

Dear Senators LODGE, Broadsword & LeFavour, and  
Representatives BLOCK, Nielsen & Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed  
rules of the Dept. of Health & Welfare:

IDAPA 16.02.11 - Immunization Requirements for Children Attending Licensed

Daycare Facilities (Docket No. 16-0211-1001)

16.02.15 - Immunization Requirements for Idaho School Children

(Docket No. 16-0215-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by  
the co-chairmen or by two (2) or more members of the subcommittee giving oral or written  
notice to Research and Legislation no later than fourteen (14) days after receipt of the rules'  
analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no  
later than 10-22-10. If a meeting is called, the subcommittee must hold the meeting within forty-  
two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a  
meeting on the enclosed rules is 11-22-10.

The germane joint subcommittee may request a statement of economic impact with  
respect to a proposed rule by notifying Research and Legislation. There is no time limit on  
requesting this statement, and it may be requested whether or not a meeting on the proposed rule  
is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the  
address or FAX number indicated on the memorandum attached.



# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

Jeff Youtz  
Director

## MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker **PAP**

DATE: October 4, 2010

SUBJECT: Department of Health and Welfare - IDAPA 16.02.11 - Immunization Requirements for Children Attending Licensed Daycare Facilities (Docket No. 16-0211-1001)(Proposed); and IDAPA 16.02.15 - Immunization Requirements for Idaho School Children (Docket No. 16-0215-1001) (Proposed)

The Department submits two proposed rules (collectively, "proposed rules") dealing with immunization requirements: Docket No. 16-0211-1001, dealing with immunization requirements for children attending licensed daycare facilities (hereinafter "daycare rule") and Docket No. 16-0215-1001, dealing with the immunization requirements for Idaho school children (hereinafter "school rule"). According to the Department, the proposed rules are authorized pursuant to section 39-1118, Idaho Code, which provides, at subsection (1), that the immunizations required and the manner and frequency of their administration shall be prescribed by the Board of Health and Welfare and shall conform to recognized standard medical practices in the state. That subsection also requires the Board to promulgate rules for the enforcement of the required immunization program and specifies reporting requirements of daycare facilities. However, section 39-1118 does not address immunizations for children attending schools. That is provided for in section 39-4801, Idaho Code, which vests the Board with the authority to prescribe the immunizations required and the manner and frequency of the administration for children attending preschool and kindergarten through twelve of any public, private or parochial school.

The purpose of the proposed rules is to increase the number of vaccines required for children attending licensed daycare facilities and schools in Idaho. The Department states that the proposed rules will help protect children from additional vaccine-preventable diseases, provide a conditional admission clause for children who are in the process of receiving required vaccines, provide clarification of exclusion of children from attendance and update existing language to match current practices.

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

According to the Department, no fee or charge is imposed by the proposed rules. The Department states that there is no anticipated impact to the general fund greater than \$10,000 during the fiscal year as a result of the proposed rules. According to the Department, negotiated rulemaking was conducted with the Idaho Public Health Districts, Idaho Medical Association, American Academy of Pediatrics - Idaho chapter, American Academy of Family Physicians - Idaho chapter and the Idaho Immunization Coalition. The daycare rule included negotiated rulemaking with the IdahoSTARS and the Idaho Child Care Program staff, while the school rule included negotiated rulemaking with the State Board of Education, Idaho School Boards Association, Idaho State Department of Education, School Nurses Association of Idaho, Head Start - Friends of Family and Children, and Meridian Joint District No. 2 - Nursing Services.

According to the Department, public hearings concerning this rulemaking were held in Boise on September 9th, Idaho Falls on September 14th and Lewiston on September 16<sup>th</sup>. The Department states that all written comments must be delivered to the Department on or before September 22, 2010.

## ANALYSIS

Most of the changes in both the daycare rule and the school rule result in nearly identical language. The major differences between these rules lie in the different setting (daycare vs. school) and the age of the child (less than 13 years of age for the daycare rule vs. enrollment is school, preschool, kindergarten through grade twelve for the school rule). The daycare rule has an additional section on exclusion criteria, documentation and retention of immunization records, inspections, enforcement and technical assistance.

Some changes are common to the daycare and school rules. "Parent" replaces "legal parent" throughout. The broader "licensed health care professional" (including medical doctors, osteopaths, nurse practitioners, physicians' assistants, licensed professional nurses, registered nurses and pharmacists) replaces "physician." The daycare rule has adopted the term "immunization record" in place of "immunization document," which is consistent with the usage in the school rule.

Incorporated by reference in both proposed rules are the Recommended Immunization Schedules for Persons Aged 0 Through 18 Years - United States 2010," which are referred to as the "Advisory Committee on Immunization Practices (ACIP) Recommended Schedules." Sections 004.

The daycare rule changes the definition of "child" from a person less than twelve years of age to a person less than thirteen years of age. Daycare rule, section 010.04. Either through addition or amendment, the proposed rules provide identical definitions for the following terms: "immunization record," "laboratory proof," "licensed health care professional," "physician," and "regulatory authority" [director of the Department]. Both proposed rules delete the definition of "pertussis." The daycare chapter deletes the definition of "immunization document."

Both proposed rules require that immunizations be administered age appropriately according to the ACIP Recommended Schedules, unless fewer doses are medically recommended by a physician. Sections 100.

Specific dosage requirements are deleted from the daycare rule. Added to the daycare rule are vaccines for Rubella (MMR), Varicella, Pneumococcal, Rotavirus, and Hepatitis A.

The school rule distinguishes vaccine requirement based on date of birth and school grade.

- For children born on or before September 1, 1999, the minimum immunization requirements prior to admission are: one dose of Measles, Mumps and Rubella (MMR); four doses of Diphtheria, Tetanus, Pertussis (DTaP); three doses of Polio; and three doses of Hepatitis B.
- For children born after September 1, 1999, through September 1, 2005, the minimum preadmission immunization requirements are: five doses of Diphtheria, Tetanus and Pertussis (DTaP); three doses of Polio; and three doses of Hepatitis B.
- For children born after September 1, 2005, the required immunizations are: two doses of Measles, Mumps and Rubella (MMR); five doses of Diphtheria, Tetanus and Pertussis (DTaP); four doses of Polio; three doses of Hepatitis; two doses of Hepatitis A; and two doses of Varicella.
- Effective with the 2011-2012 school year, prior to admission to the seventh grade (and higher grades in succeeding years), are: one dose of Tetanus, Diphtheria, Pertussis Booster (Tdap); and one dose of Meningococcal. These are in addition to the other required immunizations.

These requirements are also set forth in table format. Section 100.

The evidence of immunization status in both proposed rules is parallel. The parent, custodian or guardian must present an immunization record, defined as “an electronic medical record, an immunization registry document, or a written immunization certificate confirmed by a licensed health care professional or a physician’s representative which states the month, day and year of each immunization a person has received.” The definition incorporates the “certification statement” that is no longer used. Sections 102.01.

A child who has received at least one dose of each required vaccine and is currently on schedule for subsequent immunizations may conditionally attend daycare/school when a schedule of intended immunizations form is provided. The daycare/school must have a schedule of intended immunizations form completed by a parent, custodian or guardian for any child who is not immunized, excepted, or exempted and who is in the process of receiving, or is scheduled to receive, the required immunizations. Information required to be on the schedule of intended immunizations form includes the child’s date of birth, the dates of scheduled immunizations to be administered, and the signature of the licensed health care professional providing care to the child. Sections 102.02.

The proposed rules clarify that if the child has laboratory proof of immunity to one of the listed childhood diseases, the child will not be required to receive the required immunization for which the child is immune. Sections 105.01. The exception for diagnosed diseases requires a statement signed by a licensed health care professional stating that the child has had varicella (chicken pox). Chickenpox replaces measles (rubeola) or mumps as the only disease that qualifies for the diagnosis exception. Section 105.02.

The religious exception to the immunization requirement has been modified in the proposed rules by requiring the form provided by the Department (deleting an optional one containing similar information) and requiring date of birth be included on the form. Sections 110.02.

Both the daycare and school rules provide that the regulatory authority may exclude any child who does not meet the requirements in the respective chapter and who has not been otherwise excluded. Daycare rule, section 310.01; school rule, section 150.01. Both rules provide that a child exempted under that rule may be excluded by the regulatory authority in the event of a disease outbreak under the Department's reportable disease rule. Daycare rule, section 150.02; school rule, section 150.03.

The daycare rule contains some additional changes. The daycare rule adds new section 150 on exclusion criteria that requires that a child must be excluded by the daycare operator if one of five conditions is met: received fewer than the required number of doses; failed to continue to receive the required immunizations; received one or more doses at less than the minimum interval or less than the minimum age; not received any doses of the required immunization and does not have a valid exception or exemption; or no immunization record on file at the daycare facility. Section 150.01. Under the daycare rule, the immunization record must be retained by the daycare facility for each child for one year after the last attendance. Section 200.02.

## **SUMMARY**

The Department's daycare rule appears to be authorized under section 39-1118, Idaho Code; The Department's school rule appears to be authorized under section 39-4801, Idaho Code.

cc: Department of Health and Welfare: Tamara Prisock and Rebecca Coyle

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

**16.02.11 - IMMUNIZATION REQUIREMENTS FOR CHILDREN  
ATTENDING LICENSED DAYCARE FACILITIES**

**DOCKET NO. 16-0211-1001**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-1118, Idaho Code.

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

<b>Thursday, September 9, 2010 6:00 p.m. MDT</b>	<b>Tuesday, September 14, 2010 6 p.m. MDT</b>	<b>Thursday, September 16, 2010 6:00 p.m. PDT</b>
<b>Central District Health Dept. 707 N Armstrong Place Immunization Lobby Boise, ID</b>	<b>Eastern ID Public Health Dept. 1250 Hollipark Dr. North Conf. Rm Idaho Falls, ID</b>	<b>Red Lion Hotel 621 21st Street Port One - Conf. Rm. Lewiston, ID</b>

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

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

In an effort to increase the number of children who are fully protected from preventable diseases, the Department is amending these rules to increase the number of vaccines required for children attending licensed daycare facilities. The changes to these rules will help protect children from additional vaccine-preventable diseases, provide a conditional attendance clause for children who are in the process of receiving required vaccines, provide clarification on exclusion of children from attendance, and update existing language to match current practices. Parents who choose not to immunize their children will still be able to sign an exemption form for medical, religious, or other reasons.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking has no anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with the following: Idaho Public Health Districts, Idaho Medical Association (IMA), American Academy of Pediatrics - Idaho chapter, American Academy of Family Physicians - Idaho chapter, IdahoSTARS, Idaho Child Care Program staff (ICCP), and the Idaho Immunization Coalition.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the "Recommended Immunization Schedules for Persons Aged 0 through 18 Years -- United States, 2010," is being incorporated by reference into these rules because it contains the national standard for immunization schedules and is regularly updated to reflect best practices and to give it the force and effect of law. The document is not being republished in this chapter of rules due to its length and format and because of the cost of republication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rebecca Coyle at (208) 334-5942.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED RULE TEXT FOR DOCKET NO. 16-0211-1001**

**004. INCORPORATION BY REFERENCE.**

~~No documents have been incorporated by reference in this chapter of rules.~~ The “Recommended Immunization Schedules for Persons Aged 0 Through 18 Years -- United States, 2010,” are incorporated by reference for this chapter of rules. Published in the Morbidity and Mortality Weekly Report, January 8, 2010, Vol. 58 (51 and 52), by the Centers for Disease Control and Prevention as recommended by the Advisory Committee on Immunization Practices (ACIP). This document is referred to in this chapter of rules as “ACIP Recommended Schedule.” These schedules may be obtained from the Department or viewed online at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5851a6.htm>. (4-6-05)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

- 01. ACIP.** The Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices. (4-6-05)(\_\_\_\_)
- 02. Board.** The Idaho State Board of Health and Welfare. (12-31-91)
- 03. Board of Medicine.** The Idaho State Board of Medicine. (5-24-91)
- 04. Child.** A person less than ~~twelve~~ thirteen (1~~2~~3) years of age, as defined in Section 39-1102, Idaho Code. (5-24-91)(\_\_\_\_)
- 05. Department.** The Idaho Department of Health and Welfare. (5-24-91)
- 06. Director.** The Director of the Idaho Department of Health and Welfare, or designated individual. (12-31-91)
- ~~**07. Immunization Document.** A medical or other written record initiated and retained by a licensed daycare facility which gives the month, day and year of each immunization a child has received. (5-24-91)~~
- 087. Immunization Record.** An electronic medical health record, an immunization registry document, or a written ~~document signed~~ immunization certificate confirmed by a ~~physician~~ licensed health care professional or a physician’s representative which states the month, day, and year of each immunization a person has received. (5-24-91)(\_\_\_\_)
- 098. Initial Attendance.** The first admission of a child to any licensed daycare facility in Idaho. (5-24-91)
- 409. Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of test performed, the date of each test and the results, accompanied by a physician’s statement indicating the child is

immune. Tests performed must meet the requirements ~~of~~ in IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." (4-6-05)(\_\_\_\_)

**140. Licensed Daycare Facility.** Any Idaho daycare facility maintained by an individual, organization or corporation and licensed by an authorized governmental entity to provide care to children. (5-24-91)

**121. Licensed Daycare Facility Operator.** Any person who owns and operates or is designated by an individual, organization or corporation to manage the day-to-day operation of a licensed daycare facility described in Subsection 010.10 of these rules. (4-6-05)

**12. Licensed Health Care Professional.** A practitioner, licensed in the State of Idaho by the Board overseeing the practitioner's license, or by a similar body in another state or jurisdiction within the United States. The practitioner's scope of practice for licensure must allow for the ordering of immunizations and writing of prescriptions, or the practitioner must be under the direction of a licensed physician. Licensed health care professionals who may provide for immunization requirements include: medical doctors, osteopaths, nurse practitioners, physicians' assistants, licensed professional nurses, registered nurses, and pharmacists. Other persons authorized by law to practice any of the healing arts, shall not be considered licensed health care professionals for the purposes of this chapter. (\_\_\_\_)

**13. Parent, Custodian, or Guardian.** The legal parent, custodian, or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (5-24-91)

~~**14. Pertussis.** An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough. (4-6-05)~~

~~**154. Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States, to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine. (4-6-05)(\_\_\_\_)~~

**165. Physician's Representative.** Any person appointed by or vested with the authority to act on behalf of a physician in matters concerning health. (5-24-91)

**176. Regulatory Authority.** The Director of the Idaho Department of Health and Welfare or the Director's designee. (5-24-91)

**011. -- 099. (RESERVED).**

**100. IMMUNIZATION ~~PROGRAM~~ REQUIREMENTS.**

All immunizations listed in Subsections 100.01 through 100.059 of these rules, are required of children who ~~are to~~ attend licensed daycare facilities. These immunizations must be administered age appropriately according to the "General ACIP Recommendations on Immunizations Schedule," ~~established by the ACIP~~ incorporated by reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These recommendations are available from the Department. (4-6-05)(\_\_\_\_)

~~**01. Diphtheria, Tetanus and A-Cellular Pertussis (DTaP) Vaccine.** *Five (5) doses of DTaP (Diphtheria, Tetanus and a cellular Pertussis) vaccine are required and must be administered to the child unless fewer doses are medically recommended.* (4-6-05)(\_\_\_\_)~~

~~**02. Polio Vaccine.** *Three (3) doses of polio vaccine are required and must be administered to the child unless fewer doses are medically recommended. See Section 110 of these rules.* (4-6-05)(\_\_\_\_)~~

~~**03. Measles, ~~Rubella~~ and Mumps, and Rubella (MMR) Vaccine.** *Two (2) doses of measles, rubella and mumps vaccine are required and must be administered to the child according to ACIP recommendations.* (4-6-05)(\_\_\_\_)~~

~~**04. Haemophilus Influenza Type B (HIB) Vaccine.** *Haemophilus influenza type b (HIB) vaccine is required and must be administered to the child according to ACIP recommendations.* (4-6-05)(\_\_\_\_)~~

05. **Hepatitis B Vaccine.** ~~Three (3) doses of hepatitis B vaccine administered to children born after November 22, 1991, unless fewer doses are medically recommended. See Section 110 of these rules. (4-6-05)( )~~

06. **Varicella Vaccine.** ( )

07. **Pneumococcal Vaccine.** ( )

08. **Rotavirus Vaccine.** ( )

09. **Hepatitis A Vaccine.** ( )

101. **TIME PERIOD FOR COMPLIANCE.**

The ~~legal~~ parent, custodian, or guardian of a child must comply with the provisions contained in this chapter within fourteen (14) days of initial attendance to any licensed daycare facility in Idaho. (4-6-05)( )

102. **EVIDENCE OF IMMUNIZATION STATUS.**

01. **Immunization ~~Certification Statement~~ Record.** Within the deadlines established in Section 101 of these rules, a ~~legal~~ parent, custodian, or guardian of each child must present to the licensed daycare facility operator an immunization record ~~or certification statement signed by a physician or a physician's representative stating the type, number and dates of immunizations received.~~ (4-6-05)( )

02. **Schedule of Intended Immunizations Form.** A child who has received at least one (1) dose of each required vaccine and is currently on schedule for subsequent immunizations may conditionally attend daycare when a schedule of intended immunizations form is provided. The licensed daycare facility operator, ~~within fourteen (14) days of initial attendance,~~ must have a ~~statement~~ schedule of intended immunizations form completed by a ~~legal~~ parent, custodian, or guardian ~~of for~~ any child who is not immunized, excepted, or exempted, and who is in the process of receiving, or has been scheduled to receive, the required immunizations. ~~This statement~~ A form provided by the Department, or one similar, must include the following information: (4-6-05)( )

- a. Name and ~~age~~ date of birth of child; (4-6-05)( )
- b. Type, number and dates of scheduled immunizations to be administered; (4-6-05)( )
- c. Signature of the ~~legal~~ parent, custodian, or guardian ~~providing the information;~~ and (4-6-05)( )
- d. Signature of a ~~physician or physician's representative~~ licensed health care professional providing care to the child. (5-24-91)( )

103. -- 104. (RESERVED).

105. **EXCEPTIONS TO IMMUNIZATION REQUIREMENT ~~FOR THE APPLICABLE DISEASE.~~**

A child who meets one (1) or both of the following conditions in Subsections 105.01 or 105.02 of this rule, when supporting documentation is in the possession of the licensed daycare facility operator, will not be required to ~~undergo~~ receive the required immunizations: in order to attend the licensed daycare facility. (4-6-05)( )

01. **Laboratory Proof.** A child who has laboratory proof of immunity to any of the ~~nine (9)~~ childhood diseases listed in Section 100 of these rules, will not be required to ~~undergo~~ receive the required immunizations for which the child is immune. (4-6-05)( )

02. **Disease Diagnosis.** A child who has a statement signed by a licensed ~~physician~~ health care professional stating the child has had ~~measles (rubeola) or mumps~~ varicella (chickenpox) disease ~~and~~ diagnosed by ~~the physician~~ a licensed health care professional upon personal examination will not be required to ~~undergo~~ receive the required immunizations for the diagnosed disease. (4-6-05)( )

106. -- 109. (RESERVED).

**110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of the licensed daycare facility operator, a child who meets one (1) or both of the ~~following~~ conditions in Subsections 110.01 and 110.02 of this rule, will be exempt from the required immunizations. (4-6-05)( )

**01. Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered; ~~or~~ (4-6-05)( )

**02. Religious or Other Objections.** A signed statement of the legal parent, custodian, or guardian on a form provided by the Department ~~or one containing similar information, and that~~ includes the following: (4-6-05)( )

a. Name of child, date of birth; and (5-24-91)( )

b. A statement of objection on religious or other grounds. (5-24-91)

**111. -- 1949. (RESERVED).**

**150. EXCLUSION CRITERIA.**

**01. Noncompliance.** A child meeting any one (1) of the following conditions must be excluded by the licensed daycare facility operator: ( )

a. Has received fewer than the required number of doses of immunizations described in Section 100 of these rules; ( )

b. Has failed to continue to receive immunizations as provided on the schedule of intended immunizations form described in Subsection 102.02 of these rules; ( )

c. Has received one or more doses at less than the minimum interval or less than the minimum age as recommended by the ACIP under Section 004; ( )

d. Has not received any doses of the required immunization and does not have a valid exception or exemption described in Sections 105 and 110 of these rules; or ( )

e. Has no immunization record on file at the daycare facility. ( )

**02. Exempted Children.** A child exempted under Section 110 of these rules, may be excluded by the regulatory authority in the event of a disease outbreak under IDAPA 16.02.10, "Idaho Reportable Diseases." ( )

**151. -- 199. (RESERVED).**

**200. DOCUMENTATION AND RETENTION OF IMMUNIZATIONS ~~DATA~~ RECORD BY LICENSED DAYCARE FACILITY OPERATORS.**

**01. Provision of Information.** The licensed daycare facility operator will provide to the legal parent, custodian, or guardian, information on immunization requirements and the ACIP recommended immunization schedule. (4-6-05)( )

~~**02. Immunization Document.** The licensed daycare facility operator will copy the immunization data from the child's immunization record to a daycare immunization document or have on file a true and correct copy of the child's immunization record. This immunization document must include the month, day and year of each immunization the child has received. (4-6-05)~~

**032. Immunization ~~Document~~ Record Retention.** The immunization documentation described in

~~Subsection 200.102~~ of these rules, must be retained by the licensed daycare facility ~~on all children~~ for each child as long as the child attends the licensed daycare facility plus one (1) year ~~after last attendance~~. (4-6-05)(\_\_\_\_)

**201. -- 299. (RESERVED).**

**300. INSPECTIONS ~~BY PUBLIC DISTRICT HEALTH DEPARTMENTS.~~**

**01. Compliance Inspection.** The regulatory authority will verify that the immunization ~~document~~ record described in ~~Subsection 200.02 010~~ of these rules, is ~~initiated and~~ retained in the licensed daycare facility. (4-6-05)(\_\_\_\_)

**02. Recording of Violation.** Following an inspection which reveals a violation of this chapter by a licensed daycare facility, the regulatory authority will record the violations in writing and provide a copy to the licensed daycare facility operator. (4-6-05)

**03. Response to Violation.** The licensed daycare facility operator will submit a written report to the regulatory authority within thirty (30) days following the inspection stating that the specified violations have been corrected. (4-6-05)

**04. Failure to Respond.** The regulatory authority will report in writing to the licensing authority any violations recorded in Subsection 300.02 of ~~these~~ this rules, to which a licensed daycare facility operator has not responded as required by Subsection 300.03 of ~~these~~ this rules. (4-6-05)(\_\_\_\_)

**301. -- 309. (RESERVED).**

**310. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.**

**01. ~~Noncompliance.~~** ~~Licensed daycare facility operators in Idaho must exclude any child who is not in compliance with this chapter within fourteen (14) days of initial attendance in their daycare facility.~~ **Enforcement** The regulatory authority may exclude any child who does not meet the requirements in this chapter and who has not been excluded from the licensed daycare facility as required in Section 150 of these rules. (4-6-05)(\_\_\_\_)

**02. Length of Exclusion.** Any child excluded from a licensed daycare facility in Idaho as required in Subsection 310.01 of ~~these~~ this rules, may not be readmitted to the facility until they ~~are~~ child is in compliance with the requirements of this chapter. (4-6-05)(\_\_\_\_)

**311. -- 399. (RESERVED).**

**400. TECHNICAL ASSISTANCE.**

**01. Random Evaluations.** A representative of the Department will randomly select and visit licensed daycare facilities in Idaho to evaluate the facility files for the following: (4-6-05)

- a. Immunization ~~documents~~ record described in ~~Subsection 200.02 010~~ of these rules; (4-6-05)(\_\_\_\_)
- b. Exceptions documentation described in Section 105 of these rules; and (4-6-05)
- c. Exemption statements described in Section 110 of these rules. (4-6-05)

**02. Notice of Intent to Review.** A representative of the Department will inform licensed daycare facilities selected in Subsection 400.01 of ~~these~~ this rules, at least thirty (30) days prior to an intent to review the licensed daycare facilities' documents. (4-6-05)(\_\_\_\_)

**03. Evaluation Results.** Information will be provided to the licensed daycare facility about the results of the immunization evaluation described in Subsection 400.01 of ~~these~~ this rules, and the recommendations for correcting deficiencies and increasing immunity levels. (4-6-05)(\_\_\_\_)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.02.15 - IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-1001

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-1118, Idaho Code.

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

Thursday, September 9, 2010 6:00 p.m. MDT	Tuesday, September 14, 2010 6:00 p.m. MDT	Thursday, September 16, 2010 6:00 p.m. PDT
Central District Health Dept. 707 N Armstrong Place Immunization Lobby Boise, ID	Eastern Idaho Public Health Dept. 1250 Hollipark Dr. North Conf. Rm. Idaho Falls, ID	Red Lion Hotel 621 21st Street Port One - Conf. Rm. Lewiston, ID

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

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

In an effort to increase the number of children who are fully protected from preventable diseases, the Department is amending these rules to increase the number of vaccines required for children attending schools in Idaho. The changes to these rules will help protect children from additional vaccine-preventable diseases, provide a conditional admission clause for children who are in the process of receiving required vaccines, provide clarification on exclusion of children from attendance, and update existing language to match current practices. Parents who choose not to immunize their children will still be able to sign an exemption form for medical, religious, or other reasons.

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

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

This rulemaking has no anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with the following: Idaho Public Health Districts, Idaho Medical Association (IMA), American Academy of Pediatrics - Idaho chapter, American Academy of Family Physicians - Idaho chapter, State Board of Education, Idaho School Boards Association, Idaho State Department of Education, School Nurses Association of Idaho (SNOI), Head Start - Friends of Family and Children, Meridian Joint District No. 2 - Nursing Services, and the Idaho Immunization Coalition.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the "Recommended Immunization Schedules for Persons Aged 0 through 18 Years -- United States, 2010," is being incorporated by reference into these rules because it contains the national standard for immunization schedules and is regularly updated to reflect best practices and to give it the force and effect of law. The document is not being republished in this chapter of rules due to its length and format and because of the cost of republication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rebecca Coyle at (208) 334-5942.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0215-1001**

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is, IDAPA 16.02.15, "Immunization Requirements for Idaho School Children." (4-6-05)

**02. Scope.** These rules contain the legal requirements for the administration of an immunization program for children enrolled in grades preschool, kindergarten through twelve (12) of any Idaho public, private, or parochial school. (~~3-30-07~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

~~No documents have been incorporated by reference in this chapter of rules.~~ The "Recommended Immunization Schedules for Persons Aged 0 Through 18 Years -- United States, 2010," are incorporated by reference for this chapter of rules. Published in the Morbidity and Mortality Weekly Report, January 8, 2010, Vol. 58 (51 and 52), by the Centers for Disease Control and Prevention as recommended by the Advisory Committee on Immunization Practices (ACIP). This document is referred to in this chapter of rules as "ACIP Recommended Schedule." These schedules may be obtained from the Department or viewed online at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5851a6.htm>. (4-6-05)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. ACIP.** The Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. (4-6-05)( )

**02. Admission.** Admission to a public, private or parochial school is: (4-2-08)

**a.** Registration of a child before attendance; or (4-2-08)

**b.** Re-entry of a child after withdrawing from previous enrollment. (4-2-08)

- c.** Transfer of a child from one (1) Idaho school to another or from schools outside Idaho. ( )
- 03.** **Child.** A minor who is enrolled in preschool, kindergarten through grade twelve (12) in any Idaho public, private, or parochial school. ~~(3-30-07)~~( )
- 04.** **Department.** Idaho Department of Health and Welfare. (10-13-92)
- 05** **Immunization Record.** An electronic medical health record, an immunization registry document, or a written immunization certificate confirmed by a licensed health care professional or a physician's representative which states the month, day, and year of each immunization a person has received. ( )
- 056.** **Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of test performed, the date of each test, and the results, accompanied by a physician's statement indicating the child is immune. Tests performed must meet the requirements of IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." ~~(4-6-05)~~( )
- 07.** **Licensed Health Care Professional.** A practitioner, licensed in the State of Idaho by the Board overseeing the practitioner's license, or by a similar body in another state or jurisdiction within the United States. The practitioner's scope of practice for licensure must allow for the ordering of immunizations and writing of prescriptions, or the practitioner must be under the direction of a licensed physician. Licensed health care professionals who may provide for immunization requirements include: medical doctors, osteopaths, nurse practitioners, physicians' assistants, licensed professional nurses, registered nurses, and pharmacists. Other persons authorized by law to practice any of the healing arts, shall not be considered licensed health care professionals for the purposes of this chapter. ( )
- 068.** **Parent, Custodian, or Guardian.** The legal parent, custodian, or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (4-6-05)
- ~~**07.** **Pertussis.** An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough. ~~(4-6-05)~~~~
- 089.** **Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States, to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine. ~~(4-6-05)~~( )
- ~~**0910.** **Physician's Representative.** Any person appointed by, or vested with the authority to act on behalf of a physician in matters concerning health. (8-15-79)~~
- 11.** **Preschool.** The provision of education for children before the commencement of statutory and obligatory education, differing from traditional daycare in that the emphasis is learning and development rather than enabling parents to work or pursue other activities. Preschools may include, but are not limited to, federally-funded Head Start centers, state-funded preschools, government-funded special education programs, public school preschool programs, and for-profit and not-for profit preschool programs. ( )
- 102.** **Private or Parochial School.** Any Idaho school maintained by an individual, organization or corporation, not at public expense, and open only to children selected and admitted by the individual, organization or corporation, or to children of a certain class or possessing certain qualifications, which may or may not charge tuition fees. (1-25-79)
- 143.** **Public School.** Any Idaho school maintained at the public expense and open to all children within a given district, including those responsible for the education and training of exceptional children or those schools specially chartered. (1-25-79)
- 14.** **Regulatory Authority.** The Director of the Idaho Department of Health and Welfare or the Director's designee. ( )

~~125.~~ **School Authority.** An authorized representative designated by the Board of Trustees of a public school or a person or body designated to act on behalf of the governing body of a private or parochial school. (8-15-79)

011. -- 099. (RESERVED).

**100. IMMUNIZATION ~~PROGRAM~~ REQUIREMENTS.**

All ~~h~~immunizations listed in Subsections 100.01 through 100.04 of this rule, are required of children upon admission to kindergarten through grade twelve (12) of any Idaho public, private, or parochial school. Upon admission to preschool, children must be age appropriately immunized with all immunizations listed in Subsections 100.01 through 100.03 of this rule. Immunizations must be administered according to the “General ACIP Recommendations on Immunizations Schedule,” established by the ACIP or their equivalent incorporated by reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These recommendations are available from the Department ~~as provided in Section 004 of these rules.~~ Exemptions from these immunization requirements are provided in Section 110 of these rules. (4-2-08)( )

**01. ~~Measles, Mumps and Rubella (MMR)~~ Child Born on or Before September 1, 1999. (4-2-08)**

~~a-~~ A child born after September 1, 1999, is required to have any combination of two (2) doses of the vaccines listed in Subsections 100.01.c. and 100.01.d. of this rule. (4-2-08)

~~b-~~ A child born on or before September 1, 1999, ~~is required to have one (1) dose of either of the vaccines listed in Subsections 100.01.c. and 100.01.d. of this rule.~~ must meet the following minimum immunization requirements prior to admission for these vaccines: one (1) dose of (4-2-08)

~~e-~~ Measles, Mumps, and Rubella (MMR); ~~or~~ (4-2-08)

~~d-~~ ~~Measles, Mumps, Rubella and Varicella (MMRV).~~ four (4) doses of Diphtheria, Tetanus, Pertussis (DTaP), three (3) doses of Polio, and three (3) doses of Hepatitis B. (4-2-08)( )

**02. ~~Diphtheria and Tetanus~~ Child Born After September 1, 1999 Through September 1, 2005. (4-2-08)**

~~a-~~ A child born after September 1, 1999, ~~is required to have any combination of five (5) doses of the following vaccines listed in Subsections 100.02.c. through 100.02.g. of this rule. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed.~~ (4-2-08)

~~b-~~ A child born on or before September 1, 1999, ~~is required to have any combination of four (4) doses, of the vaccines listed in Subsections 100.02.c. through 100.02.g. of this rule.~~ through September 1, 2005, must meet the following minimum immunization requirements prior to admission for these vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of (4-2-08)

~~e-~~ Diphtheria, Tetanus, and ~~acellular~~ Pertussis (DTaP—~~Pediatric~~); (3-30-07)

~~d-~~ Diphtheria, Tetanus and Pertussis (DTP); (3-30-07)

~~e-~~ Tetanus, Diphtheria and acellular Pertussis (Tdap—~~Adolescent~~); (3-30-07)

~~f-~~ Diphtheria, Tetanus (DT—~~Pediatric~~); ~~or~~ (4-2-08)

~~g-~~ Tetanus, Diphtheria (Td—~~Adolescent~~), three (3) doses of Polio, and three (3) doses of Hepatitis B. (3-30-07)( )

**03. ~~Pertussis~~ Child Born After September 1, 2005. (4-2-08)**

~~a-~~ A child born after September 1, 1999, ~~is required to have any combination of five (5) doses of the vaccines listed in Subsections 100.03.c. through 100.03.e. of this rule. If the fourth dose was administered on or after~~

~~the child's fourth birthday, the fifth dose is not needed.~~ (4-2-08)

~~**b.** A child born on or before September 1, 1999, is required to have any combination of four (4) doses of the vaccines listed in Subsection 100.03.e. through 100.03.e. of this rule. 2005, must meet the following minimum immunization requirements prior to admission for the following vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of~~ (4-2-08)

~~**e.** Diphtheria, Tetanus, and *a*cellular Pertussis (DTaP—*P*ediatric);~~ (4-2-08)

~~**d.** Diphtheria, Tetanus and Pertussis (DTP); or~~ (4-2-08)

~~**e.** Tetanus, Diphtheria and *a*cellular Pertussis (Tdap—*A*dolescent), four (4) doses of Polio, three (3) doses of Hepatitis B, two (2) doses of Hepatitis A, and two (2) doses of Varicella.~~ (4-2-08)( )

**04. Polio.** *A child is required to have three (3) doses of Polio vaccine.* **Seventh Grade Immunization Requirements.** Effective with the 2011-2012 school year, and each year thereafter, in addition to the required immunizations listed in Section 100.01 through 100.03 of this rule, a child must meet the following minimum immunization requirements prior to admission into the seventh (7th) grade for these vaccines: one (1) dose of Tetanus, Diphtheria, Pertussis Booster (Tdap), and one (1) dose of Meningococcal. This requirement will be extended to: 7th - 8th grade students in 2012, 7th - 9th grade students in 2013, 7th - 10th grade students in 2014, 7th - 11th grade students in 2015, and 7th - 12th grade students in 2016. (4-2-08)( )

~~**05. Hepatitis B.** *A child born after November 22, 1991, is required to have three (3) doses of Hepatitis B vaccine.*~~ (4-2-08)

**065. Summary of Immunization Requirements.** ( )

**a. Immunization requirements.**

TABLE 100.065.a. SUMMARY OF IMMUNIZATION REQUIREMENTS			
Immunization Requirement*	Child born after on or before September 1, 1999	Child born on or before after September 1, 1999, through September 1, 2005	Child born after September 1, 2005
Measles, Mumps, and Rubella (MMR)	<del>2</del> 1 doses	<del>4</del> 2 doses	<u>2</u> doses
Diphtheria, Tetanus, Pertussis	<del>5</del> 4 doses	<del>4</del> 5 doses	<u>5</u> doses
<i>Pertussis</i>	<del>5</del> doses	<del>4</del> doses	
Polio	3 doses	3 doses	<u>4</u> doses
Hepatitis B	3 doses	3 doses**	<u>3</u> doses
Hepatitis A	<u>0</u> doses	<u>0</u> doses	<u>2</u> doses
Varicella	<u>0</u> doses	<u>0</u> doses	<u>2</u> doses

\* Exemptions for immunization requirements are found in Section 110 of these rules.  
 \*\* *Hepatitis B—Three (3) doses unless child was born on or before November 22, 1991.*

(4-2-08)( )

**b. Seventh grade immunization requirements.**

<b>TABLE 100.05.b SUMMARY OF SEVENTH GRADE IMMUNIZATION REQUIREMENTS</b>		
<b><u>Immunization Requirement*</u></b>	<b><u>Child admitted to 7th grade prior to 2011-2012 school year</u></b>	<b><u>Child admitted to 7th grade during 2011-2012 school year and each year thereafter</u></b>
Tetanus, Diphtheria, Pertussis (Tdap)	0 doses	1 dose
Meningococcal	0 doses	1 dose
* Exemptions for immunization requirements are found in Section 110 of these rules.		

( )

**101. ~~DEADLINE FOR COMPLIANCE.~~**

The *legal* parent, custodian, or guardian of any child who is to attend any public, private, or parochial school in Idaho must comply with the provisions contained in this chapter at the time of admission and before attendance.

(4-6-05)( )

**102. EVIDENCE OF IMMUNIZATION STATUS.**

**01. ~~Immunization Certification Statement Record.~~** Within the deadlines established in Section 101 of these rules, a *legal* parent, custodian, or guardian of each child must present to school authorities an immunization *certification statement signed by a physician or a physician's representative stating the type, number and dates of immunizations received* record.

(4-6-05)( )

**02. ~~Schedule of Intended Immunizations Form.~~** A child who has received at least one (1) dose of each required vaccine and is currently on schedule for subsequent immunizations may be conditionally admitted. School authorities, at the time of admission and before attendance, must have a *statement schedule of intended immunizations form completed* by a *legal* parent, custodian, or guardian *of* for any child who is not immunized, excepted, or exempted, and who is in the process of receiving, or has been scheduled to receive, the required immunizations. A form ~~is~~ provided by the Department, or one similar, must include the following information:

(4-6-05)( )

- a. Name and ~~age~~ date of birth of child; (4-6-05)( )
- b. School and grade child is enrolled in and attending; (4-6-05)
- c. Types, numbers, and dates of scheduled immunizations to be administered; (4-6-05)( )
- d. Signature of the *legal* parent, custodian, or guardian ~~providing the information~~; and (10-13-92)( )
- e. Signature of a *physician or physician's representative* licensed health care professional providing care to the child. (7-9-90)( )

**03. ~~Children Admitted to School and Failing to Continue the Schedule of Intended Immunizations.~~** A child, who does not receive the required immunizations as scheduled in Subsection 102.02 of ~~these~~ this rules, will be excluded by school authorities until documentation of the administration of the required immunizations is provided to school authorities by the child's *legal* parent, custodian, or guardian. (4-6-05)( )

**103. -- 104. (RESERVED).**

**105. EXCEPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities at the time of admission and before

attendance, a child who meets one (1) or ~~more~~ both of the following conditions in Subsections 105.01 and 105.02 of this rule, will not be required to ~~undergo~~ receive the required immunizations in order to attend school.  
(4-6-05)( )

**01. Laboratory Proof.** Laboratory proof of immunity to any of the ~~eight (8)~~ childhood diseases listed in Section 100 of these rules, will not be required to receive the immunization for that disease; ~~or for which the child is immune.~~  
(4-6-05)( )

**02. Disease Diagnosis.** A child who has a statement signed ~~statement of by~~ a licensed ~~physician~~ health care professional stating that the child has had ~~measles or mumps~~ varicella (chickenpox) disease diagnosed by ~~the physician~~ a licensed health care professional upon personal examination, will not be required to receive the immunization for the diagnosed disease.  
(4-6-05)( )

106. -- 109. (RESERVED).

**110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities, at the time of admission and before attendance, a child who meets one (1) or both of the following conditions in Subsections 110.01 and 110.02 of this rule, will not be required to ~~undergo~~ receive the required immunizations.  
(4-6-05)( )

**01. Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered; ~~or~~  
(4-6-05)( )

**02. Religious or Other Objections.** A signed statement of the ~~legal~~ parent, custodian, or guardian on a form provided by the Department ~~or one containing similar information, and that~~ includes the following:  
(4-6-05)( )

- a. Name of child, date of birth; and (1-25-79)( )
- b. A statement of objection on religious or other grounds. (1-25-79)

111. -- 149. (RESERVED).

**150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.**

**01. Noncompliance.** Any child not in compliance with this chapter upon admission to any Idaho public, private, or parochial school, will be denied attendance by school authorities, unless the child is excepted or exempted from these immunization requirements as provided in Sections 105 and 110 of these rules. The regulatory authority may exclude any child who does not meet the requirements in this chapter and who has not been excluded from school.  
(4-2-08)( )

**02. Length of Exclusion.** Any child denied attendance in accordance with Subsection 150.01 of this rule, will not be allowed to attend any Idaho public, private or parochial school until the child is in compliance with the requirements of this chapter. (4-2-08)

**03. Exempted Children.** A child exempted under Section 110 of these rules, may be excluded by the regulatory authority in the event of a disease outbreak under IDAPA 16.02.10, "Idaho Reportable Diseases." ( )

151. -- 199. (RESERVED).

**200. REPORTS BY SCHOOL AUTHORITIES.**

**01. Responsibility and Timeliness.** School authorities must submit a report of each school's immunization status, by grade, to the Department on or before the first day of November each year. (4-6-05)

**02. Form and Content of Report.** Each school report must include ~~the~~ following information ~~with~~

and be provided submitted on a Department form or electronically ~~by school:~~ ~~(4-6-05)~~( )

- a.** Inclusive dates of reporting period; (10-13-92)
- b.** Name and address of school, school district and county; (4-6-05)
- c.** Grade being reported and total number of children enrolled in the grade; (4-6-05)
- d.** The name and title of the person completing the report form. (4-6-05)
- e.** Number of children who meet all of the required immunizations listed in Section 100 of these rules; (4-6-05)
- f.** Number of children who do not meet all of the required number of immunizations listed by specific immunization type; (4-6-05)
- g.** Number of children who do not meet the immunization requirement, but are in the process of receiving the required immunizations; and (4-6-05)
- h.** Number of children who claimed exemption to the required immunizations as allowed in Section 110 of these rules. (4-6-05)