Title 54 – Professions, Vocations & Businesses: Chapter 17 - Pharmacists
Title 37 – Food, Drugs & Oil: Chapter 27 - Uniform Controlled Substance Act
Rules of the Idaho State Board of Pharmacy
Message from the Board Chairman

Thank you for downloading the Idaho Pharmacy Law Book, which compiles select state laws relevant to the practice of pharmacy in or into Idaho.

During the 2018 Legislative Session, the Idaho Legislature enacted significant revisions to these laws, which were proposed by the Idaho State Board of Pharmacy (BOP). The BOP has acknowledged that changes in the education and training of pharmacists, as well as rapid advancements in the technology environment, have forced a change in approach to regulating the practice of pharmacy. Rather than these laws being read as an itemized checklist of what pharmacists can do, the BOP has adopted an approach known as “permissionless innovation” that recognizes professionalism and allows for innovation in practice.

Rule 27.01.01.020 provides guidance to licensees as they determine whether a specific act is permissible. First, a licensee should consider whether the act is expressly prohibited by any state or federal law. If an act is not expressly prohibited, the licensee should consider whether:

- The act is consistent with the licensee or registrant’s education, training or practice experience; and
- Performance of the act is within the accepted standard of care that would be provided in a similar setting by a reasonable and prudent licensee or registrant with similar education, training and experience.

Two questions that may help licensees successfully navigate this change in approach from prescriptive rules to professional judgment follow:

1. If someone asks why I made this decision, can I justify it as being consistent with good patient care and with law?
2. Would this decision withstand a test of reasonableness (e.g., would another prudent pharmacist make the same decision in this situation)?

You should consult an attorney if you have questions as to the legality of your actions under the laws and rules regulating pharmacy in the State of Idaho. It is your responsibility to ensure that you are acting consistently with those laws and rules.

The BOP hopes that you find this compilation of select state laws relevant to the practice of pharmacy in or into Idaho helpful.

Best regards,

Nicole Chopski, PharmD
Chairman
54-1701.SHORT TITLE. This chapter shall be known as the "Idaho Pharmacy Act."

54-1702.LEGISLATIVE DECLARATION. The practice of pharmacy in the state of Idaho is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this chapter, merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in or into the state of Idaho. This chapter shall be liberally construed to carry out these objects and purposes.

54-1703.STATEMENT OF PURPOSE. It is the purpose of this act to promote, preserve and protect the health, safety and welfare of the public by and through the effective control and regulation of the practice of pharmacy and of the registration of drug outlets engaged in the manufacture, production, sale and distribution of drugs, medications, devices and such other materials as may be used in the diagnosis and treatment of injury, illness and disease.

54-1704.PRACTICE OF PHARMACY. "Practice of pharmacy" means:

(1) The interpretation, evaluation and dispensing of prescription drug orders;
(2) Participation in drug and device selection, drug administration, prospective and retrospective drug reviews and drug or drug-related research;
(3) The provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care;
(4) The responsibility for:
   (a) Compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices;
   (b) Proper and safe storage of drugs and devices, and maintenance of proper records for them; and
   (c) The offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy;
(5) The prescribing of:
   (a) Dietary fluoride supplements when prescribed according to the American dental association's recommendations for persons whose drinking water is proven to have a fluoride content below the United States department of health and human services' recommended concentration;
   (b) Agents for active immunization when prescribed for susceptible persons six (6) years of age or older.
age or older for the protection from communicable disease;
(c) Opioid antagonists pursuant to section 54-1733B, Idaho Code;
(d) Epinephrine auto-injectors pursuant to sections 54-1733C and 54-1733D, Idaho Code;
(e) Drugs, drug categories or devices that are specifically authorized in rules adopted by the
board. Such drugs and devices shall be prescribed in accordance with the product's federal
food and drug administration-approved labeling. Drugs, drug categories or devices
authorized by the board under this section shall be limited to conditions that:
   (i) Do not require a new diagnosis;
   (ii) Are minor and generally self-limiting;
   (iii) Have a test that is used to guide diagnosis or clinical decision-making and are
waived under the federal clinical laboratory improvement amendments of 1988; or
   (iv) In the professional judgment of the pharmacist, threaten the health or safety of
the patient should the prescription not be immediately dispensed. In such cases, only
sufficient quantity may be provided until the patient is able to be seen by another
provider.
The board shall not adopt any rules authorizing a pharmacist to prescribe a controlled drug,
compounded drug or biological product;
(f) Tobacco cessation products pursuant to section 54-1733E, Idaho Code; and
(g) Tuberculin purified protein derivative products pursuant to section 54-1733F, Idaho
Code.

54-1705.DEFINITIONS. In this chapter:
   (1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.
   (2) "Central drug outlet" means a resident or nonresident pharmacy, drug outlet or business
entity employing or contracting pharmacists to perform off-site pharmacy services.
   (3) "Compounding" means the practice in which a pharmacist, a prescriber, or, in the case
of an outsourcing facility, a person under the supervision of a pharmacist, combines, mixes or alters
ingredients of a drug to create a medication tailored to the needs of an individual patient.
   (4) "Counseling" or "counsel" means the effective communication by the pharmacist of
information, as set out in this chapter, to the patient or caregiver in order to improve therapeutic
outcomes by maximizing proper use of prescription drugs and devices. Specific areas of counseling
include, but are not limited to:
      (a) Name and strength and description of the drug;
      (b) Route of administration, dosage, dosage form, continuity of therapy and refill
information;
      (c) Special directions and precautions for preparation, administration, storage and use by the
patient as deemed necessary by the pharmacist;
      (d) Side effects or adverse effects and interactions and therapeutic contraindications that
may be encountered, including their avoidance, which may interfere with the proper use of
the drug or device as was intended by the prescriber, and the action required if they occur;
      (e) Techniques for self-monitoring drug therapy; and
      (f) Action to be taken in the event of a missed dose.
   (5) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or
device from one person to another, whether or not for a consideration.
   (6) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in
vitro reagent or other similar related article including any component part or accessory which is:
(a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;
(b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;
(c) Intended to affect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(7) "Dispense" or "dispensing" means the preparation and delivery of a drug pursuant to a lawful prescription drug order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription.

(8) "Distribute" means the delivery of a drug other than by administering or dispensing.

(9) "Drug" means:
   (a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;
   (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;
   (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animal; and
   (d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(10) "Drug outlet" means a resident or nonresident pharmacy, business entity or other facility where employees or personnel are engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices in or into Idaho.

(11) "Institutional drug order" means a prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes as defined in rule. Unless specifically differentiated, state law applicable to a prescription drug order is also applicable to an institutional drug order.

(12) "Institutional facility" means a facility for which its primary purpose is to provide a physical environment for patients to obtain health care services and in which patients spend a majority of their time, as may be further defined by board rule.

(13) "Internship" means a practical experience program under the supervision of a preceptor.

(14) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(15) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law.

(16) "Limited service outlet" means a resident or nonresident pharmacy, facility or business entity that is subject to registration by the board, pursuant to section 54-1729, Idaho Code, and has employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, in the dispensing, delivering, distributing or manufacturing of drugs or devices as may be further defined by board rule but is not a retail pharmacy, institutional facility,
manufacturer, wholesaler, nonresident central drug outlet or mail service pharmacy.

(17) "Mail service pharmacy" means a nonresident pharmacy that ships, mails or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law.

(18) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering, dispensing or, as authorized by board rule, distributing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(19) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(20) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription drug order and which are prepackaged for use by the consumer and labeled in accordance with state and federal law.

(21) "Nonresident" means a person or business entity located in the District of Columbia or a state or territory other than Idaho that practices pharmacy including, but not limited to, pharmaceutical care services into Idaho.

(22) "Off-site pharmacy services" means services provided by a central drug outlet or an off-site pharmacist or technician. Services may include, but are not limited to: processing a request from another pharmacy to fill, refill or dispense a prescription drug order; performance of processing functions; or providing cognitive or pharmaceutical case services. Each function may be performed by the same or different persons and at the same or different locations.

(23) "Outsourcing facility" means a pharmacy or facility that is registered by the United States food and drug administration pursuant to 21 U.S.C. 353b and either registered or endorsed by the board.

(24) "Person" means an individual, corporation, partnership, association or any other legal entity.

(25) "Person in charge" or "PIC" means a pharmacist or, in the case of a prescriber drug outlet, a prescriber whose qualifications, responsibilities and reporting requirements are defined in rule.

(26) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

(27) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist registered by this state who is located in another state, territory or the District of Columbia and is engaged in the practice of pharmacy into Idaho, unless exempted.
(28) "Pharmacist intern" means a person who is enrolled in or who has completed a course of study at an accredited school or college of pharmacy and is registered with the board as a pharmacist intern prior to commencement of an internship program.

(29) "Pharmacy" means any drug outlet, facility, department or other place where prescription drug orders are filled or compounded and prescriptions are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(30) "Practitioner" means a person licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(31) "Preceptor" means a pharmacist or other health professional licensed and in good standing who supervises the internship training of a registered pharmacist intern.

(32) "Precursor" means a substance, other than a legend drug, which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(33) "Prescriber" means an individual currently licensed, registered or otherwise authorized to prescribe and administer drugs in the course of professional practice.

(34) "Prescriber drug outlet" means a drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples, patient assistance program drugs, or investigational drugs as permitted in chapter 93, title 39, Idaho Code.

(35) "Prescription drug or legend drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:
   (a) "Caution: Federal law prohibits dispensing without a prescription"; or
   (b) "Rx Only"; or
   (c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription drug order only or is restricted to use by practitioners only.

(36) "Prescription drug order" means a valid order of a prescriber for a drug or device for an ultimate user of the drug or device.

(37) "Prospective drug review" includes, but is not limited to, the following activities:
   (a) Evaluation of the prescription drug order for:
      (i) Known allergies;
      (ii) Rational therapy contraindications;
      (iii) Reasonable dose and route of administration; and
      (iv) Reasonable directions for use.
   (b) Evaluation of the prescription drug order for duplication of therapy.
   (c) Evaluation of the prescription drug order for interactions:
      (i) Drug-drug;
      (ii) Drug-food; and
      (iii) Drug-disease.
   (d) Evaluation of the prescription drug order for proper utilization:
      (i) Over- or under-utilization; and
(ii) Abuse/misuse.

(38) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects that are used in any way in connection with the purchase, sale or handling of any drug or device.

(39) "Sale" means every sale and includes:
(a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;
(b) Exposure, offer, or any other proffer;
(c) Holding, storing or any other possession;
(d) Dispensing, giving, delivering or any other supplying; and
(e) Applying, administering or any other usage.

(40) "Ultimate user" means a person who lawfully possesses a drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(41) "Veterinary drug outlet" means a prescriber drug outlet that dispenses drugs or devices intended for animal patients.

(42) "Wholesaler" means a person who in the usual course of business lawfully distributes drugs or devices in or into Idaho to persons other than the ultimate user.

54-1706. STATE BOARD OF PHARMACY ESTABLISHED. There is hereby established in the department of self-governing agencies a state board of pharmacy whose responsibilities shall be to enforce the provisions of this act. The board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this act, as well as such other duties, powers and authority as it may be granted from time to time by appropriate statute.

54-1707. MEMBERSHIP. The board of pharmacy shall consist of five (5) members. One (1) member shall be a representative of the public, and four (4) members shall be licensed pharmacists who possess the qualifications specified in section 54-1708, Idaho Code. The board of pharmacy shall have diverse pharmacy practice experience, with at least one (1) member having substantial experience in retail pharmacy and at least one (1) member having substantial experience in hospital pharmacy.

54-1708. QUALIFICATIONS OF BOARD MEMBERS. (1) The public member of the board of pharmacy shall be a resident of the state of Idaho who has attained the age of majority and shall not be nor shall he ever have been a member of the profession of pharmacy, the spouse of a member of the profession of pharmacy, or a person who has or has had a material financial interest in providing pharmacy service or any other activity directly related to the practice of pharmacy.

(2) The pharmacist members of the board of pharmacy shall at the time of their appointment and at all times thereafter:
(a) Be residents of the state of Idaho;
(b) Be licensed and in good standing to engage in the practice of pharmacy in the state of Idaho;
(c) Be engaged in the practice of pharmacy in the state of Idaho;
(d) Have five (5) years of experience in the practice of pharmacy in the state of Idaho after licensure.

54-1709. APPOINTMENT OF BOARD MEMBERS -- NOTICE OF VACANCY -- NOMINEES. Prior to the expiration of the regular term of a member of the board or upon the occurrence of declaration of a vacancy in the membership of the board, the governor shall appoint a qualified person to fill the vacancy. The governor may consider recommendations for appointment to the board from the Idaho state pharmacy association and from any individual residing in this state.

54-1710. TERMS OF OFFICE. (1) Except as provided in subsection (2) of this section, members of the board of pharmacy shall be appointed for a term of five (5) years, except that members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.
(2) The terms of the members of the board shall be staggered, so that the terms of no more than one (1) member shall expire in any year.
(3) No member of the board shall serve more than (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.
(4) An appointee to a full term on the board shall be appointed by the governor as provided in section 54-1709, Idaho Code, and be effective on July 1 of the year of appointment. Appointees to unexpired portions of full terms shall become members of the board upon appointment.

54-1711. VACANCIES. Any vacancy which occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability or disqualification, shall be filled by the governor in the manner prescribed in section 54-1709, Idaho Code. The governor shall fill vacancies which occur by expiration of full terms within thirty (30) days prior to each date of expiration, and shall fill vacancies which occur for any other reason within sixty (60) days after such vacancy occurs.

54-1712. REMOVAL OF BOARD MEMBERS. All board members shall serve at the pleasure of the governor.

54-1713. ORGANIZATION OF THE BOARD. (1) The board of pharmacy shall elect from its members a chairman and such other officers as it deems appropriate and necessary to the conduct of its business. The chairman of the board of pharmacy shall preside at all meetings of the board and shall be responsible for the performance of all of the duties and functions of the board required or permitted by this chapter. Each additional officer elected by the board shall perform those duties normally associated with his position and such other duties assigned to him from time to time by the board.
(2) Officers elected by the board shall serve terms of one (1) year commencing with the day of their election, and ending upon election of their successors.
(3) The board shall employ a person who shall be an ex officio member of the board without vote to serve as a full-time employee of the board in the position of executive director. The executive director shall be responsible for the performance of the regular administrative functions of the board and such other duties as the board may direct.

54-1714 компенсация за работу членов совета. (1) Каждый член совета аптеки должен быть компенсирован в соответствии с статьей 59-509, каждый день, в течение которого член выполняет свои обязанности, и возмещение всех расходов, связанных с выполнением этих обязанностей.

(2) Президент совета аптеки должен быть неклассифицированным офицером и получать ежегодную зарплату, которую он определит, и возмещение всех расходов, связанных с выполнением своих обязанностей.

54-1715 заседания совета. (1) Совет аптек должен собираться не реже одного раза каждые шесть месяцев для выполнения своих обязанностей. Одно заседание в каждом финансовый год должен быть назначен как ежегодное заседание и иметь целью выбор новых членов совета и его переформирования. Совет может созывать дополнительные заседания по своему усмотрению.

(2) Совет может созывать заседания в любом месте, которое выберут члены совета. Место заседания должно быть определено перед уведомлением о заседании и не может быть изменено, за исключением уведомления, в течение которого заседание уже назначено.

(3) Уведомление о всех заседаниях совета должно быть выполнено в соответствии с законодательством, правилами и регуляциями, установленными для этого.

(4) Большинство членов совета составляет необходимое количество для проведения заседания. Все действия совета должны быть выполнены большинством присутствующих.

(5) Все заседания и слушания совета должны быть проведены в соответствии с законом о собраниях, который содержится в главе 74, раздел 2, статья 74, штат Идaho.

54-1716 служащие. (1) Совет аптек может нанять дополнительных работников, помимо директора, для выполнения своих обязанностей.

(2) Все работники, кроме директора, должны быть классифицированы и получать зарплату в соответствии с законом о классификации и оплате труда, который содержится в статье 67-5309, штат Идaho.
54-1717.RULES AND REGULATIONS. The board of pharmacy shall make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the board, from time to time, for the proper administration and enforcement of this act. Such rules and regulations shall be promulgated in accordance with the procedures specified in Chapter 52, Title 67, Idaho Code, the administrative procedures act.

54-1718.LICENSURE AND DISCIPLINE. (1) The board of pharmacy shall be responsible for the control and regulation of the practice of pharmacy in this state including, but not limited to, the following:

(a) The licensing by examination or by reciprocity of applicants who are qualified to engage in the practice of pharmacy under the provisions of this chapter;
(b) The renewal of licenses to engage in the practice of pharmacy;
(c) The determination and issuance of standards for recognition and approval of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training, including internship;
(d) The enforcement of the provisions of this chapter relating to the conduct or competence of pharmacists practicing in this state, and the suspension, revocation or restriction of licenses to practice pharmacy;
(e) The regulation of the training, qualifications and employment of pharmacist interns.

(2) The board of pharmacy shall require the following applicants to submit to a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database:

(a) Original applicants for licensure or registration, unless exempted by board rule; and
(b) Applicants for reinstatement of a license or registration.

Each applicant shall submit a completed ten (10) finger fingerprint card or scan to the board of pharmacy at the time of application and shall pay the cost of the criminal history check.

54-1719.MEDICATIONS -- DRUGS -- DEVICES -- OTHER MATERIALS. The board of pharmacy shall also have the following responsibilities in regard to medications, drugs, devices and other materials used in this state in the diagnosis, mitigation and treatment or prevention of injury, illness and disease:

(1) The regulation of the sale at retail and the dispensing of medications, drugs, devices and other materials, including the method of dispensing in institutional facilities, and including the right to seize such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the administrative procedure act;
(2) The specifications of minimum professional and technical equipment, environment, supplies and procedures for the compounding, dispensing and distribution of such medications, drugs, devices and other materials within the practice of pharmacy;
(3) The control of the purity and quality of such medications, drugs, devices and other materials within the practice of pharmacy;
(4) The issuance and renewal of certificates of registration of drug outlets for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs.
54-1720. OTHER DUTIES -- POWERS -- AUTHORITY. The board of pharmacy shall have such other duties, powers, and authority as may be necessary to the enforcement of this chapter and to the enforcement of board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board.

(2) In addition to any statutory requirements, the board may require such surety bonds as it deems necessary to guarantee the performance and discharge of the duties of any officer or employee receiving and disbursing funds.

(3) The executive director of the board shall keep the seal of the board and shall affix it only in such manner as may be prescribed by the board.

(4) (a) The board shall determine by rule the fees to be collected for the issuance and renewal of licenses and registrations.

(b) All fees or fines that shall be paid under the provisions of this chapter shall be paid over by the board to the treasurer of the state of Idaho and shall be held by the state treasurer in the pharmacy account, which shall be paid out by the state treasurer upon warrant drawn by the state controller against said account. The state controller is hereby authorized, upon presentation of the proper vouchers of claims against the state, approved by the said board and the state board of examiners, as provided by law, to draw his warrant upon said account.

(5) In addition to its annual appropriations, the board may solicit and receive, from parties other than the state, grants, moneys, donations and gifts of tangible and intangible property for any purpose consistent with this act, which may be specified as a condition of any grants, donations or gifts. Such moneys may be solicited or received provided:

(a) Such moneys are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this chapter, or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(b) Such moneys are expended for the pursuit of the objective for which they are awarded;

(c) Activities connected with or occasioned by the expenditures of such moneys do not interfere with or impair the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by this chapter;

(d) Such moneys are kept in a separate, special state account; and

(e) Periodic reports are made to the administrator, division of financial management, concerning the board's receipt and expenditure of such moneys.

(6) The board shall assign to each drug outlet under its jurisdiction a uniform state number.

(7) The board or its authorized representatives shall also have power to investigate and gather evidence concerning alleged violations of the provisions of this chapter or of the rules of the board.

(8) (a) Notwithstanding anything in this chapter to the contrary, whenever a duly authorized representative of the board finds or has probable cause to believe that any drug or device is adulterated or misbranded within the meaning of the Idaho food, drug and cosmetic act, he shall affix to such drug or device a tag or other appropriate marking giving notice that such article is or is suspected of being adulterated or misbranded, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board, its agent or the court. No person shall remove or dispose of such embargoed drug or device by sale or otherwise without the
permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.

(b) When a drug or device detained or embargoed under paragraph (a) of this subsection has been declared by such representative to be adulterated or misbranded, the board shall, as soon as practical thereafter, petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the board shall direct the immediate removal of the tag or other marking.

(c) If the court finds the detained or embargoed drug or device is adulterated or misbranded, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of such drug or device. When the adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner thereof for such labeling or processing under the supervision of a board representative. Expense of such supervision shall be paid by the owner. Such bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

(d) It is the duty of the attorney general to whom the board reports any violation of this subsection to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. Nothing in this subsection shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(9) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers and authority in accordance with the administrative procedure act.

(10) (a) For the purpose of any proceedings held before the board as authorized by law, including the refusal, nonrenewal, revocation or suspension of licenses, registrations or certifications authorized by this chapter, or the imposition of fines or reprimands on persons holding such licenses, certifications or registrations, the board may subpoena witnesses and compel their attendance, and may also at such time require the production of books, papers, documents or other memoranda. In any such proceeding before the board, any member of the board, or its designee, may administer oaths or affirmations to witnesses so appearing.

(b) If any person shall refuse to obey a subpoena so issued, or refuse to testify or produce any books, papers or documents called for by said subpoena, the board may make application to the district court of the county in which the proceeding is held for an order of the court requiring the person to appear before the court and to show cause why the person should not be compelled to testify, to produce such books, papers, memoranda or other documents required by the subpoena, or otherwise comply with its terms. The application shall set forth the action theretofore taken by the board to compel the attendance of the witness, the circumstances surrounding the failure of the witness to attend or otherwise comply with the subpoena, together with a brief statement of the reasons why compliance with the subpoena is necessary to the proceeding before the board.

(c) Upon the failure of a person to appear before the court at the time and place designated by it, the court may enter an order without further proceedings requiring the person to comply
with the subpoena. Any person failing or refusing to obey such order of the court shall be punished for contempt of court as in other cases provided.

(11) The board may sponsor, participate in or conduct education, research or public service programs or initiatives to carry out the purposes of this act.

54-1721. UNLAWFUL PRACTICE. (1) It shall be unlawful for any person or business entity to engage in the practice of pharmacy including, but not limited to, pharmaceutical care services in or into Idaho unless licensed or registered to so practice under the provisions of this chapter, except as provided herein:

(a) Physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of this state may deliver and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this state;

(b) Nonresident pharmacists who are actively licensed in their state of residence may practice pharmacy into Idaho if employed by or affiliated with and practicing for an Idaho-registered nonresident drug outlet. Only the person in charge of a registered nonresident facility must be licensed or registered to practice into Idaho; and

(c) A veterinary drug outlet, as defined in section 54-1705, Idaho Code, does not need to register with the board if the outlet does not dispense for outpatient use any controlled substances listed in chapter 27, title 37, Idaho Code, euthanasia drugs, tranquilizer drugs, neuromuscular paralyzing drugs or general anesthesia drugs.

(2) Notwithstanding the provisions of subsection (1) of this section and any statute or rule to the contrary, persons who hold a valid and current license to practice practical or professional nursing in this state pursuant to sections 54-1407, 54-1408 and 54-1418, Idaho Code, and who are employed by one (1) of the public health districts established under section 39-408, Idaho Code, shall be permitted to engage in the labeling and delivery of refills of the following prepackaged items when such items have been prescribed to a patient by a licensed physician, licensed physician's assistant or licensed advanced practice nurse:

(a) Prenatal vitamins;

(b) Contraceptive drugs approved by the United States food and drug administration;

(c) Antiviral drugs approved by the United States centers for disease control and prevention for treatment of sexually transmitted infection; and

(d) Drugs approved by the United States centers for disease control and prevention for treatment of active and latent tuberculosis.

(3) It shall be unlawful for any person, not legally licensed or registered as a pharmacist, to take, use or exhibit the title of pharmacist or the title of druggist or apothecary, or any other title or description of like import.

(4) Any person who shall be found to have unlawfully engaged in the practice of pharmacy shall be subject to a fine not to exceed three thousand dollars ($3,000) for each offense. Each such violation of this chapter or the rules promulgated hereunder pertaining to unlawfully engaging in the practice of pharmacy shall also constitute a misdemeanor punishable upon conviction as provided in the criminal code of this state.
54-1722. QUALIFICATIONS FOR LICENSURE BY EXAMINATION. (1) To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination shall:

   (a) Have submitted a written application in the form prescribed by the board of pharmacy;
   (b) Have attained the age of majority;
   (c) Be of good moral character and temperate habits;
   (d) Have graduated and received the first professional undergraduate degree from a school or college of pharmacy approved by the board of pharmacy;
   (e) Have completed an internship or other program approved by the board of pharmacy, or demonstrated to the board's satisfaction experience in the practice of pharmacy that meets or exceeds the minimum internship requirements of the board;
   (f) Have successfully passed an examination given by the board of pharmacy; and
   (g) Paid the fees specified by the board of pharmacy for examination and issuance of license.

(2) Examinations. The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.

(3) Internship and other training programs. All applicants for licensure by examination shall obtain practical experience in the practice of pharmacy concurrent with or after college attendance, or both, under such terms and conditions as the board shall determine.

(4) Any applicant who is a graduate of a school or college of pharmacy located outside the United States, the degree program of which has not been approved by the board, but who is otherwise qualified to apply for a license to practice pharmacy in this state, may be considered to have satisfied the degree requirements of subsection (1)(d) of this section by verification to the board of his academic record and his graduation and by meeting any other requirements as the board may establish from time to time. The board may require that the applicant successfully pass an examination given or approved by the board to establish proficiency in English and an equivalency of education with qualified graduates of a degree program specified in subsection (1)(d) of this section as a prerequisite of taking the licensure examination as provided in subsection (1)(f) of this section.

54-1723. QUALIFICATIONS FOR LICENSURE BY RECIPROCITY. (1) To obtain a license as a pharmacist by reciprocity, an applicant for licensure shall:

   (a) Have submitted a written application in the form prescribed by the board of pharmacy;
   (b) Have attained the age of majority;
   (c) Have good moral character and temperate habits;
   (d) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this state;
   (e) Have presented to the board proof of initial licensure by examination and proof that such license and any other license or licenses granted to the applicant by any other state or states is not at the time of application suspended, revoked, canceled or otherwise restricted in a manner preventing the applicant from practicing as a pharmacist for any reason except nonrenewal or the failure to obtain required continuing education credits in any state where the applicant is licensed but not engaged in the practice of pharmacy; and
   (f) Have paid the fees specified by the board of pharmacy for issuance of a license.

(2) Eligibility. No applicant shall be eligible for licensure by reciprocity unless the state in
which the applicant was initially licensed as a pharmacist also grants reciprocal licensure to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

54-1723A. REGISTRATION TO ENGAGE IN THE PRACTICE OF PHARMACY INTO IDAHO. (1) To obtain a registration to practice as a pharmacist into the state of Idaho, the applicant shall:
   (a) Be licensed and in good standing in the state from which the applicant practices pharmacy;
   (b) Submit a written application in the form prescribed by the board;
   (c) Pay the fee(s) specified by the board for the issuance of the registration; and
   (d) Comply with all other requirements of the board.
(2) A successful applicant for registration under this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.
(3) A successful applicant for registration under this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located.
(4) Renewal shall be required annually and submitted to the board no later than the last day of the registrant's birth month. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration.

54-1724. RENEWAL OF LICENSES. (1) Each pharmacist shall apply for license renewal annually no later than the last day of the licensee's birth month. The board shall renew the license of each pharmacist who is qualified to engage in the practice of pharmacy.
(2) The board shall specify by rule or regulation the procedures to be followed and the fees to be paid for renewal of licenses.

54-1725. CONTINUING PHARMACY EDUCATION. (1) The legislature makes the following findings and declarations:
   (a) Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain his professional competency and improve his professional skills; and
   (b) To assure the continued competency of the pharmacist and to maintain uniform qualifications for registration and licensure in the profession for the protection of the health and welfare of its citizens, the legislature of this state deems it in the public interest to adopt a continuing professional education program.
(2) No annual renewal license shall be issued to a pharmacist until such pharmacist shall have submitted proof to the board that he has satisfactorily completed an accredited program of continuing professional education during the previous year to help assure his continued competence to engage in the practice of pharmacy. The board shall from time to time determine the amount of continuing education to be required.
(3) The board shall adopt rules and regulations necessary to carry out the stated objectives and purposes and to enforce the provisions of this section, which shall include the methods of
54-1726. GROUNDS FOR DISCIPLINE. (1) The board of pharmacy may refuse to issue or renew, or may suspend, revoke or restrict the license or registration of any person, pursuant to the procedures set forth in chapter 52, title 67, Idaho Code, upon one (1) or more of the following grounds:

(a) Unprofessional conduct as that term is defined by the rules of the board;
(b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;
(c) Being found guilty, convicted or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:
   (i) Any felony;
   (ii) Any act involving moral turpitude, gross immorality or which is related to the qualifications, functions or duties of a licensee; or
   (iii) Violations of the pharmacy or drug laws of this state or rules pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government;
(d) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license.
(e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license, or falsely using the title of pharmacist.
(f) Being found by the board to be in violation of any of the provisions of this chapter, chapter 27, title 37, Idaho Code, or rules adopted pursuant to either chapter.

(2) Nonresidentlicensees and registrants shall be held accountable to the board for violations by its agents and employees and subject to the same grounds for discipline and penalties for their actions as set forth herein.

54-1727. CONFIDENTIALITY OF PRESCRIPTIONS AND PATIENT INFORMATION. (1) All prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient shall be held in the strictest confidence. No person in possession of such information shall release the information, unless requested as follows:

(a) By the board, or its representatives, acting in their official capacity;
(b) By the patient, or the patient's designee, regarding the patient's own records;
(c) By the practitioner, or the practitioner's designee, who issued the prescription;
(d) By other licensed health care professionals who are responsible for the direct and acute care of the patient;
(e) By agents of the department of health and welfare when acting in their official capacity with reference to issues related to the practice of pharmacy (written requests by authorized agents of the department requesting such information are required);
(f) By agents of any board whose practitioners have prescriptive authority, when the board is enforcing laws governing that practitioner;
(g) By an agency of government charged with the responsibility for providing medical care for the patient (written requests by authorized agents of the agency requesting such information are required);
(h) By the federal food and drug administration (FDA), for purposes relating to monitoring of adverse drug events in compliance with the requirements of federal law, rules or regulations adopted by the federal food and drug administration;

(i) By the patient's authorized insurance benefit provider or health plan providing health care coverage or pharmacy benefits to the patient.

(j) Nothing in this section shall be construed to prohibit consultations between health care professionals who are involved in the diagnosis, care and treatment of the patient.

(k) Nothing in this section shall prohibit insurance companies and health plans from sharing patient specific information with law enforcement authorities or any of the entities identified in subsections (1)(a) through (i) of this section, in cases of suspected fraud and substance abuse.

(l) Nothing in this section shall prohibit disclosure of patient specific information to law enforcement authorities pursuant to a search warrant, subpoena, or other court order.

(2) Nothing in this section shall prevent the pharmacist or others from providing aggregate or other data, which does not identify the patient to qualified researchers, including pharmaceutical manufacturers, for purposes of clinical, pharmacoepidemiological, or pharmacoeconomic research.

(3) Any person who has knowledge by virtue of his office or occupation of any prescription drug order, record, or pharmacy related information that specifically identifies an individual patient shall not divulge such information except as authorized in subsections (1) and (2) of this section. Any person or entity to whom information is divulged pursuant to subsection (1) of this section shall not divulge such information except in compliance with this section.

(4) Nothing in this section shall limit the authority of the board or its representatives from inspecting the records of pharmacies or pharmacists or the authority of any other board with licensees who have prescriptive authority from performing any other duty or authority of that board, nor shall this section limit a court of competent jurisdiction from ordering the release or disclosure of such records upon a showing of just cause after such review or hearing as the court deems necessary and proper. This section shall not limit the authority of any other board or agency to inspect records of persons it regulates, notwithstanding that the records may contain information protected by the provisions of this section.

(5) In addition to all other penalties as provided by law, any person or entity found by the board to be in violation of the provisions of this section shall be subject to an administrative penalty not to exceed three thousand dollars ($3,000) for each violation.

(6) No person shall be liable, nor shall a cause of action exist, for any loss or damage based upon the proper good faith release of records pursuant to the provisions of subsection (1) or (2) of this section.

54-1728.PENALTIES AND REINSTATEMENT. (1) Upon the finding of the existence of grounds for discipline of any person or business entity holding a license or registration, seeking a license or registration, or a renewal license or registration under the provisions of this chapter, the board of pharmacy may impose one (1) or more of the following penalties:

(a) Suspension of the offender's license or registration for a term to be determined by the board;

(b) Revocation of the offender's license or registration;

(c) Restriction of the offender's license or registration to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;
(d) Refusal to renew the offender's license or registration;
(e) Placement of the offender on probation and supervision by the board for a period to be determined by the board;
(f) Imposition of an administrative fine not to exceed two thousand dollars ($2,000) for each occurrence providing a basis for discipline.
(2) The board may take any action against a nonresident licensee or registrant that the board can take against a resident licensee or registrant for violation of the laws of this state or the state in which it resides.
(3) The board may report any violation by a nonresident licensee or registrant, or its agent or employee, of the laws and rules of this state, the state in which it resides or the United States to any appropriate state or federal regulatory or licensing agency including, but not limited to, the regulatory agency of the state in which the nonresident licensee or registrant is a resident.
(4) The board may elect to not initiate an administrative action under Idaho law against a nonresident licensee or registrant upon report of a violation of law or rule of this state if the licensee's or registrant's home state commences an action for the violation complained of; provided however, that the board may elect to initiate an administrative action if the home state action is unreasonably delayed or the home state otherwise fails to take appropriate action for the reported violation.
(5) The suspension, revocation, restriction or other action taken against a licensee or registrant by a state licensing board with authority over a licensee's or registrant's professional license or registration or by the drug enforcement administration may result in the board's issuance of an order likewise suspending, revoking, restricting or otherwise affecting the license or registration in this state, without further proceeding, but subject to the effect of any modification or reversal by the issuing state or the drug enforcement administration.
(6) The assessment of costs and fees incurred in the investigation and prosecution or defense of a person holding a license or registration, seeking a license or registration, or renewing a license or registration under this chapter shall be governed by the provisions of section 12-117, Idaho Code.
(7) Any person whose license to practice pharmacy in this state has been suspended, revoked or restricted pursuant to this chapter, or any drug outlet whose certificate of registration has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.
(8) Nothing herein shall be construed as barring criminal prosecutions for violations of the act where such violations are deemed as criminal offenses in other statutes of this state or of the United States.
(9) All final decisions by the board shall be subject to judicial review pursuant to the procedures of the administrative procedure act.

54-1729.REGISTRATION AND LICENSURE OF FACILITIES. (1) All drug or device outlets doing business in or into Idaho shall:
(a) If a nonresident, be licensed or registered and in good standing in the applicant's state of residence;
(b) Submit a written application in the form prescribed by the board;
(c) Pay the fee or fees specified by the board for the issuance of the registration or license; and
(d) Have a PIC who is licensed or registered by the board, except manufacturers, wholesalers and other drug outlets in accordance with board rule.

(2) Each drug or device outlet shall apply for a certificate of registration or a license in one of the following classifications:
(a) Retail pharmacy;
(b) Institutional facility;
(c) Manufacturer;
(d) Wholesaler;
(e) Prescriber drug outlet;
(f) Central drug outlet;
(g) Mail service pharmacy;
(h) Limited service outlet.

(3) The board shall establish by rule under the powers granted to it under sections 54-1718 and 54-1719, Idaho Code, the criteria that each outlet with employees or personnel engaged in the practice of pharmacy must meet to qualify for registration or licensure in each classification designated in subsection (2) of this section. The board may issue various types of certificates with varying restrictions to such outlets designated in subsection (2) of this section where the board deems it necessary by reason of the type of outlet requesting a certificate.

(4) It shall be lawful for any outlet or facility to sell and distribute nonprescription drugs. Outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule will be adopted by the board under this chapter that requires the sale of nonprescription drugs by a pharmacist or under the supervision of a pharmacist or otherwise applies to or interferes with the sale and distribution of such medicines.

(5) If the regulatory board or licensing authority of the state in which a nonresident outlet is located fails or refuses to conduct an inspection or fails to obtain records or reports required by the board, upon reasonable notice to the nonresident outlet, the board may conduct an inspection. Nonresident outlets shall also pay the actual costs of the out-of-state inspection of the outlet, including the transportation, lodging and related expenses of the board's inspector.

(6) A successful applicant for registration under the provisions of this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(7) A successful applicant for registration under the provisions of this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located.

(8) Renewal shall be required annually and submitted to the board no later than December 31. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration or licensure.

54-1730.DRUG OUTLET APPLICATION PROCEDURES. (1) The board shall specify by rule the registration procedures to be followed including, but not limited to, specification of forms for use in applying for such certificates of registration and times, places and fees for filing such application.

(2) Applications for certificates of registration shall include the following information about
the proposed outlet:

(a) Ownership;
(b) Location;
(c) Identity of pharmacist licensed or registered to practice in the state, who shall be the person in charge of the outlet, where one is required by this chapter, and such further information as the board may deem necessary.

(3) Certificates of registration issued by the board pursuant to this chapter shall not be transferable or assignable.

(4) The board shall specify by rule minimum standards for the professional responsibility in the conduct of any outlet that has employees or personnel engaged in the practice of pharmacy. The board is specifically authorized to require that the portion of the facility to which such certificate of registration applies be operated only under the direct supervision of no less than one (1) pharmacist licensed to practice in this state and not otherwise, and to provide such other special requirements as deemed necessary.

54-1731 NOTIFICATIONS. (1) All registered drug outlets shall report to the board of pharmacy the occurrence of any of the following changes:

(a) Permanent closing;
(b) Change of ownership, management, location or pharmacist in charge;
(c) Any and all other matters and occurrences as the board may require by rules and regulations.

(2) Disasters, accidents and emergencies which may affect the strength, purity or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness and disease shall be immediately reported to the board.

54-1732 VIOLATIONS AND PENALTIES. (1) No drug outlet designated in section 54-1729, Idaho Code, shall be operated until a certificate of registration has been issued to said facility by the board. Upon the finding of a violation of this subsection, the board may impose one (1) or more of the penalties enumerated in section 54-1728, Idaho Code.

(2) Reinstatement of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified in section 54-1728(7), Idaho Code.

(3) The following acts, or the failure to act, and the causing of any such act or failure are unlawful:

(a) The sale, delivery or administration of any prescription drug or legend drug, except an opioid antagonist pursuant to section 54-1733B, Idaho Code, or an epinephrine auto-injector pursuant to sections 54-1733C and 54-1733D, Idaho Code, unless:

(i) Such legend drug is dispensed or delivered by a pharmacist upon an original prescription, drug order or prescription drug order by a practitioner in good faith in the course of his practice. Any person violating the provisions of this subparagraph shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars ($5,000) or by both such fine and imprisonment.

(ii) In the case of a legend drug dispensed by a pharmacist or prescriber, there is a label affixed to the immediate container in which such drug is dispensed. Any person violating this subparagraph shall be guilty of a misdemeanor and upon conviction
thereof shall be fined not more than five hundred dollars ($500). Nothing in this subparagraph prohibits a practitioner from delivering professional samples of legend drugs in their original containers in the course of his practice when oral directions for use are given at the time of such delivery.

(b) The refilling of any prescription or drug order for a legend drug except as designated on the prescription or drug order or by the authorization of the practitioner. Any person guilty of violating the provisions of this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(c) The possession or use of a legend drug or a precursor, except an opioid antagonist pursuant to section 54-1733B, Idaho Code, or an epinephrine auto-injector pursuant to sections 54-1733C and 54-1733D, Idaho Code, by any person unless such person obtains such drug on the prescription or drug order of a practitioner. Any person guilty of violating the provisions of this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(d) The wholesale distribution of drugs or devices by a pharmacy except for:
   (i) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.
   (ii) The sale of minimal quantities of prescription drugs to practitioners for office use.
   (iii) The sale of a prescription drug for emergency medical reasons, but never to a wholesale distributor.
   (iv) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees or a colicensed product, but never to a wholesale distributor.

(e) The failure to keep records as required by the board. Any person guilty of violating the provisions of this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(f) The refusal to make available and to accord full opportunity to check any record, as required by the board. Any person guilty of violating the provisions of this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(g) It is unlawful to:
   (i) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by fraud, deceit, misrepresentation or subterfuge; by the forgery or alteration of a prescription, drug order, or of any written order; by the concealment of a material fact; or by the use of a false name or the giving of a false address.
   (ii) Communicate information to a physician in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug. Any such communication shall not be deemed a privileged communication.
(iii) Intentionally make a false statement in any prescription, drug order, order, report or record required by this chapter.

(iv) For the purpose of obtaining a legend drug to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other person.

(v) Make or utter any false or forged prescription or false drug order or forged written order.

(vi) Affix any false or forged label to a package or receptacle containing legend drugs. This subparagraph does not apply to law enforcement agencies or their representatives while engaged in enforcing state and federal drug laws.

(vii) Wholesale or retail any prescription or legend drug to any person in this state not entitled by law to deliver such drug to another.

Every violation of paragraph (g)(i) through (vi) of this subsection shall be a misdemeanor, and any person convicted thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or fined not more than one thousand dollars ($1,000), or punished by both such fine and imprisonment. Any person violating paragraph (g)(vii) of this subsection is guilty of a felony and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars ($5,000), or by both such fine and imprisonment.

(4) Provided however, that a veterinarian may dispense or deliver a legend drug prescribed for an animal upon the prescription, drug order, or prescription drug order of another veterinarian. The label shall be affixed pursuant to subsection (3)(a)(ii) of this section, and penalties for violations of the provisions of this subsection shall be as provided in this section for like violations by a pharmacist.

(5) The ultimate user of a legend drug who has lawfully obtained such legend drug may deliver, without being registered, the legend drug to another person for the purpose of disposal of the legend drug if the person receiving the legend drug for purposes of disposal is authorized under a state or federal law or regulation to engage in such activity.

54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) A prescription drug order for a legend drug is valid only if it is issued by a prescriber for a legitimate medical purpose arising from a prescriber-patient relationship which includes a documented patient evaluation adequate to establish diagnoses, if applicable, and identify underlying conditions and/or contraindications to the treatment.

(2) A prescriber who is otherwise authorized to perform any of the activities listed in this section may prescribe or perform any of the following activities for a patient with whom the prescriber does not have a prescriber-patient relationship under the following circumstances:

(a) Writing initial admission orders for a newly hospitalized patient;
(b) Writing a prescription drug order for a patient of another prescriber for whom the prescriber is taking call;
(c) Writing a prescription drug order for a patient examined by a physician assistant, advanced practice registered nurse or other licensed practitioner with whom the prescriber has a supervisory or collaborative relationship;
(d) Writing a prescription drug order for a medication on a short-term basis for a new patient prior to the patient's first appointment;
(e) Writing a prescription for an opioid antagonist pursuant to section 54-1733B, Idaho
(f) In emergency situations where the life or health of the patient is in imminent danger;

(g) In emergencies that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;

(h) Epinephrine auto-injectors in the name of a school pursuant to section 33-520A, Idaho Code, or an authorized entity pursuant to section 54-1733C, Idaho Code;

(i) If a prescriber makes a diagnosis of a sexually transmitted disease in a patient, prescribe or dispense antibiotics to the infected patient's named sexual partner or partners for treatment of the sexually transmitted disease as recommended by the most current centers for disease control and prevention guidelines; and

(j) If a prescriber makes a diagnosis of an infectious disease in a patient, prescribe or dispense antimicrobials to an individual who has been exposed to the infectious person in accordance with clinical guidelines for chemoprophylaxis.

(3) Treatment, including issuing a prescription drug order, based solely on an online questionnaire or consultation outside of an ongoing clinical relationship does not constitute a legitimate medical purpose.

(4) A prescription drug order shall be issued only by a prescriber including a prescriber who is licensed in a jurisdiction other than the state of Idaho and is permitted by such license to prescribe legend drugs in the course of his professional practice as long as the individual is acting within the jurisdiction, scope and authority of his license when issuing the prescription drug order.

(5) The following acts shall be unlawful:

(a) To knowingly issue an invalid prescription drug order for a legend drug;

(b) To knowingly dispense a legend drug pursuant to an invalid prescription drug order; or

(c) To prescribe drugs to individuals without a prescriber-patient relationship, unless excepted in this section.

Such acts shall constitute unprofessional conduct and the prescriber or dispenser shall be subject to discipline according to the provisions of the Idaho Code chapter pursuant to which the prescriber or dispenser is licensed, certified or registered.

54-1733A.TRANSMISSION OF PRESCRIPTION DRUG ORDERS. (1) A valid prescription drug order may be transmitted to a licensed pharmacy by the following means:

(a) By delivery of the original signed written prescription drug order or a digital image of the order in accordance with rules adopted by the board;

(b) Electronically by the prescriber or prescriber's agent in compliance with the uniform electronic transactions act, chapter 50, title 28, Idaho Code;

(c) Electronically by a licensed practical or professional nurse in an institutional facility for a patient of that facility via a secure, interoperable information technology system that exchanges data accurately, effectively and in compliance with applicable laws;

(d) Verbally by the prescriber, prescriber's agent, or a licensed practical or professional nurse for a patient of an institutional facility or for a hospice patient; and

(e) Via facsimile by a prescriber, prescriber's agent, institutional facility or hospice agent, provided that if the order was initially received verbally, the transmitted document shall include the name of the prescriber, the name of the licensed practical or professional nurse who received and transcribed the order and the name of the person who faxed the order.

(2) In the event that there are no refills remaining on an existing prescription drug order and
the pharmacist requests a new prescription drug order from the prescriber, the prescriber's agent, after obtaining prescriber authorization, may sign and return the request via facsimile as long as:

(a) The request is generated from the pharmacy;
(b) The request is for medication that the patient is currently taking;
(c) There are no changes to the type of drug, its strength or directions for the continuation of therapy;
(d) The prescriber's agent's transmission is received via facsimile from the prescriber's office; and
(e) The request, which is subsequently transmitted back to the requesting pharmacy by the prescriber's agent, contains all components of a valid prescription drug order.

54-1733B.OPIOID ANTAGONISTS. (1) Notwithstanding any other provision of law, any prescriber or pharmacist acting in good faith and exercising reasonable care may prescribe an opioid antagonist to:

(a) A person at risk of experiencing an opiate-related overdose;
(b) A person in a position to assist a person at risk of experiencing an opiate-related overdose;
(c) A person who, in the course of his official duties or business, may encounter a person experiencing an opiate-related overdose; or
(d) A person who in the opinion of the prescriber or pharmacist has valid reason to be in the possession of an opioid antagonist.

(2) Notwithstanding any other provision of law, any person acting in good faith and exercising reasonable care may administer an opioid antagonist to another person who appears to be experiencing an opiate-related overdose. As soon as possible, the administering person shall contact emergency medical services.

(3) Any person who prescribes or administers an opioid antagonist pursuant to subsection (1) or (2) of this section shall not be liable in a civil or administrative action or subject to criminal prosecution for such acts.

(4) The department of health and welfare in cooperation with the office of drug policy shall create and maintain an online education program for laypersons and the general public on matters pertaining to opiate-related overdoses, including:

(a) How to recognize symptoms or indications of an opiate-related overdose;
(b) How to store, administer and dispose of an opioid antagonist;
(c) Emergency procedures in the event of an opiate-related overdose; and
(d) Other information deemed pertinent by the department of health and welfare and the office of drug policy.

(5) As used in this section, "opioid antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal food and drug administration for the treatment of drug overdose.

54-1733C.EPINEPHRINE AUTO-INJECTORS -- EMERGENCY ADMINISTRATION. Notwithstanding any provision of law to the contrary:

(1) A health care practitioner, including a pharmacist, may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists and other health care practitioners may dispense epinephrine auto-injectors pursuant
to a prescription issued in the name of an authorized entity.

(2) An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section. Such epinephrine auto-injectors shall be stored in a location readily accessible in an emergency and in accordance with the epinephrine auto-injector’s instructions for use. Following administration, the administering person shall contact emergency medical services as soon as possible.

(3) An employee or agent of an authorized entity or other individual who has completed the training required by subsection (4) of this section may use an epinephrine auto-injector prescribed pursuant to subsection (1) of this section to:
   (a) Provide an epinephrine auto-injector to any individual whom the employee, agent or other individual believes in good faith to be experiencing anaphylaxis, or the parent, guardian or caregiver of such an individual, for immediate administration, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy; or
   (b) Administer an epinephrine auto-injector to any individual whom the employee, agent or other individual believes in good faith to be experiencing anaphylaxis, regardless of whether the individual has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(4) An employee, agent or other individual described in subsection (2) or (3) of this section must complete a biennial anaphylaxis training program. Such training shall be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment. Training may be conducted online or in person, and at a minimum shall cover:
   (a) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;
   (b) Standards and procedures for the storage, administration and disposal of an epinephrine auto-injector; and
   (c) Emergency follow-up procedures.

The entity that conducts training shall issue a document of completion to each person who successfully completes the anaphylaxis training program.

(5) Nurses, pharmacists or other health care practitioners may act pursuant to subsection (3) of this section without completing the training required by subsection (4) of this section.

(6) The following shall not be liable for any injuries or related damages that result from any act or omission taken pursuant to this section:
   (a) An authorized entity that possesses and makes available epinephrine auto-injectors, and the employees, agents or other individuals associated with such entity;
   (b) A pharmacist or other health care practitioner who prescribes or dispenses epinephrine auto-injectors to an authorized entity; and
   (c) An individual or entity that conducts the training required by subsection (4) of this section.

This provision of immunity does not apply to acts or omissions constituting gross negligence. The administration of an epinephrine auto-injector in accordance with this section is not the practice of medicine or any other profession that otherwise requires licensure. This section does not eliminate, limit or reduce any other immunity or defense that may be available under state law, including that provided under section 5-330, Idaho Code.

(7) An entity located in this state shall not be liable for any injuries or related damages that result from the provision or administration of an epinephrine auto-injector outside of this state if the entity:
(a) Would not have been liable for such injuries or related damages had the provision or administration occurred within this state; or
(b) Is not liable for such injuries or related damages under the law of the state in which such provision or administration occurred.
(8) An authorized entity that possesses and makes available epinephrine auto-injectors shall take effort to remove outdated product and dispose of it properly.
(9) As used in this section:
(a) "Administer" means the direct application of an epinephrine auto-injector to the body of an individual.
(b) "Authorized entity" means any entity or organization, other than a school pursuant to section 33-520A, Idaho Code, in connection with or at which allergens capable of causing anaphylaxis may be present including, but not limited to, recreation camps, colleges and universities, day care facilities, youth sports leagues, amusement parks, restaurants, places of employment and sports arenas.
(c) "Epinephrine auto-injector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.
(d) "Health care practitioner" means an individual currently licensed, registered or otherwise authorized to prescribe and administer drugs in the course of professional practice.
(e) "Provide" means to supply one (1) or more epinephrine auto-injectors to an individual.

54-1733D.EPINEPHRINE AUTO-INJECTORS -- PRESCRIPTION AND ADMINISTRATION. Notwithstanding any other provision of law, any prescriber or pharmacist acting in good faith and exercising reasonable care may prescribe an epinephrine auto-injector to:
(1) A person at risk of experiencing anaphylaxis;
(2) A person in a position to assist a person at risk of experiencing anaphylaxis;
(3) A person who, in the course of the person's official duties or business, may encounter a person experiencing anaphylaxis; and
(4) A person who, in the opinion of the prescriber or pharmacist, has a valid reason to be in possession of an epinephrine auto-injector.

54-1733E.TOBACCO CESSATION PRODUCTS -- PRESCRIPTION. Notwithstanding any other provision of law, a pharmacist acting in good faith and exercising reasonable care may prescribe any tobacco cessation product approved by the federal food and drug administration, provided the following conditions are met:
(1) Prior to prescribing tobacco cessation products, the pharmacist must successfully complete a course on tobacco cessation therapy taught by a provider accredited by the accreditation council for pharmacy education or by a comparable provider recognized by the board;
(2) When a patient requests a tobacco cessation product, the pharmacist shall use a screening procedure based on clinical guidelines to identify appropriate candidates for treatment by the pharmacist. The pharmacist shall refer high-risk patients or patients with a contraindication to the patient's primary care provider, as applicable, or to another provider, as appropriate; and
(3) When a pharmacist prescribes a tobacco cessation product:
(a) Documentation of the patient screening and the prescription record shall be maintained in the records of the pharmacy and a copy shall be made available to the patient or the patient's provider, or both, upon request;
(b) A follow-up care plan shall be developed and implemented in accordance with clinical
guidelines;
(c) Notification of the patient screening, the prescription record and the follow-up care plan shall be provided to the patient's primary care provider, as applicable, within five (5) business days following the prescribing of a tobacco cessation product; and
(d) The pharmacist shall recommend that the patient seek additional assistance for behavior change including, but not limited to, the Idaho QuitLine.

54-1733F. TUBERCULIN PURIFIED PROTEIN DERIVATIVE PRODUCTS -- SCREENING. Notwithstanding any other provision of law, a pharmacist acting in good faith and exercising reasonable care may prescribe and administer a tuberculin purified protein derivative product approved by the federal food and drug administration to a patient for the purpose of screening for tuberculosis infection, provided the following conditions are met:

(1) Prior to prescribing and administering a tuberculin purified protein derivative product, the pharmacist must successfully complete a course on proper test administration and interpretation of results from the United States centers for disease control and prevention (CDC) or a comparable course from a provider accredited by the accreditation council for pharmacy education;
(2) The pharmacist shall follow the recommendations for Mantoux tuberculin skin testing from the CDC regarding test administration and interpretation of results;
(3) Documentation of test results shall be maintained in the records of the pharmacy and a copy of the results shall be made available to the patient upon request; and
(4) If the patient is found to have a positive test reading:
   (a) The pharmacist shall coordinate a timely referral to the patient's primary care provider, if applicable, or to a local clinic to coordinate further diagnostics and follow-up care; and
   (b) A report shall be submitted to the patient's local health district or to the Idaho department of health and welfare in accordance with the rules governing Idaho reportable diseases.

54-1734. POSSESSION OF LEGEND DRUGS. The following persons or their agents or employees may possess legend drugs for use in the usual and lawful course of their business or practice or in the performance of their lawful official duties, without a valid prescription drug order:

(1) Pharmacists;
(2) Prescribers;
(3) Researchers who are prohibited from further distribution;
(4) Hospitals and other institutional facilities;
(5) Manufacturers and wholesalers;
(6) Common carriers solely in the usual course of business of transporting prescription drugs;
(7) Schools or other authorized entities possessing stock supplies of epinephrine auto-injectors pursuant to section 33-520A or 54-1733C, Idaho Code, upon presenting proof that the authorized entity has at least one (1) individual who has completed the training requirement of section 33-520A(5)(b) or 54-1733C(4), Idaho Code;
(8) Persons, agencies and organizations possessing opioid antagonists pursuant to section 54-1733B, Idaho Code;
(9) Midwives licensed pursuant to section 54-5507, Idaho Code, limited to formulary drugs consistent with rules promulgated by the Idaho board of midwifery;
(10) Home health nurses or agencies, or hospice agencies, possessing emergency kits pursuant to rules of the board; and

(11) Chiropractic physicians licensed pursuant to chapter 7, title 54, Idaho Code, and certified pursuant to sections 54-708 and 54-717, Idaho Code, limited to the prescription drug products listed in section 54-716, Idaho Code.

54-1735. PATIENT MEDICATION RECORDS. In order to effectively counsel patients, the pharmacist shall make a reasonable effort to obtain, record and maintain significant patient information including, but not limited to:

(1) Name, address, telephone number;
(2) Date of birth (age), gender;
(3) Medical history:
   (a) Disease state(s);
   (b) Allergies/drug reactions; and
   (c) Current list of medications and devices;
(4) Pharmacist comments.

54-1736. DECLARATION OF COMMON NUISANCE. Any store, shop, warehouse, dwelling house, apartment, building, vehicle, boat, aircraft, or any place whatever, which is used by any person for the purpose of unlawfully using any legend drug, or which is used for the unlawful keeping or selling of the same, is a common nuisance. No person shall keep, or maintain such a common nuisance, nor frequent or visit such place knowing it to be used for any said purposes.

54-1737. BURDEN OF PROOF. (a) In any complaint, information, affidavit or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, proviso, or exemption contained in this chapter, the burden of proof is upon the party claiming any such exception, excuse, proviso or exemption.

(b) Anyone wholesaling or retailing prescription or legend drugs shall bear the burden of ascertaining that the receiver of such drugs is entitled by law to administer, dispense or deliver such drugs and proof that one has sold such drugs at wholesale or retail to an unauthorized person shall be prima facie evidence of illegality.

54-1738. PROOF THAT A DRUG IS A PRESCRIPTION DRUG OR LEGEND DRUG. The following shall constitute prima facie evidence in any criminal or civil proceeding in this state that a drug is a prescription drug or legend drug:

(1) In the case of a drug for which a new drug application was submitted to the United States food and drug administration, the affidavit of an officer having legal custody of the official records of the United States food and drug administration stating that such records show that the new drug application was approved, setting forth the date of approval, and further stating that the records show that proposed labeling for the drug which includes the legend "Caution: Federal law prohibits dispensing without a prescription" was approved. The affidavit shall be accompanied by a certificate that such officer has the custody.

(2) In the case of a drug for which the United States food and drug administration does not
require an approved new drug application as a condition for marketing the drug, the affidavit of an officer having legal custody of the official records of the United States food and drug administration stating that such records reflect that the drug meets the criteria of federal law to be regarded as a prescription drug and is required to bear the legend "Caution: Federal law prohibits dispensing without a prescription." The affidavit shall be accompanied by a certificate that such officer has the custody.

(3) In the case of a drug designated a prescription drug by action of the state board of pharmacy, independently of federal law, the affidavit of an officer having legal custody of the records of the state board of pharmacy stating that such records show that the drug has been denominated a prescription drug, to which shall be attached a copy of the official document evidencing such action. The affidavit shall be accompanied by a certificate that such officer has the custody.

(4) This section does not prevent proof that a drug is a prescription or legend drug by any method authorized by any applicable statute, rule of procedure or rule of evidence.

54-1739.PROSPECTIVE DRUG REVIEW AND COUNSELING. (1) Before dispensing any prescription, a pharmacist shall complete a prospective drug review as defined in section 54–1705, Idaho Code.

(2) Before dispensing a prescription for a new medication, or when otherwise deemed necessary or appropriate, a pharmacist shall counsel the patient or caregiver. In addition to the counseling requirements provided in section 54–1705, Idaho Code, counseling shall include such supplemental written materials as required by law or as are customary in that practice setting. For refills or renewed prescriptions, a pharmacist or a technician shall extend an offer to counsel the patient or caregiver. If such offer is accepted, a pharmacist shall provide such counseling as necessary or appropriate in the professional judgment of the pharmacist. All counseling and offers to counsel shall be face to face with the patient or caregiver when possible, but if not possible, then a reasonable effort shall be made to contact the patient or caregiver. Nothing in this section shall require a pharmacist to provide counseling when a patient or caregiver refuses such counseling or when counseling is otherwise impossible. Patient counseling shall not be required for inpatients of a hospital or institutional facility when licensed health care professionals administer the medication.

(3) This section shall apply to all registered and licensed pharmacies, including mail service pharmacies. In cases of prescriber dispensing, the prescriber shall perform the prospective drug review and counseling consistent with the provisions of this section.

54-1751.SHORT TITLE. Sections 54–1751 through 54–1759, Idaho Code, shall be known and may be cited as the "Idaho Wholesale Drug Distribution Act."

54-1752.DEFINITIONS. As used in sections 54–1751 through 54–1759, Idaho Code:

(1) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(2) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with
the federal food and drug administration's implementation of the prescription drug marketing act.

(3) "Manufacturer" means a person, including a colicensed partner or affiliate of that person, who prepares, derives, manufactures, produces or repackages a drug or is licensed or approved by the federal food and drug administration to engage in the manufacture of drugs.

(4) "Person" means an individual, corporation, business entity, government, governmental subdivision or agency, partnership, business trust, association or any other legal entity.

(5) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(6) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.

(7) "Reverse distributor" means a drug outlet that receives nonsaleable prescription drugs from persons or their agents, who may lawfully possess prescription drugs without being issued a valid prescription drug order, and processes for credit or disposes of such prescription drugs.

(8) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(a) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.
(b) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.
(c) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.
(d) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, mis-picked, returned or recalled prescription drugs to the original manufacturer, original wholesaler, or third party returns processor, including a reverse distributor.

54-1753.WHOLESALE DRUG DISTRIBUTOR LICENSING REQUIREMENT -- MINIMUM REQUIREMENTS FOR LICENSURE. (1) Every business entity that engages in the wholesale distribution of prescription drugs in or into Idaho must be licensed by the board as a wholesale distributor except:

(a) Manufacturers distributing their own federal food and drug administration approved drugs and devices including distribution of prescription drug samples by manufacturer's representatives and intracompany sales, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity or any transfer between colicensees of a colicensed product, unless particular requirements are deemed necessary and appropriate following rulemaking.
(b) An entity that donates prescription drugs, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.
(c) A pharmacy distributing in accordance with section 54-1732, Idaho Code.
(d) Persons selling, purchasing, distributing, trading or transferring a prescription drug for emergency medical reasons.

(2) The board shall require the following minimum information from each wholesale
distributor applying for a license under subsection (1) of this section:
(a) The name, full business address and telephone number of the licensee;
(b) All trade or business names used by the licensee;
(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;
(d) The type of ownership or operation, i.e., partnership, corporation, or sole proprietorship;
(e) The name of each person who is an owner or an operator of the licensee;
(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs;
(g) The name of the applicant's designated representative for the facility, together with the personal information statement and fingerprints, required pursuant to paragraph (h) of this subsection for such individual;
(h) Each individual required by paragraph (g) of this subsection to provide a personal information statement and fingerprints shall provide the following information to the board:
   (i) The individual's places of residence for the past seven (7) years;
   (ii) The individual's date and place of birth;
   (iii) The individual's occupations, positions of employment and offices held during the past seven (7) years;
   (iv) The principal business and address of any business, corporation or other organization in which each such office of the individual was held or in which each such occupation or position of employment was carried on;
   (v) Whether the individual has been, during the past seven (7) years, the subject of any proceeding for the revocation of any license or any criminal violation and, if so, the nature of the proceeding and the disposition of the proceeding;
   (vi) Whether, during the past seven (7) years, the individual has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control or distribution of prescription drugs or criminal violations, together with details concerning any such event;
   (vii) A description of any involvement by the individual with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven (7) years, which manufactured, administered, prescribed, distributed or stored pharmaceutical products, and any lawsuits in which such businesses were named as a party and in which the individual was also a named party in the same lawsuit or, regardless of whether the individual was a named party, in which the individual testified as a witness at trial or in a deposition;
   (viii) A description of any felony criminal offense of which the individual, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the individual pled guilty or nolo contendere. If the individual indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within fifteen (15) days after the disposition of the appeal, submit to the board a copy of the final written order of disposition; and
   (ix) A photograph of the individual taken in the previous year.
(3) The information required pursuant to subsection (2) of this section shall be provided under oath.
(4) The board shall not issue a wholesale distributor license to an applicant, unless the board:
(a) Conducts a physical inspection of the facility at the address provided by the applicant as required in subsection (2)(a) of this section or approves an inspection report that evidences
equivalent standards to those in Idaho; and
(b) Determines that the designated representative meets the following qualifications:
   (i) Is at least twenty-one (21) years of age;
   (ii) Has been employed full time for at least three (3) years in a pharmacy or with a wholesale distributor in a capacity related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs;
   (iii) Is employed by the applicant full time in a managerial level position;
   (iv) Is actively involved in and aware of the actual daily operation of the wholesale distributor;
   (v) Is physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized including, but not limited to, sick leave and vacation leave;
   (vi) Is serving in the capacity of a designated representative for only one (1) applicant at a time, except where more than one (1) licensed wholesale distributor is collocated in the same facility and such wholesale distributors are members of an affiliated group, as defined in section 1504 of the Internal Revenue Code;
   (vii) Does not have any convictions under any federal, state or local law relating to wholesale or retail prescription drug distribution or distribution of controlled substances; and
   (viii) Does not have any felony convictions under federal, state or local law.

(5) All applicant-designated representatives shall submit to a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each applicant shall submit a completed ten (10) finger fingerprint card or scan to the board of pharmacy at the time of application and shall pay the cost of the criminal history check.

(6) If a wholesale distributor distributes prescription drugs in or into Idaho from more than one (1) facility, the wholesale distributor shall obtain a license for each facility.

(7) A wholesale distributor shall have adequate processes in place for monitoring purchase activity of customers and identifying suspicious ordering patterns that identify potential diversion or criminal activity related to controlled substances such as orders of unusual size, orders deviating substantially from a normal pattern, orders for drugs that are outside of the prescriber's scope of practice, or orders of unusual frequency.

(8) The designated representative identified pursuant to subsection (2)(g) of this section must receive and complete continuing training in applicable federal law and the law of this state governing wholesale distribution of prescription drugs.

(9) The board may adopt rules to approve an accreditation body to evaluate a wholesaler's operations to determine compliance with professional standards and any other applicable laws, and to perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesaler.

54-1754.RESTRICTIONS ON TRANSACTIONS. (1) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of expired, damaged, recalled or otherwise nonsaleable pharmaceutical product shall be distributed by the receiving wholesale distributor only to either the original manufacturer or third-party returns processor, including a reverse distributor.
Wholesale distributors and pharmacies shall be held accountable for administering their returns process and ensuring that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.

(2) A wholesale distributor shall not engage in the wholesale distribution of prescription drugs that are purchased from pharmacies or practitioners or from wholesale distributors that purchase them from pharmacies or practitioners.

(3) A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the appropriate state licensing agency to manufacture, distribute, dispense, conduct research or independently administer such prescription drugs, unless exempted by law. A manufacturer or wholesale distributor shall furnish a scheduled controlled substance listed in section 37-2705, 37-2707, 37-2709, 37-2711 or 37-2713, Idaho Code, only to a person who has been issued a valid controlled substance registration by the United States drug enforcement administration and the Idaho board of pharmacy, unless exempted by state or federal law.

(4) Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered only to the registered address; provided that the manufacturer or wholesale distributor may furnish prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(a) The identity and authorization of the recipient is properly established; and
(b) This method of receipt is employed only to meet the immediate needs of a particular patient of the authorized person.

(5) Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug so received. Any discrepancy between receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.

(6) A manufacturer or wholesale distributor shall not accept payment for, or allow the use of, a person’s credit to establish an account for the purchase of prescription drugs from any person other than the owner(s) of record, the chief executive officer or the chief financial officer listed on the license of a person legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee.

54-1757.DISCIPLINE -- GROUNDS -- PENALTIES. (1) Upon a finding that a wholesale distributor is in violation of any provision of this chapter or of this act, or such rules or standards of conduct and practice as may be adopted by the board, and in accordance with the provisions of chapter 52, title 67, Idaho Code, the board may impose any one (1) or more of the penalties provided for in section 54-1728, Idaho Code.

(2) Imposition of a penalty by the board or other action against a wholesale distributor by the board as set forth in this act shall not be construed as barring other civil, administrative or criminal proceedings or prosecutions or entry of any available penalty or sanction as authorized by law.

54-1758.PROHIBITED ACTS. (1) It shall be unlawful for a person to knowingly perform, or cause the performance of, or aid and abet any of the following acts in this state:

(a) Failure to obtain a license when a license is required by this chapter;
(b) Operate as a wholesale distributor without a valid license when a license is required by this chapter;
(c) Purchase from or otherwise receive, return or exchange a prescription drug from a pharmacy or chain pharmacy warehouse, other than in compliance with section 54-1754(1), Idaho Code;
(d) When a state license is required pursuant to section 54-1754(3), Idaho Code, sell, distribute, transfer or otherwise furnish a prescription drug to a person who is not authorized under the law of the jurisdiction in which the person received the prescription drug to receive the prescription drug;
(e) Failure to deliver prescription drugs to specified premises, as required by section 54-1754(4), Idaho Code;
(f) Acceptance of payment or credit for the purchase of prescription drugs, other than in compliance with section 54-1754(6), Idaho Code;
(g) Provide the board or any of its representatives or any federal official with false or fraudulent records or make false or fraudulent statements regarding any matter within the provisions of this chapter;
(h) Obtain, or attempt to obtain, a prescription drug by fraud, deceit or misrepresentation or engage in misrepresentation or fraud in the distribution of a prescription drug;
(i) Manufacture, repackage, sell, transfer, deliver, hold or offer for sale any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit or otherwise has been rendered unfit for distribution;
(j) Adulterate, misbrand or counterfeit any prescription drug;
(k) Receive any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;
(l) Deliver or proffer delivery of, for pay or otherwise, any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;
(m) Alter, mutilate, destroy, obliterate or remove the whole or any part of the labeling of a prescription drug or commit any other act with respect to a prescription drug that results in the prescription drug being misbranded; or
(n) Sell, deliver, transfer or offer to sell to a person not authorized under law to receive the return or exchange of a prescription drug, a prescription drug that has expired, been damaged or recalled by either the original manufacturer, a third party returns processor or a reverse distributor.

(2) The acts prohibited in subsection (1) of this section do not include a prescription drug manufacturer, or agent of a prescription drug manufacturer, who obtains or attempts to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

54-1759.PENALTIES. (1) Any person who commits any act prohibited by section 54-1758(1)(a) through (f), Idaho Code, is guilty of a misdemeanor, which is punishable by not more than one (1) year of imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or both.

(2) Any person who commits any act prohibited by section 54-1758(1)(g) through (n), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand
dollars ($500,000), or both.

(3) Any person who, with the intent to commit any of the acts prohibited by section 54-1758(1)(g) through (n), Idaho Code, commits any act prohibited by section 54-1758(1)(a) through (f), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand dollars ($500,000), or both.

(4) Any criminal penalty imposed on a person who commits any act prohibited by section 54-1758, Idaho Code, is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

54-1760.SHORT TITLE. Sections 54-1760 through 54-1765, Idaho Code, shall be known and may be cited as the "Idaho Legend Drug Donation Act."

54-1761.DEFINITIONS. As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Legend drug" has the same meaning as provided in section 54-1705(35), Idaho Code.

(2) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(3) "Patient assistance program" means a program in which pharmaceutical manufacturers provide financial or medication assistance to low-income or medically indigent individuals.

(4) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code, acting in consultation with a pharmacist licensed in the state of Idaho; or a designated regional behavioral health center as identified in chapter 31, title 39, Idaho Code; or a state charitable institution as defined in chapter 1, title 66, Idaho Code, acting in consultation with a pharmacist, physician, physician assistant or advanced practice professional nurse with prescriptive authority licensed in the state of Idaho.

54-1762.IDAHO LEGEND DRUG DONATION ACT. (1) The board of pharmacy shall establish and implement a program through which legend drugs may be transferred from a qualified donor that elects to participate in the program for the purpose of distribution to a qualifying charitable clinic or center for donation to qualifying medically indigent patients.

(2) A qualifying charitable clinic or center shall establish procedures consistent with the Idaho legend drug donation act and rules promulgated thereunder.

(3) The acceptance and distribution of legend drugs for use in the program shall be subject to the following requirements:

(a) Donated drugs shall be in the manufacturer's original, sealed and tamper evident packaging, including drugs packaged in single unit doses when the outside packaging is open and the single unit dose packaging is intact, except for patient assistance program medications as described in subsection (8) of this section, which must be originally received by the qualifying designated regional behavioral health center or qualifying state charitable institution and remain under the control and storage of such center or institution. Drugs that have been previously dispensed by a pharmacy in unit dose packaging may be donated provided that the packaging is sealed, tamper evident and properly labeled.
(b) Only drugs that bear a clear and verifiable lot number and expiration date may be accepted and dispensed. However, drugs that bear an expiration date that is less than three (3) months from the date the drug is donated shall not be accepted and dispensed.

(c) Drugs and other substances provided in schedules II through V of article II, chapter 27, title 37, Idaho Code, shall not be accepted and shall not be dispensed.

(d) A drug shall not be accepted or dispensed if the person accepting or dispensing the drug has reason to believe that the drug has been adulterated.

(4) The following entities that are licensed or registered in the state of Idaho are qualified donors and may donate legend drugs to a qualifying charitable clinic or center:

(a) Pharmacies;
(b) Hospitals and nursing homes;
(c) Drug manufacturers;
(d) Wholesale distributors; and
(e) Prescriber drug outlets.

(5) The following entities may accept legend drugs:

(a) A qualifying charitable clinic's or center's pharmacy;
(b) A qualifying charitable clinic or center in consultation with a pharmacist licensed in the state of Idaho; or
(c) A qualifying charitable clinic or center designated as a regional behavioral health center or a state charitable institution acting in consultation with a pharmacist, physician, physician assistant or advanced practice professional nurse with prescriptive authority licensed in the state of Idaho.

(6) Any qualifying charitable clinic or center that participates in the program may dispense drugs donated under the Idaho legend drug donation act to persons who are medically indigent residents of the state of Idaho.

(7) Any qualifying charitable clinic or center dispensing legend drugs shall:
(a) Comply with the provisions of the Idaho legend drug donation act and all rules promulgated thereunder;
(b) Comply with all applicable federal and state laws related to the storage and distribution of drugs;
(c) Inspect all drugs prior to dispensing to determine that such drugs have not been adulterated; and
(d) Dispense drugs only pursuant to a valid prescription.

(8) A qualifying charitable clinic or center designated as a regional behavioral health center or state charitable institution may accept unused patient assistance program medications as donations for use and may dispense these medications if:
(a) The unused patient assistance program medication has remained under the control of the designated regional behavioral health center or state charitable institution;
(b) The storage of the medication complies with all applicable federal and state laws; and
(c) At least one (1) of the following applies:
   (i) The original recipient of the patient assistance program medication no longer has a valid prescription order for the medication;
   (ii) The patient assistance program medication was not picked up for the use of the original recipient; or
   (iii) The original recipient of the patient assistance program medication is no longer receiving services from the regional behavioral health center or state charitable institution.
(9) Participation in the program is voluntary and nothing in the Idaho legend drug donation act shall require any person or entity to participate in the program.
(10) Nothing in the Idaho legend drug donation act shall prohibit or restrict the return of unused prescription drugs to the Idaho medicaid program pursuant to rules promulgated by the Idaho department of health and welfare.

54-1763.BOARD DUTIES AND POWERS. (1) The board of pharmacy shall adopt rules necessary for the donation of legend drugs to qualifying charitable clinics or centers by nursing homes, including:
(a) Standards and procedures for the transfer, acceptance and safe storage of donated drugs;
(b) Standards and procedures for inspecting donated drugs to ensure that the drugs are in compliance with the provisions of the Idaho legend drug donation act and all federal and state product integrity standards and regulations;
(c) Standards and procedures for the distribution of donated drugs to a qualifying charitable clinic or center;
(d) Standards and procedures for the dispensing of donated drugs to qualifying medically indigent patients; and
(e) Any other standards and procedures the board deems appropriate or necessary to implement or enforce the provisions of the Idaho legend drug donation act.
(2) The board shall provide technical assistance to participants in the program.

54-1764.IMMUNITY FROM LIABILITY. Any entity that lawfully and voluntarily participates by donating, accepting, distributing or dispensing legend drugs under the Idaho legend drug donation act shall be immune from liability for any civil action arising out of the provision of such action. This section shall not extend immunity to the participating entity for any acts constituting intentional, willful or grossly negligent conduct or to acts by a participating entity that are outside the scope of practice authorized by the entity's licensure, certification or registration.

54-1765.EXEMPT FROM THE IDAHO WHOLESALE DRUG DISTRIBUTION ACT. Any person or entity lawfully donating, accepting, distributing or dispensing legend drugs under the Idaho legend drug donation act shall be exempt from the provisions of the Idaho wholesale drug distribution act as provided in sections 54-1751 through 54-1759, Idaho Code.

54-1768.PRESCRIBER-AUTHORIZED SUBSTITUTION. (1) A licensed prescriber may authorize a pharmacist to substitute a drug with another drug in the same therapeutic class that would, in the opinion of the pharmacist, have a substantially equivalent therapeutic effect even though the substitute drug is not a therapeutic equivalent drug, provided the following conditions are met:
(a) The prescriber has clearly indicated that drug product substitution is permissible by indicating "therapeutic substitution allowed" or by making a similar designation;
(b) The drug product substitution is intended to ensure formulary compliance with the patient's health insurance plan or, in the case of a patient without insurance, to lower the cost.
to the patient while maintaining safety;
(c) The patient opts in to the drug product substitution, and the pharmacist clearly informs
the patient of the differences in the drug products and specifies that the patient may refuse
the substitution; and
(d) If a drug product substitution is made:
   (i) The prescriber's directions are modified to allow for an equivalent amount of drug
to be dispensed as prescribed; and
   (ii) The pharmacist shall notify the patient's original prescriber of the drug product
substitution within five (5) business days of dispensing the prescription.
(2) Nothing in this section shall apply to biological products, as set forth in section 54-1769,
Idaho Code, or to narrow therapeutic index drugs.

(3) For purposes of this section:
(a) "Drug product substitution" means dispensing a drug product other than the drug product
originally prescribed.
(b) "Narrow therapeutic index drug" means a drug where a small difference in dose or blood
concentration may lead to serious therapeutic failures or adverse drug reactions.
(c) "Therapeutic class" means a group of similar drug products that have the same or similar
mechanisms of action and are used to treat a specific condition.
(d) "Therapeutic equivalent drug" means a product assigned an "A" code by the federal food
and drug administration (FDA) in the "Approved Products with Therapeutic Equivalence Evaluations" (orange book) and animal drug products published in the FDA's "Approved Animal Drug Products" (green book).

54-1769.COMMUNICATION REGARDING BIOLOGICAL PRODUCTS. [EFFECTIVE UNTIL JULY 1, 2026] (1) A pharmacist who dispenses a biological product according to board
rule shall communicate to the prescriber the name and manufacturer of the drug within five (5)
business days following the dispensing of the biological product. Communication shall occur via
an entry in an interoperable electronic medical records system, an electronic prescribing
technology, a pharmacy benefit management system or a pharmacy record that can be accessed
electronically by the prescriber. Entry into an electronic records system as described in this
subsection shall be considered notice to the prescriber. Otherwise, the pharmacist shall
communicate the biological product dispensed to the prescriber using facsimile, telephone,
electronic transmission or other prevailing means, provided that the communication shall not be
required when:
   (a) There is no interchangeable biological product approved by the federal food and drug
administration for the product prescribed;
   (b) A refill prescription is not changed from the product dispensed on the prior filling of the
prescription; or
   (c) The pharmacist or the pharmacist's designee has already communicated to the prescriber
the specific product to be provided to the patient, including the name and manufacturer of
the product, prior to dispensing; and that product is the product that is actually dispensed.
(2) Nothing in this section shall delay the dispensing of a valid prescription for a biological
product.
(3) For purposes of this section:
(a) "Biological product" shall have the same meaning as in 42 U.S.C. 262(i).
(b) "Interchangeable biological product" means a biological product that the federal food
and drug administration has licensed and determined meets the standards for interchangeability set forth in 42 U.S.C. 262(k)(4) or has been deemed therapeutically equivalent by the federal food and drug administration in the latest edition of or supplement to the publication "Approved Drug Products with Therapeutic Equivalence Evaluations."

54-1770.NOTIFICATION OF DRUG PRODUCT SELECTION FOR EPILEPSY AND SEIZURE DRUGS. (1) In this section:
(a) "Anti-epileptic drug" means:
   (i) A drug used for the treatment of epilepsy; or
   (ii) A drug used to treat or prevent seizures.
(b) "Drug product selection" means the selection of a therapeutically equivalent drug, including a generic version for the prescribed brand, a branded version for the prescribed generic, a generic version by one (1) manufacturer for a generic version by a different manufacturer.
(c) "Epilepsy" means a neurological condition characterized by recurrent seizures.
(d) "Seizure" means an acute clinical change secondary to a brief disturbance in the electrical activity of the brain.
(2) When a prescriber has specified that a drug is prescribed for the treatment of epilepsy or seizures, pharmacy personnel who perform drug product selections shall:
   (a) Notify the prescriber of such drug product selection via facsimile, telephone message or any other appropriate means to the prescriber’s place of business; and
   (b) Provide the patient or the patient’s representative with notification of the selection.
(3) Nothing in this section shall delay the dispensing of a valid prescription for an anti-epileptic drug.

54-1771.SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.
37-2701.DEFINITIONS. As used in this chapter:

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
   (1) A practitioner or, in his presence, by his authorized agent; or
   (2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy created in chapter 17, title 54, Idaho Code, or its successor agency.

(d) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(e) "Controlled substance" means a drug, substance or immediate precursor in schedules I through VI of article II of this chapter.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Director" means the director of the Idaho state police.

(i) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(j) "Dispenser" means a practitioner who dispenses.

(k) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(l) "Distributor" means a person who distributes.

(m) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(ł) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing,
analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
   (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
   (ii) Water pipes;
   (iii) Carburetion tubes and devices;
   (iv) Smoking and carburetion masks;
   (v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
   (vi) Miniature cocaine spoons, and cocaine vials;
   (vii) Chamber pipes;
   (viii) Carburetor pipes;
   (ix) Electric pipes;
   (x) Air-driven pipes;
   (xi) Chillums;
   (xii) Bongs;
   (xiii) Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any
state or federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of this chapter;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the
   object, to deliver it to persons whom he knows, or should reasonably know, intend to use the
   object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in
   control of the object, as to a direct violation of this chapter shall not prevent a finding that
   the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or
    related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of
    the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;

(o) "Financial institution" means any bank, trust company, savings and loan association,
    savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the
    state or under the jurisdiction of an agency of the United States.

(p) "Immediate precursor" means a substance which the board has found to be and by rule
    designates as being the principal compound commonly used or produced primarily for use, and
    which is an immediate chemical intermediary used or likely to be used in the manufacture of a
    controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(q) "Isomer" means the optical isomer, except as used in section 37-2705(d), Idaho Code.
(r) "Law enforcement agency" means a governmental unit of one (1) or more persons
    employed full-time or part-time by the state or a political subdivision of the state for the purpose
    of preventing and detecting crime and enforcing state laws or local ordinances, employees of which
    unit are authorized to make arrests for crimes while acting within the scope of their authority.

(s) "Manufacture" means the production, preparation, propagation, compounding,
    conversion or processing of a controlled substance, and includes extraction, directly or indirectly,
    from substances of natural origin, or independently by means of chemical synthesis, or by a
    combination of extraction and chemical synthesis, and includes any packaging or relabeled of
    the substance or labeling or relabeling of its container, except that this term does not include the
    preparation or compounding of a controlled substance:
    (1) By a practitioner as an incident to his administering, dispensing or, as authorized by
        board rule, distributing of a controlled substance in the course of his professional practice; or
    (2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or
        as an incident to, research, teaching, or chemical analysis and not for delivery.

(t) "Marijuana" means all parts of the plant of the genus Cannabis, regardless of species, and
    whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and
    every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or
    resin. It does not include the mature stalks of the plant unless the same are intermixed with
    prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the
    achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation
of the mature stalks, except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. Evidence that any plant material or the resin or any derivative thereof, regardless of form, contains any of the chemical substances classified as tetrahydrocannabinols shall create a presumption that such material is "marijuana" as defined and prohibited herein.

(u) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.
(3) Opium poppy and poppy straw.
(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(v) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 37-2702, Idaho Code, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(w) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(x) "Peace officer" means any duly appointed officer or agent of a law enforcement agency, as defined herein, including, but not limited to, a duly appointed investigator or agent of the Idaho state police, an officer or employee of the board of pharmacy, who is authorized by the board to enforce this chapter, an officer of the Idaho state police, a sheriff or deputy sheriff of a county, or a marshal or policeman of any city.

(y) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(z) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(aa) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of his professional practice or research in this state;
(2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of its professional practice or research in this state.

(bb) "Prescribe" means a direction or authorization permitting an ultimate user to lawfully obtain or be administered controlled substances.

(cc) "Prescriber" means an individual currently licensed, registered or otherwise authorized to prescribe and administer controlled substances in the course of professional practice.

(dd) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(ee) "Simulated controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the
substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

1. Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
2. Statements made to the recipient that the substance may be resold for inordinate profit; or
3. Whether the substance is packaged in a manner normally used for illicit controlled substances.

(ff) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(gg) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(hh) "Utility" means any person, association, partnership or corporation providing telephone and/or communication services, electricity, natural gas or water to the public.

37-2702.AUTORITY TO CONTROL. (a) The board shall administer the regulatory provisions of this act and may add substances to or delete or reschedule all substances enumerated in the schedules in section 37-2705, 37-2707, 37-2709, 37-2711, or 37-2713, Idaho Code, pursuant to the procedures of chapter 52, title 67, Idaho Code. In making a determination regarding a substance, the board shall consider the following:

1. The actual or relative potential for abuse;
2. The scientific evidence of its pharmacological effect, if known;
3. The state of current scientific knowledge regarding the substance;
4. The history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. The risk to the public health;
7. The potential of the substance to produce psychic or physiological dependence liability; and
8. Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the board shall similarly control the substance under this act by promulgating a temporary rule or proposing a statutory amendment, or both, within thirty (30) days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty (30) day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard.
At the conclusion of the hearing, the board shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board, control under this act is stayed until the board publishes its decision.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco.

37-2703. NOMENCLATURE. The controlled substances listed or to be listed in the schedules in sections 37-2705, 37-2707, 37-2709, 37-2711 and 37-2713, Idaho Code, are included by whatever official, common, usual, chemical, or trade-name designated.

37-2704. SCHEDULE I TESTS. The board shall place a substance in schedule I if it finds that the substance:
   (a) Has high potential for abuse; and
   (b) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.
   (b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:
      (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
      (2) Acetylmethadol;
      (3) Acetyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);
      (4) Alpynprodine;
      (5) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
      (6) Alpameprodine;
      (7) Alphamethadol;
      (8) Alpha-methylfentanyl;
      (9) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
      (10) Benzethidine;
      (11) Betacetylmethadol;
      (12) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
      (13) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
      (14) Betameprodine;
      (15) Betamethadol;
      (16) Betaprodine;
      (17) Clonitazene;
      (18) Dextromoramide;
(19) Diampropidine;
(20) Diethylthiambutene;
(21) Difenoxin;
(22) Dimenoxadol;
(23) Dimephtanol;
(24) Dimethylthiambutene;
(25) Dioxaphetyl butyrate;
(26) Dipipanone;
(27) Ethylmethylthiambutene;
(28) Etoxeridine;
(29) Etoxeridine;
(30) Furethidine;
(31) Hydroxypethidine;
(32) Ketobemidone;
(33) Levomoramide;
(34) Levophenacylmorphan;
(35) 3-Methylfentanyl;
(36) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamid);
(37) Morheridine;
(38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(39) Noracymethadol;
(40) Norlevorphanol;
(41) Normethadone;
(42) Norpipanone;
(43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]propanamid);
(44) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(45) Phenadoxone;
(46) Phenampramide;
(47) Phenomorphan;
(48) Phenoperidine;
(49) Piritramide;
(50) Proheptazine;
(51) Properidine;
(52) Propiram;
(53) Racemoramide;
(54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piper-idinyl]-propanamide);
(55) Tilidine;
(56) Trimeperidine;
(57) u-47700 (3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide).

c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprénorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drostephanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methylidesmorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.
(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):
(1) Dimethoxyphenethylamine, or any compound not specifically excepted or listed in another schedule that can be formed from dimethoxyphenethylamine by replacement of one (1) or more hydrogen atoms with another atom(s), functional group(s) or substructure(s) including, but not limited to, compounds such as DOB, DOC, 2C-B, 25B-NBOMe;
(2) Methoxyamphetamine or any compound not specifically excepted or listed in another schedule that can be formed from methoxyamphetamine by replacement of one (1) or more hydrogen atoms with another atom(s), functional group(s) or substructure(s) including, but not limited to, compounds such as PMA and DOM;
(3) 5-methoxy-3,4-methylenedioxyamphetamine;
(4) 5-methoxy-N,N-diisopropyltryptamine;
(5) Amphetamine or methamphetamine with a halogen substitution on the benzyl ring, including compounds such as fluorinated amphetamine and fluorinated methamphetamine;
(6) 3,4-methylenedioxyamphetamine;
(7) 3,4-methylenedioxymethamphetamine (MDMA);
(8) 3,4-methylenedioxyn-ethylamphetamine (also known as N-et-hyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-et-hyl MDA, MDE, MDEA);
(9) N-hydroxy-3,4-methylenedioxymethamphetamine (also known as N-hyd-roxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hyd-roxy MDA);
(10) 3,4,5-trimethoxyamphetamine;
(11) 5-methoxy-N,N-dimethyltryptamine (also known as 5-methoxy-3-2[2-(dimethylamino)ethyl]indole and 5-MeO-DMT);
(12) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-am-inobutyl) indole);
(13) Alpha-methyltryptamine;
(14) Bufotenine;
(15) Diethyltryptamine (DET);
(16) Dimethyltryptamine (DMT);
(17) Ibogaine;
(18) Lysergic acid diethylamide;
(19) Marihuana;
(20) Mescaline;
(21) Parahexyl;
(22) Peyote;
(23) N-ethyl-3-piperidyl benzilate;
(24) N-methyl-3-piperidyl benzilate;
(25) Psilocybin;
(26) Psilocyn;
(27) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:
   i. Tetrahydrocannabinols:
      a. \( \Delta^1 \) cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in either a soft gelatin capsule or in an oral solution in a drug product approved by the U.S. Food and Drug Administration.
      b. \( \Delta^6 \) cis or trans tetrahydrocannabinol, and their optical isomers.
      c. \( \Delta^{3,4} \) cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
      d. \( [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-o1)] \), also known as 6aR-trans-3-\( (1,1\text{-dimethylheptyl})-6a,7,10,10a\text{-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and its geometric isomers (HU211 or dexanabinol).}
   ii. The following synthetic drugs:
      a. Any compound structurally derived from (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl)methanone, or (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl)methane, or (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl), methyl or dimethyl butanoate, amino-methyl (or dimethyl)-1-oxobutan-2-yl) carboxamide by substitution at the nitrogen atoms of the indole ring or carboxamide to any extent, whether or not further substituted in or on the indole ring to any extent, whether or not substituted to any extent in or on the cycloalkyl, cycloalkenyl, aryl ring(s) (substitution in the ring may include, but is not limited to, heteroatoms such as nitrogen, sulfur and oxygen).
      b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring to any extent, whether or not further substituted in the naphthyl ring to any extent, whether or not substituted in the naphthyl ring to any extent.
      c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by
substitution at the 3-position of the indene ring to any extent, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.
d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.
e. Any compound structurally derived from 2-(3-hydroxy)cyclohexyl)phenol by substitution at the 5-position of the phenolic ring to any extent, whether or not substituted in the cyclohexyl ring to any extent.
f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.
g. [2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoazin-6-yl]-1-napthalenylmethylone (WIN-55,212-2).
h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).
i. (6S, 6aR, 9R, 10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

(28) Ethylamine analog of phencyclidine: N-ethyl-1-phenylethylamine (1-phenylethylamine) ethylamine; N-(1-phenylethyl)ethylamine, cyclohexamine, PCE;
(29) Pyrrolidine analog of phencyclidine: 1-(phenylethyl)-pyrrolidin, PCPy, PHP;
(30) Thiophene analog of phencyclidine: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;
(31) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;
(32) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gam-ma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sod-i-um oxyb-a-te; sodium oxybutyrate);
(2) Flunitrazepam (also known as "R2," "Rohypnol");
(3) Mecloqualone;
(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
(2) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-amino-propiophenone, 2-amino-propiophenone and noephedrone);
(3) Substituted cathinones. Any compound, except bupropion or compounds listed under a
different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-
position with either phenyl, naphthyl or thiophene ring systems, whether or not the compound
is further modified in any of the following ways:
   i. By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy,
haloalkyl, hydroxyl or halide substituents, whether or not further substituted in the
ring system by one (1) or more other univalent substituents;
   ii. By substitution at the 3-position with an acyclic alkyl substituent;
   iii. By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or
methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic
structure.
(4) Fenethylline;
(5) Methcathinone (some other names: 2-(methyl-amino)-propioph-enone, alpha-
(methylamino)-propiophenone, N-methylcathin-one, AL-464, AL-422, AL-463 and
UR1423);
(6) (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];
(7) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
(8) N-ethamphetamine;
(9) N,N-dimethylamphetamine (also known as: N,N-al-pha-trimethyl-benzeneethanamine).

37-2706.SCHEDULE II TESTS. The board shall place a substance in schedule II if it finds that:
   (a) The substance has high potential for abuse;
   (b) The substance has currently accepted medical use in treatment in the United States, or
currently accepted medical use with severe restrictions; and
   (c) The abuse of the substance may lead to severe psychic or physical dependence.

37-2707.SCHEDULE II. (a) Schedule II shall consist of the drugs and other substances, by
whatever official name, common or usual name, chemical name, or brand name designated, listed
in this section.
   (b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or
unless listed in another schedule, any of the following substances whether produced directly or
indirectly by extraction from substances of vegetable origin, or independently by means of
chemical synthesis, or by a combination of extraction and chemical synthesis:
   (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate,
excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, naltrexone and their
respective salts, but including the following:
      1. Raw opium;
      2. Opium extracts;
      3. Opium fluid extracts;
      4. powdered opium;
      5. Granulated opium;
      6. Tincture of opium;
      7. Codeine;
      8. Dihydroetorphine;
      9. Diprenorphine;
     10. Ethylmorphine;
11. Etorphine hydrochloride;
12. Hydrocodone;
13. Hydromorphone;
14. Metopon;
15. Morphine;
16. Oripavine;
17. Oxycodone;
18. Oxymorphone;
19. Tapentadol;
20. Thebaine.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b)(1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but shall not include the following:
   1. Decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine; or ecgonine; or
   2. \([^{123}]\text{I}\text{oflupane}.\)

(5) Benzoylecgonine.

(6) Methylbenzoylecgonine (Cocaine - its salts, optical isomers, and salts of optical isomers).

(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk Dextropropoxyphene (nondosage forms);
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(17) Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid;
(18) Pethidine (meperidine);
(19) Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenyl-piperidine;
(20) Pethidine -- Intermediate -- B, ethyl-4-phenylpiperid-ine-4-carboxylate;
(21) Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperid-ine-4-carboxylic acid;
(22) Phenazocine;
(23) Pimidodine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil;
(27) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers;
2. Lisdexamfetamine;
3. Methamphetamine, its salts, isomers, and salts of its isomers;
4. Phenmetrazine and its salts;
5. Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Amobarbital;
2. Glutethimide;
3. Pentobarbital;
4. Phenocyclidine;
5. Secobarbital.

(f) Hallucinogenic substances.

(1) Nabilone (another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydro-xy-6,6-dimethyl-9H-dibenzob[d]pyran-9-one) 21 CFR 1308.12 (f).

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

1. Immediate precursor to amphetamine and methamphetamine:
   a. Antranilic acid;
   b. Ephedrine;
   c. Lead acetate;
   d. Methylamine;
   e. Methyl formamide;
   f. N-methylephedrine;
   g. Phenylacetic acid;
   h. Phenylacetone;
   i. Phenylpropanolamine;
   j. Pseudoephedrine.

Except that any combination or compound containing ephedrine, or any of its salts and
isomers, or phenylpropanolamine or its salts and isomers, or pseudoephedrine, or any of its salts and isomers which is prepared for dispensing or over-the-counter distribution is not a controlled substance for the purpose of this section, unless such substance is possessed, delivered, or possessed with intent to deliver to another with the intent to manufacture methamphetamine, amphetamine or any other controlled substance in violation of section 37-2732, Idaho Code. For purposes of this provision, the requirements of the uniform controlled substances act shall not apply to a manufacturer, wholesaler or retailer of over-the-counter products containing the listed substances unless such person possesses, delivers, or possesses with intent to deliver to another the over-the-counter product with intent to manufacture a controlled substance.

(2) Immediate precursors to phencyclidine (PCP):
   (a) 1-phenylcyclohexylamine;
   (b) 1-piperidinocyclohexanecarbonitrile (PCC).

(3) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

37-2708.SCHEDULE III TESTS. The board shall place a substance in schedule III if it finds that:
   (a) The substance has a potential for abuse less than the substances listed in schedules I and II;
   (b) The substance has currently accepted medical use in treatment in the United States; and
   (c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

37-2709.SCHEDULE III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

   (b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (whether optical or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
      (1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed as excepted compounds under 21 CFR 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.
      (2) Benzphetamine;
      (3) Chlorthemidine;
      (4) Clortermin;
      (5) Phendimetrazine.

   (c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
      (1) Any compound, mixture or preparation containing:
         i. Amobarbital;
         ii. Secobarbital;
         iii. Pentobarbital or any salt thereof and one (1) or more other active medicinal
ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:
   i. Amobarbital;
   ii. Secobarbital;
   iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof, including, but not limited to:
   i. Aprobarbital;
   ii. Butabarbital (secbutabarbital);
   iii. Butalbital;
   iv. Butobarbital (butethal);
   v. Talbutal;
   vi. Thiamylal;
   vii. Thiopental;
   viii. Vinbarbital.

(4) Chlorhexadol;
(5) Embutramide;
(6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;
(7) Ketamine, its salts, isomers, and salts of isomers-7285. (Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).
(8) Lysergic acid;
(9) Lysergic acid amide;
(10) Methyprylon;
(11) Perampanel, and its salts, isomers and salts of isomers;
(12) Sulfondiethylmethane;
(13) Sulfonethylmethane;
(14) Sulfonmethane;
(15) Tiletamine and zolazepam or any salt thereof.
(d) Nalorphine.
(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule:
(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
   (i) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
   (ii) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
   (iii) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
   (iv) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;
(v) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or
not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic
ingredients in recognized therapeutic amounts;
(vi) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters
or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized
therapeutic amounts.
(2) Any material, compound, mixture, or preparation containing any of the following
narcotic drugs or their salts, as set forth below:
   (i) Buprenorphine.
   (ii) [Reserved].
(f) Anabolic steroids and human growth hormones. Any drug or hormonal substance,
chemically and pharmacologically related to testosterone (other than estrogens, progestins and
corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or
substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.
   (1) 13beta-ethyl-17beta-hydroxygon-4-en-3-one;
   (2) 17alpha-methyl-3alpha, 17beta-dihydroxy-5alpha-androstane;
   (3) 17alpha-methyl-3beta, 17beta-dihydroxy-5alpha-androstane;
   (4) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;
   (5) 17alpha-methyl-4-hydroxynandrolone;
   (6) 17alpha-methyl-delta1-dihydrotestosterone;
   (7) 19-nor-4-androstenediol;
   (8) 19-nor-4-androstenedione;
   (9) 19-nor-4,9(10)-androstadienedione;
   (10) 19-nor-5-androstenediol;
   (11) 19-nor-5-androstenedione;
   (12) 1-androstenediol;
   (13) 1-androstenedione;
   (14) 3alpha,17beta-dihydroxy-5alpha-androstane;
   (15) 3beta,17beta-dihydroxy-5alpha-androstane;
   (16) 4-androstenediol;
   (17) 4-androstenedione;
   (18) 4-hydroxy-19-nortestosterone;
   (19) 4-hydroxytestosterone;
   (20) 5-androstenediol;
   (21) 5-androstenedione;
   (22) Androstenedione;
   (23) Bolasterone;
   (24) Boldenone;
   (25) Boldione;
   (26) Calusterone;
   (27) Chlorotestosterone (4-chlorotestosterone);
   (28) Clostebol;
   (29) Dehydrochlormethyltestosterone;
   (30) Delta1-dihydrotestosterone;
   (31) Desoxymethyltestosterone;
   (32) Dihydrotestosterone (4-dihydrotestosterone);
   (33) Drostanolone;
(34) Ethylestrenol;
(35) Fluoxymesterone;
(36) Formebulone;
(37) Furazabol;
(38) Human growth hormones;
(39) Mestanolone;
(40) Mesterolone;
(41) Methandienone;
(42) Methandranone;
(43) Methandriol;
(44) Methandrostenolone;
(45) Methasterone (2a, 17a-dimethyl-5a-androstan-17β-ol-3-one);
(46) Methenolone;
(47) Methyldienolone;
(48) Methyltestosterone;
(49) Methyltrienolone;
(50) Mibolerone;
(51) Nandrolone;
(52) Norbolethone;
(53) Norclostebol;
(54) Norethandrolone;
(55) Normethandrolone;
(56) Oxandrolone;
(57) Oxymesterone;
(58) Oxymetholone;
(59) Prostanozol (17β-hydroxy-5a-androstan-3,2-c[3,2-c]pyrazole);
(60) Stanolone;
(61) Stanozolol;
(62) Stenbolone;
(63) Testolactone;
(64) Testosterone;
(65) Testosterone cypionate;
(66) Testosterone enanthate;
(67) Testosterone propionate;
(68) Tetrahydrogestrinone;
(69) Trenbolone.

Anabolic steroids that are expressly intended for administration through implants or injection to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Hallucinogenic substances.
Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in the federal Food and Drug Administration approved product -- 7369. (Some other names for dronabinol: (6aR-trans) -6a,7,8,10a-tetrahydro-6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(h) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (b) or (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

37-2710.SCHEDULE IV TESTS. The board shall place a substance in schedule IV if it finds that:

(a) The substance has a low potential for abuse relative to substances in schedule III;
(b) The substance has currently accepted medical use in treatment in the United States; and
(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

37-2711.SCHEDULE IV. (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) No more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl- 3-methyl-2-propionoxybutane).
(3) 2- [(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (including tramadol), including its salts, optical and geometric isomers, and salts of isomers.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alfaxalone 5[alpha]-pregnan-3[alpha]-ol-11,20-dione;
(2) Alprazolam;
(3) Barbital;
(4) Bromazepam;
(5) Camazepam;
(6) Carisprodol;
(7) Chloral betaine;
(8) Chloral hydrate;
(9) Chlordiazepoxide;
(10) Clobazam;
(11) Clonazepam;
(12) Clorazepate;
(13) Clotiazepam;
(14) Cloxazolam;
(15) Delorazepam;
(16) Diazepam;
(17) Dichloralphenazone;
(18) Estazolam;
(19) Ethchlorvynol;
(20) Ethinamate;
(21) Ethyl loflazepate;
(22) Fludiazepam;
(23) Flurazepam;
(24) Fospropofol;
(25) Halazepam;
(26) Haloxazolam;
(27) Ketazolam;
(28) Loprazolam;
(29) Lorazepam;
(30) Lormetazepam;
(31) Mebutamate;
(32) Medazepam;
(33) Meprobamate;
(34) Methohexitol;
(35) Methylphenobarbital (mephobarbital);
(36) Midazolam;
(37) Nimetazepam;
(38) Nitrazepam;
(39) Nordiazepam;
(40) Oxazepam;
(41) Oxazolam;
(42) Paraldehyde;
(43) Petrichloral;
(44) Phenobarbital;
(45) Pinazepam;
(46) Prazepam;
(47) Quazepam;
(48) Suvorexant;
(49) Temazepam;
(50) Tetrazepam;
(51) Triazolam;
(52) Zaleplon;
(53) Zolpidem;
(54) Zopiclone.

(d) Fenfluramine -- Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or
geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

1. Dexfenfluramine;
2. Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Cathine ((+)-norpseudoephedrine);
2. Diethylpropion;
3. Fenproporex;
4. Fenproporex;
5. Lorcanin;
6. Mazindol;
7. Mefenorex;
8. Modafinil;
9. Pemoline (including organometallic complexes and chelates thereof);
10. Phentermine;
11. Pipradrol;
12. Sibutramine;
13. SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

1. Pentazocine;
2. Butorphanol (including its optical isomers);
3. Eluxadoline (5-[[2S]-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl][1S]-1-(4-phenyl-1H-imidazol-2-yl)ethylamino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

(g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

37-2712. SCHEDULE V TESTS. The board shall place a substance in schedule V if it finds that:

(a) The substance has low potential for abuse relative to the controlled substances listed in schedule IV;
(b) The substance has currently accepted medical use in treatment in the United States; and
(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

37-2713. SCHEDULE V. (a) Schedule V shall consist of the drugs and other substances, by
whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
3. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
6. Not more than 0.5 milligrams difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

1. Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (also referred to as BRV; UCB-34714; Briviact) (including its salts);
2. Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]-2779;
3. Lacosamide;
4. Pregabalin;
5. Pyrovalerone.

37-2713A. SCHEDULE VI. (a) Schedule VI shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) Volatile nitrites. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following drugs or their related compounds, congeners or isomers as follows:

1. Amyl nitrite;
2. Butyl nitrite;
3. Isobutyl nitrite;
4. Isoamyl nitrite;
5. Isopentyl nitrite.

Except that any combination or compound containing amyl nitrite which is prepared pursuant to a prescription issued by a licensed practitioner is not a controlled substance for the purpose of this section.

37-2715. RULES. The board may promulgate rules and charge reasonable fees relating to the
registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

37-2716. REGISTRATION REQUIREMENTS. (a) Every person who manufactures, distributes, prescribes, administers, dispenses, or conducts research with any controlled substance within this state shall obtain annually a registration issued by the board in accordance with this chapter and its rules.

(b) Every prescriber, except veterinarians, shall also register with the board to obtain online access to the controlled substances prescriptions database.

(c) Persons registered by the board under this chapter may possess, manufacture, distribute, dispense, prescribe, administer, or conduct research with those substances to the extent authorized by their registration and licensing entity and in conformity with the other provisions of this chapter.

(d) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) An agent or employee of any person registered pursuant to this chapter, if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(e) The board may waive by rule the requirement for registration of certain persons if it finds it consistent with the public health and safety.

(f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, administers, dispenses, or conducts research with controlled substances, except a separate registration is not required under this chapter for practitioners engaging in research with nonnarcotic controlled substances in schedules II through IV where the practitioner is already registered under this chapter in another capacity.

(g) Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon registering in Idaho and furnishing the board with evidence of the practitioner's federal registration.

(h) The board may inspect the establishment of a registrant or applicant for registration in accordance with this chapter and board rule.

37-2717. REGISTRATION. The board shall register an applicant to manufacture, prescribe, administer, dispense, distribute or conduct research with controlled substances included in sections 37-2705, 37-2707, 37-2709, 37-2711 and 37-2713, Idaho Code, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(a) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(b) Compliance with applicable state and local law;

(c) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(d) Past experience in the manufacture, dispensing, prescribing, administering, research or distribution of controlled substances, and the existence in the applicant's establishment of effective
controls against diversions;
(e) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
(f) Restriction, suspension or revocation of the applicant's federal registration; and
(g) Any other factors relevant to and consistent with the public health and safety.

37-2718. DISCIPLINE. (a) A registration under section 37-2717, Idaho Code, may be restricted, suspended or revoked by the board upon a finding that the registrant:
(1) Has furnished false or fraudulent material information in any application filed under this act;
(2) Has been found guilty of a felony or misdemeanor under any state or federal law relating to any controlled substance; or
(3) Has had his federal registration restricted, suspended or revoked;
(4) Has violated this chapter, any rule of the board promulgated under this act, an order of the board or any federal regulation relating to controlled substances; provided, however, that no restriction, revocation or suspension procedure be initiated under this paragraph without the board first giving notice of the procedure to the state licensing board with authority over the registrant's professional license.
(b) The notice required in subsection (a)(4) of this section shall be given immediately in the event action is taken without an order to show cause as allowed under section 37-2719(b), Idaho Code. In all other cases, such notice shall be given as early as reasonably practicable without risking compromise of the board's investigation but no later than the earlier of:
(1) Issuance of an order to show cause under section 37-2719(a), Idaho Code; or
(2) Setting of a hearing for approval of a resolution of the matter through informal proceedings.
(c) Restriction, revocation or suspension procedures arising solely from "practice related issues" shall be referred by the board to such registrant's state licensing board.
(1) Upon such referral, the registrant's state licensing board shall commence such investigation of the referred matter as it deems necessary and shall take action upon the registrant's license or shall inform the board of pharmacy, in writing, that it has investigated the referred matter and has concluded that no action is necessary.
(2) For purposes of this section, the term "practice related issues" refers to issues involving questions regarding the professional conduct of the registrant within the scope of the registrant's profession.
(d) The board may limit the revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
(e) If the board restricts, suspends or revokes a registration, all pertinent controlled substances owned or possessed by the registrant at the time of the restriction or suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.
(f) The board shall promptly notify the bureau and the state licensing board with authority over the registrant's professional license of all orders restricting, suspending or revoking registration and all forfeitures of controlled substances.
(g) In the event a state licensing board with authority over a registrant's professional license takes an action against the registrant in any fashion which suspends, restricts, limits or affects the registrant's ability to manufacture, distribute, prescribe, administer, dispense, or conduct research with any controlled substance, the professional licensing board shall promptly notify the board of pharmacy of the action.

(1) Upon such action, the board of pharmacy shall be authorized to issue its order suspending, restricting, limiting or otherwise affecting the registrant's controlled substance registration in the same fashion as the professional licensing board action.

(2) The board of pharmacy order may be issued without further hearing or proceeding, but shall be subject to the effect of any reversal or modification of the professional licensing board action by reason of any appeal or rehearing.

37-2719. ORDER TO SHOW CAUSE. (a) Except as set forth in section 37-2718(g), Idaho Code, before denying, restricting, suspending or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should be restricted, denied, revoked, or suspended, or why the renewal should be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 52, title 67, Idaho Code, without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 37-2718, Idaho Code, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

(c) In conjunction with a proceeding for denying, restricting, suspending or revoking a registration, or refusing a renewal of registration, and upon a finding of grounds for such denial, restriction, suspension, revocation or refusal to renew, the board may also impose an administrative fine not to exceed two thousand dollars ($2,000) per occurrence and the costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts.

37-2720. RECORDS -- DRUG STORAGE -- INVENTORY. Persons registered under this chapter shall keep records, store controlled substances and maintain inventories in conformance with the recordkeeping, storage and inventory requirements of federal law and with any additional rules the board issues.

37-2722. ISSUING, DISTRIBUTING AND DISPENSING OF CONTROLLED SUBSTANCES. No person shall issue or dispense a prescription drug order for a controlled
substance unless it is in compliance with applicable state and federal law and rules of the board.

(a) Controlled substances included in schedule I shall be distributed only by a registrant to another registrant pursuant to the federal drug enforcement administration (DEA) order form 222.

(b) Controlled substances included in schedule II shall:
   (1) Be distributed only by a registrant to another registrant pursuant to DEA order form 222.
   (2) Be dispensed only pursuant to a valid prescription drug order, except when dispensed directly by a prescriber.
   (3) Not be refilled.
   (4) Include a quantity that is both spelled out in English and written in numerical form, when a written prescription drug order is required.

(c) Controlled substances included in schedule III or IV shall:
   (1) Be dispensed only pursuant to a valid prescription drug order, except when dispensed directly by a prescriber.
   (2) Not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.
   (3) Not be refilled.
   (4) Include a quantity that is both spelled out in English and written in numerical form, when a written prescription drug order is required.

(d) Controlled substances included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) A pharmacist may dispense a controlled substance pursuant to a valid prescription drug order of an individual licensed in a jurisdiction other than the state of Idaho as long as the individual is acting within the jurisdiction, scope and authority of his license.

37-2725. PRESCRIPTION DRUG ORDER BLANKS. (1) Paper prescription drug order blanks shall comply with federal law and shall utilize noncopyable paper that contains security provisions against copying that results in some indication on the copy that it is a copy and therefore rendering it null and void.

   (2) Prescription drug order blanks shall not be transferable. Any person possessing any such blank otherwise than is herein provided is guilty of a misdemeanor.

   (3) The prescription drug order blank shall contain the name and address of the prescriber. Prescription drug order blanks may contain the printed names of multiple prescribers who are affiliated; provided however, such prescription drug order blanks shall contain a means, in addition to the signature of the prescriber, such as a box or a check, for clear identification of the printed name and address of the prescriber issuing the prescription.

   (4) Prescriptions written by a prescriber in an institutional facility or other health care facility in which a prescriber may attend a patient, other than his or her regular place of business, may be written on prescription drug order blanks kept or provided by that facility that contain the name and address of that facility, but not necessarily of the prescriber, provided the prescriber's name must be stamped, written or printed on the completed prescription in a manner that is legible to a pharmacist.

   (5) Failure of a prescriber to clearly mark the prescriber's printed name and address on the prescription as required in subsection (3) of this section, or to stamp, write or print the prescriber's name legibly as required in subsection (4) of this section shall subject the prescriber to appropriate discipline by the board.

   (6) Prescription drug order blanks or drugs lost or stolen must be immediately reported to the board.
37-2726. FILING PRESCRIPTIONS -- DATABASE. (1) All controlled substances, and opioid antagonists as defined in section 54-1733B, Idaho Code, dispensed for humans shall be filed with the board electronically in a format established by the board or by other method as required by board rule. The board may require the filing of other prescriptions by board rule. The board shall establish by rule the information to be submitted pursuant to the purposes of this section and the purposes set forth in section 37-2730A, Idaho Code.

(2) The board shall create, operate and maintain a controlled substances prescriptions database containing the information submitted pursuant to subsection (1) of this section to be used for the purposes and subject to the terms, conditions and immunities described in section 37-2730A, Idaho Code. The board shall retain the information submitted pursuant to subsection (1) of this section for a period of five (5) years from the date the controlled substance was dispensed. The database information must be made available only to the following:

(a) Authorized individuals employed by Idaho's boards or other states' licensing entities charged with the licensing and discipline of practitioners;
(b) Peace officers employed by federal, state and local law enforcement agencies engaged as a specified duty of their employment in enforcing law regulating controlled substances;
(c) Authorized individuals under the direction of the department of health and welfare for the purpose of monitoring and enforcing that department's responsibilities under the public health, medicare and medicaid laws;
(d) A practitioner, licensed in Idaho or another state, having authority to prescribe controlled substances, or a delegate under the practitioner's supervision, to the extent the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance;
(e) A pharmacist, licensed in Idaho or another state, having authority to dispense controlled substances, or a delegate under the pharmacist's supervision, to the extent the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance, or providing pharmaceutical care as defined in the Idaho pharmacy act;
(f) An individual who is the recipient of a dispensed controlled substance entered into the database may access records that pertain to that individual, upon the production of positive identification, or that individual's designee upon production of a notarized release of information by that individual;
(g) Upon a lawful order issued by the presiding judge in a court of competent jurisdiction for the release of prescription monitoring program records of a named individual;
(h) Prosecuting attorneys, deputy prosecuting attorneys and special prosecutors of a county or city and special assistant attorneys general from the office of the attorney general engaged in enforcing law regulating controlled substances; and
(i) A medical examiner or coroner who is an officer of or employed by a state or local government, for determining a cause of death or for performing other duties authorized by law.

(3) The board shall require pharmacists and prescribers, except veterinarians, to annually register with the board to obtain online access to the controlled substances prescriptions database.

(4) The board must maintain records on the information disclosed from the database, including:

(a) The identification of each individual who requests or receives information from the database and who that individual represents;
(b) The information provided to each such individual; and
(c) The date and time the information is requested or provided.
(5) The board shall promulgate rules to ensure that only authorized individuals have access to the database.
(6) The board shall limit to four (4) the number of delegates that a practitioner or pharmacist may permit to access the database under the practitioner's or pharmacist's supervision.
(7) Any person who knowingly misrepresents to the board that he is a person entitled under subsection (2) of this section to receive information from the controlled substances prescriptions database under the conditions therein provided, and who receives information from the controlled substances prescriptions database resulting from that misrepresentation, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars ($2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.
(8) Any person in possession, whether lawfully or unlawfully, of information from the controlled substances prescriptions database that identifies an individual patient and who knowingly discloses such information to a person not authorized to receive or use such information under any state or federal law or rule or regulation, or the lawful order of a court of competent jurisdiction, or written authorization of the individual patient shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars ($2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law. The provisions of this subsection shall not apply to disclosure of individual patient information by the patient himself. The provisions of this subsection shall not apply to disclosure of information by a prosecuting attorney, deputy prosecuting attorney or special prosecutor of a county or city or by a special assistant attorney general from the office of the attorney general in the course of a criminal proceeding, whether preconviction or postconviction.
(9) Any person with access to the board's online prescription monitoring program pursuant to a board-issued user account, login name and password who intentionally shares or recklessly fails to safeguard his user account, login name and password, resulting in another person not authorized to receive or use such information under the provisions of any state or federal law, rule or regulation obtaining information from the controlled substances prescriptions database, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months or by a fine not to exceed two thousand dollars ($2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.
(10) The board may, at its discretion, block access to certain controlled substances prescriptions database data if the board has reason to believe that access to the data is or may be used illegally.
(11) All costs associated with recording and submitting data as required in this section are assumed by the dispensing practitioner recording and submitting the data.
(12) For purposes of this section, "delegate" means a nurse, medical or office assistant, current student of a health profession if a licensed practitioner or registered graduate of such profession may access the database, or a registered pharmacy technician who is designated by a supervising practitioner or pharmacist to access the database according to the provisions of this section and who must register with the state board of pharmacy for such access.
37-2727.CONTROLLED SUBSTANCES IN OPIOID (NARCOTIC) TREATMENT PROGRAMS. (1) At a facility with a controlled substance registration certificate issued by the United States department of justice, drug enforcement administration, for the operation of a narcotic treatment program, a nurse licensed under chapter 14, title 54, Idaho Code, may, pursuant to a valid order of a physician licensed under chapter 18, title 54, Idaho Code:

(a) Prepare and administer to a patient at that facility a controlled substance whether or not a practitioner is present; and

(b) Deliver at that facility to a patient for subsequent use by the patient off-site, take-home doses of a controlled substance, provided that:

(i) The patient is entitled to receive take-home doses of the controlled substance;

(ii) The take-home doses delivered by the nurse to the patient were obtained at the facility by the nurse from a locked storage area suitable to prevent unauthorized access and to ensure a proper environment for preservation of the drugs within such area; and

(iii) The take-home doses were prepared pursuant to a valid prescription drug order of the physician and were provided in a suitable container appropriately labeled for use by the patient.

(2) A nurse acting under the authority of this section is exempt from the registration requirements imposed by this chapter.

(3) The facility must be registered under chapter 17, title 54, Idaho Code.

37-2730A.PRESCRIPTION TRACKING PROGRAM. (1) The board shall maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2726, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board shall report this information to the individuals and persons set forth in section 37-2726(2), Idaho Code. The board may release unsolicited information to pharmacists and practitioners when the release of information may be of assistance in preventing or avoiding inappropriate use of controlled substances. The board may provide the appropriate law enforcement agency, medicaid or medicare agency or licensing board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) Information, which does not identify individual patients, practitioners or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

(4) Nothing herein shall prevent a pharmacist or practitioner from furnishing another pharmacist or practitioner information obtained pursuant to and in compliance with this chapter.

(5) Unless there is shown malice or criminal intent or gross negligence or reckless, willful
and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

(a) The furnishing of information under the conditions herein provided;
(b) The receiving and use of, or reliance on, such information;
(c) The fact that any such information was not furnished; or
(d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

(6) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

37-2731. INFORMATION REQUIRED ON LABEL. A practitioner with statutory authority to dispense a controlled substance shall affix to the package a label pursuant to board rule.

37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:
   (A) A controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, except as provided for in section 37-2732B(a)(3), Idaho Code, is guilty of a felony and upon conviction may be imprisoned for a term of years not to exceed life imprisonment, or fined not more than twenty-five thousand dollars ($25,000), or both;
   (B) Any other controlled substance which is a nonnarcotic drug classified in schedule I, or a controlled substance classified in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars ($15,000), or both;
   (C) A substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars ($10,000), or both;
   (D) A substance classified in schedules V and VI, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:
   (A) A counterfeit substance classified in schedule I which is a narcotic drug, or a counterfeit substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, fined not more than twenty-five thousand dollars ($25,000), or both;
   (B) Any other counterfeit substance classified in schedule I which is a nonnarcotic drug contained in schedule I or a counterfeit substance contained in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars ($15,000), or both;
(C) A counterfeit substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars ($10,000), or both;
(D) A counterfeit substance classified in schedules V and VI or a noncontrolled counterfeit substance, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or both.

(c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.
(1) Any person who violates this subsection and has in his possession a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than seven (7) years, or fined not more than fifteen thousand dollars ($15,000), or both.
(2) Any person who violates this subsection and has in his possession lysergic acid diethylamide is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than five thousand dollars ($5,000), or both.
(3) Any person who violates this subsection and has in his possession a controlled substance which is a nonnarcotic drug classified in schedule I except lysergic acid diethylamide, or a controlled substance classified in schedules III, IV, V and VI is guilty of a misdemeanor and upon conviction thereof may be imprisoned for not more than one (1) year, or fined not more than one thousand dollars ($1,000), or both.

d) It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this section shall deem those persons guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars ($300) and not more than ninety (90) days in the county jail, or both.

e) If any person is found to possess marijuana, which for the purposes of this subsection shall be restricted to all parts of the plants of the genus Cannabis, including the extract or any preparation of cannabis which contains tetrahydrocannabinol, in an amount greater than three (3) ounces net weight, it shall be a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than ten thousand dollars ($10,000), or both.

(f) If two (2) or more persons conspire to commit any offense defined in this act, said persons shall be punishable by a fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

(g) (1) It is unlawful for any person to manufacture or distribute a "simulated controlled substance," or to possess with intent to distribute, a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1,000) and not more than one (1) year in the county jail, or both.
(2) It is unlawful for any person to possess a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars ($300) and not more than six (6) months in the county jail, or both.

(h) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation
offering for sale simulated controlled substances. Any person who violates this subsection is guilty of a misdemeanor and shall be punished in the same manner as prescribed in subsection (g) of this section.

(i) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in section 37-2701(aa), Idaho Code, in the course of professional practice or research.

(j) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

(k) Upon conviction of a felony or misdemeanor violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

37-2732A.SACRAMENTAL USE OF PEYOTE PERMITTED. The criminal sanctions provided in this chapter do not apply to that plant of the genus Lophophora Williamii commonly known as peyote when such controlled substance is transported, delivered or possessed to be used as the sacrament in religious rites of a bona fide native American religious ceremony conducted by a bona fide religious organization; provided, that this exemption shall apply only to persons of native American descent who are members or eligible for membership in a federally recognized Indian tribe. Use of peyote as a sacrament in religious rites shall be restricted to Indian reservations as defined in subsection (2) of section 63-3622Z, Idaho Code. A person transporting, possessing or distributing peyote in this state for religious rites shall have on their person a tribal enrollment card, a card identifying the person as a native American church member and a permit issued by a bona fide religious organization authorizing the transportation, possession and distribution of peyote for religious rites.

37-2732B.TRAFFICKING -- MANDATORY SENTENCES. (a) Except as authorized in this chapter, and notwithstanding the provisions of section 37-2732, Idaho Code:

(1) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, one (1) pound of marijuana or more, or
twenty-five (25) marijuana plants or more, as defined in section 37-2701, Idaho Code, is guilty of a felony, which felony shall be known as "trafficking in marijuana." If the quantity of marijuana involved:

(A) Is one (1) pound or more, but less than five (5) pounds, or consists of twenty-five (25) marijuana plants or more but fewer than fifty (50) marijuana plants, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of one (1) year and fined not less than five thousand dollars ($5,000);
(B) Is five (5) pounds or more, but less than twenty-five (25) pounds, or consists of fifty (50) marijuana plants or more but fewer than one hundred (100) marijuana plants, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);
(C) Is twenty-five (25) pounds or more, or consists of one hundred (100) marijuana plants or more, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars ($15,000).
(D) The maximum number of years of imprisonment for trafficking in marijuana shall be fifteen (15) years, and the maximum fine shall be fifty thousand dollars ($50,000).
(E) For the purposes of this section, the weight of the marijuana is its weight when seized or as determined as soon as practicable after seizure, unless the provisions of subsection (c) of this section apply.

(2) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of cocaine or of any mixture or substance containing a detectable amount of cocaine is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

(A) Is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);
(B) Is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars ($15,000);
(C) Is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars ($25,000).
(D) The maximum number of years of imprisonment for trafficking in cocaine shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000).

(3) Any person who knowingly manufactures or attempts to manufacture methamphetamine and/or amphetamine is guilty of a felony which shall be known as "trafficking in methamphetamine and/or amphetamine by manufacturing." Any person convicted of trafficking in methamphetamine and/or amphetamine by attempted manufacturing shall be sentenced to a mandatory minimum fixed term of imprisonment of two (2) years and not to exceed fifteen (15) years imprisonment and fined not less than ten thousand dollars ($10,000). Any person convicted of trafficking in methamphetamine and/or amphetamine by manufacturing shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and not to exceed life imprisonment and fined not less than twenty-five
thousand dollars ($25,000). The maximum number of years of imprisonment for trafficking in methamphetamine and/or amphetamine by manufacturing shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000).

(4) Any person who knowingly delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of methamphetamine or amphetamine or of any mixture or substance containing a detectable amount of methamphetamine or amphetamine is guilty of a felony, which felony shall be known as "trafficking in methamphetamine or amphetamine." If the quantity involved:

(A) Is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);

(B) Is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars ($15,000);

(C) Is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars ($25,000).

(D) The maximum number of years of imprisonment for trafficking in methamphetamine or amphetamine shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000).

(5) Any person who knowingly manufactures, delivers, brings into this state, or who is knowingly in actual or constructive possession of the below-specified quantities of any of the following immediate precursors to methamphetamine or amphetamine (namely ephedrine, methylamine, methyl formamide, phenylacetic acid, phenylacetone, or pseudoephedrine) as defined in section 37-2707(g)(1), Idaho Code, or any compound, mixture or preparation which contains a detectable quantity of these substances, is guilty of a felony which shall be known as "trafficking in immediate precursors of methamphetamine or amphetamine." If the quantity:

(A) Of ephedrine is five hundred (500) grams or more;

(B) Of methylamine is one-half (1/2) pint or more;

(C) Of methyl formamide is one-quarter (1/4) pint or more;

(D) Of phenylacetic acid is five hundred (500) grams or more;

(E) Of phenylacetone is four hundred (400) grams or more;

(F) Of pseudoephedrine is five hundred (500) grams or more;

such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars ($25,000). The maximum number of years of imprisonment for trafficking in immediate precursors of methamphetamine or amphetamine in the quantities specified in paragraphs (A) through (F) of this subsection (5) shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000). If the quantity of pseudoephedrine is twenty-five (25) grams or more, but less than five hundred (500) grams, such person shall be sentenced to a term of imprisonment of up to ten (10) years and fined not more than twenty-five thousand dollars ($25,000).

(6) Any person who knowingly manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of, two (2) grams or more of heroin or any salt, isomer, or salt of an isomer thereof, or two (2) grams or more of any mixture or substance containing a detectable amount of any such substance is guilty of a felony, which felony shall be known as "trafficking in heroin." If the quantity involved:
(A) Is two (2) grams or more, but less than seven (7) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);

(B) Is seven (7) grams or more, but less than twenty-eight (28) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than fifteen thousand dollars ($15,000);

(C) Is twenty-eight (28) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of fifteen (15) years and fined not less than twenty-five thousand dollars ($25,000).

(D) The maximum number of years of imprisonment for trafficking in heroin shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000).

(7) A second conviction for any trafficking offense as defined in subsection (a) of this section shall result in a mandatory minimum fixed term that is twice that otherwise required under this section.

(8) Notwithstanding any other provision of law, with respect to any person who is found to have violated the provisions of this section, adjudication of guilt or the imposition or execution of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum fixed term of imprisonment prescribed in this section. Further, the court shall not retain jurisdiction.

(b) Any person who agrees, conspires, combines or confederates with another person or solicits another person to commit any act prohibited in subsection (a) of this section is guilty of a felony and is punishable as if he had actually committed such prohibited act.

(c) For the purposes of subsections (a) and (b) of this section the weight of the controlled substance as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled substance.

37-2732C. USING OR BEING UNDER THE INFLUENCE -- PENALTIES. (a) Except as authorized in this chapter, it is unlawful for any person on a public roadway, on a public conveyance, on public property or on private property open to the public, to use or be under the influence of any controlled substance specified in subsection (b), (c), (d), (e) and (f) of section 37-2705, Idaho Code, or subsection (b), (c) and (d) of section 37-2707, Idaho Code, or subsection (c)(6) of section 37-2709, Idaho Code, or any narcotic drug classified in schedule III, IV or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within this exception.

(b) Any person convicted of violating the provisions of subsection (a) of this section is guilty of a misdemeanor and is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

(c) Any person who is convicted of violating subsection (a) of this section, when the offense occurred within five (5) years of that person being convicted of two (2) or more separate violations of that subsection and who refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subsection (d) shall be punished by imprisonment in the county jail for a mandatory minimum period of time of not less than one hundred twenty (120) days, nor more than one (1) year. The court may not reduce the mandatory minimum period of incarceration provided in this subsection.

(d) The court may, when it would be in the interest of justice, permit any person convicted
of a violation of subsection (a) of this section, punishable under subsection (b) or (c) of this section, to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in the county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program. In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subsection, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(e) Notwithstanding subsection (a), (b) or (c) of this section, or any other provision of law to the contrary, any person who is unlawfully under the influence of cocaine, cocaine base, methamphetamine, heroin, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense and is punishable by imprisonment in the county jail or the state prison for not more than one (1) year. As used in this subsection, "immediate possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subsection (e) of this section is punishable upon the second and each subsequent conviction by imprisonment in the state prison for a period of time not in excess of four (4) years.

(g) In addition to any fine assessed under this section and notwithstanding the provisions of section 19-4705, Idaho Code, the court may, upon conviction, assess an additional cost to the defendant in the way of restitution, an amount not to exceed two hundred dollars ($200) to the arresting and/or prosecuting agency or entity. These funds shall be remitted to the appropriate fund to offset the expense of toxicology testing.

37-2733.PROHIBITED ACTS B -- PENALTIES. (a) It is unlawful for any person:

(1) Who is subject to article III of this act to distribute or dispense a controlled substance in violation of section 37-2722, Idaho Code;

(2) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this act;

(4) To refuse an entry into any premises for any inspection authorized by this act; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this act for the purpose of using these substances, or which is used for keeping or selling them in violation of this act.

(b) Any person who violates this section is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than twenty-five thousand dollars ($25,000), or both.

37-2734.PROHIBITED ACTS C -- PENALTIES. (a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to the requirements of section 37-2722, Idaho Code;

(2) To use in the course of the manufacture or distribution of a controlled substance a
registration number which is fictitious, revoked, suspended, or issued to another person;
(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act; or
(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a felony and upon conviction may be imprisoned for not more than four (4) years, or fined not more than thirty thousand dollars ($30,000), or both.

37-2734A.PROHIBITED ACTS D -- PENALTIES. (1) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(3) Any person who is in violation of the provisions of subsections (1) and/or (2) of this section is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than one thousand dollars ($1,000), or both.

37-2734B.PROHIBITED ACTS E -- PENALTIES. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who is in violation of this section is guilty of a felony and upon conviction may be imprisoned for not more than nine (9) years, fined not more than thirty thousand dollars ($30,000), or both.

37-2734C.PROHIBITED ACTS F -- PENALTIES. (1) A person is guilty of the crime of unlawful storage of anhydrous ammonia in a container that:
(a) Is not approved by the United States department of transportation to hold anhydrous ammonia; or
(b) Was not constructed to meet state and federal industrial health and safety standards for holding anhydrous ammonia.

(2) Violation of this section is a felony.

(3) This section does not apply to public employees or private contractors authorized to clean
up and dispose of hazardous waste or toxic substances pursuant to the provisions of chapter 22, title 49, Idaho Code.

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia equipment shall be the sole responsibility of the person or persons unlawfully possessing, storing or tampering with the anhydrous ammonia. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor or seller of the anhydrous ammonia or anhydrous ammonia equipment, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor or seller that constitute negligent misconduct to abide by the laws regarding anhydrous ammonia possession and storage.

37-2735.PENALTIES UNDER OTHER LAWS. Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

37-2735A.DRUG HOTLINE FEE. In addition to any other penalties, a person convicted of a violation of this chapter shall be subject to an additional fine of ten dollars ($10.00) to be deposited in the drug and driving while under the influence enforcement donation fund, as set forth in section 57-816, Idaho Code, to be used for the purposes designated in that section.

37-2736.BAR TO PROSECUTION. If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

37-2737.DISTRIBUTION TO PERSONS UNDER AGE 18. Any person eighteen (18) years of age or over who violates section 37-2732(a), Idaho Code, by distributing any nonnarcotic drug classified in schedule I, or any controlled substance classified in schedule III, IV, V, or VI, to a person under eighteen (18) years of age who is at least three (3) years his junior is punishable by the fine authorized by section 37-2732(a)(1)(B), (C) or (D), Idaho Code, by a term of imprisonment of up to twice that authorized by section 37-2732(a)(1)(B), (C) or (D), Idaho Code, or by both.

37-2737A.MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE WHERE CHILDREN ARE PRESENT. (1) Except as authorized in this chapter, it is unlawful for any person to manufacture or deliver, or possess with the intent to manufacture or deliver, a controlled substance as defined in schedules I, II, III and IV in this chapter, upon the same premises where a child under the age of eighteen (18) years is present.

(2) As used in this section, "premises" means any:
(a) Motor vehicle or vessel;
(b) Dwelling or rental unit including, but not limited to, apartment, townhouse, condominium, mobile home, manufactured home, motel room or hotel room;
(c) Dwelling house, its curtilage and any other outbuildings.

(3) Except as provided in subsection (4) of this section, a person who violates the provisions of this section shall be guilty of a felony and upon conviction may be imprisoned for a term not to exceed five (5) years, fined not more than five thousand dollars ($5,000), or be both so imprisoned and fined.

(4) A person who violates the provisions of this section by manufacturing or delivering, or possessing with the intent to manufacture or deliver, methamphetamine or amphetamine in quantities as specified in section 37-2732B(a)(4), Idaho Code, shall be guilty of a felony and upon conviction may be imprisoned for a term of up to ten (10) years, fined not more than twenty-five thousand dollars ($25,000), or be both so imprisoned and fined.

(5) Any fine imposed under the provisions of this section shall be in addition to the fine imposed for any other offense, and any term of imprisonment shall be consecutive to any term imposed for any other offense, regardless of whether the violation of the provisions of this section and any of the other offenses have arisen from the same act or transaction.

37-2738.SENTENCING CRITERIA IN DRUG CASES. (1) Any person who pleads guilty to, is found guilty of or has a judgment of conviction entered upon a violation of the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, shall be sentenced according to the criteria set forth herein.

(2) Prior to sentencing for a violation enumerated in subsection (1) of this section, the defendant shall undergo, at his own expense (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code), a substance abuse evaluation at a facility approved by the Idaho department of health and welfare. Provided however, if the defendant has no prior or pending charges under the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, and the court does not have any reason to believe that the defendant regularly abuses drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of subsection (b), (e)(3), or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of a substance abuse evaluation with respect to a defendant's violation of the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or similar assessment which has evaluated the defendant's need for substance abuse treatment conducted within twelve (12) months preceding the date of the defendant's sentencing.

(3) In the event a substance abuse evaluation indicates the need for substance abuse treatment, the evaluation shall recommend an appropriate treatment program, together with the estimated costs thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration to determine an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event it shall be presumed that substance abuse treatment is needed unless it is shown by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide or report an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, the person or facility performing the evaluation shall not be the person or
facility that provides the treatment, unless this requirement is waived by the sentencing court, and with the exception of federally recognized Indian tribes or federal military installations where diagnoses and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court ordered substance abuse treatment for indigent defendants.

(4) When sentencing an individual for the crimes enumerated in subsection (1) of this section, the court shall not enter a withheld judgment unless it finds by a preponderance of the evidence that:

(a) The defendant has no prior finding of guilt for any felony, any violation of chapter 80, title 18, Idaho Code, or subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, whatsoever; and

(b) The sentencing court has an abiding conviction that the defendant will successfully complete the terms of probation; and

(c) The defendant has satisfactorily cooperated with law enforcement authorities in the prosecution of drug related crimes of which the defendant has previously had involvement.

The requirements for the granting of a withheld judgment pursuant to this subsection shall not apply to a defendant who has been admitted to a problem solving court program approved by the drug court and mental health court coordinating committee and is participating in, or about to begin participating in, such a program, or who participated in such a problem solving court program in connection with the pending case and who successfully graduated from such a program prior to sentencing.

(5) Any person who pleads guilty to or is found guilty of a violation of the provisions of the Idaho Code identified in subsection (1) of this section shall, when granted a probationary period of any sort whatsoever, be required by the court to complete a period of not less than one hundred (100) hours of community service work.

37-2739.SECOND OR SUBSEQUENT OFFENSES. (a) Any person convicted of a second or subsequent offense under this act, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

37-2739A.MANDATORY MINIMUM PENALTY. Any person who is convicted of violating the felony provisions of section 37-2732(a), Idaho Code, by distributing controlled substances to another person, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, and who has previously been convicted within the past ten (10) years in a court of the United States, any state or a political subdivision of one or more felony offenses of dealing, selling or trafficking in controlled substances on an occasion or occasions different from the felony violation of section 37-2732(a), Idaho Code, and which offense or offenses were punishable in such court by imprisonment in excess of one (1) year, shall be sentenced to the custody of the state board of correction for a mandatory minimum period of time of not less than
three (3) years or for such greater period as the court may impose up to a maximum of life imprisonment. The mandatory minimum period of three (3) years incarceration shall not be reduced and shall run consecutively to any other sentence imposed by the court.

37-2739B.FIXED MINIMUM SENTENCES IN DRUG CASES. (a) The legislature intends to allow fixed minimum sentences for certain aggravating factors found in cases brought under the uniform controlled substances act. The legislature hereby finds and declares that trafficking in controlled substances in the state of Idaho is a primary contributor to a societal problem that causes loss of life, personal injury and theft of property, and exacts a tremendous toll on the citizens of this state. To afford better protection to our citizens from those who traffic in controlled substances, the fixed minimum sentencing contained in subsections (b) and (c) of this section is enacted. By enacting fixed minimum sentences, the legislature does not seek to limit a court's power to impose a greater sentence pursuant to section 19-2513, Idaho Code.

(b) Any person who is found guilty of violating the provisions of section 37-2732(a)(1)(A), Idaho Code, or of any attempt or conspiracy to commit such a crime, may be sentenced to a fixed minimum term of confinement to the custody of the state board of correction, which term shall be at least five (5) years and may extend to life, for each of the following aggravating factors found by the trier of fact:

1. That the defendant has previously been found guilty of or convicted of a violation of section 37-2732(a)(1)(A), Idaho Code, or of an attempt or conspiracy to commit such a crime, or an offense committed in another jurisdiction which, if committed in this jurisdiction, would be punishable as a violation of section 37-2732(a)(1)(A), Idaho Code, or as an attempt or conspiracy to commit such an offense.

2. That the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school.

3. That the violation consisted of the delivery or attempted delivery of a controlled substance to a minor child under the age of eighteen (18) years.

(c) The fixed minimum terms provided in this section may be imposed where the aggravating factors are separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at the trial of the substantive crime; provided, however, that the prosecutor shall give notice to the defendant of intent to seek a fixed penalty at least fourteen (14) days prior to trial. During a fixed minimum term of confinement imposed under this section, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service. Each fixed minimum term imposed shall be served consecutively to the others, and consecutively to any minimum term of confinement imposed for the substantive offense.

(d) Any person who is found guilty of violating the provisions of section 37-2732(a)(1)(A), Idaho Code, or of any attempt or conspiracy to commit such a crime, and who is sentenced to serve at least one (1) minimum term of confinement under this section, may be fined an amount up to twice that otherwise provided for the substantive offense.

37-2739C.MEDICAL ASSISTANCE -- DRUG-RELATED OVERDOSE -- PROSECUTION FOR POSSESSION. (1) A person acting in good faith who seeks medical assistance for any
person experiencing a drug-related medical emergency shall not be charged or prosecuted for possession of a controlled substance pursuant to section \texttt{37-2732(c) or (e)}, Idaho Code, for using or being under the influence of a controlled substance pursuant to section \texttt{37-2732(c)}, Idaho Code, or for using or possessing with intent to use drug paraphernalia pursuant to section \texttt{37-2734A(1)}, Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the person seeking medical assistance.

(2) A person who experiences a drug-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to section \texttt{37-2732(c) or (e)}, Idaho Code, for using or being under the influence of a controlled substance pursuant to section \texttt{37-2732(c)}, Idaho Code, or for using or possessing with intent to use drug paraphernalia pursuant to section \texttt{37-2734A(1)}, Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the medical emergency and the need for medical assistance.

(3) The protections in this section from prosecution shall not be grounds for suppression of evidence in other criminal charges.

\texttt{37-2739C.MEDICAL ASSISTANCE -- DRUG-RELATED OVERDOSE -- PROSECUTION FOR POSSESSION.} (1) A person acting in good faith who seeks medical assistance for any person experiencing a drug-related medical emergency shall not be charged or prosecuted for possession of a controlled substance pursuant to section \texttt{37-2732(c) or (e)}, Idaho Code, for using or being under the influence of a controlled substance pursuant to section \texttt{37-2732(c)}, Idaho Code, or for using or possessing with intent to use drug paraphernalia pursuant to section \texttt{37-2734A(1)}, Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the person seeking medical assistance.

(2) A person who experiences a drug-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to section \texttt{37-2732(c) or (e)}, Idaho Code, for using or being under the influence of a controlled substance pursuant to section \texttt{37-2732(c)}, Idaho Code, or for using or possessing with intent to use drug paraphernalia pursuant to section \texttt{37-2734A(1)}, Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the medical emergency and the need for medical assistance.

(3) The protections in this section from prosecution shall not be grounds for suppression of evidence in other criminal charges.

\texttt{37-2740.POWERS OF ENFORCEMENT PERSONNEL.} (a) Any peace officer, as defined by this act, may:

(1) Carry firearms in the performance of his official duties;
(2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state;
(3) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony or a misdemeanor;
(4) Make seizures of property pursuant to this act.
(b) The director of the Idaho state police shall administer the state-level program of Idaho to suppress the unlawful traffic and abuse of controlled substances and shall have the authority to appoint and commission agents to enforce the provisions of this act.
(c) All duly authorized peace officers while investigating offenses under this act in the performance of their official duties, and any person working under their immediate direction, supervision, or instruction, provided such person shall not deviate from the lawful direction of the peace officer, are immune from prosecution under this act.

37-2741. ADMINISTRATIVE INSPECTIONS AND WARRANTS. (a) Issuance and execution of administrative inspection warrants shall be as follows:
(1) A magistrate, within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this act or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;
(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
(B) Be directed to a person authorized by section 37-2740, Idaho Code, to execute it;
(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
(D) Identify the item or types of property to be seized, if any;
(E) Direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned;
(3) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;
(4) The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in the county in which the inspection was made.
(b) The board may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:
   (A) Places where persons registered or exempted from registration requirements under this act are required to keep records; and
   (B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) of this section an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:
   (A) Inspect and copy records required by this act to be kept;
   (B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b)(5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this act; and
   (C) Inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 52, title 67, Idaho Code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:
   (A) If the owner, operator, or agent in charge of the controlled premises consents;
   (B) In situations presenting imminent danger to health or safety;
   (C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
   (D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or
   (E) In all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

37-2741A.UTILITY RECORDS -- INSPECTION AND COPYING -- WRONGFUL DISCLOSURE. (a) Upon request of the attorney general or prosecuting attorney, a subpoena for the production of records of a utility may be signed and issued by a magistrate judge if there is reasonable articulable suspicion that a violation of the provisions of section 37-2732, 37-2732B, 37-2733, 37-2734 or 37-2734A, Idaho Code, has occurred or is occurring and that the records sought will materially aid in the investigation of such activity or appear reasonably calculated to lead to the discovery of information that will do so. The subpoena shall be served on the utility as in civil actions. The court may, upon motion timely made and in any event before the time specified for compliance with the subpoena, condition compliance upon advancement by
the attorney general or prosecuting attorney of the reasonable costs of producing the records specified in the subpoena.

(b) A response to a subpoena issued under this section is sufficient if a copy or printout, duly authenticated by an authorized representative of the utility as a true and correct copy or printout of its records, is provided, unless otherwise provided in the subpoena for good cause shown.

(c) Except as provided in this subsection, a utility served with a subpoena under this section may disclose to the customer the fact that a subpoena seeking records relating to the customer has been served. A magistrate judge may order that the attorney general, prosecuting attorney or utility refrain from disclosing the fact that a subpoena has been served.

(d) A utility shall be reimbursed in an amount set by the court for reasonable costs incurred in providing information pursuant to the provisions of this section.

(e) The provisions of this section do not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges or the right to seek a protective order where appropriate.

(f) Disclosure by the attorney general, county prosecuting attorney, or any peace officer or other person designated by the attorney general or the county prosecuting attorney, of information obtained under this section, except in the proper discharge of official duties, is punishable as a misdemeanor.

(g) Upon filing of any civil or criminal action, the nondisclosure requirements of any subpoena or order under this section shall terminate, and the attorney general or prosecuting attorney filing the action shall provide copies to the defendant of all subpoenas or other orders issued under this section.

(h) A good faith reliance on a court order by a utility shall constitute a complete defense to any civil or criminal action brought against such utility under the laws of this state.

(i) The term "utility," as used herein, shall mean every corporation, association, company, partnership, sole proprietorship, business entity, person, or any municipal corporation, mutual nonprofit or cooperative corporation which provides water, gas or electrical services to members of the public, for compensation, within the state of Idaho.

(j) If an action is not filed within two (2) years and the investigation is no longer active, records obtained pursuant to this section shall be destroyed by the attorney general or prosecuting attorney.

37-2742.INJUNCTIONS. (a) The district courts have jurisdiction to restrain or enjoin violations of this act.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

37-2743.COOPERATIVE ARRANGEMENTS. (a) The director of the Idaho state police shall cooperate with federal and other state agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;
(3) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. The name or identity of a patient or research subject whose identity could not be obtained under subsection (c) of this section shall be subject to disclosure according to chapter 1, title 74, Idaho Code;
(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substance may be extracted;
(5) Enter into agreements with other states to coordinate and facilitate the enforcement of this act; and
(6) Require law enforcement agencies to report such information regarding traffic in controlled substances and abuse of controlled substances as he deems necessary to enforce this act. Such reports shall be on forms supplied by the director of the Idaho state police and shall include, but not be limited to, the following information: Names, ages, sex, race, and residences of individuals involved in violations of this act; the contraband confiscated, showing the kind, location, quantity, date, and place where seized; the circumstances surrounding the arrests and a report of the disposition of charges.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this act, including results of inspections and investigations conducted by the bureau may be relied and acted upon by the board in the exercise of its regulatory functions under this act.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the director, nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential and as such the name or identity of the patient or research subject is subject to disclosure according to chapter 1, title 74, Idaho Code.

37-2744.FORFEITURES. (a) The following are subject to forfeiture:
(1) All controlled substances that have been manufactured, distributed, dispensed, acquired, possessed or held in violation of this act or with respect to which there has been any act by any person in violation of this act;
(2) All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances or counterfeit substances in violation of this act;
(3) All property that is used, or intended for use, as a container for property used in the commission of an act prohibited by section 37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code;
(4) All conveyances, including aircraft, vehicles, or vessels, that are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt or manufacture of substances as prohibited by section 37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code, but:
(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;
(B) No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section;
(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the security interest was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged.

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this act.

(6) (A) All moneys, currency, negotiable instruments, securities or other items easily liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other property described in paragraphs (2) and (3) of this subsection that is found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of this subsection and that has been used or is intended for use in connection with the illegal manufacture, distribution, dispensing or possession of property described in paragraph (1), (2), (3), (5), (7) or (8) of this subsection;
(B) Items described in paragraph (6)(A) of this subsection or other things of value furnished or intended to be furnished by any person in exchange for a contraband controlled substance in violation of this chapter, all proceeds, including items of property traceable to such an exchange, and all moneys or other things of value used or intended to be used to facilitate any violation of this chapter, except that no property shall be forfeited under this paragraph to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All drug paraphernalia as defined by section 37-2701, Idaho Code.

(8) All simulated controlled substances, which are used or intended for use in violation of this chapter.

(9) All weapons, or firearms, which are used in any manner to facilitate a violation of the provisions of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the director, or any peace officer of this state, upon process issued by any district court, or magistrate division thereof, having jurisdiction over the property. Seizure without process may be made if:
(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal racketeering or civil forfeiture proceeding based upon a violation of this chapter;
(3) Probable cause exists to believe that the property is directly or indirectly dangerous to health or safety; or
(4) Probable cause exists to believe that the property was used or is intended to be used in violation of this chapter.

Mere presence or possession of United States currency, without other indicia of criminal activity, is insufficient cause for seizure.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.
(1) When property is seized under this section, the director or the peace officer who seized
the property may:
(A) Place the property under seal;
(B) Remove the property to a place designated by it; or
(C) Take custody of the property and remove it to an appropriate location for
disposition in accordance with law.
(2) The peace officer who seized the property shall within five (5) days notify the director
of such seizure.
(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under
subsection (d) of this section shall be instituted within thirty (30) days by the director or
appropriate prosecuting attorney.
(d) Property taken or detained under this section may be subject to replevin during the
pendency of the forfeiture proceedings upon a hearing and finding by the district court, or
magistrate division thereof, having jurisdiction over the forfeiture proceedings, that the property
is: (i) reasonably necessary for the owner's employment or personal use, that the property will not
be disposed of or used for criminal activity, and that reasonable security has been posted; or (ii)
that the seizure violated the provisions of this section. The right of replevin shall terminate upon
an order of forfeiture as set forth in this section. Property that is being held that has evidentiary
value in the underlying criminal case shall not be subject to replevin. Forfeiture proceedings shall
be civil actions against the property subject to forfeiture and the standard of proof shall be
preponderance of the evidence.
(1) All property described in paragraphs (1), (7) and (8) of subsection (a) of this section shall
be deemed contraband and shall be summarily forfeited to the state. Controlled substances
that are seized or come into possession of the state, the owners of which are unknown, shall
be deemed contraband and shall be summarily forfeited to the state.
(2) When property described in paragraphs (2), (3), (4), (5), (6) or (9) of subsection (a) of
this section is seized pursuant to this section, forfeiture proceedings shall be filed in the office
of the clerk of the district court for the county wherein such property is seized. The procedure
governing such proceedings shall be the same as that prescribed for civil proceedings by the
Idaho rules of civil procedure. The court shall determine whether such property was used, or
intended for use, in violation of this chapter. The court shall also determine whether a
property forfeiture is proportionate to the crime alleged, charged or proven. Factors to be
considered by the court in making such a determination shall include, but are not limited to,
the nature and severity of the crime, the fair market value of the property, the intangible or
subjective value of the property, the hardship to the defendant, the effect of forfeiture on the
defendant's family or financial circumstances, and any other sanctions or penalties that have
been imposed upon the defendant. The court may tailor the forfeiture of property according
to its determination of proportionality as justice requires.
(3) When conveyances, including aircraft, vehicles, or vessels are seized pursuant to this
section a complaint instituting forfeiture proceedings shall be filed in the office of the clerk
of the district court for the county wherein such conveyance is seized.
(A) Notice of forfeiture proceedings shall be given to each owner or party in interest
who has a right, title, or interest which in the case of a conveyance shall be determined
by the record in the Idaho transportation department or a similar department of
another state if the records are maintained in that state, by serving a copy of the
complaint and summons according to one (1) of the following methods:
(I) Upon each owner or party in interest by mailing a copy of the complaint
and summons by certified mail to the address as given upon the records of the
(II) Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last known address.

(B) Within twenty (20) days after the mailing or publication of the notice, the owner of the conveyance or claimant may file a verified answer and claim to the property described in the complaint instituting forfeiture proceedings.

(C) If at the end of twenty (20) days after the notice has been mailed there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use, or intent to use, and shall order the property forfeited to the director, or appropriate prosecuting attorney, if such fact is proved.

(D) If a verified answer is filed, the forfeiture proceeding shall be set for hearing before the court without a jury on a day not less than thirty (30) days therefrom; and the proceeding shall have priority over other civil cases.

(I) At the hearing any owner who has a verified answer on file may show by competent evidence that the conveyance was not used or intended to be used in any manner described in subsection (a)(4) of this section.

(II) At the hearing any owner who has a verified answer on file may show by competent evidence that his interest in the conveyance is not subject to forfeiture because he did not know that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section.

(III) If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

(IV) An owner, co-owner or claimant of any right, title, or interest in the conveyance may prove that his right, title, or interest, whether under a lien, mortgage, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order the conveyance released to the bona fide or innocent owner, purchaser, lienholder, mortgagee, or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the conveyance, the conveyance may be sold at public auction by the director or appropriate prosecuting attorney. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the conveyance. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent owner, purchaser, conditional sales vendor, lienholder or mortgagee of the conveyance, if any, up to the value of his interest in the conveyance.

2. The balance, if any, in the following order:

   A. To the director, or appropriate prosecuting attorney,
for all expenditures made or incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the conveyance, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

B. To the law enforcement agency of this state which seized the conveyance for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any conveyance seized under this act.

C. The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

(iii) In any case, the director, or appropriate prosecuting attorney, may, within thirty (30) days after judgment, pay the balance due to the bona fide lienholder, mortgagee or conditional sales vendor and thereby purchase the conveyance for use to enforce this act.

(e) When property is forfeited under this section, or is received from a federal enforcement agency, the director, or appropriate prosecuting attorney, may:

(1) Upon a showing that the property as set forth in this section is suited for and likely to be used for law enforcement activities, the plaintiff or law enforcement agency may, with judicial approval, retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public.

The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

(A) To the director, or prosecuting attorney on behalf of the county or city law enforcement agency, for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, maintenance, storage or transportation, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this act.

(C) The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local agency's drug enforcement donation fund; or

(3) Take custody of the property and remove it for disposition in accordance with law.
(f) (1) The director or any peace officer of this state seizing any of the property described in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the court, law enforcement agency, or person having custody of the same to the director to be destroyed pursuant to paragraph (2) of this subsection. The property shall be accompanied with a written inventory on forms furnished by the director.

(2) All property described in paragraphs (1) and (2) of subsection (a) of this section that is seized or surrendered under the provisions of this act may be destroyed after all legal actions have been exhausted. The destruction shall be done under the supervision of the Idaho state police by a representative of the office of the director and a representative of the state board of pharmacy. An official record listing the property destroyed and the location of destruction shall be kept on file at the office of the director. Except, however, that the director of the Idaho state police or his designee may authorize the destruction of drug or nondrug evidence, or store those items at government expense when, in the opinion of the director or his designee, it is not reasonable to remove or transport such items from the location of the seizure for destruction. In such case, a representative sample will be removed and preserved for evidentiary purposes and, when practicable, destroyed as otherwise is in accordance with this chapter. On-site destruction of such items shall be witnessed by at least two (2) persons, one (1) of whom shall be the director or his designee who shall make a record of the destruction.

(g) Species of plants from which controlled substances in schedules I and II may be derived that have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the director, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The director shall have the authority to enter upon any land or into any dwelling pursuant to a search warrant, to cut, harvest, carry off or destroy such plants described in subsection (g) of this section.

(j) On or before March 31, 2019, and by March 31 of each year thereafter, each state or local law enforcement agency in this state that has seized or forfeited property pursuant to this section shall retain the following information from the previous calendar year:

1. Name of the law enforcement agency that seized the property;
2. Date of seizure;
3. Type and description of property seized, including make, model, year, and serial number, if applicable;
4. Crime, if any, for which the suspect has been charged, including whether such crime is a violation of state or federal law;
5. Criminal case number, if any;
6. Outcome, if any, of suspect's case;
7. If forfeiture was not processed under state law, the reason for the federal transfer, if known;
8. Forfeiture case number;
9. Date of forfeiture decision;
(10) Whether there was a forfeiture settlement agreement;
(11) Date and outcome of property disposition as described by one (1) of the following: returned to owner, partially returned to owner, sold, destroyed, or retained by law enforcement; and
(12) Value of the property forfeited based on the value realized, if sold, or a reasonable good faith estimate of the value, if possible.

Local law enforcement agencies shall submit the information required by this subsection to the county prosecutor for its jurisdiction on a form as promulgated in rule by the Idaho state police, and such prosecutor shall retain the form for a period of seven (7) years.

37-2744A.REAL PROPERTY SUBJECT TO FORFEITURE. (a) Any real property, including any interest therein and any appurtenances thereto or improvements thereon, which is used in any manner or part, to commit or to facilitate the commission of a violation of the provisions of this chapter punishable by more than one (1) year of imprisonment, shall be subject to forfeiture under the provisions of this section.

(b) Property subject to forfeiture under the provisions of this section may be seized by the director upon determining that a parcel of property is subject to forfeiture, by filing a notice of forfeiture with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided, however, that in the event the property sought to be forfeited is part of a greater parcel, the director may, for the purposes of this notice, use the legal description of the greater parcel. The director shall also send by certified mail a copy of the notice of forfeiture to any persons holding a recorded interest or of whose interest the director has actual knowledge. The director shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(c) If a seizure pursuant to subsection (a) of this section, a complaint instituting forfeiture proceedings under subsection (d) of this section shall be filed in the district court in the county in which the real property is situated within ninety (90) days of the date of seizure. The complaint shall be served in the same manner as other complaints subject to the Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(d) Real property sought to be forfeited under the provisions of this section shall not be subject to an action for detainer or any other collateral action, but is deemed to be in the custody of the director subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil proceedings in which the burden of proof shall be on the director to prove by a preponderance of the evidence that the property sought to be forfeited is subject to forfeiture. Upon being satisfied that an owner or claimant as defined in paragraph (4) of this subsection should not be subjected to forfeiture because that person had no knowledge or reason to believe that the real property was being used or had been used for the purposes alleged by the department, the director shall release the property to the owner or other claimant. The procedure applicable to such cases shall be the same as that prescribed by the Idaho rules of civil procedure. Following service the director may, where appropriate, seek default judgment pursuant to the Idaho rules of civil procedure. If an answer is filed the court shall proceed to set the case for hearing before the court without a jury.
(1) Following the hearing, if the court finds that the property is subject to forfeiture pursuant to subsection (a) of this section the court shall order the property forfeited to the director and title shall vest as of the date of the original seizure.

(2) Following the hearing, if the court finds that the property is not subject to forfeiture pursuant to subsection (a) of this section, the court shall order the property released to the owner or owners thereof.

(3) Any owner who has an answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used, or had been used in any manner in violation of the provisions of this section. If the court finds that the property was not used in violation of the provisions of this section or is not subject to forfeiture under the provisions of this section, the court shall order the property released to the owner.

(4) An owner, co-owner or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged by the department;

   (A) In the event of such proof, the court shall order the real property released to the innocent owner, purchaser, lienholder or mortgagee.

   (B) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the director. The proceeds from such sale shall be distributed as follows in the order indicated:

      (i) To the innocent owner, purchaser or mortgagee of the real property, if any, up to the value of his interest in the real property.

      (ii) The balance, if any, in the following order:

         1. To the director for all expenditures made or incurred by the department in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred by the department in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses’ fees, reporters’ fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

         2. The remainder, if any, to the director for credit to the drug enforcement donation account.

   (C) In any case, the director may, within thirty (30) days after judgment, pay the balance due to the innocent owner, purchaser, lienholder or mortgagee and thereby purchase the real property for use in the enforcement of this act.

(e) In issuing any order under the provisions of this section, the court shall make a determination that the property, or a portion thereof, was actually used in violation of the provisions of this act. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this section.

(f) When property is forfeited under the provisions of this section the director may:

(1) Retain it for official use; or

(2) Sell the property in a commercially reasonable manner. The proceeds shall be distributed by the director as follows:

   (A) To reimburse for all expenditures made or incurred in connection with the sale, including expenditures for any necessary repairs or maintenance, and for all
expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for attorneys' fees, title company fees, insurance premiums, recording costs, witnesses' fees, reporters' fees, transcripts, printing, travel and investigation.

(B) The remainder, if any, shall be credited to the drug enforcement donation account.

(3) Recommend to the court that the property, or proceeds thereof, be forfeited in whole or in part to a city or county, the law enforcement agency of which participated in the events leading to the seizure of the property or proceeds. Property distributed pursuant to this recommendation shall be used by the city or county for purposes consistent with the provisions of this chapter.

37-2744B.AUTORIZATION TO RECEIVE AND ADMINISTER FEDERAL FORFEITURES AND PRIVATE DONATIONS. The director of the Idaho state police is authorized to receive and dispose of any real or personal property which has been seized by a federal drug enforcement agency, or any donations from private citizens, the proceeds of which shall be placed in the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

37-2745.BURDEN OF PROOF -- LIABILITIES. (a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under the provisions of this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration, valid prescription, or order form issued under the provisions of this act, he is presumed not to be the holder of the registration, valid prescription or form. The burden of proof is upon him to rebut the presumption.

(c) In all prosecutions under the provisions of this act involving the analysis of a controlled substance or a sample thereof, a certified copy of the analytical report with the notarized signature of the bureau chief of the Idaho forensic laboratory and the criminalist who conducted the analysis shall be accepted as prima facie evidence of the results of the analytical findings.

(d) Notwithstanding any statute or rule to the contrary, the defendant may subpoena the criminalist to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

(e) No liability is imposed under the provisions of this act upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties.

37-2746.JUDICIAL REVIEW. All final determinations, findings and conclusions of the board under this act are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the district court of the county where the aggrieved person resides. Findings of fact by the board, if supported by substantial evidence, are conclusive.

37-2747.EDUCATION AND RESEARCH. (a) The director or his authorized agent shall carry
out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs he may:

1. Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
2. Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
3. Consult with interested groups and organizations to aid them in solving administrative and organizational problems;
4. Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
5. Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and
6. Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The director shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this act, he may:

1. Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;
2. Make studies and undertake programs of research to:
   A. Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;
   B. Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and
   C. Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and
3. Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The director may enter into contracts for educational and research activities without performance bonds.

(d) The director may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The director may authorize the possession and distribution of controlled substances by persons lawfully engaged in education and research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

37-2748. PENDING PROCEEDINGS. (a) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act. If the offense being prosecuted is similar to one set out in article IV of this act, then the penalties under article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective
date of this act are not affected by this act.

(c) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of this act. Any substance controlled under prior law which is not listed within schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The board shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of this act and who are registered or licensed by the state.

(e) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

37-2749.CONTINUATION OF RULES. Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

37-2750.UNIFORMITY OF INTERPRETATION. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

37-2751.SHORT TITLE. This act may be cited as the "Uniform Controlled Substances Act."
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LEGAL AUTHORITY.
This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, 54-1755, and 54-1763, Idaho Code.

TITLE AND SCOPE.
01. Title. The title of this chapter is “General Provisions,” IDAPA 27, Title 01, Chapter 01.
02. Scope. The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to:
   a. Regulate and control the manufacture, distribution, and dispensing of controlled substances within or into the state, pursuant to the Uniform Controlled Substances Act, Section 37-2715, Idaho Code;
   b. Regulate and control the practice of pharmacy, pursuant to the Idaho Pharmacy Act, Section 54-1718, Idaho Code; and
   c. Carry out its duties in regard to drugs, devices and other materials used in the diagnosis, mitigation and treatment, or prevention of injury, illness, and disease, pursuant to Section 54-1719, Idaho Code, or in regard to professionals or other individuals licensed or registered by the Board or otherwise engaged in conduct subject to regulation under these Acts.

WRITTEN INTERPRETATIONS.
In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Board of Pharmacy office.

ADMINISTRATIVE PROCEEDINGS AND APPEALS.
Administrative proceedings and appeals are administered by the Board in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01, Subchapter B -- Contested Cases, Rules 100 through 800.
01. Place and Time for Filing. Documents in rulemakings or contested cases must be filed with the executive director of the Board at the Board office between the hours of 8 a.m. and 5 p.m., Mountain Time, Monday through Friday, excluding state holidays.
02. Manner of Filing. One (1) original of each document is sufficient for filing; however, the person or officer presiding over a particular rulemaking or contested case proceeding may require the filing of additional copies. A document may be filed with the Board by e-mail or fax if legible, complete, and received during the Board’s office hours. The filing party is responsible for verifying with Board staff that an e-mail or fax was successfully and legibly received.

INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules.

BOARD OFFICE INFORMATION.
01. **Street Address.** The office is located at 1199 Shoreline Lane, Suite 303, Boise, Idaho. (7-1-18)

02. **Mailing Address.** The mailing address is P.O. Box 83720, Boise, Idaho 83720-0067. (7-1-18)

03. **Telephone Number.** The telephone number is (208) 334-2356. (7-1-18)

04. **Fax Number.** The fax number is (208) 334-3536. (7-1-18)

05. **Electronic Address.** The website address is https://bop.idaho.gov. (7-1-18)

06. **Office Hours.** The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (7-1-18)

006. **PUBLIC RECORDS ACT COMPLIANCE.**

Board of Pharmacy records and filings are subject to compliance with the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (7-1-18)

007. **OFFICIAL BOARD JOURNAL.**

The official journal of the Board is the electronic Idaho State Board of Pharmacy Newsletter. A link to recent versions of the newsletter is posted on the Board’s website. Board licensees and registrants are presumed to have knowledge of the contents of the newsletter on the date of publication. The newsletter may be used in administrative hearings as proof of notification. (7-1-18)

008. – 009. (RESERVED)

010. **DEFINITIONS AND ABBREVIATIONS (A – D).**

The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms shall have the meanings set forth below: (7-1-18)

01. **ACCME.** Accreditation Council for Continuing Medical Education. (7-1-18)

02. **Accredited School or College of Pharmacy.** A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (7-1-18)

03. **ACPE.** Accreditation Council for Pharmacy Education. (7-1-18)

04. **ADS – Automated Dispensing and Storage.** A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (7-1-18)

05. **Biological Product.** A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), that is applicable to the prevention, treatment, or cure of a disease or condition of human beings and licensed under Section 351(k) of the Public Health Service Act, 42 U.S.C. Section 262(i). (7-1-18)

06. **Biosimilar.** A biological product highly similar to a specific reference biological product that is licensed by the FDA pursuant to 42 U.S.C. Section 262(k) and published in the Purple Book. (7-1-18)

07. **CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (7-1-18)

08. **Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (7-1-18)

09. **CLIA-Waived Test.** A test that is waived under the federal Clinical Laboratory Improvement
Amendments (CLIA) of 1988.

10. **Clinical Guidelines.** Recommendations from a reputable organization that are evidence-based and intended to optimize patient care in specific clinical circumstances.

11. **CME.** Continuing medical education.

12. **Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists or pharmacies jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations.

13. **Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists or pharmacies and one (1) or more prescribers that provides for collaborative pharmacy practice.

14. **Community Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business.

15. **Continuous Quality Improvement Program.** A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system.

16. **CPE.** Continuing pharmacy education.

17. **CPE Monitor.** An NABP service that allows pharmacists to electronically keep track of CPE credits from ACPE-accredited providers.

18. **DEA.** United States Drug Enforcement Administration.

19. **Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer.

20. **DME.** Durable medical equipment.

21. **Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic.

22. **Drug Product Substitution.** Dispensing a drug product other than prescribed.

23. **DTM – Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative pharmacy practice agreement or statewide protocol agreement.

011. **DEFINITIONS AND ABBREVIATIONS (E – N).**

The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms shall have the meanings set forth below:

01. **Emergency Drugs.** Drugs necessary to meet the immediate therapeutic needs of one (1) or more patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source.

02. **Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code.

03. **FDA.** United States Food and Drug Administration.

04. **Flavoring Agent.** An additive in food or drugs when used in accordance with the principles of
good pharmacy practices and in the minimum quantity necessary to produce its intended effect. (7-1-18)

05. **Floor Stock.** Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (7-1-18)

06. **FPGEC.** Foreign Pharmacy Graduate Examination Committee. (7-1-18)

07. **Hazardous Drug.** Any drug listed as such by the National Institute for Occupational Safety and Health or any drug identified by at least one (1) of the following criteria:
   a. Carcinogenicity; (7-1-18)
   b. Teratogenicity or developmental toxicity; (7-1-18)
   c. Reproductive toxicity in humans; (7-1-18)
   d. Organ toxicity at low doses in humans or animals; (7-1-18)
   e. Genotoxicity; or (7-1-18)
   f. New drugs that mimic existing hazardous drugs in structure or toxicity. (7-1-18)

08. **HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (7-1-18)

09. **Idaho State Board of Pharmacy or Idaho Board of Pharmacy.** The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, “the Board” or “Board” also means the Idaho State Board of Pharmacy. (7-1-18)

10. **Institutional Pharmacy.** A pharmacy located in an institutional facility. (7-1-18)

11. **Interchangeable Biosimilar.** A licensed biosimilar product determined by the FDA to be therapeutically equivalent to the reference biological product and published in the Purple Book. (7-1-18)

12. **Limited Service Outlet.** Limited service outlets include, but are not limited to, sterile product pharmacies, remote dispensing pharmacies, facilities operating narcotic treatment programs, durable medical equipment outlets, prescriber drug outlets, outsourcing facilities, nuclear pharmacies, cognitive service pharmacies, correctional facilities, offsite ADs for non-emergency dispensing, reverse distributors, and analytical or research laboratories. (7-1-18)

13. **Maintenance Drug.** A drug intended for the treatment of a health condition or disease that is persistent or otherwise expected to be long lasting in its effects. (7-1-18)

14. **Medication Synchronization Program.** An opt-in program provided by a pharmacy for aligning the refill dates of a patient’s prescription drugs so that drugs that are refilled at the same frequency may be refilled concurrently. (7-1-18)

15. **MPJE.** Multistate Pharmacy Jurisprudence Exam. (7-1-18)

16. **NABP.** National Association of Boards of Pharmacy. (7-1-18)

17. **NAPLEX.** North American Pharmacists Licensure Examination. (7-1-18)

18. **NDC.** National Drug Code. (7-1-18)
012. DEFINITIONS AND ABBREVIATIONS (O – Z).
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms shall have the meanings set forth below: (7-1-18)

01. Parenteral Admixture. The preparation and labeling of sterile products intended for administration by injection. (7-1-18)

02. Pharmaceutical Care Services. A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and also encompasses services provided by way of DTM under a collaborative practice agreement, statewide protocol agreement, pharmacy practice, clinical pharmacy practice, pharmacist independent practice, and Medication Therapy Management. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (7-1-18)

a. Performing or obtaining necessary assessments of the patient’s health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (7-1-18)

b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (7-1-18)

c. Monitoring and evaluating the patient’s response to drug therapy, including safety and effectiveness; (7-1-18)

d. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (7-1-18)

e. Documenting the care delivered; (7-1-18)

f. Communicating essential information or referring the patient when necessary or appropriate; (7-1-18)

g. Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (7-1-18)

h. Conducting a drug therapy review consultation with the patient or caregiver; (7-1-18)

i. Preparing or providing information as part of a personal health record; (7-1-18)

j. Identifying processes to improve continuity of care and patient outcomes; (7-1-18)

k. Providing consultative drug-related intervention and referral services; (7-1-18)

l. Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; (7-1-18)

m. Ordering and interpreting laboratory tests; and (7-1-18)

n. Other services as allowed by law. (7-1-18)

03. Pharmacy Operations. Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (7-1-18)

04. PDMP. Prescription Drug Monitoring Program. (7-1-18)

05. Prepackaging. The act of transferring a drug, manually or using an automated system, from a manufacturer’s original container to another container prior to receiving a prescription drug order. (7-1-18)
06. **Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (7-1-18)

07. **Purple Book.** The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act. (7-1-18)

08. **Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (7-1-18)

09. **Reconstitution.** The process of adding a diluent to a powdered medication to prepare a solution or suspension, according to the product’s labeling or the manufacturer’s instructions. (7-1-18)

10. **Restricted Drug Storage Area.** The area of a drug outlet where prescription drugs are prepared, compounded, distributed, dispensed, or stored. (7-1-18)

11. **Sample.** A unit of a drug that is not intended to be sold and is intended to promote the sale of the drug. (7-1-18)

12. **Skilled Nursing Facility.** An institutional facility or a distinct part of an institutional facility that is primarily engaged in providing daily skilled nursing care and related services. (7-1-18)

13. **Student Technician.** A student who is enrolled in a high school or college supervised program, and who does not otherwise meet the requirements for registration as a technician-in-training or certified technician. (7-1-18)

14. **Technician.** Unless specifically differentiated, a term inclusive of pharmacy technician, certified technician, and technician-in-training to indicate an individual authorized by registration with the Board to perform routine pharmacy support services under the supervision of a pharmacist. (7-1-18)

15. **Telepharmacy.** The use of telecommunications and information technologies in the practice of pharmacy to provide pharmaceutical care services to patients at a distance. (7-1-18)

16. **Therapeutic Equivalent Drugs.** Products assigned an “A” code by the FDA in the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) and animal drug products published in the FDA Approved Animal Drug Products (Green Book). (7-1-18)

17. **Unit Dose.** Drugs packaged in individual, sealed doses with tamper-evident packaging (for example, single unit-of-use, blister packaging, unused injectable vials, and ampules). (7-1-18)

18. **USP.** United States Pharmacopeia. (7-1-18)


22. **VAWD – Verified Accredited Wholesale Distributor.** An accreditation program for wholesale distributors offered through NABP. (7-1-18)

013. – 019. (RESERVED)

020. **PRACTICE OF PHARMACY: GENERAL APPROACH.**

To evaluate whether a specific act is within the scope of pharmacy practice in or into Idaho, a licensee or registrant of
the Board must independently determine whether:

01. **Express Prohibition.** The act is expressly prohibited by:
   a. The Idaho Pharmacy Act, Title 54, Chapter 17, Idaho Code; (7-1-18)
   b. The Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; (7-1-18)
   c. The rules of the Idaho State Board of Pharmacy; or (7-1-18)
   d. Any other applicable state or federal laws, rules or regulations. (7-1-18)

02. **Education and Training.** The act is consistent with licensee or registrant’s education, training or practice experience. (7-1-18)

03. **Standard of Care.** Performance of the act is within the accepted standard of care that would be provided in a similar setting by a reasonable and prudent licensee or registrant with similar education, training and experience. (7-1-18)

021. **WAIVER OR VARIANCES.**

01. **Criteria.** The board may grant or deny, in whole or in part, a waiver of, or variance from, specified rules if the granting of the waiver or variance is consistent with the Board’s mandate to promote, preserve and protect public health, safety and welfare, and based on consideration of one (1) or both of the following: (7-1-18)
   a. The application of a certain rule or rules is unreasonable and would impose an undue hardship or burden on the petitioner; or (7-1-18)
   b. The waiver or variance requested would test an innovative practice or service delivery model. (7-1-18)

02. **Content and Filing of a Waiver or Variance Petition.** A written petition for waiver or variance should include at least the following: (7-1-18)
   a. The name, address, and telephone number of the petitioner or petitioners; (7-1-18)
   b. A specific reference to the rule or rules from which a waiver or variance is requested; (7-1-18)
   c. A statement detailing the waiver or variance requested, including the precise scope and duration; and (7-1-18)
   d. A description of how the waiver or variance, if granted, will afford substantially equal protection of public health, safety, and welfare intended by the particular rule for which the waiver or variance is requested. (7-1-18)

03. **Invalid Requests.** A waiver or variance request that is contrary to federal law or Idaho Code or that seeks to delay or cancel an administrative deadline will not be considered or granted by the Board. (7-1-18)

04. **Time Period of Waiver or Variance.** Waivers or variances may be granted on a permanent or temporary basis. Temporary waivers or variances have no automatic renewal, but may be renewed if the Board finds that sufficient grounds to allow the waiver or variance continue to exist. (7-1-18)

05. **Cancellation or Modification of a Waiver or Variance.** A waiver or variance granted by the Board may be canceled or modified by the Board at any time. (7-1-18)

022. **BOARD INSPECTIONS AND INVESTIGATIONS.**
01. Records Subject to Board Inspection. Records created, maintained, or retained by Board licensees or registrants in compliance with statutes or rules enforced by the Board must be made available for inspection upon request by Board inspectors or authorized agents. It is unlawful to refuse to permit or to obstruct a Board inspection. (7-1-18)

02. Inspections. Prior to the commencement of business, as applicable, and thereafter at regular intervals, upon presentation of appropriate identification, registrants and licensees must permit the Board or its compliance officers to enter and inspect the premises and to audit the records of each drug outlet for compliance with laws enforced by or under the Board’s jurisdiction. (7-1-18)

03. Inspection Deficiencies. Deficiencies noted must be promptly remedied, and if requested, the Board office notified of corrective measures. If required, one (1) follow-up inspection may be performed by the Board at no cost. For additional follow-up inspections, the drug outlet will be charged actual travel and personnel costs incurred in the inspection and must pay within ninety (90) days of inspection. (7-1-18)

04. Inspection Reports. Inspection reports must be reviewed with the Board inspector and signed by an agent of the drug outlet upon completion of the exit interview. (7-1-18)

05. Investigations. Licensees or registrants must also fully cooperate with Board investigations conducted to confirm compliance with laws enforced by the Board, to gather information pertinent to a complaint received by the Board, or to enforce disciplinary actions. (7-1-18)

023. UNPROFESSIONAL CONDUCT. The following acts or practices by any licensee or registrant are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest. (7-1-18)

01. Unethical Conduct. Conduct in the practice of pharmacy or in the operation of a pharmacy that may reduce the public confidence in the ability and integrity of the profession of pharmacy or endangers the public health, safety, and welfare. A violation of this section includes committing fraud, misrepresentation, negligence, concealment, or being involved in dishonest dealings, price fixing, or breaching the public trust with respect to the practice of pharmacy. (7-1-18)

02. Lack of Fitness. A lack of fitness for professional practice due to incompetency, personal habits, drug or alcohol dependence, physical or mental illness, or for any other cause that endangers public health, safety, or welfare. (7-1-18)

03. On-Duty Intoxication or Impairment. Intoxication, impairment, or consumption of alcohol or drugs while on duty, including break periods after which the individual is expected to return to work, or prior to reporting to work. (7-1-18)

04. Diversion of Drug Products and Devices. Supplying or diverting drugs, biologicals, and other medicines, substances, or devices legally sold in pharmacies that allows the circumvention of laws pertaining to the legal sale of these articles. (7-1-18)

05. Unlawful Possession or Use of Drugs. Possessing or using a controlled substance without a lawful prescription drug order. A failed drug test creates a rebuttable presumption of a violation of this rule. (7-1-18)

06. Prescription Drug Order Noncompliance. Failing to follow the instructions of the person writing, making, or ordering a prescription as to its refills, contents, or labeling except as provided in these rules. (7-1-18)

07. Failure to Confer. Failure to confer with the prescriber when necessary or appropriate or filling a prescription if necessary components of the prescription drug order are missing or questionable. (7-1-18)

08. Excessive Provision of Controlled Substances. Providing a clearly excessive amount of controlled substances. Evidentiary factors of a clearly excessive amount include, but are not limited to, the amount of controlled substances furnished and previous ordering patterns (including size and frequency of orders). (7-1-18)
09. Failure to Counsel or Offer Counseling. Failing to counsel or offer counseling, unless specifically exempted or refused. (7-1-18)

10. Substandard, Misbranded, Adulterated, or Expired Products. Manufacturing, compounding, delivering, dispensing, or permitting to be manufactured, compounded, delivered, or dispensed substandard, misbranded, or adulterated drugs or preparations or those made using secret formulas. Failing to remove expired drugs from stock. (7-1-18)

11. Prescriber Incentives. Allowing a commission or rebate to be paid, or personally paying a commission or rebate, to a person writing, making, or otherwise ordering a prescription. (7-1-18)

12. Exclusive Arrangements. Participation in a plan or agreement that compromises the quality or extent of professional services or limits access to provider facilities at the expense of public health or welfare. (7-1-18)

13. Failure to Report. Failing to report to the Board any violation of statutes or rules pertaining to the practice of pharmacy or any act that endangers the health, safety, or welfare of patients or the public. (7-1-18)

14. Failure to Follow Board Order. Failure to follow an order of the Board. (7-1-18)

15. Use of False Information. Knowingly using false information in connection with the prescribing, delivering, administering, or dispensing of a controlled substance or other drug product is prohibited. (7-1-18)

16. Standard of Care. Providing health care services which fail to meet the standard provided by other qualified licensees or registrants in the same or similar setting. (7-1-18)

17. Unnecessary Services or Products. Directly promoting or inducing for the provisions of health care services or products that are unnecessary or not medically indicated. (7-1-18)

024. – 999. (RESERVED)
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27.01.02 – RULES GOVERNING LICENSURE AND REGISTRATION

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, 54-1755, and 54-1763, Idaho Code. (7-1-18)

001. TITLE AND SCOPE.
In addition to the General Provisions set forth in IDAPA 27.01.01, “General Provisions,” the following title and scope shall apply to these rules: (7-1-18)

01. Title. The title of this chapter is “Rules Governing Licensure and Registration,” IDAPA 27, Title 01, Chapter 02. (7-1-18)

02. Scope. The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to license individuals and facilities engaged in the practice of pharmacy in or into Idaho, including pharmacists, technicians, pharmacist interns, practitioners, and drug outlets. (7-1-18)

002. WRITTEN INTERPRETATIONS.
In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Board of Pharmacy office. (7-1-18)

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.
Administrative proceedings and appeals are administered by the Board in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01, Subchapter B -- Contested Cases, Rules 100 through 800. (7-1-18)

01. Place and Time for Filing. Documents in rulemakings or contested cases must be filed with the executive director of the Board at the Board office between the hours of 8 a.m. and 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (7-1-18)

02. Manner of Filing. One (1) original of each document is sufficient for filing; however, the person or officer presiding over a particular rulemaking or contested case proceeding may require the filing of additional copies. A document may be filed with the Board by e-mail or fax if legible, complete, and received during the Board’s office hours. The filing party is responsible for verifying with Board staff that an e-mail or fax was successfully and legibly received. (7-1-18)

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules. (7-1-18)

005. BOARD OFFICE INFORMATION.

01. Street Address. The office is located at 1199 Shoreline Lane, Suite 303, Boise, Idaho. (7-1-18)

02. Mailing Address. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0067. (7-1-18)

03. Telephone Number. The telephone number is (208) 334-2356. (7-1-18)

04. Fax Number. The fax number is (208) 334-3536. (7-1-18)

05. Electronic Address. The website address is https://bop.idaho.gov. (7-1-18)
06. Office Hours. The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (7-1-18)

006. PUBLIC RECORDS ACT COMPLIANCE.
Board of Pharmacy records and filings are subject to compliance with the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (7-1-18)

007. OFFICIAL BOARD JOURNAL.
The official journal of the Board is the electronic Idaho State Board of Pharmacy Newsletter. A link to recent versions of the newsletter is posted on the Board’s website. Board licensees and registrants are presumed to have knowledge of the contents of the newsletter on the date of publication. The newsletter may be used in administrative hearings as proof of notification. (7-1-18)

008. – 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the definitions and abbreviations found at IDAPA 27.01.01.010 through 012 are applicable to these rules. (7-1-18)

011. – 019. (RESERVED)

020. BOARD OF PHARMACY LICENSURE AND REGISTRATION.
The Board will issue or renew a license or certificate of registration upon application and determination that the applicant has satisfied the requirements of the Idaho Pharmacy Act, Idaho Controlled Substances Act, and any additional criteria specified by these rules for the license or registration classification. Licenses or registrations required by state or federal law, or both, must be obtained prior to engaging in these practices or their supportive functions, except that the Board may suspend such requirements for the duration of a national, state or local emergency declared by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, for individuals engaged in the scope of practice for which they are licensed in another state. (7-1-18)

021. LICENSURE AND REGISTRATION: GENERAL REQUIREMENTS.

01. Board Forms. Initial licensure and registration applications, annual renewal applications, and other forms used for licensure, registration, or other purposes must be in such form as designated by the Board. (7-1-18)

02. Incomplete Applications. Information requested on the application or other form must be provided and submitted to the Board office with the applicable fee or the submission will be considered incomplete and will not be processed. Applications that remain incomplete after six (6) months from the date of initial submission will expire. (7-1-18)

03. On-Time Annual Renewal Application. Licenses and registrations must be renewed annually to remain valid. Applications for renewal must be completed and submitted to the Board office prior to the license or registration expiration. Timely submission of the renewal application is the responsibility of each licensee or registrant. Licenses and certificates of registration issued to individuals will expire annually on the last day of the individual’s birth month, and on December 31 for facilities, unless an alternate expiration term or date is stated in these rules. (7-1-18)

04. Late Renewal Application. Failure to submit a renewal application prior to the expiration date will cause the license or registration to lapse and will result in the assessment of a late fee and possible disciplinary action. A lapsed license or registration is invalid until renewal is approved by the Board and if not renewed within thirty (30) days after its expiration will require reinstatement. (7-1-18)

05. Exemption. New licenses and registrations issued ten (10) weeks or less prior to the renewal due date are exempt from the renewal requirements that year only. (7-1-18)
06. **Cancellation and Registration.** Failure to maintain the requirements for any registration will result in the cancellation of the registration. (7-1-18)

07. **Reinstatement of License or Registration.** Unless otherwise specified in Board rule, consideration of a request for reinstatement of a license or registration will require a completed application on a Board form, submission of a completed fingerprint card, as applicable, and payment of any applicable fees due or delinquent at the time reinstatement is requested. (7-1-18)

08. **Parent or Legal Guardian Consent.** No person under the age of eighteen (18), unless an emancipated minor, may submit an application for licensure or registration without first providing the Board with written consent from a parent or legal guardian. (7-1-18)

022. **BOARD FEES.**

01. **Fee Determination and Collection.** Pursuant to the authority and limitations established by Sections 37-2715 and 54-1720(5)(a), Idaho Code, the Board has determined and will collect fees for the issuance, annual renewal, or reinstatement of licenses and certificates of registration to persons and drug outlets engaged in acts or practices regulated by the Board. The Board may also charge reasonable fees for specified administrative services or publications. (7-1-18)

02. **Time and Method of Payment.** Fees are due and must be paid by cash, credit card, or by personal, certified, or cashier’s check or money order payable to the “Idaho State Board of Pharmacy” at the time of application, submission, or request. Fees are nonrefundable and will not be prorated, except for the limited purpose of transitioning to the new renewal deadlines established by these rules. (7-1-18)

03. **Fee for Dishonored Payment.** A reasonable administrative fee may be charged for a dishonored check or other form of payment. If a license or registration application has been approved or renewed by the Board and payment is subsequently dishonored, the approval or renewal is immediately canceled on the basis of the submission of an incomplete application. The board may require subsequent payments to be made by cashier’s check, money order, or other form of guaranteed funds. (7-1-18)

04. **Overpayment of Fees.** “Overpayment” refers to the payment of any fee in excess of the listed amount. Refunds issued will be reduced by a reasonable processing fee. (7-1-18)

05. **Fee Exemption for Controlled Substance Registrations.** Persons exempt pursuant to federal law from fee requirements applicable to controlled substance registrations issued by the DEA are also exempt from fees applicable to controlled substance registrations issued by the Board. (7-1-18)

023. **FEE SCHEDULE.**

01. **Licenses and Registrations -- Professionals.**

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024. -- 029. (RESERVED)

030. DETERMINATION OF NEED FOR PHARMACIST LICENSE, NONRESIDENT REGISTRATION, OR NEITHER.

01. Practice in Idaho. All pharmacists practicing pharmacy in the state of Idaho must be licensed according to the Board’s laws.

02. Nonresident Pharmacists. All nonresident pharmacists practicing pharmacy into the state of Idaho must be licensed in their state of practice and must additionally be licensed or registered in Idaho as follows:

a. Independent Practice. Pharmacists must be licensed if engaged in the independent practice of pharmacy across state lines and not practicing for an Idaho registered drug outlet.

b. Practice for an Idaho Registered Drug Outlet. A nonresident pharmacist serving as the PIC for an Idaho registered nonresident drug outlet must be licensed or registered to practice into Idaho. All other nonresident pharmacists who are employed by, or affiliated with, and practicing for the Idaho registered nonresident drug outlet, but who are not the PIC, are exempt from license and registration requirements for practice into Idaho.
03. Exemption from Separate Controlled Substance Registration. All pharmacists who are practicing in or into Idaho are exempt from obtaining a separate controlled substance registration, but must maintain compliance with all requirements under Title 37, Chapter 27, Idaho Code. (7-1-18)

031. PHARMACIST LICENUSE BY EXAMINATION. To be considered for licensure, a person must satisfy the requirements of Section 54-1722(1)(a) through (e), Idaho Code, and submit to the Board an application for licensure by examination. (7-1-18)

01. Graduates of U.S. Pharmacy Schools. An applicant must be a graduate of an ACPE-accredited school or college of pharmacy within the United States. (7-1-18)

02. Graduates of Foreign Pharmacy Schools. An applicant who is a graduate of a school or college of pharmacy located outside of the United States must submit certification by the FRGEC, and verification of completion of a minimum of seventeen hundred forty (1,740) experiential hours. An Idaho State Board of Pharmacy Employer’s Affidavit certifying the experiential hours of a foreign pharmacy graduate must be signed by a pharmacist licensed and practicing in the United States and submitted to the Board. The Board may also request verifiable business records to document the hours. (7-1-18)

03. Licensure Examinations. Qualified applicants must pass the NAPLEX and the MPJE in accordance with NABP standards. A candidate who fails the NAPLEX three (3) times must complete at least thirty (30) hours of continuing education accredited by an ACPE-accredited provider prior to being eligible to sit for each subsequent reexamination. Candidates are limited to five (5) total attempts to pass each exam. (7-1-18)

032. PHARMACIST LICENUSE BY RECIPROCITY. An applicant for pharmacist licensure by reciprocity must satisfy the requirements of Section 54-1723, Idaho Code, and this rule to obtain an Idaho license. An applicant whose pharmacist license is currently restricted by a licensing entity in another state must appear before the Board to petition for licensure by reciprocity. (7-1-18)

01. Transfer Application. The applicant must submit a preliminary application for licensure transfer through NABP. (7-1-18)

02. MPJE. The applicant must pass the Idaho-based MPJE within five (5) total attempts. (7-1-18)

03. Intern Hours. An applicant not actively engaged in the practice of pharmacy during the year preceding the date of application may also be required to complete intern hours for each year away from the practice of pharmacy. (7-1-18)

033. PHARMACIST LICENSE RENEWAL: CPE REQUIREMENTS. Each pharmacist applicant for license renewal must complete fifteen (15) CPE hours each calendar year between January 1 and December 31. (7-1-18)

01. ACPE. At least twelve (12) of the CPE hours obtained must be from programs by an ACPE that have a participant designation of “P” (for pharmacist) as the suffix of the ACPE universal program number. ACPE credits must be reported to and documented in CPE Monitor in order to be accepted. (7-1-18)

02. CME. A maximum of three (3) of the hours may be obtained from CME, if the credits are:

a. Obtained from an ACCME accredited provider; and (7-1-18)

b. A certificate is furnished that identifies the name of the ACCME accredited provider and a clear reference to its accreditation status, the title of the CME program, the completed hours of instruction, the date of completion, and the name of the individual obtaining the credit. All CME certificates must be submitted to the Board between December 1 and December 31. (7-1-18)

034. PHARMACIST LICENSE: REINSTATEMENT.
The Board may, at its discretion, consider reinstatement of a pharmacist license upon receipt of a completed application, background check, and payment of the reinstatement and other fees due or delinquent at the time reinstatement is requested. (7-1-18)

01. **Satisfactory Evidence.** Reinstatement applicants must provide satisfactory evidence of completion of a minimum of thirty (30) CPE hours within the twenty-four (24) months prior to reinstatement and compliance with any direct orders of the Board. (7-1-18)

02. **Additional Requirements.** A pharmacist reinstatement applicant may be required to appear before the Board. If a pharmacist license has lapsed for more than twenty-four (24) months, the applicant must pass the MPJE prior to returning to practice. The Board may also, at its discretion, impose additional requirements on a pharmacist reinstatement applicant who has not practiced as a pharmacist for the preceding twelve (12) months or longer that may include taking and passing an examination, completion of intern hours, completion of additional CPE hours, or other requirements determined necessary to acquire or demonstrate professional competency. (7-1-18)

035. **NONRESIDENT PHARMACIST REGISTRATION TO PRACTICE PHARMACY INTO IDAHO.** To be registered to practice pharmacy into Idaho an applicant must submit an application on a Board form including, but not limited to: (7-1-18)

01. **Individual License Information.** Current pharmacist licensure information in all other states, including each state of licensure and each license number; (7-1-18)

02. **Facility License Information.** The license or registration number of the facility for which the applicant will be practicing. (7-1-18)

036. **PHARMACIST INTERN REGISTRATION.**

01. **Registration Requirements.** To be approved for and maintain registration as a pharmacist intern, the applicant must:

a. Currently be enrolled and in good standing in an accredited school or college of pharmacy, pursuing a professional degree in pharmacy; or (7-1-18)

b. Be a graduate of an accredited school or college of pharmacy within the United States and awaiting examination for pharmacist licensure; or (7-1-18)

c. Be a graduate of a school or college of pharmacy located outside the United States, obtain certification by the FPGEC, and be awaiting examination for pharmacist licensure or obtaining practical experience as required under Board rule. (7-1-18)

02. **Renewal.**

a. Current Students. A pharmacist intern registration must be renewed annually by July 15; however, the renewal fee will be waived, if renewed on time, for the duration of the student’s enrollment in the school or college of pharmacy. Following graduation, if a pharmacist license application has been submitted, the pharmacist intern license will be extended at no cost for up to six (6) additional months from the date of application as a pharmacist, after which time the individual will need to submit a new application to continue to be a pharmacist intern. (7-1-18)

b. Pharmacy Graduates. A graduate pharmacist intern registration may be obtained and renewed once within one (1) year from the date of issuance. The Board may, at its discretion, grant additional time to complete internship experience if unique circumstances present. (7-1-18)

037. – 039. (RESERVED)

040. **CERTIFIED TECHNICIAN REGISTRATION.** To be approved for registration as a certified technician, a person must satisfy the following requirements: (7-1-18)
01. **Age.** Be at least sixteen (16) years of age; (7-1-18)

02. **Education.** Be a high school graduate or the recipient of a high school equivalency diploma; (7-1-18)

03. **Personal Characteristics.** Be of good moral character and temperate habits; and (7-1-18)

04. **Certification.** Have obtained and maintained certified pharmacy technician (CPhT) status through the Pharmacy Technician Certification Board (PTCB), the National Healthcareer Association (NHA), or their successors. (7-1-18)

041. **TECHNICIAN-IN-TRAINING REGISTRATION.**

01. **Applying for Registration.** A person who has not obtained or maintained technician certification may apply for registration as a technician-in-training if the person satisfies all other requirements for registration as a certified technician. (7-1-18)

02. **Duration.** An individual may register as a technician-in-training for a maximum of two (2) years from the date of issuance. (7-1-18)

042. **STUDENT TECHNICIAN.**

01. **Registration Requirements.** To be approved for registration as a student technician, an applicant must be at least sixteen (16) years of age, currently enrolled and in good standing in a high school or college supervised program, and not meet the requirement for registration as a technician-in-training or certified technician. (7-1-18)

02. **Exemption from Criminal Background Check.** Student technician candidates under the age of eighteen (18) are exempt from the fingerprint-based criminal history check requirement of Idaho Code. (7-1-18)

03. **Renewal.** A student technician registration must be renewed annually by July 15; however, the renewal fee will be waived, if renewed on time, for the duration of the student’s enrollment in a technician training program. (7-1-18)

043. **TECHNICIAN EXEMPTIONS.**

01. **Certification Exemption for Continuous Employment.** A technician registered with the Board and employed as a technician on June 30, 2009, is not required to obtain or maintain certification as a condition of registration renewal after June 30, 2009, as long as the registrant remains continuously employed as a technician by the same employer. If a registrant that qualifies for this exemption disrupts continuous employment as a technician with one employer, or if any change of ownership occurs at the technician’s place of employment, the technician registration will become invalid. (7-1-18)

02. **Duration Exemption.** The Board’s executive director may grant a brief extension of duration of registration for a technician-in-training or a student technician for the purposes of employment continuity in the instance in which a technician is awaiting the completion of a requirement necessary to become a certified technician. No waiver may be granted in the instance in which the individual delayed sitting for the certification exam that the applicant was otherwise qualified to sit for. (7-1-18)

044. **PRACTITIONER CONTROLLED SUBSTANCE REGISTRATION.**

Any practitioner in Idaho who intends to prescribe, administer, dispense, or conduct research with a controlled substance must first obtain an Idaho practitioner controlled substance registration. (7-1-18)

01. **State License.** An applicant must hold a valid license or registration to prescribe medications from a licensing entity established under Title 54, Idaho Code. (7-1-18)
02. DEA Registration. An applicant must also hold a valid federal DEA registration, if required under federal law. (7-1-18)

045. -- 049. (RESERVED)

050. DRUG OUTLET LICENSURE AND REGISTRATION: GENERAL REQUIREMENTS.
A license or a certificate of registration is required for drug outlets prior to doing business in or into Idaho. A license or certificate of registration will be issued by the Board to drug outlets pursuant to, and in the general classifications defined by, Section 54-1729, Idaho Code. (7-1-18)

01. New Drug Outlet Inspections. Prior to approving the issuance of a new license or registration, each drug outlet may be inspected to confirm that the facility is appropriately equipped and has implemented proper procedures and minimum standards necessary for compliance with applicable law. Prescription drugs may not be delivered to a new drug outlet location prior to satisfactory completion of a requisite opening inspection. A change of ownership of a currently registered pharmacy will not require an onsite inspection prior to issuance of a new pharmacy registration unless a structural remodel occurs. (7-1-18)

02. License and Registration Transferability. Drug outlet licenses and registrations are location and owner specific and are nontransferable as to person or place. If the ownership or location of an outlet changes, any registration or license issued to it by the Board is void. (7-1-18)

03. Temporary Licenses.

a. Temporary Pharmacy License Number Issued Prior to Operation. Upon request on a Board form, the Board may issue a temporary pharmacy license number prior to the pharmacy being open for business provided that the proposed location is in Idaho and has designated a PIC. (7-1-18)

b. Temporary Drug Outlet Facilities and Mobile Drug Outlets. To provide pharmacy services during a national, state, or local emergency declared by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, drug outlets may arrange to temporarily locate or relocate to a temporary drug outlet facility or mobile drug outlet. (7-1-18)

04. Nonresident Drug Outlet. The Board may license or register a drug outlet licensed or registered under the laws of another state if the other state’s standards are comparable to those in Idaho and acceptable to the Board, evidenced by an inspection report. (7-1-18)

05. Change of Ownership. The registrant must notify the Board of a drug outlet’s change of ownership at least ten (10) days prior to the event on a Board form. (7-1-18)

06. Permanent Closing. A registrant must notify the Board and the general public of the pharmacy’s permanent closing at least ten (10) days prior to closing. The notice must include the proposed date of closure and the new location of the prescription files. Notice must be provided to the public by prominent posting in a public area of the pharmacy. The PIC must retain a closing inventory record of controlled substances. (7-1-18)

07. Exemption from Separate Controlled Substance Registration. All drug outlets doing business in or into Idaho who hold a valid license or registration from the Board are exempt from obtaining a separate controlled substance registration, but must maintain compliance with all requirements under Title 37, Chapter 27, Idaho Code. (7-1-18)

051. -- 059. (RESERVED)

060. STERILE PRODUCT DRUG OUTLET ENDORSEMENT.
A drug outlet engaged in sterile product preparation must obtain a single endorsement for one (1) or more hood or aseptic environmental control devices. (7-1-18)

061. OUTSOURCING FACILITY REGISTRATION.
An outsourcing facility must be registered with the Board in order to distribute compounded drug product for human
01. **Application.** An applicant must submit an application in the manner and form prescribed by the Board, including, but not limited to:

   a. A copy of a valid FDA registration as an outsourcing facility as required by 21 U.S.C. Section 353b;
   
   b. Identity of a pharmacist licensed or registered in Idaho who is designated as the PIC of the outsourcing facility; and
   
   c. An inspection report indicating compliance with applicable state and federal law.

02. **Coincidental Activity.** An outsourcing facility applicant currently registered by the Board as a pharmacy or mail service pharmacy will be considered for an outsourcing facility registration with a supplemental pharmacy or mail service pharmacy registration at no additional fee. Exemption from registration fees does not excuse compliance with all laws and rules pertaining to pharmacies and mail service pharmacies.

062. -- 069. (RESERVED)

070. **WHOLESALER LICENSURE AND REGISTRATION.**

01. **Wholesaler Licensure.** In addition to the information required pursuant to Section 54-1753, Idaho Code, the following information must be provided under oath by each applicant for wholesaler licensure as part of the initial licensing procedure and for each renewal on a Board form:

   a. Any felony conviction or any conviction of the applicant relating to wholesale or retail prescription drug distribution or distribution of controlled substances.
   
   b. Any discipline of the applicant by a regulatory agency in any state for violating any law relating to wholesale or retail prescription drug distribution or distribution of controlled substances.

02. **VAWD Accreditation.** The Board will recognize a wholesaler’s VAWD accreditation by NABP for purposes of reciprocity and satisfying the new drug outlet inspection requirements of these rules.

03. **Wholesaler Registration.** Except when licensed pursuant to the Idaho Wholesale Drug Distribution Act and these rules, a wholesaler that engages in wholesale distribution of DME supplies, prescription medical devices, or non-prescription drugs in or into Idaho must be registered by the Board.

071. -- 079. (RESERVED)

080. **MANUFACTURER REGISTRATION.**
A manufacturer located in Idaho must be inspected and registered by the Board prior to engaging in drug manufacturing. Non-resident manufacturers that ship, mail, or deliver dispensed prescription drugs or devices to an Idaho resident must be registered by the Board as a mail service pharmacy.

081. -- 999. (RESERVED)
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000. LEGAL AUTHORITY. 
This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, 54-1755, and 54-1763, Idaho Code. (7-1-18)

001. TITLE AND SCOPE. 
In addition to the General Provisions set forth in IDAPA 27.01.01, “General Provisions,” the following title and scope shall apply to these rules: (7-1-18)

01. Title. The title of this chapter is “Rules Governing Pharmacy Practice,” IDAPA 27, Title 01, Chapter 03. (7-1-18)

02. Scope. The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to: (7-1-18)

a. Regulate drug outlet practice standards; (7-1-18)

b. Regulate and control the filling and dispensing of prescription drugs; and (7-1-18)

c. Regulate drug outlet recordkeeping and reporting requirements. (7-1-18)

002. WRITTEN INTERPRETATIONS. 
In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Board of Pharmacy office. (7-1-18)

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS. 
Administrative proceedings and appeals are administered by the Board in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01, Subchapter B -- Contested Cases, Rules 100 through 800. (7-1-18)

01. Place and Time for Filing. Documents in rulemakings or contested cases must be filed with the executive director of the Board at the Board office between the hours of 8 a.m. and 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (7-1-18)

02. Manner of Filing. One (1) original of each document is sufficient for filing; however, the person or officer presiding over a particular rulemaking or contested case proceeding may require the filing of additional copies. A document may be filed with the Board by e-mail or fax if legible, complete, and received during the Board’s office hours. The filing party is responsible for verifying with Board staff that an e-mail or fax was successfully and legibly received. (7-1-18)

004. INCORPORATION BY REFERENCE. 
No documents have been incorporated by reference into these rules. (7-1-18)

005. BOARD OFFICE INFORMATION. 

01. Street Address. The office is located at 1199 Shoreline Lane, Suite 303, Boise, Idaho. (7-1-18)
02. **Mailing Address.** The mailing address is P.O. Box 83720, Boise, Idaho 83720-0067. (7-1-18)

03. **Telephone Number.** The telephone number is (208) 334-2356. (7-1-18)

04. **Fax Number.** The fax number is (208) 334-3536. (7-1-18)

05. **Electronic Address.** The website address is https://bop.idaho.gov. (7-1-18)

06. **Office Hours.** The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (7-1-18)

006. **PUBLIC RECORDS ACT COMPLIANCE.**
Board of Pharmacy records and filings are subject to compliance with the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (7-1-18)

007. **OFFICIAL BOARD JOURNAL.**
The official journal of the Board is the electronic Idaho State Board of Pharmacy Newsletter. A link to recent versions of the newsletter is posted on the Board’s website. Board licensees and registrants are presumed to have knowledge of the contents of the newsletter on the date of publication. The newsletter may be used in administrative hearings as proof of notification. (7-1-18)

008. – 009. **(RESERVED)**

010. **DEFINITIONS AND ABBREVIATIONS.**
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the definitions and abbreviations found at IDAPA 27.01.01.010 through 012 are applicable to these rules. (7-1-18)

011. – 099. **(RESERVED)**

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**SUBCHAPTER B – PROFESSIONAL PRACTICE STANDARDS**
(Rules 100 through 199 – Professional Practice Standards)

100. **PRESCRIBER PERFORMANCE OF PHARMACY FUNCTIONS.**

01. **Prescriber Roles.** For the purposes of this chapter, any function that a pharmacist may perform may similarly be performed by an Idaho prescriber in the course of filling or dispensing prescription drugs. (7-1-18)

02. **Prescriber Delegation.** For the purposes of this chapter, any function that a pharmacist may delegate to a technician or pharmacist intern may similarly be delegated by an Idaho prescriber to an appropriate support personnel in accordance with the prescriber’s practice act. (7-1-18)

101. **DELEGATION OF PHARMACY FUNCTIONS.**
A pharmacist may delegate to and allow performance by a technician or pharmacist intern only those functions performed in pharmacy operations that meet the following criteria:

01. **Supervision.** The function is performed under a pharmacist’s supervision; (7-1-18)

02. **Education, Skill and Experience.** The function is commensurate with the education, skill, and experience of the technician or pharmacist intern; and (7-1-18)

03. **Professional Judgment Restriction.** Any function that requires the use of a pharmacist’s professional judgment may be performed by a pharmacist intern. (7-1-18)

102. – 199. **(RESERVED)**
200. **PIC: RESPONSIBILITIES AND LIMITATIONS.**

01. **Drug Outlets that Must Designate a PIC.** The following drug outlets must have a designated PIC by the date of opening and must not thereafter allow a vacancy of a designated PIC to continue for more than thirty (30) sequential days:
   
   a. Any drug outlet that dispenses drugs to patients in Idaho;  
   b. Any central drug outlet; and  
   c. Any outsourcing facility.

02. **PIC and Drug Outlet Responsibility.** The PIC is responsible for the management of every part of the drug outlet and its regulated operations. The PIC and the drug outlet each have corresponding and individual responsibility for compliance with applicable state and federal law and these rules.

03. **PIC Oversight Limitations.** A person may neither be designated nor function as the PIC for more than two (2) drug outlets concurrently.

201. **DRUG OUTLETS THAT DISPENSE PRESCRIPTION DRUGS: MINIMUM FACILITY STANDARDS.**

A resident drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements:

01. **Security.** A drug outlet must be constructed and equipped with adequate security to protect its equipment, records and supply of drugs, devices and other restricted sale items from unauthorized access, acquisition or use. An alarm or other comparable monitoring system is required for any non-institutional drug outlet that stocks controlled substances and is new or remodeled after July 1, 2018.

02. **Patient Privacy.** All protected health information must be stored and maintained in accordance with HIPAA. In addition, a community pharmacy that is new or remodeled after March 21, 2012 must provide and maintain a patient consultation area that affords the patient auditory and visual privacy and is compliant with the Americans with Disabilities Act.

03. **Equipment.** A drug outlet must be properly equipped to ensure the safe, clean, and sanitary condition necessary and appropriate for proper operation, the safe preparation of prescriptions, and to safeguard product integrity.

04. **Staffing.** A drug outlet must be staffed sufficiently to allow for appropriate supervision, to otherwise operate safely and, if applicable, to remain open during the hours posted as open to the public for business.

05. **Controlled Substances Storage.** Controlled substances must be stored in a securely locked, substantially constructed cabinet or safe. However, a pharmacy may disperse substances listed in Schedules II, III, IV and V, in whole or in part, throughout the stock of non-controlled substances if doing so would be likely to obstruct the theft or diversion of the controlled substances.

06. **Controlled Substances Disposal.** Expired, excess or unwanted controlled substances that are owned by the drug outlet must be properly disposed of through the services of a DEA-registered reverse distributor or by another method permitted by federal law.

07. **Authorized Access to the Restricted Drug Storage Area.**
a. Access to the restricted drug storage area can occur only when a pharmacist or prescriber is on duty. (7-1-18)

b. Access must be limited to pharmacists, technicians and pharmacist interns, or in the case of a prescriber drug outlet, to prescribers and appropriate support personnel in accordance with the prescriber’s practice act. A pharmacist or prescriber may, however, authorize an individual temporary access to the restricted drug storage area to perform a legitimate non-pharmacy function if the individual remains under the direct supervision of the pharmacist or prescriber. (7-1-18)

c. An institutional facility may also develop an emergency drug access protocol in which a non-pharmacist health professional may enter into the restricted drug storage area of an institutional facility that is otherwise closed, and pursuant to a valid prescription drug order, remove a sufficient quantity of non-controlled drugs necessary to meet the immediate needs of a patient. (7-1-18)

202. DRUG OUTLETS THAT DISPENSE PRESCRIPTION DRUGS: MINIMUM PRESCRIPTION FILLING REQUIREMENTS.

Unless exempted by these rules, each drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements: (7-1-18)

01. Valid Prescription Drug Order. Prescription drugs must only be dispensed pursuant to a valid prescription drug order as set forth in Subchapter D of these rules. (7-1-18)

02. Prospective Drug Review. Prospective drug review, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

03. Labeling. Each drug must bear a complete and accurate label as set forth in Subchapter D of these rules. (7-1-18)

04. Verification of Dispensing Accuracy. Verification of dispensing accuracy must be performed to compare the drug stock selected to the drug prescribed. If not performed by a pharmacist or prescriber, an electronic verification system must be used that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. A compounded drug may only be verified by a pharmacist or prescriber. (7-1-18)

05. Patient Counseling. Counseling, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

203. OFFSITE PHARMACY SERVICES.

A drug outlet may provide offsite pharmacy services at one (1) or more locations. When the services being performed are related to prescription fulfillment or processing, the drug outlet must comply with the following: (7-1-18)

01. Policies and Procedures. The originating drug outlet must have written policies and procedures outlining the offsite pharmacy services to be provided by the central drug outlet, or the offsite pharmacist or technician, and the responsibilities and accountabilities of each party. (7-1-18)

02. Secure Electronic File. The parties share a secure common electronic file or utilize other secure technology, including a private, encrypted connection that allows access by the central drug outlet or offsite pharmacist or technician to information necessary to perform offsite pharmacy services. (7-1-18)

03. Exemption. A single prescription drug order may be shared by an originating drug outlet and a central drug outlet, or offsite pharmacist or technician. The filling, processing and delivery of a prescription drug order by one pharmacy for another pursuant to this section will not be construed as the filling of a transferred prescription or as a wholesale distribution. (7-1-18)

204. DRUG OUTLETS THAT DISPENSE DRUGS TO PATIENTS WITHOUT AN ONSITE PHARMACIST OR PRESCRIBER.

In addition to all other preceding rules of this subchapter, a drug outlet that dispenses drugs to patients in Idaho that does not have a pharmacist or prescriber onsite to perform or supervise pharmacy operations must comply with the
following requirements:

01. Security and Access.
    a. The drug outlet must maintain video surveillance with an adequate number of views of the full
       facility and retain a high quality recording for a minimum of ninety (90) days.
    b. Proper identification controls of individuals accessing the restricted drug storage area must be
       utilized and access must be limited, authorized, and regularly monitored.

02. Staffing Limitations. The ratio of pharmacists to support personnel may not exceed one (1)
    pharmacist for every six (6) technicians and pharmacist interns in total across all practice sites.

03. Technology. The video and audio communication system used to counsel and interact with each
    patient or patient’s caregiver, must be clear, secure, and HIPAA-compliant.

04. Controlled Substances Inventories.
    a. A perpetual inventory must be kept for all Schedule II controlled substances; and
    b. If a perpetual inventory is not kept for all Schedule III through V substances, the pharmacist or
       prescriber must inventory and audit at least three (3) random controlled substances quarterly.

05. Self-Inspection. A pharmacist or prescriber must complete and retain a monthly in-person self-
    inspection of the drug outlet using a form designated by the Board.

06. Emergency Situations.
    a. A pharmacist or prescriber must be capable of being on site at the drug outlet within twelve (12)
       hours if an emergency arises.
    b. The drug outlet must be, or remain, closed to the public if any component of the surveillance or
       video and audio communication system is malfunctioning, until system corrections or repairs are completed.

07. Exemption for Self-Service Systems. A self-service ADS that is operating as a drug outlet is
    exempt from the video surveillance requirement and the self-inspection requirement of this rule. In addition, if
    counseling is provided by an onsite prescriber or pharmacist, a self-service ADS is exempt from the video and audio
    communication system requirements of this rule.

08. Exemption for Veterinarians. Veterinarians practicing in accordance with their Idaho practice act
    are exempt from this rule.

205. DRUGS STORED OUTSIDE OF A DRUG OUTLET FOR RETRIEVAL BY A LICENSED
    HEALTH PROFESSIONAL.
    Drugs may be stored in an alternative designated area outside the drug outlet, including, but not limited to, floor
    stock, in an emergency cabinet, in an emergency kit, or as emergency outpatient drug delivery from an emergency
    room at a registered institutional facility, provided the following conditions are met:

01. Supervising Drug Outlet. Drugs stored in such a manner must remain under the control of, and be
    routinely monitored by, the supervising drug outlet.

02. Policies and Procedures. The supervising drug outlet must develop and implement policies and
    procedures regarding authorized access to drugs stored in the alternative designated area, documentation of drugs
    used, drug returns and wastage, and regular inventory procedures.

03. Secure Storage. The area is appropriately equipped to ensure security and protection from
    diversion or tampering.
04. **Controlled Substances.** Controlled substances may only be stored in an alternative designated area as permitted by, and in accordance with, federal law. (7-1-18)

05. **Stocking and Replenishing.** Stocking or replenishing drugs in an alternative designated area may be performed by a pharmacist or prescriber, or by appropriate support personnel using either an electronic verification system or a two (2) person checking system. (7-1-18)

206. – 299. (RESERVED)

SUBCHAPTER D – FILLING AND DISPENSING PRESCRIPTION DRUGS
(Rules 300 through 399 - Filling and Dispensing Prescription Drugs)

300. **PRESCRIPTION DRUG ORDER: VALIDITY.**
Prior to filling or dispensing a prescription drug order, a pharmacist must verify its validity. (7-1-18)

01. **Invalid Prescription Drug Orders.** A prescription drug order is invalid if not issued:

a. In good faith; (7-1-18)

b. For a legitimate medical purpose; (7-1-18)

c. By a licensed prescriber; (7-1-18)

d. Within the course and scope of the prescriber’s professional practice and prescriptive authority; (7-1-18)

e. Pursuant to a valid prescriber-patient relationship, unless statutorily exempted; or (7-1-18)

f. In the form and including the elements specified in this Subchapter D. (7-1-18)

02. **Antedating or Postdating.** A prescription drug order is invalid if antedated or postdated. (7-1-18)

03. **Tampering.** A prescription drug order is invalid if, at the time of presentation, it shows evidence of alteration, erasure, or addition by any person other than the person who wrote it. (7-1-18)

04. **Prescriber Self-Use.** A prescription drug order written for a controlled substance is invalid if written for the prescriber’s own use. (7-1-18)

05. **Family Members.** A prescription drug order written for a prescriber’s family member is invalid if inconsistent with the scope of practice and prescriptive authority of the prescriber’s profession. (7-1-18)

06. **Expiration.** A prescription drug order is invalid after its expiration date as follows:

a. A prescription drug order for a Schedule II controlled substance must not be filled or dispensed more than ninety (90) days after its date of issue. (7-1-18)

b. A prescription drug order for a controlled substance listed in Schedules III, IV or V must not be filled or refilled more than six (6) months after its date of issue. (7-1-18)

c. A prescription drug order for a non-controlled drug must not be filled or refilled more than fifteen (15) months after its date of issue, unless if extended in accordance with these rules. (7-1-18)

07. **Prescriber Change of Status.** A prescription drug order is invalid after ninety (90) days from the date the pharmacist learns of a change in status that precludes a continued prescriber-patient relationship. (7-1-18)
301. PRESCRIPTION DRUG ORDER: SCHEDULE II DRUG LIMITATIONS

01. **Faxed and Verbal Prescriptions.** A Schedule II prescription must not be dispensed pursuant to a faxed or verbal prescription drug order, except as permitted by federal law. (7-1-18)

02. **Multiple Prescription Drug Orders.** A prescriber may issue and a pharmacy may fill multiple prescription drug orders, written on and dated with the same date, that allow the patient to receive up to a ninety (90)-day supply of a Schedule II controlled substance in accordance with federal law. (7-1-18)

302. PRESCRIPTION DRUG ORDER: MINIMUM REQUIREMENTS.

A prescription drug order must comply with applicable requirements of federal law and, except as differentiation is permitted for an institutional drug order, must include at least the following: (7-1-18)

01. **Patient’s Name.** The patient’s or authorized entity’s name and:
   a. If for a controlled substance, the patient’s full name and address; and
   b. If for an animal, the species. (7-1-18)

02. **Date.** The date issued. (7-1-18)

03. **Drug Information.** The drug name, strength, quantity and, if for a controlled substance, the dosage form. (7-1-18)

04. **Directions.** The directions for use. (7-1-18)

05. **Prescriber Information.** The name and, if for a controlled substance, the address and DEA registration number of the prescriber. (7-1-18)

06. **Signature.** If paper, the pre-printed, stamped or hand-printed name and written signature of the prescriber or, if statutorily allowed, the prescriber’s agent’s signature and, if electronic, the prescriber’s electronic signature. (7-1-18)

07. **Institutional Drug Order Exemptions.** An institutional drug order may exempt the patient’s address, the dosage form, quantity, prescriber’s address, and prescriber’s DEA registration number. (7-1-18)

303. FILLING PRESCRIPTION DRUG ORDERS: PRACTICE LIMITATIONS.

01. **Drug Product Selection.** Drug product selection is allowed only between therapeutic equivalent drugs. If a prescriber orders by any means that a brand name drug must be dispensed, then no drug product selection is permitted. (7-1-18)

02. **Partial Filling.** A prescription drug order may be partially filled within the limits of federal law. The total quantity dispensed in partial fillings must not exceed the total quantity prescribed. (7-1-18)

03. **Refill Authorization.** A prescription drug order may be refilled when permitted by state and federal law and only as specifically authorized by the prescriber, except as follows:
   a. A pharmacist acting in good faith and exercising reasonable care may dispense or refill a prescription drug that is not a controlled substance up to the total amount authorized by the prescriber including refills. (7-1-18)
   b. A pharmacist may refill a prescription for a non-controlled drug one (1) time in a six (6)-month period when the prescriber is not available for authorization. In such cases, a pharmacist may dispense a refill up to the quantity on the most recent fill or a thirty (30)-day supply, whichever is less. (7-1-18)

304. FILLING PRESCRIPTION DRUG ORDERS: ADAPTATION.
Upon patient consent, a pharmacist acting in good faith and exercising reasonable care may adapt drugs as specified in this rule, provided that the drug is not for a controlled substance, compounded drug, or biological product, and provided that the prescriber has not indicated by any means necessary that adaptation is not permitted. (7-1-18)

**01. Change Quantity.** A pharmacist may change the quantity of medication prescribed if:

- The prescribed quantity or package size is not commercially available; or
- The change in quantity is related to a change in dosage form. (7-1-18)

**02. Change Dosage Form.** A pharmacist may change the dosage form of the prescription if it is in the best interest of patient care, so long as the prescriber’s directions are also modified to equate to an equivalent amount of drug dispensed as prescribed. (7-1-18)

**03. Complete Missing Information.** A pharmacist may complete missing information on a prescription if there is sufficient evidence to support the change. (7-1-18)

**04. Medication Synchronization.** A pharmacist may extend a maintenance drug for the limited quantity necessary to coordinate a patient’s refills in a medication synchronization program. (7-1-18)

**05. Documentation.** A pharmacist who adapts a prescription in accordance with these rules must document the adaptation in the patient’s record. (7-1-18)

### 305. FILLING PRESCRIPTION DRUG ORDERS: DRUG PRODUCT SUBSTITUTION.

Drug product substitutions are allowed only as follows:

**01. Hospital.** Pursuant to a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital; (7-1-18)

**02. Skilled Nursing Facility.** At the direction of the quality assessment and assurance committee of a skilled nursing facility; (7-1-18)

**03. Drug Shortage.** Upon a drug shortage, a pharmacist may exercise professional judgment, without contacting the prescriber, and may substitute an alternative dose of a prescribed drug, so long as the prescriber’s directions are also modified, to equate to an equivalent amount of drug dispensed as prescribed; or (7-1-18)

**04. Biosimilars.** A pharmacist may substitute an interchangeable biosimilar product for a prescribed biological product if:

- The biosimilar has been determined by the FDA to be interchangeable and published in the Purple Book; (7-1-18)
- The prescriber does not indicate by any means that the prescribed biological product must be dispensed; and (7-1-18)
- The name of the drug and the manufacturer or the NDC number is documented in the patient medical record. (7-1-18)

### 306. FILLING PRESCRIPTION DRUG ORDERS: TRANSFERS.

**01. Communicating Prescription Drug Order Transfers.** A prescription drug order may be transferred within the limits of federal law. A controlled substance listed in Schedules III, IV or V may be transferred only from the drug outlet where it was originally filled and never from the drug outlet that received the transfer. (7-1-18)

**02. Pharmacies Using Common Electronic Files.** Drug outlets using a common electronic file are not required to transfer prescription drug order information for dispensing purposes between or among other drug outlets
sharing the common electronic file. (7-1-18)

307. LABELING: STANDARD PRESCRIPTION DRUG.
Unless otherwise directed by these rules, a prescription drug must be dispensed in an appropriate container that bears the following information: (7-1-18)

01. Dispenser Information. The name, address, and telephone number of the dispenser (person or business). (7-1-18)

02. Serial Number. The serial number. (7-1-18)

03. Date. The date the prescription is filled. (7-1-18)

04. Prescriber. The name of the prescriber. (7-1-18)

05. Name. (7-1-18)
   a. If a person, the name of the patient or other person authorized to possess a legend drug in accordance with Idaho Code; (7-1-18)
   b. If an animal, the name and species of the patient; or (7-1-18)
   c. If a facility or other entity is authorized to possess a legend drug in accordance with Idaho Code, the name of the facility or entity. (7-1-18)

06. Drug Name and Strength. Unless otherwise directed by the prescriber, the name and strength of each drug included (the generic name and its manufacturer’s name or the brand name). (7-1-18)

07. Quantity. The quantity of item dispensed. (7-1-18)

08. Directions. The directions for use. (7-1-18)

09. Cautionary Information. Cautionary information as necessary or deemed appropriate for proper use and patient safety. (7-1-18)

10. Expiration. An expiration date that is either: (7-1-18)
   a. The lesser of:
      i. One (1) year from the date of dispensing; (7-1-18)
      ii. The manufacturer’s original expiration date; (7-1-18)
      iii. The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or (7-1-18)
      iv. A shorter period if warranted. (7-1-18)
   b. If dispensed in the original, unopened manufacturer packaging, the manufacturer’s original expiration date. (7-1-18)

11. Refills. The number of refills remaining, if any, or the last date through which the prescription is refillable. (7-1-18)

12. Warning. A warning sufficient to convey that state or federal law, or both, prohibits the transfer of this drug to any person other than the patient for whom it was prescribed, except when dispensing to an animal, when a warning sufficient to convey “for veterinary use only” may be utilized. (7-1-18)
13. **Identification.** The initials or other unique identifier of the dispensing pharmacist or dispensing prescriber. (7-1-18)

308. **LABELING: INSTITUTIONAL FACILITY DRUGS.**
Except if dispensed in unit dose packaging, a drug dispensed for patient use while in a hospital must be dispensed in an appropriate container that bears at least the following information: (7-1-18)

- **01. Date.** The date filled; (7-1-18)
- **02. Patient.** The name of the patient; (7-1-18)
- **03. Drug.** The name and strength of the drug; (7-1-18)
- **04. Quantity.** The quantity of item dispensed; (7-1-18)
- **05. Directions.** The directions for use, including the route of administration; (7-1-18)
- **06. Caution.** Cautionary information as necessary or deemed appropriate for proper use and patient safety; (7-1-18)
- **07. Expiration Date.** The expiration or beyond use date, if appropriate; and (7-1-18)
- **08. Pharmacist.** The initials or other unique identifier of the dispensing pharmacist. (7-1-18)

309. **LABELING: PARENTERAL ADMIXTURE.**
If one (1) or more drugs are added to a parenteral admixture, the admixture’s container must include a distinctive, supplementary label with at least the following information: (7-1-18)

- **01. Ingredient Information.** The name, amount, strength and, if applicable, the concentration of the drug additive and the base solution or diluent; (7-1-18)
- **02. Date and Time.** The date and time of the addition, or alternatively, the beyond use date; (7-1-18)
- **03. Identification.** The initials or other unique identifier of the pharmacist or preparing prescriber responsible for its accuracy; (7-1-18)
- **04. Prescribed Administration Regimen.** The rate or appropriate route of administration or both, as applicable; and (7-1-18)
- **05. Special Instructions.** Any special handling, storage, or device-specific instructions. (7-1-18)

310. **LABELING: PREPACKAGED PRODUCT.**
The containers of prepackaged drugs prepared for ADS systems or other authorized uses must include a label with at least the following information: (7-1-18)

- **01. Drug Name and Strength.** The name and strength of the drug; (7-1-18)
- **02. Expiration Date.** An expiration date that is the lesser of:
  - a. The manufacturer’s original expiration date; (7-1-18)
  - b. One (1) year from the date the drug is prepackaged; or (7-1-18)
  - c. A shorter period if warranted (A prepackaged drug returned unopened from an institutional facility and again prepackaged must be labeled with the expiration date used for the initial prepackaging.). (7-1-18)
03. Conditional Information. If not maintained in a separate record, the manufacturer’s name and lot number and the identity of the pharmacist or provider responsible for the prepackaging.

311. DISPENSING CONTROLLED SUBSTANCES: POSITIVE IDENTIFICATION REQUIRED.
A potential recipient of a controlled substance must first be positively identified or the controlled substance must not be dispensed.

01. Positive Identification Presumed. Positive identification is presumed and presentation of identification is not required if dispensing directly to the patient and if:
   a. The controlled substance will be paid for, in whole or in part, by an insurer;
   b. The patient is being treated at an institutional facility or is housed in a correctional facility; or
   c. The filled prescription is delivered to the patient or patient’s provider.

02. Personal Identification. Presentation of identification is also not required if the individual receiving the controlled substance is personally and positively known by a drug outlet staff member who is present and identifies the individual and the personal identification is documented by recording:
   a. The recipient’s name (if other than the patient);
   b. A notation indicating that the recipient was known to the staff member; and
   c. The identity of the staff member making the personal identification.

03. Acceptable Identification. A valid government-issued identification must include an unaltered photograph and signature to be acceptable.

04. Identification Documentation. Documentation of the recipient’s identification must be permanently linked to the record of the dispensed controlled substance and include:
   a. A copy of the identification presented; or
   b. A record that includes:
      i. The recipient’s name;
      ii. A notation of the type of identification presented;
      iii. The government entity that issued the identification; and
      iv. The unique identification number.

312. DISPENSING CONTROLLED SUBSTANCES: NON-PRESCRIPTION DISPENSING LIMITATIONS.
Limited quantities of a Schedule V non-prescription controlled substance may be dispensed to a retail purchaser as permitted by federal law.

313. PRESCRIPTION DELIVERY: RESTRICTIONS.

01. Acceptable Delivery. A drug outlet that dispenses drugs to patients in Idaho may deliver filled prescriptions to the following, as long as appropriate measures are taken to ensure product integrity:
   a. To the patient or the patient’s residence, the institutional facility in which the patient is convalescing, the correctional facility in which a patient is housed;
b. To the patient’s licensed or registered healthcare provider, as follows: (7-1-18)
   i. If the drug is not a controlled substance; or (7-1-18)
   ii. If the drug is a controlled substance that is intended for direct administration by the prescriber or
       prescriber’s delegate. (7-1-18)

c. To another licensed drug outlet. (7-1-18)

02. Pick-up or Return by Authorized Personnel. Filled prescriptions may be picked up for or
    returned from delivery by authorized personnel when the drug outlet is closed for business if the
    prescriptions are placed in a secured delivery area outside of the restricted drug storage area that is equipped
    with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry,
    theft and diversion under policies and procedures developed by the PIC. (7-1-18)

314. DESTRUCTION OR RETURN OF DRUGS OR DEVICES: RESTRICTIONS.
A drug outlet registered with the DEA as a collector may collect controlled and non-controlled drugs for destruction
in accordance with applicable federal law. Otherwise a dispensed drug or prescription device must only be accepted
for return as follows: (7-1-18)

01. Error. Those that were dispensed in a manner inconsistent with the prescriber’s instructions may
    be returned for quarantine and destruction purposes only. (7-1-18)

02. Did Not Reach Patient. Non-controlled drugs that have been maintained in the custody and
    control of the institutional facility, dispensing pharmacy, or their related clinical facilities may be returned if product
    integrity can be assured. Controlled substances may only be returned from a hospital daily delivery system under
    which a pharmacy dispenses no more than a twenty-four (24) hour supply for a drug order, or up to a seventy-two
    (72) hour supply for a drug order if warranted for good patient care. (7-1-18)

03. Donation. Those that qualify for return under the provisions of the Idaho Legend Drug Donation
    Act as specified in Section 54-1762, Idaho Code. (7-1-18)

315. REPACKAGING DRUG PREVIOUSLY DISPENSED.
A drug outlet may repackage a drug previously dispensed to a patient, pursuant to the patient or the patient’s agent’s
request, if: (7-1-18)

01. Pharmacist Verification. The repackaging pharmacist verifies the identity of the previously
    dispensed drugs as matching the label on the container that the drugs were initially dispensed within. (7-1-18)

02. Intermingled Drugs. The drugs are never intermingled with the repackaging pharmacy’s regular
    stock. (7-1-18)

03. Labeling. The repackaging pharmacy affixes to the container of the repackaged drug a label that
    complies with the standard labeling rule and includes:
    a. The original dispensed prescription’s serial number; (7-1-18)
    b. The name, address, and phone number of the original dispensing pharmacy; and (7-1-18)
    c. A statement that indicates that the drug has been repackaged, such as the words “repackaged by”
       followed by the name of the repackaging pharmacy. (7-1-18)

316. – 399. (RESERVED).
400. RECORDKEEPING: MAINTENANCE AND INVENTORY REQUIREMENTS.

01. Records Maintenance and Retention Requirement. Unless an alternative standard is stated for a specified record type, form, or format, records required to evidence compliance with statutes or rules enforced by the Board must be maintained and retained in a readily retrievable form and location for at least three (3) years from the date of the transaction. (7-1-18)

02. Prescription Retention. A prescription drug order must be retained in a readily retrievable manner by each drug outlet and maintained as follows: (7-1-18)

   a. Schedule II Prescriptions. Paper prescription drug orders for Schedule II controlled substances must be maintained at the registered location in a separate prescription file. (7-1-18)

   b. Schedule III through V Prescriptions. Paper prescription drug orders for Schedules III, IV and V controlled substances must be maintained at the registered location either in a separate prescription file for Schedules III, IV and V controlled substances only or in a readily retrievable manner from other prescription records as required by federal law. (7-1-18)

   c. Electronic Prescriptions. Electronic prescription drug orders for controlled substances must be maintained in a system that meets the requirements of federal law. The records may be maintained at another location if readily retrievable at the registered location. The electronic application must be capable of printing or otherwise converting the records into a readily understandable format at the registered location and must allow the records to be sortable by prescriber name, patient name, drug dispensed, and date filled. (7-1-18)

03. Inventory Records. Each drug outlet must maintain a current, complete and accurate record of each controlled substance manufactured, imported, received, ordered, sold, delivered, exported, dispensed or otherwise disposed of by the registrant. Drug outlets must maintain inventories and records in accordance with federal law. An inventory must be conducted as follows: (7-1-18)

   a. Annual Inventory of Stocks of Controlled Substances. Each registrant must conduct an inventory of controlled substances on hand annually at each registered location no later than seven (7) days after the date of the most recent inventory in a form and manner that satisfies the inventory requirements of federal law. A separate controlled substances inventory must be taken and retained at each DEA-registered location. (7-1-18)

   b. Inventory on PIC Change. A complete controlled substance inventory must be conducted by the incoming PIC or his delegate on or by the first day of employment of the incoming PIC. (7-1-18)

   c. Inventory on Addition to Schedule of Controlled Substances. On the effective date of an addition of a substance to a schedule of controlled substances, each registrant that possesses that substance must take an inventory of the substance on hand, and thereafter, include the substance in each inventory. (7-1-18)

   d. Drugs Stored Outside a Drug Outlet. In addition to the annual inventory requirements, drugs stored outside a drug outlet in accordance with these rules must be regularly inventoried and inspected to ensure that they are properly stored, secured, and accounted for. (7-1-18)

   e. Closing of Pharmacy. A closing inventory must be conducted and retained. (7-1-18)

04. Rebuttal Presumption of Violation. Evidence of an amount of a controlled substance that differs from the amount reflected on a record or inventory required by state or federal law creates a rebuttable presumption that the registrant has failed to keep records or maintain inventories in conformance with the recordkeeping and inventory requirements of state and federal law. (7-1-18)

05. Central Records Storage. Records may be retained at a central location in compliance with federal law. (7-1-18)
06. **Electronic Records Storage.** Any record required to be kept under this section may be electronically stored and maintained if they remain legible and are in a readily retrievable format, and if federal law does not require them to be kept in a hard copy format. (7-1-18)

401. **RECORDKEEPING: ELECTRONIC SYSTEM FOR PATIENT MEDICATION RECORDS.**
A drug outlet that is new or remodeled after the effective date of this rule must use an electronic recordkeeping system to establish and store patient medication records and prescription drug order, refill, transfer information, and other information necessary to provide safe and appropriate patient care. (7-1-18)

01. **Real-time Online Retrieval of Information.** The electronic recordkeeping system must be capable of real-time, online retrieval of information stored therein for a minimum of fifteen (15) months from the date of entry. (7-1-18)

02. **Immediately Retrievable Refill Data.** The electronic recordkeeping system must have functionality that allows refill data to be immediately retrievable and produced upon request; for example, a refill-by-refill audit trail for a specified strength and dosage form of a drug. (7-1-18)

03. **Audit Trail Documentation.** The electronic recordkeeping system must also have audit trail functionality that documents for each prescription drug order the identity of each individual involved at each step of its processing, filling, and dispensing or, alternatively, the identity of the pharmacist or prescriber responsible for the accuracy of these processes. Systems that automatically generate user identification without requiring an entry by the responsible individual are prohibited. Drug outlets that utilize offsite pharmacy services for product fulfillment or processing must track the identity and location of each individual involved in each step of the offsite pharmacy services. (7-1-18)

04. **System Security.** The electronic recordkeeping system must include security features to protect the confidentiality and integrity of patient records including:

a. Safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription drug order information and patient medication records; and (7-1-18)

b. Functionality that documents any alteration of prescription drug order information after a prescription drug order is dispensed, including the identification of the individual responsible for the alteration. (7-1-18)

05. **System Downtime, Backup and Recovery.** The pharmacy must have policies and procedures in place for system downtime, backup and recovery. (7-1-18)

06. **Exemption.** Drug outlets are exempt from this section if they fill on average fewer than twenty (20) prescriptions per business day, and paper records must be maintained. (7-1-18)

402. **REPORTING REQUIREMENTS.**

01. **PIC Change.** Both an outgoing and incoming PIC must report to the Board a change in a PIC designation within ten (10) days of the change. (7-1-18)

02. **Theft or Loss of Controlled Substances.** A registrant must report to the Board on the same day reported to the DEA a theft or loss of a controlled substance that includes the information required by federal law. (7-1-18)

03. **Individual Information Changes.** Changes in employment or changes to information provided on or with the initial or renewal application must be reported to the Board within ten (10) days of the change. (7-1-18)

04. **Reporting Adulteration or Misappropriation.** A licensee or registrant must report to the Board any adulteration or misappropriation of a controlled drug in accordance with Section 37-117A, Idaho Code. (7-1-18)
403. – 499. (RESERVED)

SUBCHAPTER F – PRESCRIPTION DRUG MONITORING PROGRAM REQUIREMENTS
(Rules 500 through 999 – Prescription Drug Monitoring Program Requirements)

500. CONTROLLED SUBSTANCES: PDMP.
Specified data on controlled substances must be reported by the end of the next business day by all drug outlets that dispense controlled substances in or into Idaho and prescribers that dispense controlled substances to humans. Data on controlled substance prescription drug samples does not need to be reported. (7-1-18)

01. Online Access to PDMP. Online access to the Board’s PDMP is limited to licensed prescribers and pharmacists, or their delegates, for treatment purposes. To obtain online access, a prescriber or pharmacist, or their delegate must complete and submit a registration application and agree to adhere to the access restrictions and limitations established by law. (7-1-18)

02. Use Outside Scope of Practice Prohibited. Information obtained from the PDMP must not be used for purposes outside the prescriber’s or pharmacist’s scope of professional practice. A delegate may not access the PDMP outside of their supervisor’s scope of professional practice. (7-1-18)

03. Profile Requests. Authorized persons without online access may obtain a profile by completing a Board form and submitting it to the Board office with proof of identification and other credentials required to confirm the requestor’s authorized status pursuant to Section 37-2726, Idaho Code. (7-1-18)

04. Suspension, Revocation, or Restriction of PDMP Access. Violation of this rule provides grounds for suspension, revocation, or restriction of the prescriber’s, pharmacist’s, or delegate’s authorization for online access to the PDMP. (7-1-18)

501. – 999. (RESERVED)
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000. **LEGAL AUTHORITY.**
This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, 54-1755, and 54-1763, Idaho Code. (7-1-18)

001. **TITLE AND SCOPE.**
In addition to the General Provisions set forth in IDAPA 27.01.01, “General Provisions,” the following title and scope shall apply to these rules:

01. **Title.** The title of this chapter is “Rules Governing Pharmacist Prescriptive Authority,” IDAPA 27, Title 01, Chapter 04. (7-1-18)

02. **Scope.** The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to determine which drugs or devices pharmacists can prescribe independently, and further establish criteria for collaborative pharmacy practice and statewide protocol agreements. (7-1-18)

002. **WRITTEN INTERPRETATIONS.**
In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Board of Pharmacy office. (7-1-18)

003. **ADMINISTRATIVE PROCEEDINGS AND APPEALS.**
Administrative proceedings and appeals are administered by the Board in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01, Subchapter B -- Contested Cases, Rules 100 through 800. (7-1-18)

01. **Place and Time for Filing.** Documents in rulemakings or contested cases must be filed with the executive director of the Board at the Board office between the hours of 8 a.m. and 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (7-1-18)

02. **Manner of Filing.** One (1) original of each document is sufficient for filing; however, the person or officer presiding over a particular rulemaking or contested case proceeding may require the filing of additional copies. A document may be filed with the Board by e-mail or fax if legible, complete, and received during the Board’s office hours. The filing party is responsible for verifying with Board staff that an e-mail or fax was successfully and legibly received. (7-1-18)

004. **INCORPORATION BY REFERENCE.**
No documents have been incorporated by reference into these rules. (7-1-18)

005. **BOARD OFFICE INFORMATION.**

01. **Street Address.** The office is located at 1199 Shoreline Lane, Suite 303, Boise, Idaho. (7-1-18)

02. **Mailing Address.** The mailing address is P.O. Box 83720, Boise, Idaho 83720-0067. (7-1-18)

03. **Telephone Number.** The telephone number is (208) 334-2356. (7-1-18)

04. **Fax Number.** The fax number is (208) 334-3536. (7-1-18)

05. **Electronic Address.** The website address is https://bop.idaho.gov. (7-1-18)
06. **Office Hours.** The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (7-1-18)

006. **PUBLIC RECORDS ACT COMPLIANCE.**
Board of Pharmacy records and filings are subject to compliance with the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (7-1-18)

007. **OFFICIAL BOARD JOURNAL.**
The official journal of the Board is the electronic Idaho State Board of Pharmacy Newsletter. A link to recent versions of the newsletter is posted on the Board’s website. Board licensees and registrants are presumed to have knowledge of the contents of the newsletter on the date of publication. The newsletter may be used in administrative hearings as proof of notification. (7-1-18)

008. – 009. (RESERVED)

010. **DEFINITIONS AND ABBREVIATIONS.**
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the definitions and abbreviations found at IDAPA 27.01.01.010 through 012 are applicable to these rules. (7-1-18)

011. – 019. (RESERVED)

020. **PHARMACIST PRESCRIBING: GENERAL REQUIREMENTS.**
In addition to all nonprescription drugs and devices and the statutorily authorized drug products and categories set forth in Section 54-1704, Idaho Code, a pharmacist acting in good faith and exercising reasonable care may independently prescribe drugs, drug categories and devices as set forth in this chapter provided the following general requirements are met: (7-1-18)

01. **Education.** The pharmacist may only prescribe drugs or devices for conditions for which the pharmacist is educationally prepared and for which competence has been achieved and maintained. (7-1-18)

02. **Patient-Prescriber Relationship.** The pharmacist may only issue a prescription for a legitimate medical purpose arising from a patient-prescriber relationship as defined in Section 54-1733, Idaho Code. (7-1-18)

03. **Patient Assessment.** The pharmacist must obtain adequate information about the patient’s health status to make appropriate decisions based on the applicable standard of care. (7-1-18)

a. At a minimum, for each drug or drug category the pharmacist intends to prescribe, the pharmacist must maintain a patient assessment protocol based on current clinical guidelines, when available, or evidence-based research findings that specifies the following: (7-1-18)

b. Patient inclusion and exclusion criteria; and (7-1-18)

c. Explicit medical referral criteria. (7-1-18)

d. The pharmacist must revise the patient assessment protocol when necessary to ensure continued compliance with clinical guidelines or evidence-based research findings. The pharmacist’s patient assessment protocol, and any related forms, must be made available to the Board upon request. (7-1-18)

e. Any patient assessment protocol for a drug or drug category that is made available by the Board satisfies Paragraphs a. through c. of this subsection. (7-1-18)

04. **Collaboration with Other Health Care Professionals.** The pharmacist must recognize the limits of the pharmacist’s own knowledge and experience and consult with and refer to other health care professionals as appropriate. (7-1-18)

05. **Follow-Up Care Plan.** The pharmacist must develop and implement an appropriate follow-up care plan, including any monitoring parameters, in accordance with clinical guidelines. (7-1-18)
06. Notification. The pharmacist must inquire about the identity of the patient’s primary care provider; and, if one is identified by the patient, provide notification within five (5) business days following the prescribing of a drug. In the instance in which the pharmacist is prescribing to close a gap in care or to supplement a valid prescription drug order, the pharmacist must alternatively notify the provider of record. (7-1-18)

07. Documentation. The pharmacist must maintain documentation adequate to justify the care provided, including, but not limited to the information collected as part of the patient assessment, the prescription record, any notification provided as required under this section, and the follow-up care plan. (7-1-18)

021. PHARMACIST PRESCRIBING FOR MINOR CONDITIONS.
A pharmacist may prescribe any drug approved by the FDA that is indicated for the following conditions: (7-1-18)

01. Lice;
02. Cold Sores;
03. Motion Sickness Prevention; and
04. Uncomplicated Urinary Tract Infections.

022. PHARMACIST PRESCRIBING OF DEVICES.
A pharmacist may prescribe any of the following devices approved by the FDA:

01. Inhalation Spacer;
02. Nebulizer;
03. Diabetes Blood Sugar Testing Supplies;
04. Pen Needles; and
05. Syringes. Syringes for patients with diabetes.

023. PHARMACIST PRESCRIBING BASED ON CLIA-WAIVED TEST.
A pharmacist may prescribe any antimicrobial drug approved by the FDA that is indicated for the following conditions, provided the symptomatic patient first tests positive to a CLIA-waived test indicated for the condition:

01. Influenza. When a person has tested positive for influenza, a pharmacist may additionally prescribe an antiviral medication to an individual who has been exposed to the infectious person and for whom clinical guidelines recommend chemoprophylaxis; and

02. Group A Streptococcal Pharyngitis.

024. PHARMACIST PRESCRIBING FOR CLINICAL GAPS IN CARE.
A pharmacist may prescribe any drug approved by the FDA for the purposes of closing a gap in clinical guidelines as follows:

01. Statins. Statins, for patients who have been diagnosed with diabetes; and
02. Short-Acting Beta Agonists. Short-acting beta agonists (SABA), for patients with asthma who have had a prior prescription for a SABA, and who have a current prescription for a long-term asthma control medication.

025. PHARMACIST PRESCRIBING OF TRAVEL DRUGS.
A pharmacist who successfully completes an accredited CPE or CME course on travel medicine may prescribe any
non-controlled drug recommended for individuals traveling outside the United States that are specifically listed in the federal CDC Health Information for International Travel (e.g., Yellow Book). The pharmacist may only prescribe drugs that are indicated for the patient’s intended destination for travel. (7-1-18)

026. PHARMACIST PRESCRIBING TO SUPPLEMENT AN INFUSION ORDER.
A pharmacist may prescribe any of the following FDA approved drugs or devices to supplement a valid prescription drug order or institutional drug order for drugs intended to be administered to a patient via infusion; (7-1-18)

01. **Flush.** Heparin, in concentrations of one hundred (100) units per milliliter or less, and saline; (7-1-18)

02. **Devices.** Infusion pumps and other rate control devices; (7-1-18)

03. **Supplies.** Tubing, filters, catheters, intravenous (IV) start kits, central line dressing kits, and injection caps; and (7-1-18)

04. **Local Anesthetics for IV Port Access.** (7-1-18)

027. PHARMACIST PRESCRIBING IN EMERGENCY SITUATIONS.
If in an emergency, after contacting emergency medical services, a situation exists that, in the professional judgment of the pharmacist, threatens the health or safety of the patient, a pharmacist may prescribe the following FDA approved drugs in the minimum quantity necessary until the patient is able to be seen by another provider. (7-1-18)

01. **Diphenhydramine;** (7-1-18)

02. **Epinephrine;** and (7-1-18)

03. **Short-Acting Beta Agonists.** (7-1-18)

028. PHARMACIST PRESCRIBING FOR LYME DISEASE PROPHYLAXIS.
After a recognized tick bite, a pharmacist may prescribe antimicrobial prophylaxis, for the prevention of Lyme disease in accordance with current CDC guidelines. (7-1-18)

029. – 199. (RESERVED)

200. COLLABORATIVE PHARMACY PRACTICE AND STATEWIDE PROTOCOL AGREEMENTS.

01. **Collaborative Agreement.** Pharmacists or pharmacies and prescribers may enter into collaborative pharmacy practice through a written collaborative pharmacy practice agreement that defines the nature and scope of authorized DTM or other patient care services to be provided by a pharmacist. (7-1-18)

a. Agreement Elements. The collaborative pharmacy practice agreement must include: (7-1-18)

i. Identification of the parties to the agreement; (7-1-18)

ii. The establishment of each pharmacist’s scope of practice authorized by the agreement, including a description of the types of permitted activities and decisions; (7-1-18)

iii. The drug name, class or category and protocol, formulary, or clinical guidelines that describe or limit a pharmacist’s authority to perform DTM; (7-1-18)

iv. A described method for a prescriber to monitor compliance with the agreement and clinical outcomes of patients and to intercede where necessary; (7-1-18)

v. A provision allowing any party to cancel the agreement by written notification; (7-1-18)

vi. An effective date; and (7-1-18)
vii. Signatures of the parties to the agreement and dates of signing. (7-1-18)

b. Agreement Review. The collaborative pharmacy practice agreement must be reviewed and revised when necessary or appropriate. (7-1-18)

02. Statewide Protocol Agreement. A pharmacist may perform DTM or other patient care services according to a statewide protocol agreement issued by the director of the Idaho Department of Health and Welfare, in conjunction with the Board, for the purpose of improving public health. The protocol agreement must include:

a. An effective date range; (7-1-18)

b. The geographical portion of the state where the protocol agreement is to be effective; and (7-1-18)

c. The drug name, class or category and protocol, formulary, or clinical guidelines that describe or limit a pharmacist’s authority to perform DTM or other patient care services. (7-1-18)

03. Prescribing Exemption. The general requirements set forth in Section 020 of these rules do not apply to collaborative agreements and statewide protocol agreements. (7-1-18)

201. – 999. (RESERVED)
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000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, 54-1755, and 54-1763, Idaho Code.

001. TITLE AND SCOPE.
In addition to the General Provisions set forth in IDAPA 27.01.01, “General Provisions,” the following title and scope shall apply to these rules:

01. Title. The title of this chapter is “Rules Governing Drug Compounding,” IDAPA 27, Title 01, Chapter 05.

02. Scope. The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to regulate and control drug compounding.

002. WRITTEN INTERPRETATIONS.
In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Board of Pharmacy office.

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.
Administrative proceedings and appeals are administered by the Board in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01, Subchapter B -- Contested Cases, Rules 100 through 800.

01. Place and Time for Filing. Documents in rulemakings or contested cases must be filed with the executive director of the Board at the Board office between the hours of 8 a.m. and 5 p.m., Mountain Time, Monday through Friday, excluding state holidays.

02. Manner of Filing. One (1) original of each document is sufficient for filing; however, the person or officer presiding over a particular rulemaking or contested case proceeding may require the filing of additional copies. A document may be filed with the Board by e-mail or fax if legible, complete, and received during the Board’s office hours. The filing party is responsible for verifying with Board staff that an e-mail or fax was successfully and legibly received.

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules.

005. BOARD OFFICE INFORMATION.

01. Street Address. The office is located at 1199 Shoreline Lane, Suite 303, Boise, Idaho.

02. Mailing Address. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0067.

03. Telephone Number. The telephone number is (208) 334-2356.

04. Fax Number. The fax number is (208) 334-3536.

05. Electronic Address. The website address is https://bop.idaho.gov.

06. Office Hours. The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday,
excluding state holidays. (7-1-18)

006. PUBLIC RECORDS ACT COMPLIANCE.
Board of Pharmacy records and filings are subject to compliance with the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (7-1-18)

007. OFFICIAL BOARD JOURNAL.
The official journal of the Board is the electronic Idaho State Board of Pharmacy Newsletter. A link to recent versions of the newsletter is posted on the Board’s website. Board licensees and registrants are presumed to have knowledge of the contents of the newsletter on the date of publication. The newsletter may be used in administrative hearings as proof of notification. (7-1-18)

008. – 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the definitions and abbreviations found at IDAPA 27.01.01.010 through 012 are applicable to these rules. (7-1-18)

011. – 099. (RESERVED)

100. COMPOUNDING DRUG PRODUCTS.
Any compounding that is not permitted herein is considered manufacturing. (7-1-18)

01. Application. This rule applies to any person, including any business entity, authorized to engage in the practice of non-sterile compounding, sterile compounding, and sterile prepackaging of drug products in or into Idaho, except these rules do not apply to:

a. Compound positron emission tomography drugs; (7-1-18)

b. Radiopharmaceutics; (7-1-18)

c. The reconstitution of a non-sterile drug or a sterile drug for immediate administration; (7-1-18)

d. The addition of a flavoring agent to a drug product; and (7-1-18)

e. Product preparation of a non-sterile, non-hazardous drug according to the manufacturer's FDA approved labeling. (7-1-18)

02. General Compounding Standards.

a. Active Pharmaceutical Ingredients. All active pharmaceutical ingredients must be obtained from an FDA registered manufacturer. FDA registration as a foreign manufacturer satisfies this requirement. (7-1-18)

b. Certificate of Analysis (COA). Unless the active pharmaceutical ingredient complies with the standards of an applicable USP-NF monograph, a COA must be obtained for all active pharmaceutical ingredients procured for compounding and retained for a period of not less than three (3) years from the date the container is emptied, expired, returned, or disposed of. The following minimum information is required on the COA:

i. Product name; (7-1-18)

ii. Lot number; (7-1-18)

iii. Expiration date; and (7-1-18)

iv. Assay. (7-1-18)

c. Equipment. Equipment and utensils must be of suitable design and composition and cleaned,
sanitized, or sterilized as appropriate prior to use.

\(\text{(7-1-18)}\)

d. Disposal of Compromised Drugs. When the correct identity, purity, strength, and sterility of ingredients and components cannot be confirmed (in cases of, for example, unlabeled syringes, opened ampoules, punctured stoppers of vials and bags, and containers of ingredients with incomplete labeling) or when the ingredients and components do not possess the expected appearance, aroma, and texture, they must be removed from stock and isolated for return, reclamation, or destruction.

\(\text{(7-1-18)}\)

\textbf{03. Prohibited Compounding.} Compounding any drug product for human use that the FDA has identified as presenting demonstrable difficulties in compounding or has withdrawn or removed from the market for safety or efficacy reasons is prohibited.

\(\text{(7-1-18)}\)

\textbf{04. Limited Compounding.}\(^\text{(7-1-18)}\)

\textbf{a. Triad Relationship.} A pharmacist may compound a drug product in the usual course of professional practice for an individual patient pursuant to an established prescriber/patient/pharmacist relationship and a valid prescription drug order.

\(\text{(7-1-18)}\)

\textbf{b. Commercially Available Products.} A drug product that is commercially available may only be compounded if not compounded regularly or in inordinate amounts and if:

\(\text{(7-1-18)}\)

i. It is medically warranted to provide an alternate ingredient, dosage form, or strength of significance; or

\(\text{(7-1-18)}\)

ii. The commercial product is not reasonably available in the market in time to meet the patient’s needs.

\(\text{(7-1-18)}\)

\textbf{c. Anticipatory Compounding.} Limited quantities of a drug product may be compounded or sterile prepackaged prior to receiving a valid prescription drug order based on a history of receiving valid prescription drug orders for the compounded or sterile prepackaged drug product.

\(\text{(7-1-18)}\)

\textbf{05. Drug Compounding Controls.}\(^\text{(7-1-18)}\)

\textbf{a. Policies and Procedures.} In consideration of the applicable provisions of USP 795 concerning pharmacy compounding of non-sterile preparations, USP 797 concerning sterile preparations, Chapter 1075 of the USP-NF concerning good compounding practices, and Chapter 1160 of the USP-NF concerning pharmaceutical calculations, policies and procedures for the compounding or sterile prepackaging of drug products must ensure the safety, identity, strength, quality, and purity of the finished product, and must include any of the following that are applicable to the scope of compounding practice being performed:

\(\text{(7-1-18)}\)

i. Appropriate packaging, handling, transport, and storage requirements;

\(\text{(7-1-18)}\)

ii. Accuracy and precision of calculations, measurements, and weighing;

\(\text{(7-1-18)}\)

iii. Determining ingredient identity, quality, and purity;

\(\text{(7-1-18)}\)

iv. Labeling accuracy and completeness;

\(\text{(7-1-18)}\)

v. Beyond use dating;

\(\text{(7-1-18)}\)

vi. Auditing for deficiencies, including routine environmental sampling, quality and accuracy testing, and maintaining inspection and testing records;

\(\text{(7-1-18)}\)

vii. Maintaining environmental quality control; and

\(\text{(7-1-18)}\)

viii. Safe limits and ranges for strength of ingredients, pH, bacterial endotoxins, and particulate matter.
b. **Accuracy.** Components including, but not limited to, bulk drug substances, used in the compounding or sterile prepackaging of drug products must be accurately weighed, measured, or subdivided, as appropriate. The amount of each active ingredient contained within a compounded drug product must not vary from the labeled potency by more than the drug product’s acceptable potency range listed in the USP-NF monograph for that product. If USP-NF does not publish a range for a particular drug product, the active ingredients must not contain less than ninety percent (90%) and not more than one hundred ten percent (110%) of the potency stated on the label.

(7-1-18)

c. **Non-Patient Specific Records.** Except for drug products that are being compounded or sterile prepackaged for direct administration, a production record of drug products compounded or sterile prepackaged in anticipation of receiving prescription drug orders or distributed in the absence of a patient specific prescription drug order (“office use”) solely as permitted in these rules, must be prepared and kept for each drug product prepared, including:

i. Production date;

(7-1-18)

ii. Beyond use date;

(7-1-18)

iii. List and quantity of each ingredient;

(7-1-18)

iv. Internal control or serial number; and

(7-1-18)

v. Initials or unique identifier of all persons involved in the process or the compounder responsible for the accuracy of these processes.

(7-1-18)

101. **STERILE PRODUCT PREPARATION.**

01. **Application.** In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products, these rules apply to all persons, including any business entity, engaged in the practice of sterile compounding and sterile prepackaging in or into Idaho.

(7-1-18)

02. **Dosage Forms Requiring Sterility.** The sterility of compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals must be maintained or the compounded drug product must be sterilized when prepared in the following dosage forms:

a. Aqueous bronchial and nasal inhalations, except sprays intended to treat bronchial mucosa only;

(7-1-18)

b. Baths and soaks for live organs and tissues;

(7-1-18)

c. Injections (for example, colloidal dispersions, emulsions, solutions, suspensions);

(7-1-18)

d. Irrigations for wounds and body cavities;

(7-1-18)

e. Ophthalmic drops and ointments; and

(7-1-18)

f. Tissue implants.

(7-1-18)

03. **Compounder Responsibilities.** Compounders and sterile prepackagers are responsible for ensuring that sterile products are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed, as well as prepared in a manner that maintains sterility and minimizes the introduction of particulate matter;

a. Unless following manufacturer’s guidelines or another reliable literature source, opened or partially used packages of ingredients for subsequent use must be properly stored as follows;

(7-1-18)
i. Opened or entered (such as needle-punctured) single-dose containers, such as bags, bottles, syringes, and vials of sterile products and compounded sterile products shall be used within one (1) hour if opened in non-sterile conditions, and any remaining contents must be discarded; (7-1-18)

ii. Single-dose vials needle-punctured in a sterile environment may be used up to six (6) hours after initial needle puncture; (7-1-18)

iii. Opened single-dose ampules shall not be stored for any time period; and (7-1-18)

iv. Multiple-dose containers (for example, vials) that are formulated for removal of portions on multiple occasions because they contain antimicrobial preservatives, may be used for up to twenty-eight (28) days after initial opening or entering, unless otherwise specified by the manufacturer; (7-1-18)

b. Water-containing compounded sterile products that are non-sterile during any phase of the compounding procedure must be sterilized within six (6) hours after completing the preparation in order to minimize the generation of bacterial endotoxins; (7-1-18)

c. Food, drinks, and materials exposed in patient care and treatment areas shall not enter ante-areas, buffer areas, or segregated areas where components and ingredients of sterile products are prepared. (7-1-18)

04. Environmental Controls. Except when prepared for immediate administration, the environment for the preparation of sterile products in a drug outlet must be in an isolated area, designed to avoid unnecessary traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. (7-1-18)

a. Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every six (6) months or if relocated. (7-1-18)

b. Filters must be inspected and replaced in accordance with the manufacturer’s recommendations. (7-1-18)

05. Sterile Product Preparation Equipment. A drug outlet in which sterile products are prepared must be equipped with at least the following: (7-1-18)

a. Protective apparel including gowns, masks, and sterile (or the ability to sterilize) non-vinyl gloves, unless the PIC can provide aseptic isolator manufacturer’s written documentation that any component of garbing is not required; (7-1-18)

b. A sink with hot and cold water in close proximity to the hood; (7-1-18)

c. A refrigerator for proper storage of additives and finished sterile products prior to delivery when necessary; and (7-1-18)

d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet. (7-1-18)

06. Documentation Requirements. The following documentation must also be maintained by a drug outlet in which sterile products are prepared: (7-1-18)

a. Justification of beyond use dates assigned, pursuant to direct testing or extrapolation from reliable literature sources; (7-1-18)

b. Training records, evidencing that personnel are trained on a routine basis and are adequately skilled, educated, and instructed; (7-1-18)

c. Audits appropriate for the risk of contamination for the particular sterile product including: (7-1-18)
i. Visual inspection to ensure the absence of particulate matter in solutions, the absence of leakage from bags and vials, and the accuracy of labeling with each dispensing; (7-1-18)

ii. Periodic hand hygiene and garbing competency; (7-1-18)

iii. Media-fill test procedures (or equivalent), aseptic technique, and practice related competency evaluation at least annually by each compounder or sterile prepackager; (7-1-18)

iv. Environmental sampling testing at least upon registration of a new drug outlet, following the servicing or re-certification of facilities and equipment, or in response to identified problems with end products, staff techniques or patient-related infections, or every six (6) months, including:

   (1) Total particle counts;
   (2) Viable air sampling;
   (3) Gloved fingertip sampling;
   (4) Surface sampling;
   (5) Sterility testing of high risk batches of more than twenty-five (25) identical packages (ampules, bags, vials, etc.) before dispensing or distributing;

   d. Temperature, logged daily;
   e. Beyond use date and accuracy testing, when appropriate; and
   f. Measuring, mixing, sterilizing, and purification equipment inspection, monitoring, cleaning, and maintenance to ensure accuracy and effectiveness for their intended use. (7-1-18)

07. Policies and Procedures. Policies and procedures appropriate to the practice setting must be adopted by a drug outlet preparing sterile pharmaceutical products and must include a continuous quality improvement program for monitoring personnel qualifications and training in sterile technique, including:

   a. Antiseptic hand cleansing;
   b. Disinfection of non-sterile compounding surfaces;
   c. Selecting and appropriately donning protective garb;
   d. Maintaining or achieving sterility of sterile products while maintaining the labeled strength of active ingredients;
   e. Manipulating sterile products aseptically, including mixing, diluting, purifying, and sterilizing in the proper sequence;
   f. Choosing the sterilization method, pursuant to the risk of a contamination of particular compounded sterile product; and
   g. Inspecting for quality standards before dispensing or distributing. (7-1-18)

102. Hazardous Drugs Preparation. In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products and Sterile Product Preparation, these rules apply to all persons, including any business entity, engaged in the practice of compounding or sterile prepackaging with hazardous drugs. Such persons must:

   01. Ventilation. Ensure the storage and compounding areas have sufficient general exhaust ventilation
to dilute and remove any airborne contaminants. (7-1-18)

02. **Ventilated Cabinet.** Utilize a ventilated cabinet designed to reduce worker exposures while preparing hazardous drugs. (7-1-18)

   a. Sterile hazardous drugs must be prepared in a dedicated Class II biological safety cabinet or a barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets; (7-1-18)

   b. When asepsis is not required, a Class I BSC, powder containment hood or an isolator intended for containment applications may be sufficient. (7-1-18)

   c. A ventilated cabinet that re-circulates air inside the cabinet or exhausts air back into the room environment is prohibited, unless:

      i. The hazardous drugs in use will not volatilize while they are being handled; or (7-1-18)

      ii. The PIC can provide manufacturer written documentation attesting to the safety of such ventilation. (7-1-18)

03. **Clear Identification.** Clearly identify storage areas, compounding areas, containers, and prepared doses of hazardous drugs. (7-1-18)

04. **Labeling.** Label hazardous drugs with proper precautions, and dispense them in a manner to minimize risk of hazardous spills. (7-1-18)

05. **Protective Equipment and Supplies.** Provide and maintain appropriate personal protective equipment and supplies necessary for handling hazardous drugs, spills and disposal. (7-1-18)

06. **Contamination Prevention.** Unpack, store, prepackage, and compound hazardous drugs separately from other inventory in a restricted area in a manner to prevent contamination and personnel exposure until hazardous drugs exist in their final unit dose or unit-of-use packaging. (7-1-18)

07. **Compliance With Laws.** Comply with applicable local, state, and federal laws including for the disposal of hazardous waste. (7-1-18)

08. **Training.** Ensure that personnel working with hazardous drugs are trained in hygiene, garbing, receipt, storage, handling, transporting, compounding, spill control, clean up, disposal, dispensing, medical surveillance, and environmental quality and control. (7-1-18)

09. **Policy and Procedures Manual.** Maintain a policy and procedures manual to ensure compliance with this rule. (7-1-18)

103. **OUTSOURCING FACILITY.**


02. **Adverse Event Reports.** Outsourcing facilities must submit a copy of all adverse event reports submitted to the secretary of Health and Human Services in accordance with the content and format requirement established in Section 310.305 of Title 21 of the Code of Federal Regulations to the Board. (7-1-18)

03. **Policies and Procedures.** An outsourcing facility must adopt policies and procedures for maintaining records pertaining to compounding, process control, labeling, packaging, quality control, distribution, complaints, and any information required by state or federal law. (7-1-18)

104. **LABELING: DISTRIBUTED COMPOUNDED DRUG PRODUCT.**
Compounded and sterile prepackaged drug product distributed in the absence of a patient specific prescription drug order, solely as permitted for outsourcing facilities and pharmacies herein, must be labeled with the following information:

01. **Drug Name.** The name of each drug included.  

02. **Strength or Concentration.** The strength or concentration of each drug included.  

03. **Base or Diluents.** If a sterile compounded drug product, the name and concentration of the base or diluents.  

04. **Administration.** If applicable, the dosage form or route of administration.  

05. **Quantity.** The total quantity of the drug product.  

06. **Expiration Date.** The expiration or beyond use date.  

07. **Compounder Identifier.** The initials or unique identifier of the compounder responsible for the accuracy of the drug product.  

08. **Resale Prohibited.** Resale is prohibited and products must be labeled as follows: 

   a. A pharmacy that is distributing, the statement: “not for further dispensing or distribution;” and  

   b. An outsourcing facility, the statement: “not for resale.”  

09. **Instructions, Cautions, and Warnings.** Handling, storage or drug specific instructions, cautionary information, and warnings as necessary or appropriate for proper use and patient safety.  

105. – 999. (RESERVED)
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000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, 54-1755, and 54-1763, Idaho Code.

001. TITLE AND SCOPE.
In addition to the General Provisions set forth in IDAPA 27.01.01, “General Provisions,” the following title and scope shall apply to these rules:

01. Title. The title of this chapter is “Rules Governing DME, Manufacturing, and Distribution,” IDAPA 27, Title 01, Chapter 06.

02. Scope. The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to regulate and control drug manufacturing and distribution.

002. WRITTEN INTERPRETATIONS.
In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Board of Pharmacy office.

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.
Administrative proceedings and appeals are administered by the Board in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01, Subchapter B -- Contested Cases, Rules 100 through 800.

01. Place and Time for Filing. Documents in rulemakings or contested cases must be filed with the executive director of the Board at the Board office between the hours of 8 a.m. and 5 p.m., Mountain Time, Monday through Friday, excluding state holidays.

02. Manner of Filing. One (1) original of each document is sufficient for filing; however, the person or officer presiding over a particular rulemaking or contested case proceeding may require the filing of additional copies. A document may be filed with the Board by e-mail or fax if legible, complete, and received during the Board’s office hours. The filing party is responsible for verifying with Board staff that an e-mail or fax was successfully and legibly received.

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules.

005. BOARD OFFICE INFORMATION.
01. Street Address. The office is located at 1199 Shoreline Lane, Suite 303, Boise, Idaho.
02. Mailing Address. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0067.
03. Telephone Number. The telephone number is (208) 334-2356.
04. Fax Number. The fax number is (208) 334-3536.
05. Electronic Address. The website address is https://bop.idaho.gov.
06. Office Hours. The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday.
excluding state holidays. 

006. PUBLIC RECORDS ACT COMPLIANCE.
Board of Pharmacy records and filings are subject to compliance with the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. 

007. OFFICIAL BOARD JOURNAL.
The official journal of the Board is the electronic Idaho State Board of Pharmacy Newsletter. A link to recent versions of the newsletter is posted on the Board’s website. Board licensees and registrants are presumed to have knowledge of the contents of the newsletter on the date of publication. The newsletter may be used in administrative hearings as proof of notification. 

008. – 009. (RESERVED) 

010. DEFINITIONS AND ABBREVIATIONS.
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the definitions and abbreviations found at IDAPA 27.01.01.010 through 012 are applicable to these rules. 

011. – 019. (RESERVED) 

020. DME OUTLET STANDARDS.

01. Policies and Procedures. A DME outlet must adopt policies and procedures that establish:

a. Operational procedures for the appropriate provision and delivery of equipment; 

b. Operational procedures for maintenance and repair of equipment; and 

c. Recordkeeping requirements for documenting the acquisition and provision of products. 

02. Sale of Specified Prescription Drugs. Registered DME outlets may hold for sale at retail the following prescription drugs:

a. Pure oxygen for human application; 

b. Nitrous oxide; 

c. Sterile sodium chloride; and 

d. Sterile water for injection. 

03. Prescriber’s Order Required. Prescription drugs and devices may only be sold or delivered by a DME outlet upon the lawful order of a prescriber. 

021. -- 029. (RESERVED) 

030. DRUG DISTRIBUTION.

01. Authorized Distributors. The following drug outlets may distribute legend drugs in or into Idaho, in compliance with these rules, pursuant to the following restrictions:

a. A licensed or registered wholesale distributor and a registered manufacturer in compliance with the Idaho Wholesale Distribution Act and the Idaho Pharmacy Act; 


c. A dispenser without being licensed or registered as a wholesale distributor according to the following restrictions: (7-1-18)
   i. A dispenser may distribute to authorized recipients for an emergency medical purpose in which an alternative source for a drug is not reasonably available in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining a drug. The amount of the drug distributed in an emergency must not reasonably exceed the amount necessary for immediate use; (7-1-18)
   ii. A dispenser may distribute intracompany to any division, subsidiary, parent, affiliated or related company under common ownership and control of a corporate entity; (7-1-18)
   iii. A dispenser may distribute to another dispenser pursuant to a sale, transfer, merger or consolidation of all or a part of a dispenser, whether accomplished as a sale of stock or business assets; (7-1-18)
   iv. A dispenser may distribute compound positron emission tomography drugs or radiopharmaceutics, if in compliance with applicable federal law; and (7-1-18)
   v. A dispenser may distribute minimal quantities of prescription drugs to a prescriber for in-office administration, including the distribution of compounded drug product in the absence of a patient specific prescription drug order if:
      (1) The compounded drug product is not sterile and not intended to be sterile; (7-1-18)
      (2) The compounded drug product is not further dispensed or distributed by the practitioner; and (7-1-18)
      (3) The quantity of compounded drug product distributed is limited to five percent (5%) of the total number of compounded drug products dispensed and distributed on an annual basis by the dispenser, which may include a drug compounded for the purpose of, or incident to, research, teaching or chemical analysis. (7-1-18)

02. Distribution. Unless statutorily exempted, an authorized distributor must furnish:
   a. Drug product only to a person licensed by the appropriate state licensing agency to dispense, conduct research with or independently administer such drugs; (7-1-18)
   b. Scheduled controlled substances only to a person who has been issued a valid controlled substance registration by the DEA and the Board, unless exempt by state or federal law; (7-1-18)
   c. Federally required transaction documentation, including transaction information, transaction history, and transaction statements with each distribution; and (7-1-18)
   d. Drug product only to the registered address of the authorized receiving person. Delivery to a hospital pharmacy receiving area satisfies this requirement, provided that authorized receiving personnel sign for receipt at the time of delivery. (7-1-18)

03. Controlled Substance Distribution Invoice. Distributions must be pursuant to an invoice and not a prescription drug order. For controlled substances, each dispenser must retain a signed receipt of the distribution that includes at least:
   a. The date of the transaction; (7-1-18)
   b. The name, address, and DEA registration number of the distributing dispenser; (7-1-18)
   c. The name, address, and DEA registration number of the receiving dispenser; (7-1-18)
   d. The drug name, strength, and quantity for each product distributed; and (7-1-18)
04. Monitoring Purchase Activity. An authorized distributor must have adequate processes in place for monitoring purchase activity of customers and identifying suspicious ordering patterns that identify potential diversion or criminal activity related to controlled substances such as orders of unusual size, orders deviating substantially from a normal pattern, orders for drugs that are outside of the prescriber’s scope of practice, and orders of unusual frequency.

05. Reporting. An authorized distributor must report specified data on controlled substances distributed at least monthly to the Board in a form and manner prescribed by the Board, except when distributing intracompany.

06. Prohibited Acts. The following acts are prohibited:

a. Distribution of any drug product that is adulterated, misbranded, counterfeit, expired, damaged, recalled, stolen, or obtained by fraud or deceit; and

b. Failing to obtain a license or registration when one is required to distribute in or into Idaho.

031. -- 039. (RESERVED)

040. WHOLESALE: STANDARDS.
These wholesaler rules establish the minimum standards for the storage and handling of drugs by wholesalers and their officers, designated representative, agents, and employees and for the establishment and maintenance of records required for persons engaged in wholesale drug distribution.

041. WHOLESALE: FACILITY REQUIREMENTS.
Facilities where drugs are stored, warehoused, handled, held, offered, marketed, or displayed for wholesale distribution must:

01. Minimum Physical Standards. Be of suitable size, construction, and location to accommodate cleaning, maintenance, and proper operations;

02. Minimum Environmental Standards. Have adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

03. Quarantine Area. Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated or that are in immediate or sealed secondary containers that have been opened;

04. Maintenance Requirements. Be maintained in a clean and orderly condition; and

05. Pest Controls. Be free from infestation by insects, rodents, birds, or vermin of any kind.

042. WHOLESALE: FACILITY SECURITY.
Facilities used for wholesale drug distribution must be secure from unauthorized entry, as follows:

01. Access from Outside. Access from outside the premises must be kept to a minimum and well controlled;

02. Perimeter Lighting. The outside perimeter of the premises must be well lighted;

03. Authorized Entry. Entry into areas where drugs are held must be limited to authorized personnel;
04. **Alarm Systems.** Facilities must be equipped with an alarm system to detect entry after hours; and (7-1-18)

05. **Security Systems.** Facilities must be equipped with security systems sufficient to protect against theft, diversion, and record tampering. (7-1-18)

043. **WHOLESALER: DRUG STORAGE REQUIREMENTS.**

Drugs must be stored at temperatures and under conditions required by the labeling of the drugs, if any, or by current requirements of the USP-NF, to preserve product identity, strength, quality, and purity. Temperature and humidity recording equipment, devices, or logs must document proper storage of drugs. (7-1-18)

044. **WHOLESALER DRUG SHIPMENT INSPECTION REQUIREMENTS.**

01. **Examination on Receipt.** Each shipping container must be visually examined on receipt for identity and to avoid acceptance of drugs that are contaminated or otherwise unfit for distribution. (7-1-18)

02. **Outgoing Shipment Inspections.** Outgoing shipments must be inspected to verify the accuracy and product integrity of the shipment contents. (7-1-18)

045. **WHOLESALER: QUARANTINE.**

Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated must be physically separated from other drugs in a designated quarantine area until destroyed or returned to the original manufacturer or third party returns processor. (7-1-18)

01. **Container Adulteration.** Used drugs and those whose immediate or sealed outer or sealed secondary containers have been opened are adulterated and must be quarantined. (7-1-18)

02. **Other Conditions Requiring Quarantine.** Drugs must be quarantined under any condition that causes doubt as to a drug’s safety, identity, strength, quality, or purity unless under examination, testing, or other investigation the drug is proven to meet required standards. (7-1-18)

046. **WHOLESALER: RECORDKEEPING REQUIREMENTS.**

Wholesalers and other entities engaged in wholesale drug distribution must establish and maintain inventories and records of transactions pertaining to the receipt and distribution or other disposition of drugs (7-1-18)

01. **Record Contents.** The records must include at least: (7-1-18)

  a. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped; (7-1-18)

  b. The identity and quantity of the drugs received and distributed or disposed of; and (7-1-18)

  c. The dates of receipt and distribution or other disposition of the drugs. (7-1-18)

02. **Records Maintenance.** Records may be maintained in an immediately retrievable manner at the inspection site or in a readily retrievable manner at a central location. (7-1-18)

047. **WHOLESALER: PERSONNEL.**

01. **Responsible Person Designees.** A wholesaler must establish and maintain a list of officers, directors, managers, a designated representative, and other persons responsible for wholesale drug distribution, storage, and handling and must include a description of each individual’s duties and a summary of their qualifications. (7-1-18)

02. **Adequate Personnel.** A wholesaler must employ personnel in sufficient numbers and with adequate education, training, and experience to safely and lawfully engage in wholesale drug distribution activities. (7-1-18)
03. **Designated Representative Continuing Education.** A wholesaler’s designated representative must complete training and continuing education on state and federal laws pertaining to wholesale distribution of prescription drugs provided by qualified in-house specialists, outside counsel, or consulting specialists with capabilities to help ensure compliance. (7-1-18)

048. **WHOLESALER: POLICIES AND PROCEDURES.**

Wholesalers must adopt policies and procedures for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, for correcting errors and inaccuracies in inventories, and as necessary to ensure compliance with the following:

01. **Distribution of Oldest Approved Stock First.** The oldest approved stock of a drug product must be distributed first except if extraordinary circumstances require a temporary deviation. (7-1-18)

02. **Recalls and Withdrawals.** Drugs must be recalled or withdrawn upon:

   a. A request by the FDA or other local, state, or federal law enforcement or other government agency, including the Board; (7-1-18)

   b. A voluntary action by a manufacturer to remove defective or potentially defective drugs from the market; or (7-1-18)

   c. An action undertaken to promote public health and safety by replacing existing merchandise with an improved product or a new package design. (7-1-18)

03. **Crisis Preparation.** Wholesalers must prepare for, protect against, and competently handle a crisis affecting the security or operation of a facility, including a fire, flood, or other natural disaster, a strike, or other situations of local, state, or national emergency. (7-1-18)

049. **RESERVED**

050. **DRUG MANUFACTURERS.**

These rules are applicable to drug manufacturers located within the state of Idaho. Non-resident manufacturers engaged in wholesale drug distribution in or into Idaho must comply with the Idaho Wholesale Drug Distribution Act and rules, as applicable. (7-1-18)

01. **Standards.** A manufacturer must ensure compliance with the federal “Current Good Manufacturing Practice” requirements. (7-1-18)

02. **Records.** A manufacturer must adopt policies and procedures for maintaining records pertaining to production, process control, labeling, packaging, quality control, distribution, complaints, and any information required by state or federal law. (7-1-18)

051. **RESERVED**
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