

# IDAHO ADMINISTRATIVE BULLETIN

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July 3, 1996

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**IDAPA 07 - DEPARTMENT OF LABOR AND INDUSTRIAL SERVICES**  
**07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE**

**DOCKET NO. 07-0106-9601**  
**NOTICE OF PENDING RULES**

**EFFECTIVE DATE:** The pending rule becomes final and effective on July 1, 1997 unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1001, Idaho Code.

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

The current rule relating to 07.01.06.011 regarding adoption of the latest edition of the National Electrical Code will be changed to provide for the adoption of the 1996 edition of the National Electrical Code. There are no changes between the proposed and final text of the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning these temporary and pending rules, contact Gary L. Malmen, Bureau Chief, Division of Building Safety, Department of Labor and Industrial Services, 277 No. 6th Street, Suite 100, P.O. Box 83720, Boise, Idaho 83720-0048, (208) 334-2183.

DATED this 22nd day of May, 1996.

Craig G. Bledsoe  
Department of Labor and Industrial Services  
277 N. 6th, Suite 100  
P.O. Box 83720  
Boise, ID 83720-0048  
(208) 334-3950/fax (208) 334-2683

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**IDAPA 07**  
**TITLE 01**  
**Chapter 06**

**RULES GOVERNING THE USE OF THE NATIONAL ELECTRICAL CODE**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 96-5, May 1, 1996  
Pages 7 through 8.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**

**IDAPA 12 - DEPARTMENT OF FINANCE**  
**12.01.08 - RULES PURSUANT TO THE IDAHO SECURITIES ACT**  
**DOCKET NO. 12-0108-9601**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 1996..

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Section 30-1448, Idaho Code.

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

Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for hearing must be received by the undersigned on or before July 17, 1996.

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

In January, 1996, the North American Securities Administrators Association, the association of state securities regulators, passed a resolution dealing with the offer and sale of securities on the Internet. The resolution recognizes that the Internet may be a legitimate means of raising capital. However, because a communication made on the Internet may be directed not only to particular recipients, but also to anyone with access to the Internet, this rule is necessary to afford those using the Internet some certainty as to the necessity for complying with the securities registration provisions of the Idaho Securities Act. Uniform treatment of such Internet communications by state securities regulators is in the public interest and affords protection for investors.

The Idaho Department of Finance proposes this rule to establish that Internet communications by, or on behalf of, securities issuers will not be considered an "offer" of securities in Idaho, and therefore not trigger securities registration requirements, if certain conditions contained in the rule are met.

This rule confers a benefit upon issuers who may otherwise be deterred from utilizing the Internet unless a rule such as this is in place. As such, this Temporary Rule is necessary.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule-making, contact Marilyn T. Scanlan at (208) 332-8004.

Anyone can submit written comment regarding the proposed rule. All written comments must be received by the undersigned on or before July 24, 1996.

DATED this 22st day of May, 1996.

Katherine M. Witt  
Securities Bureau  
Idaho Department of Finance  
700 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0031  
Fax No. (208) 332-8099

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**TEXT OF DOCKET NO. 12-0108-9601**

**300. INTERPRETATIONS/DEFINITIONS (Rule 300).**

01. Transact Business. Idaho Code, Section 30-1406. For purposes of the Act, "to transact business" shall mean to buy or to sell or contract to buy or to sell or dispose of a security or interest in a security for value. It shall also mean any offer to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell, a security or interest in a security for value. With respect to investment advisers or investment adviser representatives, "transact business" shall include preparation of financial plans involving securities, recommendations to buy or sell securities or interests in a security for value, and solicitation of investment advisory clients. (7-1-93)

02. Annuity Contract. Idaho Code, Section 30-1402(12). That portion of Section 30-1402(12), Idaho Code, that states that a security "does not include any... annuity contract under which an insurance company promises to pay money, either in a lump sum, or periodically for life or some other specified period," is interpreted to mean annuity contracts or optional annuity contracts that meet all of the following conditions: (7-1-93)

a. The annuity or optional annuity contract is issued by a corporation (the "insurer"), which is subject to the supervision of the Idaho Department of Insurance; (7-1-93)

b. The insurer assumes the investment risk under the contract. The insurer shall be deemed to assume the investment risk under the contract if: (7-1-93)

i. The value of the contract does not vary according to the investment experience of a separate account; and (7-1-93)

ii. The insurer for the life of the contract: guarantees the principal amount of purchase payments and interest credited thereto, less any deduction, without regard to its timing, for sales, administrative or other expenses, or charges; and credits a specified rate of interest, as defined in 17 CFR 230.151(c), to net purchase payments and interest credited thereto; and (7-1-93)

iii. The insurer guarantees that the rate of any interest to be credited in excess of that described in Subsection 300.02.b. of this section will not be modified more frequently than once per year; (7-1-93)

c. The contract is not marketed primarily as an investment. (7-1-93)

03. Investment Contract. Idaho Code, Section 30-1402(12). "Investment contract" as used in Section 30-1402(12), Idaho Code, includes, but is not limited to, either or both of the following: (7-1-93)

a. Any investment in a common enterprise with the expectation of profit to be derived primarily through the managerial efforts of someone other than the investor. In this Section, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or of a third party (also known as vertical commonality); (7-1-93)

b. Any investment by which an offeree furnishes value to an offeror and a portion of this value is subjected to the risks of the enterprise, and the furnishings of said value are induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above said value, will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise. (7-1-93)

04. Unsolicited Order or Offer. Idaho Code, Section 30-1435(1)(d). (7-1-93)

a. "Unsolicited order or offer" as used in Section 30-1435(1)(d), Idaho Code, means that an order or offer to buy is regarded as unsolicited if: (7-1-93)

i. The broker-dealer has not made a direct solicitation that the customer purchase the security, and; (7-1-93)

ii. The broker-dealer has not recommended the purchase of the security to the customer, either directly or in a manner which would bring its recommendation to the customer, and; (7-1-93)

iii. The broker-dealer has not volunteered information on the issuer to the customer, and; (7-1-93)

iv. The customer has previously, and independent of any information furnished by the broker-dealer, decided to buy the security. (7-1-93)

b. Any offer or order to buy from a customer whose first knowledge of the specific security or issuer was volunteered to him by the broker-dealer, shall be regarded as a solicited order. (7-1-93)

c. Any claim of exemption pursuant to Section 30-1435(1)(d), Idaho Code, shall be supported by the broker-dealer's certificate that the transaction in question was, in fact, unsolicited. (7-1-93)

05. Offered and Sold as a Unit. Idaho Code, Section 30-1435(1)(o). That portion of Section 30-1435(1)(o), Idaho Code, that provides an exemption for certain secured transactions if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, "is offered and sold as a unit," is defined to mean an offer and sale of the entire mortgage, deed of trust, or agreement to a single purchaser at a single sale. (7-1-93)

06. An Individual Who Represents an Issuer. Idaho Code, Section 30-1402(2). That portion of Section 30-1402, Idaho Code, that refers to "an individual who represents an issuer" does not include a person who is employed by, associated or affiliated with a broker-dealer or investment adviser. It also does not include a person who is registered as a salesman or investment adviser representative with the SEC, NASD, or any state. (7-1-93)

07. Offer. Idaho Code Section 30-1402(10). Solely for the purpose of complying with the registration requirements of Idaho Code Section 30-1416, information regarding securities which is broadcast by, or on behalf of, issuers, on or through the Internet, the World Wide Web or a similar proprietary or common carrier electronic system (such systems hereinafter being referred to collectively as the "Internet"), shall not be considered an "offer" of those securities if the following conditions are met: (7-1-96)T

a. The Internet broadcast indicates that the securities are not being offered to residents of Idaho: (7-1-96)T

b. The Internet broadcast is not specifically directed to any person in Idaho by, or on behalf of, the issuer of the securities; and (7-1-96)T

c. No sales of the issuer's securities are made in Idaho as a result of the Internet broadcast until such time as the securities which are the subject of the broadcast have been registered or qualify for an exemption under the Idaho Securities Act. (7-1-96)T



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 16-0101-9601**

**NOTICE OF PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code and mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 60 Fed. Reg. 54,990, 54,994 (1995).

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

Wednesday, August 7, 1996, 7:00 p.m.  
Division of Environmental Quality, Conference Center  
1410 N. Hilton, Boise, Idaho

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements, contact the undersigned at (208)373-0418.

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

On November 17, 1995 the Board of Health and Welfare adopted as a temporary rule an amendment to the Rules for the Control of Air Pollution in Idaho, IDAPA 16.01.01. The temporary rule appeared in the January 3, 1996 issue of the Idaho Administrative Bulletin under Docket No. 16-0101-9601.

The temporary rule repealed Idaho's air rules on excess emissions found in the Tier I section of the rules (IDAPA 16.01.01.326 through 332) and revised those found in the general section of the rules (IDAPA 16.01.01.130 through 136). EPA has mandated this change in order to approve Idaho's proposed Title V Operating Permit Program. The temporary rule provided the Department with the authority to excuse an excess emission violation if certain conditions are met. Several other sections of the air rules were also revised to accommodate these revisions. The other revised sections include the general definitions, and various sections on Tier I operating permit applications.

The temporary rule also modified the procedures for issuing Permits to Construct to address an additional Title V Operating Permit program approval issue. The deadline for submission of a complete Tier I application was modified to allow additional time to develop Tier II Operating Permits for facilities that wish to opt out of the Tier I program.

With this publication, the Department of Health and Welfare proposes final adoption of the temporary rule discussed above.

Negotiated rulemaking was not conducted because time was of the essence to adopt a state rule consistent with EPA's mandate in order to receive EPA approval of Idaho's proposed Title V Operating Permit Program.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rule, contact Sue Richards at (208)373-0502.

Anyone can submit written comment regarding this proposed rule. All written comments must be received by the undersigned on or before August 9, 1996.

DATED this 3rd day of July, 1996.

Paula Junae Saul  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Fax No. (208)373-0481

**TEXT OF DOCKET NUMBER 16-0101-9601**

**006. GENERAL DEFINITIONS.**

01. (RESERVED). (3-7-95)L
02. Act. The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)
03. Actual Emissions. The emission rate, in mass per unit time, of an air pollutant from a stationary source or emissions unit, averaged over the two (2) year period which is representative of normal operation and which precedes a particular date or the date on which an application for a permit was filed. Actual emissions shall be calculated using actual operating hours, production rates, and types of materials processed, stored, or combusted during this time period, except that: (5-1-94)
- a. The Department may allow the use of a different time period upon a determination that it is more representative of normal operation; (5-1-94)
- b. The Department may consider emission rates specifically allowed in a permit to construct or operating permit to be equivalent to actual emissions if the State Implementation Plan demonstration of attainment and/or maintenance is explicitly based on the permitted emissions; and (5-1-94)
- c. For any stationary source or emissions unit which has not yet begun normal operations, actual emissions shall be considered to be those allowed in the applicable permit to construct or operating permit. (5-1-94)
04. Air Pollutant/Air Contaminant. Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof, regulated under the Act, 42 U.S.C. Sections 7401 through 7671q. these rules or any federal air quality regulation. (5-1-94)
05. Air Quality. The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)
06. Air Quality Criterion. The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)
07. Ambient Air. That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)
08. Ambient Air Quality Violation. Any single ambient concentration of any air pollutant that exceeds any national, state or local ambient air quality standard at any point in an area outside the source property line. (5-1-94)
09. Atmospheric Stagnation Advisory. An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. (5-1-94)
10. Attainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. (5-1-94)
11. Baseline (Area, Concentration, Date). See Section 579. (5-1-94)
12. Best Available Control Technology (BACT). An emission standard (including a visible emissions standard) based on the maximum control of emissions achievable through application of production processes or available methods, systems, and techniques (including fuel cleaning or treatment or innovative fuel combination

techniques) for control of such contaminants. BACT shall be determined on a case-by-case basis, taking into account energy, environmental and economic impacts, and other costs, and shall be at least as stringent as any applicable Sections of 40 CFR Part 60, 40 CFR Part 61 and 40 CFR Part 63. If an emissions standard is infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed as BACT. (5-1-94)

13. Board. Idaho Board of Health and Welfare. (5-1-94)
14. Breakdown. An unplanned and unforeseeable failure of any air pollution control equipment or emissions unit, including process equipment, which may cause excess emissions where such failure is not intentional or the result of negligence or improper maintenance. (5-1-94)
15. BTU. British thermal unit. (5-1-94)
16. Clean Air Act. The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
17. Collection Efficiency. The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
18. Commence Construction or Modification. To engage in a continuous program of construction or modification, or to engage in a program of planned grading, dredging, or landfilling, specifically designed for the stationary source or facility in preparation of the fabrication, erection, or installation of the building components of the stationary source or facility. For the purpose of this definition, delays or interruptions resulting from natural disasters, strikes, litigation, and other matters beyond the control of the owner, shall be disregarded in determining whether a construction or a modification program has commenced and/or is continuous. (5-1-94)
19. Complete. A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
20. Construction. Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
21. Control Equipment. Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
22. Controlled Emission. An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
23. Criteria Air Pollutant. Any of the following: PM-10; total suspended particulates (TSP); sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; fluorides; lead. (5-1-94)
24. Department. The Department of Health and Welfare. (5-1-94)
25. Designated Facility. Any of the following facilities: (5-1-94)
  - a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
  - b. Coal cleaning plants (thermal dryers); (5-1-94)
  - c. Kraft pulp mills; (5-1-94)
  - d. Portland cement plants; (5-1-94)
  - e. Primary zinc smelters; (5-1-94)
  - f. Iron and steel mill plants; (5-1-94)

- g. Primary aluminum ore reduction plants; (5-1-94)
- h. Primary copper smelters; (5-1-94)
- i. Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
- j. Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
- k. Petroleum refineries; (5-1-94)
- l. Lime plants; (5-1-94)
- m. Phosphate rock processing plants; (5-1-94)
- n. Coke oven batteries; (5-1-94)
- o. Sulfur recovery plants; (5-1-94)
- p. Carbon black plants (furnace process); (5-1-94)
- q. Primary lead smelters; (5-1-94)
- r. Fuel conversion plants; (5-1-94)
- s. Sintering plants; (5-1-94)
- t. Secondary metal production facilities; (5-1-94)
- u. Chemical process plants; (5-1-94)
- v. Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x. Taconite ore processing facilities; (5-1-94)
- y. Glass fiber processing plants; and (5-1-94)
- z. Charcoal production facilities. (5-1-94)
- 26. Director. The Director of the Department of Health and Welfare or his designee. (5-1-94)
- 27. Effective Dose Equivalent. The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)
- 28. Emission. Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)
- 29. Emission Standard. A permit or regulatory requirement established by the Department, or a requirement contained in 40 CFR Part 60, 40 CFR Part 61, 40 CFR Part 63 or the State Implementation Plan (SIP),

which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission control. (5-1-94)

30. Emission Standard Violation. Any emission rate that exceeds the applicable source-specific emission standard or any action or inaction that contravenes any source-specific opacity limit, equipment requirement, fuel specification or required operation or maintenance procedures. (5-1-94)

31. Emissions Unit. An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)

32. EPA. The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)

33. Environmental Remediation Source. A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five years or less of total operation. (5-1-95)

34. Existing Stationary Source or Facility. Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)

35. Facility. All of the combined sources which emit air pollutants, belong to the same industrial grouping (using the Major Groups as described in the Standard Industrial Classification Manual), are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or by persons under common control. (5-1-94)

36. Federal Class I Area. Any federal land that is classified or reclassified "Class I" pursuant to Section 580. (5-1-94)

37. Federal Land Manager. The Secretary of the federal department with authority over any federal lands in the United States. (5-1-94)

38. Fire Hazard. The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)

39. Fuel-Burning Equipment. Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)

40. Fugitive Dust. Fugitive emissions composed of particulate matter. (5-1-94)

41. Fugitive Emissions. Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)

42. Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)

43. Grain Elevator. Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)

44. Grain Storage Elevator. Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of 35,200 cubic meters (ca. 1 million bushels). (5-1-94)

45. Grain Terminal Elevator. Any grain elevator which has a permanent storage capacity of more than eighty eight thousand and one hundred (88,100) cubic meters (ca. two and one half (2.5) million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)

46. Hazardous Air Pollutant (HAP). Any air pollutant which is regulated at its emitting source by 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)

47. Hazardous Waste. Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may: (5-1-94)

a. Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)

b. Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)

48. Hot-Mix Asphalt Plant. Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)

49. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. (5-1-94)

50. Indian Governing Body. The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. (5-1-94)

51. Indian Reservation. Any federally recognized reservation established by treaty, agreement, executive order, or act of Congress. (5-1-94)

52. Kraft Pulping. Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

53. Lowest Achievable Emission Rate (LAER). The rate of emissions based on the most stringent of the following: (5-1-94)

a. The most stringent emission standard which has been demonstrated in practice by similar stationary sources, facilities, or operations; (5-1-94)

b. The most stringent emission standard in any state implementation plan for similar stationary sources, facilities or operations, unless the owner or operator of the proposed facility demonstrates that such standards are not achievable; or (5-1-94)

c. Any applicable provision in 40 CFR Part 60. (5-1-94)

54. Major Facility. (5-1-94)

- a. Any facility which has actual or allowable emissions of one hundred (100) tons per year or more of any air pollutant. (5-1-94)
- b. Fugitive dust shall be included in the determination of emissions only for designated facilities and those source categories regulated under 40 CFR Part 60, 40 CFR Part 61, or 40 CFR Part 63. (5-1-94)
55. Major Modification. (5-1-94)
- a. Any modification of a major facility that would result in a significant net emission increase of any air pollutant; or (5-1-94)
- b. Any modification of a facility that would result in a potential emissions increase of any air pollutant of one hundred (100) tons per year or more; (5-1-94)
- c. Fugitive dust shall be included in the determination of emissions only for designated facilities and those source categories regulated under 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)
56. Member of the Public. For purposes of Section 006.878.a.xx., a person located at any off-site point where there is a residence, school, business or office. (~~5-1-94~~)( )
57. Modification. Any physical change in, or change in the method of operation of, a stationary source or facility which increases the amount of any air pollutant to which an emission or ambient air quality standard applies emitted by such stationary source or facility or which results in the emission of any air pollutant to which an emission or ambient air quality standard applies not previously emitted except that routine maintenance, repair and replacement shall not be considered physical changes, and the following shall not be considered a change in the method of operation: (5-1-94)
- a. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)
- b. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)
- c. Use of an alternative fuel or raw material if prior to January 6, 1975 and the date any emission or ambient air quality standard becomes applicable to such stationary source, the affected stationary source is specifically designed to accommodate such alternative use and is not specifically prohibited in a permit. (5-1-94)
58. Monitoring. Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)
59. Multiple Chamber Incinerator. Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)
60. New Stationary Source or Facility. (5-1-94)
- a. Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)
- b. The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)
- i. The restart involves a modification to the facility; or (5-1-94)
- ii. After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the

Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)

61. Nonattainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)

62. Noncondensibles. Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)

63. Odor. The sensation resulting from stimulation of the human sense of smell. (5-1-94)

64. Opacity. A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)

65. Open Burning. The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)

66. Operating Permit. A permit issued by the Director pursuant to Sections 300 through 387 and/or 400 through 461. (5-1-94)

67. Particulate Matter. Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)

68. Particulate Matter Emissions. All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method, specified in the Procedures Manual for Air Pollution Control. (5-1-94)

69. Permit to Construct. A permit issued by the Director pursuant to Sections 200 through 225. (5-1-94)

70. Person. Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)

71. PM-10. All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)

72. PM-10 Emissions. All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in the Procedures Manual for Air Pollution Control. (5-1-94)

73. Potential to Emit/Potential Emissions. The maximum capacity of a facility to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit an air pollutant, provided the limitation or its effect on emissions is state and federally enforceable, shall be treated as part of its design. Limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation and restrictions on the type or amount of material combusted, stored or processed. This definition does not alter or affect the term "capacity factor" as defined in 42 U.S.C. Sections 7651 through 7651o. (5-1-94)

74. Portable Equipment. Equipment which is designed to be dismantled and transported from one job



site to another job site. (5-1-94)

75. PPM (parts per million). Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)

76. Prescribed Fire Management Burning. The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)
- f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)
- g. Other accepted natural resource management purposes. (5-1-94)

77. Primary Ambient Air Quality Standard. That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)

78. Process or Process Equipment. Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)

79. Process Weight. The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. (5-1-94)

80. Process Weight Rate. The rate established as follows: (5-1-94)

- a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (5-1-94)
- b. For cyclical or batch source operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (5-1-94)

81. Radionuclide. A type of atom which spontaneously undergoes radioactive decay. (5-1-94)

82. Responsible Official. One of the following: (5-1-94)

- a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall

operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)

i. The facilities employ more than two hundred and fifty (250) persons or have gross annual sales or expenditures exceeding twenty five (25) million dollars (in second quarter 1980 dollars); or (5-1-94)

ii. The delegation of authority to such representative is approved in advance by the Department. (5-1-94)

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 122, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (5-1-94)

d. For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

83. Safety Measure. Any shutdown (and related startup) or bypass of control equipment, process equipment or normal processes undertaken to prevent imminent injury or death to employees or severe damage to equipment which may cause excess emissions where such measure is not necessitated by negligence or improper maintenance. ( )

834. Salvage Operation. Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

845. Scheduled Maintenance. Planned upkeep, ~~and~~ repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (5-1-94)( )

856. Secondary Ambient Air Quality Standard. That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

867. Shutdown. The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

878. Significant. A rate of air pollutant emissions that would equal or exceed any of the following: (5-1-94)

a. Air pollutant emissions and rate: (5-1-94)

i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)

ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)

iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)

iv. Particulate matter, twenty-five (25) tons per year; (5-1-94)

- v. Ozone, forty (40) tons per year of volatile organic compounds as a measure of ozone; (5-1-94)
  - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
  - vii. Asbestos, seven-thousandths (0.007) of a ton per year; (5-1-94)
  - viii. Beryllium, four ten-thousandths (0.0004) of a ton per year; (5-1-94)
  - ix. Mercury, one-tenth (0.1) of a ton per year; (5-1-94)
  - x. Vinyl chloride, one (1) ton per year; (5-1-94)
  - xi. Fluorides, three (3) tons per year; (5-1-94)
  - xii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
  - xiii. Hydrogen sulfide (H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xiv. Total reduced sulfur (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xv. Reduced sulfur compounds (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xvi. PM-10, fifteen (15) tons per year; (5-1-94)
  - xvii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)
  - xviii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
  - xix. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
  - xx. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least one tenths (0.1) mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3) mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year; (5-1-95)
- b. In reference to a net emissions increase or the potential of a source or facility to emit an air pollutant not listed in (a) above and not a toxic air pollutant, any emission rate; or (5-1-94)
- c. For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (5-1-94)
889. Significant Contribution. Any increase in ambient concentrations which would exceed the following: (5-1-94)
- a. Sulfur dioxide: (5-1-94)
    - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
    - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)

- iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)
- b. Total suspended particulates: (5-1-94)
  - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
  - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
- c. Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)
- d. Carbon monoxide: (5-1-94)
  - i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)
  - ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)
- e. PM-10: (5-1-94)
  - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
  - ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average. (5-1-94)
- 890. Small Fire. A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)
- 901. Smoke. Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)
- 942. Smoke Management Plan. A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)
- 923. Smoke Management Program. A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas (5-1-94)
- 934. Source. A stationary source. (5-1-94)
- 945. Source Operation. The last operation preceding the emission of air pollutants, when this operation: (5-1-94)
  - a. Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)
  - b. Is not an air cleaning device. (5-1-94)
- 956. Stack. Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)
- 967. Standard Conditions. Except as specified in Section 576.02 for ambient air quality standards, a dry gas temperature of 20C (68F) and a gas pressure of 760 millimeters of mercury (14.7 pounds per square inch) absolute. (5-1-94)
- 978. Startup. The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)
- 989. Stationary Source. Any building, structure, emissions unit, or installation which emits or may emit

- any air pollutant. (5-1-94)
- ~~99~~100. Tier I Source. Any of the following: (5-1-94)
- a. Any source located at any major facility; (5-1-94)
- b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60; (5-1-94)
- c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (5-1-94)
- d. Any Phase II source; and (5-1-94)
- e. Any source in a source category designated by the Department. (5-1-94)
- ~~100~~1. Time Intervals. Where applicable, time intervals are defined as follows: (5-1-94)
- a. "Annual" means calendar year; (5-1-94)
- b. "Year" means calendar year; (5-1-94)
- c. "Month" means calendar month; (5-1-94)
- d. "Week" means calendar week; (5-1-94)
- e. "Twenty-four (24) hour concentration" means twenty-four (24) hour average concentration starting at midnight and continuing until the following midnight; (5-1-94)
- f. "Eight (8) hour concentration" means running eight (8) hour average concentration starting at each clock hour; (5-1-94)
- g. "Three (3) hour concentration" means running three (3) hour average concentration starting at each clock hour; and (5-1-94)
- h. "One (1) hour concentration" means one (1) hour average concentration starting at each clock hour. (5-1-94)
- ~~104~~2. Total Suspended Particulates. All particulate matter in the ambient air as measured by the method described in Appendix B of 40 CFR Part 50. (5-1-94)
- ~~102~~3. Toxic Air Pollutant. An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)
- ~~103~~4. Toxic Air Pollutant Carcinogenic Increments. Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one microgram per cubic meter (1 ug/m<sup>3</sup>) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)
- ~~104~~5. Toxic Air Pollutant Non-carcinogenic Increments. Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)
- ~~105~~6. Toxic Substance. Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)

1067. Trade Waste. Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)

1078. TRS (Total Reduced Sulfur). Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)

1089. Unclassifiable Area. An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

1109. Uncontrolled Emission. An emission which has not been treated by control equipment. (5-1-94)

1101. Upset. An unplanned and unforeseeable disruption in the normal operations of any air pollution control equipment or emissions unit, including process equipment, which may cause excess emissions where such disruption is not intentional or the result of negligence or improper maintenance. (5-1-94)

1142. Wigwam Burner. Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)

1123. Wood Stove Curtailment Advisory. An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~130. UPSET AND BREAKDOWN. The purposes of Sections 130 through 135 are to establish procedures and requirements for upsets and breakdowns. (5-1-94)~~

~~131. EXEMPTION. Emissions exceeding any of the limits established in this chapter as a direct result of upset conditions in, or breakdown of, any air pollution control equipment, or related operating equipment, or as a direct result of the shutdown of such equipment for scheduled maintenance shall not be deemed to be in violation of the rules establishing such limits, providing all the requirements of Sections 131 through 135 are met. Sections 130 through 134 are not applicable to any source covered by an effective Tier I operating permit issued pursuant to Sections 300 through 387. (5-1-94)~~

~~132. UPSET REPORTS. Such occurrence shall be reported in writing to the Department as soon as reasonably possible; for scheduled maintenance, such reports shall be submitted at least twenty four (24) hours prior to shutdown, and for upset conditions or breakdown such reports shall be made no later than the end of the working day following the occurrence. (5-1-94)~~

~~133. SCHEDULED MAINTENANCE. This exception from violation does not apply to scheduled maintenance on pollution control equipment, except in those cases where the maximum reasonable effort, including off-shift labor where required, has been made to accomplish such maintenance during periods of nonoperation of any related source operations or equipment. (5-1-94)~~

~~134. CORRECTION OF CONDITION. The person responsible for such emissions shall, with all practicable speed, initiate and complete appropriate reasonable action to correct the conditions causing such emissions to exceed said limits; to reduce the frequency of occurrence of such conditions; to minimize the amount by which said limits are exceeded; and shall upon request of the Department submit a full report of such occurrence, including a statement of all known causes, and of the scheduling and nature of the actions to be taken. (5-1-94)~~

~~135. AUXILIARY EQUIPMENT. Persons responsible for operating equipment that might exhaust air pollutants during maintenance shutdowns, shall provide auxiliary pollution abatement equipment approved by the Department. (5-1-94)~~

**130. STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN.**

The purpose of Sections 130 through 136 is to establish procedures and requirements for excess emissions events due to startup, shutdown, scheduled maintenance, safety measures, upsets and breakdowns. ( )

**131. EXCESS EMISSIONS.**

01. Applicability. Emissions exceeding any of the limits established in this chapter or established in a preconstruction permit or operating permit (Tier I or Tier II), or modification thereof, issued pursuant to this chapter, which emissions occur as a direct result of a startup, shutdown, scheduled maintenance, upset, or breakdown of any air pollution control equipment or emissions unit, including process equipment and processes, or as a direct result of implementation of any safety measure, shall be referred to herein as "excess emissions." Except as provided in Section 131.02, excess emissions shall be a violation of the rule or permit establishing such limits unless and until the requirements in Sections 132 through 136 are met. If the requirements in Sections 132 through 136 are met to the satisfaction of the Department, the excess emissions violation shall be excused and no penalties shall be imposed. The burden shall be on the owner or operator of the facility or source seeking to excuse the excess emissions violation to demonstrate that all of the relevant requirements in Sections 132 through 136 have been met and that the excess emissions event is or was reasonably unavoidable and the result of a startup, shutdown, scheduled maintenance, upset, breakdown, or safety measure. Any excuse of violation under this Section shall not excuse the owner or operator from compliance with the emissions limit in the future. ( )

02. Exemptions. Sections 131 through 136 shall not apply to limits established by EPA and incorporated by reference into Section 107 of this chapter or to any such limits established by EPA which are included in preconstruction or operating permits issued pursuant to this chapter. ( )

**132. CORRECTION OF CONDITION.**

The person responsible for, or in charge of a facility during, an excess emissions event shall, with all practicable speed, initiate and complete appropriate reasonable action to correct the conditions causing such excess emissions event; to reduce the frequency of occurrence of such events; to minimize the amount by which regulatory or permit limits are exceeded; and shall, as provided below or upon request of the Department, submit a full report of such occurrence, including a statement of all known causes, and of the scheduling and nature of the actions to be taken. ( )

**133. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS.**

The requirements in this section shall apply in all cases where startup, shutdown, or scheduled maintenance of air pollution control equipment or an emissions unit, including process equipment or process, may result in an excess emissions event. A demonstration of compliance with the following requirements, and adherence to any procedures developed pursuant this Section 133, shall be a prerequisite to any excuse of excess emissions violation under Section 131 for startup, shutdown or scheduled maintenance. ( )

01. Excess Emissions Procedures. For all air pollution control equipment and emissions units, including process equipment and processes, from which excess emissions may occur during startup, shutdown, or scheduled maintenance, the facility owner or operator shall establish and file with the Department specific procedures which will be used to minimize excess emissions during such events. Specific information for each of the types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be established or documented for each piece of control equipment and emissions unit (including process equipment or process) and shall include all of the following (which may be based upon the facility owner or operator's knowledge of the process or emissions where measured data is unavailable): ( )

- a. Identification of the specific air pollution control equipment or emissions unit. ( )
- b. Identification of the specific air pollutants likely to be emitted in excess of applicable standards or limits during the startup, shutdown, or scheduled maintenance period. ( )
- c. The estimated amount of excess emissions expected to be released during each event. ( )
- d. The expected duration of each excess emissions event. ( )

e. An explanation of why the excess emissions are reasonably unavoidable for each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). ( )

f. Specification of the frequency at which each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. ( )

g. For scheduled maintenance of control equipment, the owner or operator shall also document detailed explanations of: ( )

i. Why the maintenance is needed. ( )

ii. Why it is impractical to reduce or cease operation of the emissions unit(s) or other source(s) during the scheduled maintenance period. ( )

iii. Why the excess emissions are not reasonably avoidable through better scheduling of the maintenance or through better operation and maintenance practices. ( )

iv. Why, where applicable, it is necessary to by-pass, take off line, or operate the air pollution control equipment at reduced efficiency while the maintenance is being performed. ( )

h. Justification to explain why the piece of control equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and scheduled maintenance. ( )

i. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary air pollution control equipment to reduce the excess emissions. ( )

02. Amendments to Procedures. The owner or operator shall amend the procedures established pursuant to Section 133 from time to time and as deemed reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. ( )

03. Effect of Procedures. The preparation and filing of startup, shutdown, or scheduled maintenance procedures shall not absolve the owner or operator from an enforcement action by the Department if the procedures are not followed or the burden under Section 131 is not met. Unless otherwise required by these Rules, the failure to establish or file procedures under this Section shall not be a violation of these Rules in and of itself, but shall preclude the excuse of an excess emissions violation under Section 131 for emissions resulting from startup, shutdown, or scheduled maintenance. ( )

04. Filing of Procedures. To the extent procedures or plans for excess emissions resulting from startup, shutdown, or scheduled maintenance are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate, shall fulfill the requirement under this Section to file plans and procedures with the Department. ( )

05. General Provisions. The following shall pertain to all startup, shutdown, and scheduled maintenance activities: ( )

a. No scheduled startup, shutdown, or maintenance resulting in excess emissions shall occur during any period in which an Atmospheric Stagnation Advisory and/or a Wood Stove Curtailment Advisory has been declared by the Department within an area designated by the Department as a PM-10 nonattainment area, unless the permittee demonstrates that such is reasonably necessary to facility operations and cannot be reasonably avoided and the Department approves such activity in advance, to the extent advance approval by the Department is feasible. This prohibition on scheduled startup, shutdown or maintenance activities during Advisories does not apply to situations where shutdown is necessitated by urgent situations, such as imminent equipment failure, power curtailment, worker safety concerns or similar situations. ( )



b. The owner or operator of a source of excess emissions shall notify the Department of any startup, shutdown, or scheduled maintenance event that is expected to cause an excess emissions event. Such notification shall identify the time of the excess emissions, specific location, equipment involved, and type of excess emissions event (i.e. startup, shutdown, or scheduled maintenance). The notification shall be given as soon as reasonably possible, but no later than two (2) hours prior to the start of the excess emissions event unless the owner or operator demonstrates to the Department's satisfaction that a shorter advanced notice was necessary. ( )

c. The owner or operator of a source of excess emissions shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event due to startup, shutdown, or scheduled maintenance. ( )

d. No excuse of excess emissions violation under Section 131 may apply to scheduled maintenance on pollution control equipment, except in those cases where the maximum reasonable effort, including off-shift labor where required, has been made to accomplish such maintenance during periods of nonoperation of any related source operations or equipment. ( )

**134. UPSET, BREAKDOWN AND SAFETY REQUIREMENTS.**

The requirements in this section shall apply in all cases where upset or breakdown of air pollution control equipment or an emissions unit, including process equipment and processes, or the initiation of safety measures may result in an excess emissions event. A demonstration of compliance with the following requirements shall be a prerequisite to any excuse of an emissions standard violation under Section 131 for upset, breakdown or safety measures. ( )

01. Routine Maintenance and Repairs. For all air pollution control equipment and emissions units, including process equipment and processes, from which excess emissions may occur during upset conditions or breakdowns or implementation of safety measures, the facility owner or operator shall: ( )

a. Implement routine preventative maintenance and operating procedures consistent with good pollution control practices for minimizing upsets and breakdowns or events requiring implementation of safety measures, and ( )

b. Make routine repairs in an expeditious fashion when the owner or operator knew or should have known that an excess emissions event was likely to occur. Off-shift labor and overtime shall be utilized, to the extent practicable, to ensure that such repairs are made expeditiously. ( )

02. Foreseeable Excess Emissions Procedures. For equipment and process upsets and breakdowns and situations that require implementation of safety measures, which events can reasonably be anticipated to occur periodically but which cannot be reasonably avoided or predicted with certainty, the owner or operator shall establish and file with the Department specific procedures which will be used to minimize such events and excess emissions during such events. To the extent possible and reasonably practicable (and based upon knowledge of the process or emissions where measured data is not available), specify the following information for each type of anticipated upset/breakdown/safety event: ( )

a. The specific air pollution control equipment or emissions unit and the type of event anticipated. ( )

b. The specific air pollutants likely to be emitted in excess of applicable standards or limits during the event. ( )

c. The estimated amount of excess emissions expected to be released during each event. ( )

d. The expected duration of each excess emissions event. ( )

e. An explanation of why the excess emissions are reasonably unavoidable. ( )

f. The frequency of the type of event, based on historic occurrences. ( )

g. Justification to explain why the piece of control equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the particular type of event. ( )

h. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during such events, including without limitation those procedures listed under Section 134.02. ( )

03. Effect of Procedures. The preparation and filing of procedures pursuant to Section 134.02 shall not absolve the owner or operator from an enforcement action by the Department if the procedures are not followed or the burden under Section 131 is not met. Notwithstanding the foregoing, failure to follow procedures filed with the Department shall not preclude the excuse of an excess emissions violation if the owner or operator demonstrates to the Department's satisfaction that alternate and equivalent procedures were used and necessitated by the exigency of the circumstances. Unless otherwise required by these Rules, the failure to establish or file procedures under Section 134.02 shall not be a violation of these Rules in and of itself, but shall preclude the excuse of an excess emissions violation under Section 131 for emissions resulting from foreseeable upset/breakdown/safety events. ( )

04. Filing of Procedures. To the extent procedures or plans for excess emissions resulting from upsets, breakdowns or safety measures are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate, shall fulfill the requirement under this Section to file plans and procedures with the Department. ( )

05. Excess Emissions Minimization and Notification. For all air pollution control equipment and emissions units, including process equipment and processes, from which excess emissions may occur during upset or breakdown conditions or other situations that may necessitate the implementation of safety measures, the facility owner or operator shall establish specific procedures which will be used to minimize excess emissions during such events. Specific procedures shall include all of the following: ( )

a. The owner or operator shall immediately undertake appropriate measures to reduce and, to the extent possible, eliminate excess emissions resulting from the event. ( )

b. The owner or operator shall notify the Department of any upset/breakdown/safety event resulted in excess emissions. Such notification shall identify the time, specific location, equipment involved, and (to the extent known) the cause(s) of the occurrence. The notification shall be given as soon as reasonably possible, but no later than twenty-four (24) hours after the event, unless the owner or operator demonstrates to the Department's satisfaction that the longer reporting period was necessary. ( )

c. The owner or operator shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event caused by an upset, breakdown, or safety measure. ( )

06. Discretionary Reduction or Cessation Provisions. During any period of excess emissions due to upset or breakdown, or for continued operation under facility safety measures, the Department may require that the owner or operator immediately proceed to reduce or cease operation of the emissions unit(s) or facility, until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department will be taken upon consideration of the following factors and after consultation with the facility owner or operator: ( )

a. Potential risk to the public or the environment. ( )

b. Whether ceasing operations could result in physical damage to the equipment or facility, or cause injury to employees. ( )

c. If continued excess emissions were determined by the Department to be reasonably avoidable. ( )

d. The effect of the increase in pollution resulting from the shutdown and subsequent restart of the emission(s) or facility. ( )

e. The owner or operator shall not be required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility terminates the excess emissions. ( )

**135. EXCESS EMISSIONS REPORTS.**

01. Deadline for Excess Emissions Reports. A written report for each excess emissions event shall be submitted to the Department by the owner or operator no later than fifteen (15) days after the beginning of each event. ( )

02. Contents of Excess Emissions Reports. Each report shall contain the following information: ( )

a. The time period during which the excess emissions occurred; ( )

b. Identification of the specific equipment or emissions unit which caused the excess emissions; ( )

c. An explanation of the cause, or causes, of the excess emissions and whether the excess emissions occurred as a result of startup, shutdown, scheduled maintenance, upset, breakdown or a safety measure; ( )

d. An estimate of the quantity of each air pollutant emitted in excess of any applicable standard or emission limit (based on knowledge of the process and facility where emissions data is unavailable); ( )

e. A description of the activities carried out to eliminate the excess emissions; and ( )

f. Statements demonstrating compliance with the requirements of Sections 132 through 136, as appropriate. ( )

**136. EXCESS EMISSIONS RECORDS.**

01. Maintenance of Excess Emissions Records. The owner or operator shall maintain excess emissions records at the facility for the most recent five (5) calendar year period. ( )

02. Availability of Excess Emissions Records. The excess emissions records shall be made available to the Department upon request. ( )

03. Contents of Excess Emissions Records. The excess emissions records shall include the following: ( )

a. An excess emissions log book for each emissions unit or piece of equipment containing copies of all reports that have been submitted to the Department pursuant to Section 135 for the particular unit or equipment; and ( )

b. Copies of all startup, shutdown, and scheduled maintenance procedures and upset/breakdown/safety preventative maintenance plans which have been developed by the owner or operator in accordance with Sections 133 and 134, and facility records as necessary to demonstrate compliance with such procedures and plans. ( )

04. Protections Under Section 126. The protections under Section 126 for confidential information shall be available for excess emissions reports and records upon proper request of the owner or operator in accordance with Section 126. ( )

**1367. -- 139. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**209. PROCEDURE FOR ISSUING PERMITS.**

01. General Procedures. General procedures for permits to construct. (5-1-94)
- a. Within thirty (30) days after receipt of the application for a permit to construct, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. (5-1-94)
- b. Within sixty (60) days after the application is determined to be complete the Department shall: (5-1-94)
- i. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Section 209.01.c. The Department shall set forth reasons for any denial; or (5-1-94)
- ii. Issue a proposed approval, proposed conditional approval, or proposed denial. (5-1-94)
- c. An opportunity for public comment shall be provided on an application for any new major facility or major modification, any new facility or modification which would cause a significant contribution to existing ambient concentrations or affect any Class I area, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516, any application which uses an interpollutant trade pursuant to Section 210.17, and any other application which the Director determines an opportunity for public comment should be provided. (6-30-95)
- i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)
- ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)
- iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)
- iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)
- v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, or notice of public hearing if one is requested under Sections 209.02.b.iv. or 209.02.a.ii., unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)
- vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. (5-1-94)
- d. A copy of each permit will be sent to the U.S. Environmental Protection Agency. (5-1-94)
02. Additional Procedures for Specified Sources. (5-1-94)
- a. For any new major facility or major modification in an attainment or unclassifiable area for any air pollutant, except for those new major facilities and major modifications exempted under Sections 205.04.a. and 205.04.b. (5-1-94)

i. The public notice issued pursuant to Section 209.01.c.ii. shall indicate the degree of increment consumption that is expected from the new major facility or major modification; and (5-1-94)

ii. The public notice issued pursuant to Section 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effects of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. (5-1-94)

b. For any new major facility or major modification which would affect a federal Class I area or an integral vista of a mandatory federal Class I area. (5-1-94)

i. If the Department is notified of the intent to apply for a permit to construct, it shall notify the appropriate Federal Land Manager within thirty (30) days; (5-1-94)

ii. A copy of the permit application and all relevant information, including an analysis of the anticipated effects on visibility in any federal Class I area, shall be sent to the Administrator of the U.S. Environmental Protection Agency and the Federal Land Manager within thirty (30) days of receipt of a complete application and at least sixty (60) days prior to any public hearing on the application; (5-1-94)

iii. Notice of every action related to the consideration of the permit shall be sent to the Administrator of the U.S. Environmental Protection Agency; (5-1-94)

iv. The public notice issued pursuant to Section 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effect of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. (5-1-94)

v. The notice of public hearing, if required, shall explain any differences between the Department's preliminary determination and any visibility analysis performed by the Federal Land Manager and provided to the Department within thirty (30) days of the notification pursuant to Section 209.02.b.ii. (5-1-94)

vi. Upon a sufficient showing by the Federal Land Manager that a proposed new major facility or major modification will have an adverse impact upon the air quality related values (including visibility) of any federal mandatory Class I area, the Director may deny the application notwithstanding the fact that the concentrations of air pollutants would not exceed the maximum allowable increases for a Class I area. (5-1-94)

03. Establishing a Good Engineering Stack Height. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

04. Revisions of Permits to Construct. The Director may approve a revision of any permit to construct provided the stationary source or facility continues to meet all applicable requirements of Sections 200 through 225. Revised permits will be issued pursuant to procedures for issuing permits (Section 209), except that the requirements of Sections 209.01.c., 209.02.a., 209.02.b. and 209.04, shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. (5-1-94)

05. Permit to Construct Procedures for Tier I Sources. For Tier I sources that require a permit to construct, the owner or operator shall either: (5-1-94)

a. Submit only the information required by Sections 200 through 225 for a permit to construct, in which case: (5-1-94)

i. A permit to construct or denial will be issued in accordance with Sections 209.01.a. and 209.01.b. (5-1-94)

ii. The owner or operator may construct the source after permit to construct issuance. (5-1-94)

- iii. Within twelve (12) months after commencing operation, the owner or operator shall submit an application for a Tier I operating permit or a request for a substantive permit modification, whichever is appropriate. (5-1-94)
- iv. The application or substantive permit modification request shall be processed in accordance with timelines: Sections 361 and 367.02 through 367.05. (5-1-94)
- v. The final Tier I operating permit action shall supersede the permit to construct. (5-1-94)
- b. Submit all information required by Sections 200 through 299 and 300 through 387 for a permit to construct and a Tier I operating permit, in which case: (5-1-94)
- i. Completeness of the application shall be determined within thirty (30) days. (5-1-94)
- ii. The Department shall prepare a proposed permit to construct or denial, in accordance with Sections 200 through 299 and 300 through 387, within sixty (60) days. (5-1-94)(\_\_\_\_)
- iii. The Department shall provide for public comment in accordance with Section 364 on the proposed permit to construct or denial. (5-1-94)
- iv. Except as otherwise provided by these rules, the Department shall prepare a final permit to construct or denial within fifteen (15) days after the close of the public comment period. (5-1-94)
- v. The final permit to construct will be sent to EPA as the proposed Tier I operating permit for review in accordance with Section 366. (5-1-94)
- vi. The permittee shall request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 384. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**220. CATEGORY I EXEMPTION.**

No permit to construct is required for Category I sources. Category I sources must comply with all of the following requirements. (5-1-94)

01. Less Than One Hundred (100) Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant. (5-1-94)
02. Significant Increases. Not significantly increase the emissions of a major facility. (5-1-94)
03. NAAQS. As demonstrated using Department approved methods, not cause or significantly contribute to a violation of an ambient air quality standard. (5-1-94)
04. BRC. Have emissions that are less than ten percent (10%) of the emission rates specified in Section 006.878.a: (5-1-94)(\_\_\_\_)
05. Toxic Air Pollutants. Qualify under and comply with Section 225. (6-30-95)
06. Radionuclides. Not be regulated by any radionuclide standard in 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**222. CATEGORY III EXEMPTION.**

No permit to construct is required for Category III sources; provided however that the owner or operator of the Category III source shall maintain documentation on-site verifying that the source is a Category III source and submit the documentation to the Department immediately upon request; provided further that this exemption shall terminate one year after the inception of any operations and shall not be renewed. Category III sources must comply with all of the following requirements. (5-1-94)

01. Less Than One Hundred (100) Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant. (5-1-94)
02. Significant Increase. Not significantly increase the emissions of a major facility; and (5-1-94)
03. NAAQS. As demonstrated using department approved methods, not cause or significantly contribute to a violation of an ambient air quality standard. (5-1-94)
04. Pilot Plants. Be a pilot plant which uses a slip stream from an existing process stream not to exceed ten percent of that existing process stream or which complies with all of the following requirements. (5-1-94)
  - a. Not have a potential to emit emissions which are significant as defined in Section 006.878. (5-1-94)( )
  - b. Qualify under and comply with Section 225. The owner or operator may utilize a short term adjustment factor of ten (10) by multiplying either the acceptable ambient concentration or the screening emissions level, but not both, by ten (10). (6-30-95)
  - c. Not be regulated by any radionuclide standard in 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**313. TIMELY APPLICATION.**

01. Original Tier I Operating Permits. (5-1-94)
  - a. For Tier I sources existing on May 1, 1994, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than ~~January~~ June 1, 1996, or within twelve (12) months of EPA approval of the Tier I operating program, whichever is earlier, unless: (5-1-95)( )
    - i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
    - ii. The Tier I source is identified in Sections 301.02.b. or 301.02.c. (5-1-94)
  - b. For Tier I sources identified in Sections 301.02.b.i. or 301.02.b.iii. existing on November 1, 1997, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than January 1, 1998, unless the Department provides written notification of an earlier date to the owner or operator. (5-1-94)
  - c. For sources that become Tier I sources due to construction, reconstruction or modification after May 1, 1994, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after commencing operation, unless: (5-1-94)
    - i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
    - ii. The Tier I source is identified in Sections 301.02.b. or 301.02.c. (5-1-94)

d. For sources that become Tier I sources identified in Sections 301.02.b.i. or 301.02.b.iii. due to construction, reconstruction or modification after November 1, 1997, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (5-1-94)

e. For initial phase II acid rain sources identified in Section 301.02.b.ii., the owner or operator of the initial Phase II acid rain source shall submit to the Department a complete application for an original Tier I operating permit by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides. (5-1-94)

02. Earlier Dates During Initial Period. Except as otherwise provided in these rules, during the initial period which begins May 1, 1994 and ends three (3) years after EPA approval of the Tier I operating program, the Department may designate Tier I sources for processing as follows: (5-1-94)

a. The Department may develop a general estimate of the total workload and benefits associated with the Tier I operating permit applications that are predicted to be submitted during the initial period including, but not limited to, original permit applications and substantive permit modification applications. (5-1-94)

b. Considering the complexity of the applications, air quality benefits of permitting and requests for early actions from owners and operators, the Department may divide the applications into three groups each representing approximately one-third of the total workload and benefits. (5-1-94)

c. The Department may prioritize the three groups and the Tier I sources within each group for processing, establish early application deadlines and notify the owners or operators of the Tier I sources in the group in writing of a required submittal date earlier than the general deadlines provided in Section 313.01. (5-1-94)

03. Renewals of Tier I Operating Permits. The owner or operator of the Tier I source shall submit a complete application to the Department for a renewal of the Tier I operating permit at least nine (9) months before the expiration date of the existing Tier I operating permit. (5-1-94)

04. Alterations to Tier I Operating Permits. Sections 380 through 387 provide the requirements and procedures for alterations at Tier I sources or to Tier I operating permits. (5-1-94)

**314. REQUIRED STANDARD APPLICATION FORM AND REQUIRED INFORMATION.**

01. General Requirements. (5-1-94)

a. Applications shall be submitted on a form or forms provided by the Department or by other means prescribed by these rules or the Department. The application shall be certified by the responsible official in accordance with Section 123. (5-1-94)

i. If the Tier I source is regulated under 42 U.S.C. Sections 7651 through 7651o, the owner or operator shall also submit nationally-standardized acid rain forms provided by EPA. (5-1-94)

b. All information shall be in sufficient detail so that the Department may efficiently and effectively determine the applicability of requirements and make all other necessary evaluations and determinations. (5-1-94)

02. General Information for the Facility. (5-1-94)

a. Provide identifying information, including the name, address and telephone number of: (5-1-94)

i. The owner; (5-1-94)

ii. The operator; (5-1-94)

iii. The facility where the Tier I source is located; (5-1-94)



- iv. The registered agent of the owner, if any; (5-1-94)
  - v. The registered agent of the operator, if any; (5-1-94)
  - vi. The responsible official, if other than the owner or operator; and (5-1-94)
  - vii. The contact person. (5-1-94)
  - b. Provide a general description of the processes used and products produced by the facility where the Tier I source is located, including any associated with each requested alternative operating scenario and trading scenario. The description shall include narrative and applicable SIC codes. (5-1-94)
  - c. Provide a general description of each process line affecting a Tier I source. (5-1-94)
03. Excess Emissions Procedures. For all air pollution control equipment, emissions units, or other sources from which excess emissions may occur during startup, shutdown, and scheduled maintenance, provide detailed descriptions of the specific procedures which will be used to minimize excess emissions. Specific information for each of these three types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be described in full detail for each piece of control equipment, emissions unit or other source and shall include all of the following: (5-1-94)
- a. Identification of the specific air pollution control equipment, emissions unit, or other source. (5-1-94)
  - b. Identification of the specific air pollutants likely to be emitted in excess of applicable standards or limits during the startup, shutdown, or scheduled maintenance period. (5-1-94)
  - c. The estimated amount of excess emissions expected to be released during each event. (5-1-94)
  - d. The expected duration of each excess emissions event. (5-1-94)
  - e. An explanation of why the excess emissions are unavoidable for each of the three types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). (5-1-94)
  - f. Specification of the frequency at which each of the three types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. (5-1-94)
  - g. For scheduled maintenance, the owner or operator shall also provide detailed explanations of: (5-1-94)
    - i. Why the maintenance is needed. (5-1-94)
    - ii. Why it is impractical to reduce or cease operation of the emissions unit(s) or other source(s) during the scheduled maintenance period. (5-1-94)
    - iii. Why the excess emissions are not avoidable through better scheduling of the maintenance or through better operation and maintenance practices. (5-1-94)
    - iv. Why, where applicable, it is necessary to by-pass, take off line, or operate the air pollution control equipment at reduced efficiency while the maintenance is being performed. (5-1-94)
    - v. Why auxiliary air pollution control equipment is not used during the scheduled maintenance period to eliminate the excess emissions. (5-1-94)
    - h. Justification to explain why the piece of control equipment, emissions unit or other source can not be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and

scheduled maintenance. (5-1-94)

i. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary air pollution control equipment to reduce the excess emissions. (5-1-94)

04. Specific Information for Each Emissions Unit. The owner or operator shall provide, in an itemized format, all of the information identified in Sections 314.05 through 314.12 for each emissions unit, unless the emissions unit is an insignificant activity. (3-3-95)

05. Emissions. (5-1-94)

a. Identify and ~~quantify~~ describe all emissions of pollutants for which the source is major and all emissions of regulated air pollutants from each emissions unit. (5-1-94)(    )

b. Emissions rates shall be quantified in tons per year (tpy) and in such additional terms as are necessary to determine compliance ~~with all applicable requirements~~ consistent with the applicable test method. (5-1-94)(    )

~~bc.~~ Identify and describe all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of the Clean Air Act. (5-1-94)(    )

~~ed.~~ To the extent it is needed to determine or regulate emissions, identify and quantify all fuels, fuel use, raw materials, production rates, and operating schedules. (5-1-94)

~~ee.~~ Identify and describe all air pollution control equipment and compliance monitoring devices or activities. (5-1-94)

~~ef.~~ Identify and describe all limitations on source operation or any work practice standards affecting emissions. (5-1-94)

~~fg.~~ Provide the calculations on which the information provided under Sections 314.05.a. through e. is based. (5-1-94)

06. Applicable Requirements. (5-1-94)

a. Cite and describe all applicable requirements affecting the emissions unit; and (5-1-94)

b. Describe or reference all methods required by each applicable requirement for determining the compliance status of the emissions unit with the applicable requirement, including any applicable monitoring, recordkeeping and reporting requirements or test methods. (5-1-94)

07. Other Requirements. Other specific information that may be necessary to determine the applicability of, implement or enforce any requirement of the Act, these rules, 42 U.S.C. Sections 7401 through 7671q or federal regulations. (5-1-94)

08. Proposed Exemptions and Determinations of Nonapplicability. (5-1-94)

a. Identify and provide an explanation of any proposed exemptions from applicable requirements. (5-1-94)

b. Identify any other requirements for which the applicant seeks a determination of nonapplicability and provide an explanation of why the requirement is not applicable to the Tier I source. (5-1-94)

09. Alternative Operating Scenarios. (5-1-94)

- a. Identify all requested alternative operating scenarios. (5-1-94)
- b. Provide a detailed description of all requested alternative operating scenarios. Include all the information required by Section 314 that is relevant to the alternative operating scenario. (5-1-94)
- 10. Compliance Certifications. (5-1-94)
  - a. Provide a compliance certification regarding the compliance status of each emissions unit at the time the application is submitted to the Department that: (5-1-94)
    - i. Identifies all applicable requirements affecting each emissions unit. (5-1-94)
    - ii. Certifies the compliance status of each emissions unit with each of the applicable requirements. (5-1-94)
    - iii. Provides a detailed description of the method(s) used for determining the compliance status of each emissions unit with each applicable requirement, including a description of any monitoring, recordkeeping, reporting and test methods that were used. Also provide a detailed description of the method(s) required for determining compliance. (5-1-94)
    - iv. Certifies the compliance status of the emissions unit with any applicable enhanced monitoring requirements. (5-1-94)
    - v. Certifies the compliance status of the emissions unit with any applicable enhanced compliance certification requirements. (5-1-94)
    - vi. Provides all other information necessary to determining the compliance status of the emissions unit. (5-1-94)
  - b. Provide a schedule for submission of compliance certifications during the term of the Tier I operating permit. The schedule shall require compliance certifications to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)
- 11. Compliance Plans. (5-1-94)
  - a. Provide a compliance description as follows: (5-1-94)
    - i. For each applicable requirement with which the emissions unit is in compliance, state that the emissions unit will continue to comply with the applicable requirement. (5-1-94)
    - ii. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not contain a more detailed schedule, state that the emissions unit will meet the applicable requirement on a timely basis. (5-1-94)
    - iii. For each applicable requirement that will become effective during the term of the Tier I operating permit that contains a more detailed schedule, state that the emissions unit will comply with the applicable requirement on the schedule provided in the applicable requirement. (5-1-94)
    - iv. For each applicable requirement with which the emission unit is not in compliance, state that the emissions unit will be in compliance with the applicable requirement by the time the Tier I operating permit is issued or provide a compliance schedule in accordance with Subection 314.11.b. (5-1-94)
  - b. All compliance schedules shall: (5-1-94)
    - i. Include a schedule of remedial measures leading to compliance, including a verifiable sequence of actions and specific dates for achieving milestones and achieving compliance. (5-1-94)

- ii. Include a schedule for submission to the Department of periodic progress reports no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying applicable requirement or by the Department. (5-1-94)
- iii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)
- iv. Be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based. (5-1-94)
- c. Provide a schedule for submission of compliance plans during the term of the Tier I operating permit. The schedule shall require compliance plans to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)
- 12. Trading Scenarios. (5-1-94)
  - a. Identify all requested trading scenarios, including alternative emissions limits (bubbles) authorized by Section 440. (5-1-94)
  - b. Provide a detailed description of all requested trading scenarios. Include all the information required by Section 314 that is relevant to the trading scenario and all the information required by Section 440, if applicable. (5-1-94)
- 13. Additional Information. Provide all additional information that the Department determines is necessary for the Department to efficiently and effectively perform its functions. Such functions include, but are not limited to, determining the applicability of requirements for all air pollutants, determining compliance with applicable requirements, developing or defining Tier I operating permit terms and conditions, defining all approved alternative operating scenarios, evaluating excess emissions procedures or making all necessary evaluations and determinations. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~326. ADDITIONAL CONTENTS OF TIER I OPERATING PERMITS – EXCESS EMISSIONS. The purposes of Sections 326 through 332 is to establish procedures and requirements related to excess emissions from Tier I sources. (5-1-94)~~

~~327. GENERAL PROVISIONS. The following provisions regarding excess emissions shall apply to each Tier I source. (5-1-94)~~

~~01. Prohibition. Emissions of air pollutants in excess of applicable standards or emission limits are prohibited. Each Tier I operating permit shall have a provision stating that excess emissions are prohibited unless specifically exempted by the Department through an exercise of the Department's prosecutorial discretion. (5-1-94)~~

~~02. Exemption. The Department may allow a permittee to emit air pollutants in excess of applicable standards or emission limits if: (5-1-94)~~

~~a. The permittee demonstrates to the Department's satisfaction that the excess emissions were caused by an emergency, upset, breakdown, startup, shutdown, or scheduled maintenance of air pollution control equipment or an emissions unit; (5-1-94)~~

~~b. All of the requirements in Sections 326 through 332 are strictly adhered to for each type of excess emissions event; and (5-1-94)~~

~~e. The excess emissions are not attributable to a recurrent upset/breakdown. (5-1-94)~~

~~328. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS. The requirements in this section shall apply in all cases where startup, shutdown, or scheduled maintenance of air pollution control equipment or an emissions unit, including process equipment, at a Tier I source may result in excess emissions.~~

~~(5-1-94)~~

~~01. Incorporation of Procedures Submitted by Permittee. (5-1-94)~~

~~a. Each Tier I operating permit shall incorporate by reference any and all startup, shutdown, and scheduled maintenance procedures submitted by the permittee pursuant to Section 314.03, if said procedures were deemed acceptable by the Department during the Tier I operating permit application review process. (5-1-94)~~

~~b. Acceptance of the startup, shutdown, and scheduled maintenance procedures by the Department shall be based upon determinations that said procedures are consistent with good pollution control practices, said procedures will minimize emissions during such period to the extent practicable and that no adverse health impact on the public will occur. (5-1-94)~~

~~e. Each Tier I operating permit shall have a provision stating that incorporation by reference of the startup, shutdown, and scheduled maintenance procedures into the Tier I operating permit shall not absolve the permittee from an enforcement action by the Department if the approved procedures are not followed, or the criteria in Section 327.02 are not met. (5-1-94)~~

~~d. Each Tier I operating permit shall have a provision stating that excess emissions due to startup, shutdown, and scheduled maintenance of any Tier I source that are not specifically addressed in the Tier I operating permit or that do not meet the criteria in Section 327.02 are prohibited. (5-1-94)~~

~~02. General Provisions. Each Tier I operating permit shall have provisions stating: (5-1-94)~~

~~a. No startup, shutdown, or scheduled maintenance resulting in excess emissions shall occur during any period in which an Atmospheric Stagnation Advisory and/or a Wood Stove Curtailment Advisory has been declared by the Department within an area designated by the Department as a PM-10 nonattainment area. (5-1-94)~~

~~b. The permittee shall notify the Department of any startup, shutdown, or scheduled maintenance event which is expected to cause excess emissions. Such notification shall identify the time of the excess emissions, specific location, equipment involved, and type of excess emissions event (i.e. startup, shutdown, or scheduled maintenance). The notification shall be given as soon as reasonably possible, but no later than two (2) hours prior to the start of the excess emissions event unless the permittee demonstrates to the Department's satisfaction that a shorter advanced notice was necessary. (5-1-94)~~

~~e. The permittee shall report and record the information required pursuant to Sections 330 and 331 for each excess emissions event due to startup, shutdown, or scheduled maintenance. (5-1-94)~~

~~329. UPSET AND BREAKDOWN REQUIREMENTS. The requirements in this section shall apply in all cases where excess emissions from a Tier I source may result from an upset or breakdown of air pollution control equipment or an emissions unit, including process equipment. (5-1-94)~~

~~01. General Provisions. Each Tier I operating permit shall have provisions stating: (5-1-94)~~

~~a. The permittee shall immediately undertake appropriate measures to reduce and, to the extent possible, eliminate excess emissions resulting from an upset or breakdown. (5-1-94)~~

~~b. The permittee shall notify the Department of any occurrence of an upset or breakdown which may cause excess emissions. Such notification shall identify the time, specific location, equipment involved, and (to the extent known) the cause(s) of the occurrence. The notification shall be given as soon as reasonably possible, but no later than twenty-four (24) hours after its occurrence, unless the permittee demonstrates to the Department's satisfaction that the longer reporting period was necessary. (5-1-94)~~

~~e. The permittee shall report and record the information required pursuant to Sections 330 and 331 for~~

- ~~each excess emissions event due to an upset or breakdown. (5-1-94)~~
- ~~d. Excess emissions due to upset or breakdown that do not meet the criteria in Section 327.02 are prohibited. (5-1-94)~~
- ~~02. Discretionary Reduction or Cessation Provisions. Each Tier I operating permit shall have provisions stating: (5-1-94)~~
- ~~a. During any period of excess emissions due to upset or breakdown, the Department may require that the permittee immediately proceed to reduce or cease operation of the emissions unit(s) or facility until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department will be taken upon consideration of the following factors: (5-1-94)~~
- ~~i. Potential risk to the public or environment. (5-1-94)~~
- ~~ii. Whether ceasing operations could result in physical damage to the equipment or facility, or cause injury to employees. (5-1-94)~~
- ~~iii. If continued excess emissions were determined by the Department to be avoidable. (5-1-94)~~
- ~~iv. The increase in pollution resulting from the shutdown and subsequent restart of the emission(s) or facility. (5-1-94)~~
- ~~b. The permittee shall not be required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility terminates the excess emissions. (5-1-94)~~
- ~~03. Automatic Cessation Provisions. (5-1-94)~~
- ~~a. Each Tier I operating permit shall have a provision stating that in the event of any on-going period of excess emissions due to an upset or breakdown, the permittee shall cease operation of the emissions unit or facility no later than forty-eight (48) hours after the beginning of the excess emissions period, unless the condition causing the excess emissions is corrected within that time period or unless the permittee obtains and retains Department approval of temporary measures in accordance with Sections 329.03.b through 329.03.e. (5-1-94)~~
- ~~b. The permittee need not cease operation of the emissions unit or facility if: (5-1-94)~~
- ~~i. In accordance with Sections 329.03.c through 329.03.e, the permittee obtains and retains Department approval of temporary procedures that will be used to minimize excess emissions until such time as the condition(s) causing the excess emissions are corrected or brought under control; and (5-1-94)~~
- ~~ii. The permittee complies with the approved temporary procedures. (5-1-94)~~
- ~~e. If the permittee requests that the Department approve temporary procedures, the permittee shall submit the following information to the Department: (5-1-94)~~
- ~~i. The reasons why the condition(s) causing the excess emissions cannot be corrected or brought under control. Such reasons shall include but not be limited to equipment availability and difficulty of repair or installation. (5-1-94)~~
- ~~ii. Identification of the specific air pollution control equipment or emissions unit causing the excess emissions. (5-1-94)~~
- ~~iii. Identification of the specific air pollutants being emitted in excess of applicable standards or limits, the estimated amount of excess emissions expected to be released, and expected duration of the excess emissions. (5-1-94)~~
- ~~iv. Identification of specific procedures to be followed which will minimize the continued excess~~

~~emissions. (5-1-94)~~

~~d. Approval by the Department of the temporary procedures shall be based upon determinations that said procedures are consistent with good pollution control practices, said procedures will minimize emissions during such period to the extent practicable and that no adverse health impact on the public will occur. (5-1-94)~~

~~e. The Department may revoke or withdraw the approval of the temporary procedures or require modification to previously approved temporary procedures at any time during the period of excess emissions by written notification to the permittee. (5-1-94)~~

~~04. Recurrent Upset/Breakdown Event Provisions. Each Tier I operating permit shall have a provision stating that more than five (5) separate excess emissions events attributable to either an upset or breakdown of the same emissions unit or air pollution control equipment which occur within any six (6) calendar month period shall constitute a recurrent upset/breakdown event and any and all excess emissions events attributable to a recurrent upset/breakdown are prohibited. (5-1-94)~~

~~05. Preventative Maintenance Plan Provisions. Each Tier I operating permit shall have a provision stating that if the frequency of upsets and/or breakdowns occurring at the Tier I source is excessive in number, the Department may, by written notice, require the permittee to submit for Department approval a facility wide preventive maintenance plan including the following: (5-1-94)~~

~~a. Detailed descriptions of all regularly scheduled preventive maintenance activities to be conducted by the permittee for the purpose of minimizing the number of upsets and/or breakdowns at the facility. (5-1-94)~~

~~b. Identification of planned periods during which facility operations shall be ceased in order to allow the permittee to conduct preventive maintenance activities for the purpose of minimizing the number of upsets and/or breakdowns at the facility. (5-1-94)~~

~~330. EXCESS EMISSIONS REPORTS. (5-1-94)~~

~~01. Deadline for Excess Emissions Reports. A written report for each event of excess emissions, shall be submitted to the Department by the permittee no later than fifteen (15) days after the beginning of each event. (5-1-94)~~

~~02. Contents of Excess Emissions Reports. Each report shall contain the following information: (5-1-94)~~

~~a. The time period during which the excess emissions occurred; (5-1-94)~~

~~b. Identification of the specific emissions unit or air pollution control equipment which caused the excess emissions; (5-1-94)~~

~~e. An explanation of the cause, or causes, of the excess emissions and whether the excess emissions occurred as a result of startup, shutdown, scheduled maintenance, upset, or breakdown; (5-1-94)~~

~~d. An estimate of the quantity of each air pollutant emitted in excess of any applicable standard or emission limit; and (5-1-94)~~

~~e. A description of the activities carried out to eliminate the excess emissions. (5-1-94)~~

~~331. EXCESS EMISSIONS RECORDS. (5-1-94)~~

~~01. Maintenance of Excess Emissions Records. The permittee shall maintain excess emissions records at the facility for the most recent five (5) calendar year period. (5-1-94)~~

~~02. Availability of Excess Emissions Records. The excess emissions records shall be made available to the Department upon request. (5-1-94)~~

03. ~~Contents of Excess Emissions Records. The excess emissions records shall include the following:~~ (5-1-94)

a. ~~An excess emissions log book for each Tier I source containing copies of all reports that have been submitted to the Department pursuant to Section 330 for the particular source; and~~ (5-1-94)

b. ~~Copies of any and all startup, shutdown, and scheduled maintenance procedures which have been accepted by the Department and incorporated by reference into a Tier I operating permit.~~ (5-1-94)

**326. -- 331. (RESERVED).**

**332. EMERGENCY AS AN AFFIRMATIVE DEFENSE REGARDING EXCESS EMISSIONS.**

01. General. An emergency, as defined in Section 008.08.a., constitutes an affirmative defense to an action brought for emissions exceeding a technology-based emission limitation. (5-1-94)

02. Demonstration of Emergency. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that: (5-1-94)

a. An emergency occurred and that the permittee can identify the cause(s) of the emergency; (5-1-94)

b. The permitted facility was at the time being properly operated; (5-1-94)

c. During the period of the emergency, the permittee took all reasonable steps, as determined by the Department, to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and (5-1-94)

d. The permittee submitted written notice of the emergency to the Department within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. (5-1-94)

03. Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. (5-1-94)

04. Applicability. Section 332 is in addition to any emergency or upset provision contained in any ~~technology-based applicable requirement including Section 329.~~ (5-1-94)(\_\_\_\_)



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

**16.01.02 - WATER QUALITY STANDARDS AND  
WASTEWATER TREATMENT REQUIREMENTS**

**DOCKET NO. 16-0102-9502**

**NOTICE OF EXTENSION OF COMMENT PERIOD**

**AUTHORITY:** In compliance with Section 67-5222, Idaho Code, notice is hereby given that this agency has extended the period for public comment. The action is authorized by Sections 39-105, 39-107, and 39-3601 *et seq.*, Idaho Code.

**DESCRIPTIVE SUMMARY:** This action extends the time period for the submission of public comments on this docket. The new deadline for submission of comments is listed below. The summary of this action and the text of the proposed rule are found in the Idaho Administrative Bulletin, Volume 96-5, May 1, 1996, pages 11 through 41.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule-making, contact Mark Shumar at (208)373-0502.

Anyone can submit written comment regarding this proposed rule. All written comments must be received by the undersigned on or before August 2, 1996.

DATED this 3rd day of July, 1996.

Paula Junae Saul  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Fax No. (208)373-0481

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS**  
**DOCKET NO. 16-0102-9602**  
**NOTICE OF PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

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

Thursday, July 25, 1996, 7:00 p.m.  
Division of Environmental Quality Conference Center  
1410 N. Hilton, Boise, Idaho.

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements, contact the undersigned at (208)373-0418.

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

This proposed rule amends the Water Quality Standards and Wastewater Treatment Requirements by adding new Section 849, "Oil Filled Electric Equipment." This new section defines the necessary actions to be taken in the case of an unauthorized release of dielectric oil (electric insulating oil) from electrical equipment to state waters or land; the actions required to stop continuing releases and to contain releases from reaching ground or surface waters; required notification procedures; collection, removal, and disposal requirements; cleanup requirements if releases are not remediated after 30 days of discovery; and the applicability of the rule.

This rule will provide utility and power companies more flexibility regarding the requirements to report mineral oil releases from electrical equipment, and the required responses to the releases, without increasing the threat to human health or the environment. Dielectric oils have numerous toxicological, chemical and physical characteristics different than petroleum products used for fuel or heating purposes. These specific characteristics of mineral oil, combined with the fact that most electric equipment that contains mineral oil only contains small volumes of oil, greatly reduces the likelihood of actual threats to human health or the environment caused by releases from this equipment.

Negotiated rulemaking was not conducted because the nature of this rulemaking does not lend itself to the negotiated rulemaking process.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule-making, contact Scott Short at (208)373-0502. Anyone can submit written comment regarding this proposed rule. All written comments must be received by the undersigned on or before August 2, 1996.

DATED this 3rd day of July, 1996.

Paula Junae Saul  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Fax No. (208)373-0481

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**TEXT OF DOCKET NO. 16-0102-9602**

**801. -- ~~849848.~~ (RESERVED).**

**849. OIL FILLED ELECTRIC EQUIPMENT.**

Releases of Dielectric Oil from oil filled electric equipment are subject to the following requirements: ( )

01. Unauthorized Releases. In the case of an unauthorized release of dielectric oil to state waters or to land such that there is a likelihood that it will enter state waters, the persons in charge must: ( )

a. Stop Continuing Releases. Make every reasonable effort to abate and stop a continuing release. Provided however, that seepage normally associated with oil filled electrical equipment occurring in substations or distribution facilities with restricted access and not causing a threat to waters of the state is not considered a continuing release. ( )

b. Contain Material. Make every reasonable effort to contain released dielectric oil in such a manner that it will not reach surface or ground water of the state. ( )

c. Department Notification Required. Notify the Department or designated agent within forty-eight (48) hours of discovery of any release over twenty-five (25) gallons, or any release causing a threat to waters of the state, from any piece of electrical equipment. ( )

d. Collect, Remove, and Dispose. Collect, remove, and dispose of the released dielectric oil and any contaminated media in a manner approved by the Department. ( )

e. Compliance with Section 852. If collection, removal, and disposal cannot be accomplished within thirty (30) days after discovery of a release, the persons in charge shall comply with Section 852. ( )

02. Applicability. This section applies only to equipment used in the transmission of electricity such as transformers, regulators, reactors, circuit breakers, switch gear and attendant equipment which is filled with mineral insulating oil of a petroleum origin. This section does not pertain to bulk storage of dielectric oil which is not contained in electrical equipment. ( )

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

**16.01.18 - IDAHO LAND REMEDIATION RULES**

**DOCKET NO. 16-0118-9601**

**NOTICE OF NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate a rule and desires public comment prior to initiating formal rulemaking procedures. The action is authorized by Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code.

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

The purpose of the negotiated rulemaking is to create a new rule chapter to be cited as IDAPA 16.01.18, Rules of the Idaho Department of Health and Welfare, Title 01, Chapter 18, Idaho Land Remediation Rules. The purpose of the rules is to implement the provisions of the Idaho Land Remediation Act, S. 1516 (to be codified at Title 39, Chapter 72, Idaho Code). The rules will respond to the state Legislature's goal of fostering the remediation, transfer, reuse, or redevelopment of sites, or groups of sites, based on risk to human health and the environment where releases or threatened releases of hazardous substances or petroleum exist. The Idaho Land Remediation Rules will establish a state voluntary program for the remediation of hazardous substance or petroleum contaminated sites that will encourage innovation and cooperation between the state, local communities, and interested persons and will promote the economic revitalization of property. The rules will provide administrative procedures for an expedited remediation process by eliminating the need for many adversarial enforcement actions and delays in remediation plan approvals. Methodologies will be developed to determine site-specific risk-based remediation standards based on current and future land use of the property. Certificates of completion will be issued by the state to property owners upon satisfactory completion of voluntary workplans, and protection from state liability will be provided to lenders consistent with federal policy. The rule will also provide for the collection of fees to defray the actual reasonable costs of the voluntary remediation program.

A preliminary draft of the rules has not yet been developed. It will be developed through the assistance of an advisory committee. The advisory committee meetings will be open to the public. The public may also participate in this negotiated rulemaking process by submitting written comments as provided below.

The interests which may be affected by the rules include a wide range of eligible public and private owners or potential owners who wish to enter into a voluntary cleanup agreement with the state to restore the economic viability of contaminated real property.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:**

For assistance on questions concerning the negotiated rulemaking, contact Steve Manning at (208)373-0502.

Anyone may submit written comments regarding negotiated rulemaking. All written comments concerning the negotiated rulemaking must be received by the undersigned on or before July 24, 1996.

Dated this 3rd day of July, 1996.

Paula Junae Saul  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Fax No. (208)373-0481

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.01 - RULES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN**

**DOCKET NO. 16-0301-9503**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1997 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5442 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 39-106(l) and 56-202(b), Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted as proposed. The original text of the proposed rules was published in the December 6, 1995 Administrative Bulletin, Volume 95-12, pages 99 through 109.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5819.

DATED this 3rd day of July, 1996.

Staci Welsh  
Administrative Procedures Coordinator  
DHW - Legal Services Division  
450 West State Street - 10th Floor  
PO Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-5548 fax

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**IDAPA 16**  
**TITLE 03**  
**Chapter 01**

**RULES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 95-12, December 6, 1995  
Pages 99 through 109.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.01 - RULES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN**  
**DOCKET NO. 16-0301-9601**  
**NOTICE OF TEMPORARY AND PROPOSED RULES**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 1996.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 39-106(l) and 56-202(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 17, 1996.

**DESCRIPTIVE SUMMARY:** The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to confer a benefit.

The Idaho Child Care Program (ICCP) limits benefits to those families whose income is less than one hundred twenty five percent (125%) of the Federal Poverty Guidelines. Families who qualify for benefits receive only a partial reimbursement of the cost of their child care.

The Department of Health and Welfare has determined that there are sufficient funds available to the program to allow the income limit to be raised from one hundred twenty five percent (125%) to one hundred fifty percent (150%) of the Federal Poverty Guidelines. The Department will also raise the percentage of child care costs which it will reimburse to eligible families. These changes were made in Docket No. 16-0612-9601, published in the June 5, 1996 issue of the Idaho Administrative Bulletin.

Changes have been made in this docket regarding the transitional child care reimbursement percentage by referencing IDAPA 16, Title 06, Chapter 12, Rules Governing the Idaho Child Care Program, Section 307.

Changes were also made to the reference cite for transitional child care maximum reimbursement rates from IDAPA 16, Title 06, Chapter 10 to IDAPA 16, Title 06, Chapter 12, Section 305.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Patti Campbell at (208) 334-5819.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before July 24, 1996.

DATED this 3rd day of July, 1996.

STACI WELSH  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
450 West State Street, 10th Floor  
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Boise, Idaho 83720-0036  
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**TEXT OF DOCKET NO. 16-0301-9601**

**727. TCC REIMBURSEMENT PERCENTAGE.**

The TCC reimbursement percentage is based on the sliding fee scale listed in IDAPA 16, Title 06, Chapter 12, Rules Governing the Idaho Child Care Program (ICCP), Section 307. The percentage is determined based on the family size and available income. The sliding fee scale is listed on Table 727 of these rules. (7-1-96)(7-1-96)T

<b>CHILD CARE REIMBURSEMENT PERCENTAGES</b>									
	<b>FAMILY SIZE</b>								
	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
	<b>MONTHLY INCOME PERCENTAGE OF CHILD CARE COST FAMILY MUST PAY</b>								
\$0-\$99	5%	5%	5%	5%	5%	5%	5%	5%	5%
\$100-\$199	10%	5%	5%	5%	5%	5%	5%	5%	5%
\$200-\$299	15%	10%	5%	5%	5%	5%	5%	5%	5%
\$300-\$399	20%	15%	5%	5%	5%	5%	5%	5%	5%
\$400-\$499	25%	20%	10%	5%	5%	5%	5%	5%	5%
\$500-\$599	30%	25%	15%	10%	5%	5%	5%	5%	5%
\$600-\$699	35%	30%	20%	15%	10%	5%	5%	5%	5%
\$700-\$799	40%	35%	25%	20%	15%	10%	5%	5%	5%
\$800-\$899	45%	40%	30%	25%	20%	15%	10%	5%	5%
\$900-\$999	50%	45%	35%	30%	25%	20%	15%	10%	5%
\$1,000-\$1,099	55%	50%	40%	35%	30%	25%	20%	15%	10%
\$1,100-\$1,199	65%	55%	45%	40%	35%	30%	25%	20%	15%
\$1,200-\$1,299	75%	65%	50%	45%	40%	35%	30%	25%	20%
\$1,300-\$1,399	85%	75%	55%	50%	45%	40%	35%	30%	25%
\$1,400-\$1,499	95%	80%	60%	55%	50%	45%	40%	35%	30%
\$1,500-\$1,599	100%	85%	65%	60%	55%	50%	45%	40%	35%
\$1,600-\$1,699	100%	90%	70%	65%	60%	55%	50%	45%	40%
\$1,700-\$1,799	100%	95%	75%	70%	65%	60%	55%	50%	45%
\$1,800-\$1,899	100%	100%	80%	75%	70%	65%	60%	55%	50%
\$1,900-\$1,999	100%	100%	85%	80%	75%	70%	65%	60%	55%
\$2,000-\$2,099	100%	100%	90%	85%	80%	75%	70%	65%	60%
\$2,100-\$2,199	100%	100%	95%	90%	85%	80%	75%	70%	65%
\$2,200-\$2,299	100%	100%	100%	95%	90%	85%	80%	75%	70%
\$2,300-\$2,399	100%	100%	100%	100%	95%	90%	85%	80%	75%
\$2,400-\$2,499	100%	100%	100%	100%	100%	95%	90%	85%	80%

\$2,500-\$2,599	100%	100%	100%	100%	87%	84%	81%	78%	75%
\$2,600-\$2,699	100%	100%	100%	100%	90%	87%	84%	81%	78%
\$2,700-\$2,799	100%	100%	100%	100%	93%	90%	87%	84%	81%
\$2,800-\$2,899	100%	100%	100%	100%	95%	93%	90%	87%	84%
\$2,900-\$2,999	100%	100%	100%	100%	100%	100%	93%	90%	87%
\$3,000-\$3,099	100%	100%	100%	100%	100%	100%	100%	93%	90%
\$3,100-\$3,199	100%	100%	100%	100%	100%	100%	100%	100%	100%

<b>* Maximum income allowed for TCC benefits is:</b>	
\$1,449	for household of 2
\$1,790	for household of 3
\$2,131	for household of 4
\$2,472	for household of 5
\$2,813	for household of 6
\$2,876	for household of 7
\$2,940	for household of 8
\$3,004	for household of 9
\$3,068	for household of 10

**728. CHILD CARE REIMBURSEMENT RATES.**

The maximum child care reimbursement rates are as noted in IDAPA 16, Title 06, Chapter 102, Rules Governing the Idaho Child Care Program (ICCP), ~~for At-Risk Families~~ Section 305. ~~(7-1-96)~~(7-1-96)T



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM**

**DOCKET NO. 16-0304-9503**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1997 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5442 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b) and 39-106(l), Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted as proposed. The original text of the proposed rules was published in the November 1, 1995 Administrative Bulletin, Volume 95-11, pages 62 through 97.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5819.

DATED this 3rd day of July, 1996.

Staci Welsh  
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**IDAPA 16  
TITLE 03  
Chapter 04**

**RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 95-11, November 1, 1995  
Pages 62 through 97.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING AID TO THE AGED, BLIND AND DISABLED**

**DOCKET NO. 16-0305-9601**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1997 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5442 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) USCA 1396p(c), USCA 1396p(d), USCA 1396p(e), 56-205, Idaho Code, 20 CFR 416.1168, 42 CFR 435.225, 42 CFR 435.217, 42 CFR 435.236, 42 CFR 435.1006, and the Health Care Financing Administration Program Memorandum 95-1, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted as proposed. The original text of the proposed rules was published in the January 3, 1996 Administrative Bulletin, Volume 96-1, pages 177 through 215.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5819.

DATED this 3rd day of July, 1996.

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**IDAPA 16**  
**TITLE 03**  
**Chapter 05**

**RULES GOVERNING AID TO THE AGED, BLIND AND DISABLED**

**Only those sections that were inadvertently not published  
with the original proposed text are printed in this  
Bulletin following this notice.**

**The complete original text was published in the  
Idaho Administrative Bulletin, Volume 96-1, January 3, 1996  
Pages 177 through 215.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**

**TEXT OF DOCKET NO. 16-0305-9601**

**688. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.**

Receiving a life estate in return for assets or purchasing an annuity may be transfer of assets for less than fair market value. (7-1-96)

01. Life Estate. A life estate is an asset transfer subject to the penalty, unless the value of the life estate at least equals the value of the transferred real property. Calculate the value of the life estate using Table 688.01. To calculate the value of the life estate, multiply the fair market value of the real property at the time of transfer by the remainder factor for the client's age at the time of transfer.

<b>TABLE 688.01 - LIFE ESTATE REMAINDER TABLE</b>			
<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>
0	.02812	55	.19954
1	.01012	56	.20994
2	.00983	57	.22069
3	.00922	58	.23178
4	.01019	59	.24325
5	.01062	60	.25509
6	.01116	61	.26733
7	.01178	62	.27998
8	.01252	63	.29304
9	.01337	64	.30648
10	.01435	65	.32030
11	.01547	66	.33449
12	.01671	67	.34902
13	.01802	68	.36390
14	.01934	69	.37914
15	.02063	70	.39478
16	.02185	71	.41086
17	.02300	72	.42739
18	.02410	73	.44429
19	.02520	74	.46138
20	.02635	75	.47851
21	.02755	76	.49559
22	.02880	77	.51258
23	.03014	78	.52951
24	.03159	79	.54643

<b>TABLE 688.01 - LIFE ESTATE REMAINDER TABLE</b>			
<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>
25	.03322	80	.56341
26	.03505	81	.58030
27	.03710	82	.59705
28	.03938	83	.61358
29	.04187	84	.63002
30	.04457	85	.64641
31	.04746	86	.66236
32	.05058	87	.67738
33	.05392	88	.69141
34	.05750	89	.70474
35	.06132	90	.71779
36	.06540	91	.73045
37	.06974	92	.74229
38	.07433	93	.75308
39	.07917	94	.76272
40	.08429	95	.77113
41	.08970	96	.77819
42	.09543	97	.78450
43	.10145	98	.79000
44	.10779	99	.79514
45	.11442	100	.19975
46	.12137	101	.19532
47	.12863	102	.19054
48	.13626	103	.18437
49	.14422	104	.17856
50	.15257	105	.16962
51	.16126	106	.15488
52	.17031	107	.13409
53	.17972	108	.10068
54	.18946	109	.04545

(7-1-96)

02. Annuity. An annuity is a contract in which an individual pays a sum of money in return for periodic

payments for a fixed term of years. An annuity is a form of trust, but is evaluated using the asset transfer policy. The asset transfer penalty and sixty (60) month lookback apply if the annuity is irrevocable and does not provide fair market value. A revocable annuity is a resource in the amount for which it can be surrendered. A revocable annuity surrendered for less than fair market value is subject to the asset transfer penalty. The penalty is assessed against the difference between the original purchase price and the sum of the amount received for the surrendered annuity plus annuity payments received to date. (1-1-96)T

a. To provide fair market value, an irrevocable annuity must meet the life expectancy and interest tests. First, the client's life expectancy must equal or exceed the term of the annuity. Using Table 688.02, divide the face value of the annuity by the client's life expectancy at the time of purchase. The annuity meets the life expectancy test if the result equals the term of the annuity, or more. Second, determine if the annuity produces interest of five percent (5%) yearly, or more. The client can rebut the five percent (5%) interest test. The client must show single premium annuities were not offered by insurers rated exceptional or superior by an insurance rating firm such as A.M. Best Co. now or when the annuity was purchased. A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. If the annuity meets the life expectancy and interest tests, the client received fair market value. (1-1-96)T

b. If the irrevocable annuity does not provide fair market value, the asset transfer penalty applies. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year. (1-1-96)T

**TABLE 688.02 - LIFE EXPECTANCY TABLE.**

The Life Expectancy Table is as follows:

<b>LIFE EXPECTANCY TABLE - FEMALE</b>					
<b>AGE</b>	<b>LIFE EXPECTANCY</b>	<b>AGE</b>	<b>LIFE EXPECTANCY</b>	<b>AGE</b>	<b>LIFE EXPECTANCY</b>
0	78.79	40	40.61	80	9.11
1	78.42	41	39.66	81	8.58
2	77.48	42	38.72	82	8.06
3	76.51	43	37.78	83	7.56
4	75.54	44	36.85	84	7.08
5	74.56	45	35.92	85	6.63
6	73.57	46	35.00	86	6.20
7	72.59	47	34.08	87	5.79
8	71.60	48	33.17	88	5.41
9	70.61	49	32.27	89	5.05
10	69.82	50	31.37	90	4.71
11	68.63	51	30.48	91	4.40
12	67.64	52	29.60	92	4.11
13	66.65	53	28.72	93	3.84
14	65.67	54	27.86	94	3.59
15	64.68	55	27.00	95	3.36
16	63.71	56	26.15	96	3.16

<b>LIFE EXPECTANCY TABLE - FEMALE</b>					
<b>AGE</b>	<b>LIFE EXPECTANCY</b>	<b>AGE</b>	<b>LIFE EXPECTANCY</b>	<b>AGE</b>	<b>LIFE EXPECTANCY</b>
17	62.74	57	25.31	97	2.97
18	61.77	58	24.48	98	2.80
19	60.80	59	23.67	99	2.64
20	59.83	60	22.86	100	2.48
21	58.86	61	22.06	101	2.34
22	57.59	62	21.27	102	2.20
23	56.92	63	20.49	103	2.06
24	55.95	64	19.72	104	1.93
25	54.98	65	18.96	105	1.81
26	54.02	66	18.21	106	1.69
27	53.05	67	17.48	107	1.58
28	52.08	68	16.76	108	1.48
29	51.12	69	16.04	109	1.38
30	50.15	70	15.35	110	1.28
31	49.19	71	14.66	111	1.19
32	48.23	72	13.99	112	1.10
33	47.27	73	13.33	113	1.02
34	46.31	74	12.68	114	0.96
35	45.35	75	12.05	115	0.89
36	44.40	76	11.43	116	0.83
37	43.45	77	10.83	117	0.77
38	42.50	78	10.24	118	0.71
39	41.55	79	9.67	119	0.66

<b>LIFE EXPECTANCY TABLE - MALES</b>					
<b>AGE</b>	<b>LIFE EXPECTANCY</b>	<b>AGE</b>	<b>LIFE EXPECTANCY</b>	<b>AGE</b>	<b>LIFE EXPECTANCY</b>
0	71.80	40	35.05	80	6.98
1	71.53	41	34.15	81	6.59
2	70.58	42	33.26	82	6.21
3	69.62	43	32.37	83	5.85

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
4	68.65	44	31.49	84	5.51
5	67.67	45	30.61	85	5.19
6	66.69	46	29.74	86	4.89
7	65.71	47	28.88	87	4.61
8	64.73	48	28.02	88	4.34
9	63.74	49	27.17	89	4.09
10	62.75	50	26.32	90	3.86
11	61.76	51	25.48	91	3.64
12	60.78	52	24.65	92	3.43
13	59.79	53	23.82	93	3.24
14	58.62	54	23.01	94	3.06
15	57.85	55	22.41	95	2.90
16	56.91	56	21.43	96	2.74
17	55.97	57	20.66	97	2.60
18	55.05	58	19.90	98	2.47
19	54.13	59	19.15	99	2.34
20	53.21	60	18.42	100	2.22
21	52.29	61	17.70	101	2.11
22	51.38	62	16.99	102	1.99
23	50.46	63	16.30	103	1.89
24	49.55	64	15.62	104	1.78
25	48.63	65	14.96	105	1.68
26	47.72	66	14.32	106	1.59
27	46.80	67	13.70	107	1.50
28	45.88	68	13.09	108	1.41
29	44.97	69	12.50	109	1.33
30	44.06	70	11.92	110	1.25
31	43.15	71	11.35	111	1.17
32	42.24	72	10.80	112	1.10
33	41.33	73	10.27	113	1.02
34	40.23	74	9.27	114	0.96
35	39.52	75	9.24	115	0.89

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
36	38.62	76	8.76	116	0.83
37	37.63	77	8.29	117	0.77
38	36.83	78	7.83	118	0.71
39	35.94	79	7.40	119	0.66

(7-1-96)



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING AID TO THE AGED, BLIND AND DISABLED**  
**DOCKET NO. 16-0305-9602**  
**NOTICE OF TEMPORARY AND PROPOSED RULES**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 1996.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 39-106(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 17, 1996.

**DESCRIPTIVE SUMMARY:** The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to be in compliance with amendments to governing law or federal programs and to confer a benefit.

The Department proposes the following changes to Aid to the Aged, Blind and Disabled (AABD) and AABD-related Medicaid:

1. Clarify policy on treatment of burial trusts for Medicaid asset transfer and trust treatment purpose.
2. Clarify treatment of irrevocable annuities as asset transfers and early surrender of revocable annuities.
3. Provide for valuing payments made from an exempt trust for the client's food, clothing or shelter.
4. Provide that a veteran is not required to convert from a pension computed under the old pension law to a pension computed under the new pension law if it would cause loss of Medicaid or AABD.
5. Increase AABD payment standards for clients in independent living, board and room, semi-independent group residential facilities, adult residential care and adult foster care. Eliminate the room and board living arrangement for minor children living with parents.
6. Provide that excluded resources damaged in a disaster declared by the president can be excluded up to thirty-six (36) months if that amount of time is needed to repair or replace the damaged property.
7. Provide that timely reported changes in circumstances that increase an AABD payment are effective the month the change occurs or the month proof of the change is provided.
8. Provide that a marriage settlement may be valid for Medicaid and voidable for estate recovery.
9. Correct miscellaneous clerical errors.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Patti Campbell at (208) 334-5819.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before July 24, 1996.

DATED this 3rd day of July, 1996.

STACI WELSH  
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**TEXT OF DOCKET NO. 16-0305-9602**

**240. REPLACEMENT OF EXCLUDED RESOURCES.**

Cash and in-kind payments for replacement or repair of lost, damaged, or stolen excluded resources, are excluded resources for nine (9) months from the date received. This exclusion can be extended for cash receipts, up to an additional nine (9) months. The extension can be made if, for the first nine (9) months, circumstances beyond the client's control prevent repair or replacement of the lost, damaged or stolen property and keep the client from contracting for repair or replacement. This exclusion can be extended for twelve (12) more months for a catastrophe the President declares a major disaster. The excluded resource must be in the geographic area defined by the Presidential order. The client must intend to replace or repair the excluded resource and must show good cause why they have not been able to repair or replace within the original eighteen (18) month exclusion period. Interest earned by funds excluded under this provision is excluded from resources. The interest is excluded only for the period the funds are excluded from resources. This exclusion applies to funds received for the purchase of temporary housing.

(1-1-93)(7-1-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**305. APPLICATION FOR POTENTIAL BENEFITS.**

The client must apply for benefits, including RSDI, VA, pensions, Workman's Compensation, or Unemployment Insurance, when there is potential eligibility. (7-1-96)T

01. SSI. To get an AABD grant, the client must apply for SSI benefits, if he is potentially eligible, to get an AABD grant. To get AABD-Medicaid, the client does not have to apply for SSI benefits to get AABD-related Medicaid. (7-1-96)T

02. VAIP. Clients entitled to a VA pension as of December 31, 1978 cannot be required to file for Veterans Administration Improved Pension Plan (VAIP), to get an AABD grant or to get AABD-related Medicaid. The client must apply for a VAIP to get AABD-related Medicaid, unless he receives SSI. (7-1-96)T

03. Other Benefits. EITC, AFDC, BIA General Assistance and victim's compensation benefits are exempt from the filing requirement. Child support and alimony payments are not program benefits. A client is not required to file for them. (7-1-96)T

04. Department and Client Responsibilities. The Department must tell the client the benefit to apply for, in writing. The client must prove, to the Department, he applied for potential benefits as requested. The client must be allowed at least thirty (30) days to supply proof he has applied. When a client fails to apply for potential benefits, the AABD application must be denied. An open AABD case must be closed as soon as possible following timely notice. (1-1-95)(7-1-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**407. BASIC ALLOWANCE.**

The basic allowance is budgeted for clients not living in a nursing facility. The client's living situation listed in Subsections 407.01 through 407.09 of these rules must be used to determine his basic allowance. (7-1-93)

01. Living Alone. A client must be budgeted four hundred ninety-fiveeight dollars (\$4958) monthly as a basic allowance, if there is one (1) person in the AABD grant. ~~(1-1-95)(7-1-96)T~~

02. Living with Essential Person. The essential person is chosen by the client. The presence of the essential person, in the household, must be essential to the client's well being. The essential person must give services to the client that would have to be provided anyway if the client lived alone. The client must decide if an essential person he lives with is to be included in his AABD grant. The needs, income, and resources of the essential person included in the AABD grant, must be counted in determining the AABD grant. The monthly total basic allowance for the client and the essential person is ~~six hundred ninety-six~~ seven hundred dollars (\$696700). ~~(1-1-95)(7-1-96)T~~

03. Living with Another Client. The other client must not be the AABD client's spouse. The other client may receive AFDC if he is not the AABD client's spouse or dependent child. The grant for each client is determined separately. The AABD client must be budgeted a basic allowance of four hundred ninety-fiveeight dollars (\$4958) monthly, if there is one (1) person in the AABD grant. ~~(1-1-95)(7-1-96)T~~

04. Living with Client Spouse. If the AABD client lives with his AABD client spouse in the same household, the basic allowance is based on two (2) persons in the AABD grant. The two (2) AABD spouses in the AABD grant must be budgeted a basic allowance of ~~six hundred ninety-six~~ seven hundred dollars (\$696700) monthly. ~~(1-1-95)(7-1-96)T~~

05. Living in Another Person's Household. A client living in another person's household must be budgeted a basic allowance of four hundred ninety-fiveeight dollars (\$4958) monthly for one (1) person in the AABD grant. For two (2) persons in the AABD grant, the basic allowance is ~~six hundred ninety-six~~ seven hundred dollars (\$696700) monthly. ~~(1-1-95)(7-1-96)T~~

06. Living with AFDC Child. A client living with his AFDC child must be budgeted four hundred ninety-fiveeight dollars (\$4958) monthly as a basic allowance, if there is one (1) person in the AABD grant. If there are two (2) persons in the AABD grant the basic allowance for two (2) clients is ~~six hundred ninety-six~~ seven hundred dollars (\$696700) monthly. ~~(1-1-95)(7-1-96)T~~

07. Living in Hotel or Rooming House. A client, living in a hotel or rooming house, must be budgeted the basic allowance of four hundred ninety-fiveeight dollars (\$4958) monthly. A client and his AABD spouse, living in a hotel or rooming house must be budgeted the basic allowance for two (2) clients, ~~six hundred ninety-six~~ seven hundred dollars (\$696700) monthly. ~~(1-1-95)(7-1-96)T~~

08. Room and Board, Adult Care, or Foster Care. An AABD client living in a room and board home, a licensed adult residential care facility, or a licensed adult foster care home is budgeted a basic allowance of fifty-eight dollars (\$58) monthly. (1-1-93)

09. SGRIF. An AABD client living in a semi-independent group residential facility must be budgeted a basic allowance of three hundred forty-nine dollars (\$349) monthly. A client living with his client spouse in a SGRIF must be budgeted a basic allowance of three hundred and forty-nine dollars (\$349) monthly. (7-1-96)

**408. ROOM AND BOARD ALLOWANCES.**

Each client living in a room and board home must be budgeted a basic allowance of fifty-eight dollars (\$58) monthly. The client is budgeted a special needs allowance if he has a guide dog. Each AABD client living in a room and board home is budgeted the actual amount paid for room and board, but not more than four hundred seventy-twofive dollars (\$4725) monthly. A minor child living with parents is not budgeted for room and board. ~~(1-1-95)(7-1-96)T~~

**409. LICENSED ADULT RESIDENTIAL CARE FACILITY ALLOWANCES.**

Each client living in a licensed adult residential care facility must be budgeted a basic allowance of fifty-eight dollars (\$58) monthly. The client is budgeted a special needs allowance if he has a guide dog. A client's allowance for the licensed adult residential care facility is the monthly allowance for his level of care. If the client gets a lower level of care than his assessed level, his allowance must be for the lower level of care. Care levels and monthly allowances are listed in Subsections 409.01 through 409.03. (1-1-95)

- 01. Level I. ~~Six hundred fifty~~ Seven hundred and fifty-three dollars (\$~~650~~753). (~~1-1-95~~)(7-1-96)T
- 02. Level II. ~~Seven hundred three~~ Eight hundred and twenty dollars (\$~~703~~820). (~~1-1-95~~)(7-1-96)T
- 03. Level III. ~~Seven hundred fifty three~~ Eight hundred and eighty-eight dollars (\$~~753~~888). (~~1-1-95~~)(7-1-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**424. LICENSED ADULT FOSTER CARE HOME ALLOWANCES.**

Each client living in a licensed adult foster care home must be budgeted a basic allowance of fifty-eight dollars (\$58) monthly. The client is budgeted a special needs allowance if he has a guide dog. A client's allowance for the licensed adult foster care home is the cost for the level of care. The allowance must not exceed the monthly allowance for his level of care. If the client gets a lower level of care than his assessed level, his allowance must be for the lower level of care. Care levels and monthly allowances are listed in Subsections 424.01 through 424.03. (1-1-95)

- 01. Level I. ~~Six hundred fifty~~ Seven hundred and fifty-three dollars (\$~~650~~753). (~~1-1-95~~)(7-1-96)T
- 02. Level II. ~~Seven hundred three~~ Eight hundred and twenty dollars (\$~~703~~820). (~~1-1-95~~)(7-1-96)T
- 03. Level III. ~~Seven hundred fifty three~~ Eight hundred and eighty-eight dollars (\$~~753~~888). (~~1-1-95~~)(7-1-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**429. SEMI-INDEPENDENT GROUP RESIDENTIAL FACILITY ALLOWANCE.**

The Adult Residential Care Committee (ARCC) must certify need for care, before the semi-independent group residential facility allowances can be budgeted. Each client living in a semi-independent group residential facility must then be budgeted a basic allowance of three hundred forty-nine dollars (\$349) monthly. The client must be budgeted a special needs allowance if he has a guide dog. A client's monthly semi-independent group residential facility allowance is two hundred forty ~~four~~seven dollars (\$~~244~~7) monthly. (~~1-1-95~~)(7-1-96)T

01. Verifying Need for Semi-Independent Group Residential Facility Care. A client living in a semi-independent group residential facility must show need for this type of care. A statement from the Adult Residential Care Committee (ARCC) in the case file must certify the client's need for semi-independent group residential care. After need for care is certified, no redetermination of need for care is required. (1-1-93)

02. Need For Care Not Approved by ARCC. When the ARCC shows the client does not require semi-independent group residential facility care, or no longer requires such care, his allowances must not exceed those of a client living independently. (1-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**532. EFFECTIVE DATE FOR INCREASES.**

Increases are effective as shown in Subsections 532.01 through 532.06.

(1-1-96)T

01. Change Reported Timely and Proof Provided Timely. Increase benefits effective the month following the date the change is reported. ~~(1-1-96)T~~(7-1-96)T

02. Change Not Reported Timely, but Proof Provided Timely. Increase benefits effective the month following the month the change is reported. ~~(1-1-96)T~~(7-1-96)T

03. Change Reported Timely, but Proof Not Provided Timely. Increase benefits effective the month following the month the change is reported, if good cause exists. Terminate benefits for failure to provide proof of the change, following timely notice if good cause does not exist. For a reported change that would result in an increase in, or prevent a decrease in, the amount of an income deduction used to compute patient liability or client participation, decrease benefits for failure to provide proof of the change. If the client provides proof after the closure or decrease action, but before the first day of the calendar month in which the negative action was taken, benefits are continued and increased effective the month following the month the proof is provided. ~~(1-1-96)T~~(7-1-96)T

04. Change Not Reported Timely, and Proof Not Provided Timely. Terminate benefits for failure to provide proof of the change, following timely notice. For a change that would result in an increase in, or prevent a decrease in, the amount of an income deduction used to compute patient liability or client participation, decrease benefits for failure to provide proof of the change. If the client provides the proof after the closure or decrease action, but before the first day of the calendar month in which the action was taken, benefits are continued and increased effective the month following the month the proof is provided. ~~(1-1-96)T~~(7-1-96)T

05. Failure to Report Timely with Good Cause. Increase benefits effective the month following the month the change would have been submitted, if reported timely. ~~(1-1-96)T~~(7-1-96)T

06. Failure to Provide Proof Timely with Good Cause. Increase benefits effective the month following the month the proof would have been provided, if proof had been provided timely. ~~(1-1-96)T~~(7-1-96)T

07. Good Cause. Good cause exists if circumstances beyond the client's control prevented him from reporting timely or providing proof timely. Good cause includes hospitalization or documented serious illness of the client or a member of the client's family, lost or stolen mail confirmed by the Postal Service, and catastrophe caused by fire, flood or a weather condition. (1-1-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**616. COMPUTING INCOME DEDUCTION FOR LONG-TERM CARE CLIENT WITH COMMUNITY SPOUSE.**

The income deduction is computed by adding the allowances in Subsections 616.01 through 616.09 of these rules. These allowances are used starting the first full calendar month the client resides in a long-term care facility. (7-1-96)

01. Personal Needs Allowance. Thirty dollars (\$30) is allowed for the long term care client's personal needs. (1-1-93)

02. Employed and Sheltered Workshop Activity Needs. An employed client or a client engaged in sheltered workshop or work activity center activities, is also allowed the lower of eighty dollars (\$80) or his earned income, for his personal needs. The total personal needs allowance must not exceed one hundred ten dollars (\$110) for long-term care client. (1-1-93)

03. Community Spouse Allowance. CSA is determined by performing the calculations in the following Subsections 616.053.a. through 616.053.c. of these rules. ~~(1-1-93)~~(7-1-96)T

a. Compute the Shelter Adjustment. Add the Standard Utility Allowance to the community spouse's shelter costs. The Standard Utility Allowance is the current Food Stamp Program Standard Utility Allowance. Shelter

costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative. Subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is used to compute the Shelter Adjustment. The Shelter Standard is thirty percent (30%) of one hundred and fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined and revised annually by the Federal Office of Management and Budget for a family of two (2) persons. The Shelter Standard changes annually in July. The Shelter Adjustment is the positive balance remaining. (7-1-96)

b. Compute the Community Spouse Need Standard (CSNS). Add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred and fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined and revised annually by the Federal Office of Management and Budget for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is calculated by applying to fifteen hundred dollars (\$1,500) the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January. (7-1-96)

c. Compute the Community Spouse Allowance. Subtract the community spouse's gross income from the CSNS. Round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. If a court orders the long-term care client to contribute a larger amount for the support of the community spouse, the support amount ordered by the court must be used as the CSA. The CSA ordered by a court is not subject to the CSA limit. (1-1-93)

04. Family Member Allowance. A family member is claimed, or could be claimed, as a dependent on the Federal income tax return of either spouse. The family member must be a minor or dependent child, dependent parent or dependent sibling of either spouse. The family member must live in the community spouse's home. Any remainder is the FMA for that family member. The FMA is allowed, whether or not it is actually paid by the client. To figure the FMA, follow the steps outlined in Subsections 661.04.a. through 616.04.d. of these rules. (1-1-93)

- a. Compute the family member's gross income. (1-1-93)
- b. Subtract the family member's gross income from the minimum CSNS. (1-1-95)
- c. Divide the difference by three (3). (1-1-93)
- d. Round cents to the next higher dollar. (1-1-93)

05 Health Insurance Costs Allowance. Add costs for Medicare and other health insurance premiums. Subtract coinsurance charges and deductibles not subject to payment by a third party. Medicare Part B premiums are limited to the first two (2) months of Medicaid eligibility. Medicare Part B premiums must not be added if the client got SSI or AABD payment the month prior to the month patient liability is being calculated. (1-1-93)

06. Mandatory Income Taxes. Deduct taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the client receives the income. (7-1-96)

07. Guardian Fees. Deduct court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (7-1-96)

08. Trust Fees. Deduct up to twenty-five dollars (\$25) monthly paid to the trustee for administering the client's trust. (7-1-96)

09. Impairment Related Work Expenses. Deduct impairment-related work expenses for an employed client who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work. The items must be needed because of the client's impairment. The actual monthly expense of the impairment-related items is deducted. Expenses must not be averaged. (7-1-96)

10. CSA Allowed As Actually Paid. The CSA must be allowed only as actually paid by the long-term care spouse to the community spouse. If the long-term care spouse pays less than the CSA, the actual amount paid must be the CSA. If the long-term care spouse pays more than the CSA, only the CSA is allowed. (1-1-93)

11. Fair Hearing On CSA Decision. Either spouse may ask for a fair hearing, to show the community spouse must have income above the CSA. The hearing officer must consider if the community spouse's income and resources are being used to the spouse's best advantage. The hearing officer must consider if the CSA causes significant financial hardship for the community spouse, due to unusual conditions. If the fair hearing decision finds the community spouse needs income above the level provided by the CSA, the CSA must include the additional income. (7-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**620. COMMUNITY PROPERTY (CP) METHOD OF COUNTING INCOME AND RESOURCES OF A COUPLE.**

The CP method is based on the community property provisions of Chapter 9, Title 32, Idaho Code. The CP method of counting the income and resources of an aged, blind, or disabled married person for Medicaid eligibility, is intended to protect the community and separate property rights of the married person, whether or not the spouses live together. A married and aged, blind, or disabled person in long-term care, without a spouse remaining in the community, is subject to the CP method. The CP method is used for determining income eligibility of a married person subject to the FSI method, but not income eligible using the FSI method. The CP method must not be used to determine resource eligibility of a long-term care spouse subject to the FSI method. The CP method must not be used to compute patient liability for an aged, blind or disabled married person, even where the CP method is used to determine his eligibility for Medicaid. For couples entitled to choose between the SSI method and the CP method, the same method of counting income and resources must be applied to both spouses, whether one (1) or both is applying for Medicaid.

(1-1-94)

01. CP Method. Under the CP method, each spouse has an equal one-half (1/2) share of the couple's community income and resources. Each spouse also has his or her own separate income and resources. Whether the spouses live together or, if not living together, the length of time they have lived apart, does not change the way income and resources are counted. A spouse's property includes income, personal property and real property. The income and resources of a married couple acquired during the marriage are presumed to be community property of the couple. The couple must be permitted to provide evidence to rebut the presumption that property acquired during the marriage is community property.

~~(1-1-93)~~(7-1-96)T

02. CP Effect on Other Medicaid Requirements. Use of the CP method to calculate the amount of income and resources of a married person does not raise or eliminate the income and resource limits for the aged, blind, and disabled. Use of the CP method does not affect other Medicaid eligibility provisions.

(1-1-93)

03. Separate Property Agreement and CP. Under the CP method, a client's separate property is not included in the amount of his spouse's income and resources. Separate property, as defined in Section 32-903, Idaho Code, is all property of either the husband or the wife, owned by him or her before marriage and property acquired afterward by gift, bequest, devise or descent. Property a spouse gets with the proceeds of his or her separate property, is still separate property. Income produced by separate property is presumed to be community property, to the extent the income is produced during the marriage. The client is entitled to offer evidence to rebut this presumption.

(1-1-93)

04. Marriage Settlement Agreement and CP. Property can be changed from separate property to community property and vice versa by a valid marriage settlement agreement. A valid marriage settlement agreement must meet the conditions of Subsections 620.04.a. through 620.04.e. An agreement not meeting these conditions is not valid in determining eligibility for Medicaid under the CP method. A marriage settlement agreement may be valid for Medicaid eligibility and still be voidable for estate recovery purposes if value is transferred between spouses without adequate consideration.

~~(1-1-93)~~(7-1-96)T

a. A marriage settlement agreement can be made before the marriage or during the marriage. The

marriage settlement agreement must be entered into by husband and wife, and must be in writing. (1-1-93)

b. A marriage settlement agreement involving real property must be entered into by husband and wife, must be in writing and recorded in the county where the real property is located. (1-1-93)

c. A marriage settlement agreement involving income or personal property must be entered into by husband and wife, must be in writing and notarized. The date the agreement is notarized is the date the property is changed from separate to community and vice versa. (1-1-93)

d. A marriage settlement agreement can involve a transfer of property, as when property is separated and then changed back to community property. (1-1-93)

e. Medicaid eligibility is not affected where the couple has entered into a devolution agreement under Section 15-6-201(c), Idaho Code. A devolution agreement provides for property, at the death of one spouse, to pass to the surviving spouse. Department questions about the validity of an agreement, represented as a devolution agreement, must be referred to the Region's Deputy Attorney General. (1-1-93)

05. Transfer of Rights to Future Income Not Valid. An agreement between spouses, transferring or assigning rights to future income from one (1) spouse to the other, is not used to determine eligibility for Medicaid. (1-1-93)

06. Need Standard. The need standard for a married client choosing the CP method depends on his living situation. The need standard depends on whether his spouse is living with him, and whether his spouse is applying for Medicaid. The need standard for a client, whose spouse is not a Medicaid applicant, or who is not living with his spouse, or not living with his spouse on the first (1st) day of the month, is budgeted allowances for a single person. The need standard for a couple applying for Medicaid who live together, or were living together on the first day of the month, is the need standard for a couple. The budgeted allowances for the couple's needs, are the need standard. (1-1-93)

07. Resource Limit. The resource limit for a married client, choosing the CP method, depends on his living situation. The resource limit depends on whether he is living with his spouse, and if his spouse is a Medicaid applicant. The resource limit for a client, whose spouse is not a Medicaid applicant, or a client who was not living with his spouse on the first (1st) day of the month, is two thousand dollars (\$2,000). The resource limit for a couple applying for Medicaid, living together, or living together on the first (1st) day of the month, is three thousand dollar (\$3,000). (1-1-93)

08. Income Disregards. The AABD income disregards are applied to the income of a married client, choosing the CP method. A client not living with his spouse, whose spouse is not applying for Medicaid, or who was not living with his spouse on the first (1st) day of the month, gets the standard disregard of twenty dollars (\$20). If the client has earned income he gets the first sixty-five dollars (\$65), plus one-half (1/2) of the remaining earned income, disregarded. A couple, living together, or living together on the first (1st) day of the month, and applying for Medicaid, gets couple income disregards. The couple gets the standard AABD disregard of twenty dollars (\$20) on their combined unearned income. The couple gets the earned income disregard of sixty-five dollars (\$65) on their combined earned income. One-half (1/2) of the balance of earned income is subtracted from the couple's remaining earned income. (1-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**647. DRUG ADDICT OR ALCOHOLIC.**

A client not getting SSI because payment is suspended for two (2) or more months, or stopped after thirty-six (36) months for drug addiction or alcoholism, is eligible for Medicaid. Coverage under this section is void at the end of the month in which the client is mailed timely notice that drug addiction or alcoholism does not meet SSI disability criteria. (7-1-96)(7-1-96)T



**(BREAK IN CONTINUITY OF SECTIONS)**

**688. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.**

Receiving a life estate in return for assets or purchasing an annuity may be transfer of assets for less than fair market value. (7-1-96)

01. Life Estate. A life estate is an asset transfer subject to the penalty, unless the value of the life estate at least equals the value of the transferred real property. Calculate the value of the life estate using Table 688.01. To calculate the value of the life estate, multiply the fair market value of the real property at the time of transfer by the remainder factor for the client's age at the time of transfer.

<b>TABLE 688.01 - LIFE ESTATE REMAINDER TABLE</b>			
<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>
0	.02812	55	.19954
1	.01012	56	.20994
2	.00983	57	.22069
3	.00922	58	.23178
4	.01019	59	.24325
5	.01062	60	.25509
6	.01116	61	.26733
7	.01178	62	.27998
8	.01252	63	.29304
9	.01337	64	.30648
10	.01435	65	.32030
11	.01547	66	.33449
12	.01671	67	.34902
13	.01802	68	.36390
14	.01934	69	.37914
15	.02063	70	.39478
16	.02185	71	.41086
17	.02300	72	.42739
18	.02410	73	.44429
19	.02520	74	.46138
20	.02635	75	.47851
21	.02755	76	.49559
22	.02880	77	.51258
23	.03014	78	.52951
24	.03159	79	.54643

<b>TABLE 688.01 - LIFE ESTATE REMAINDER TABLE</b>			
<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE REMAINDER</b>
25	.03322	80	.56341
26	.03505	81	.58030
27	.03710	82	.59705
28	.03938	83	.61358
29	.04187	84	.63002
30	.04457	85	.64641
31	.04746	86	.66236
32	.05058	87	.67738
33	.05392	88	.69141
34	.05750	89	.70474
35	.06132	90	.71779
36	.06540	91	.73045
37	.06974	92	.74229
38	.07433	93	.75308
39	.07917	94	.76272
40	.08429	95	.77113
41	.08970	96	.77819
42	.09543	97	.78450
43	.10145	98	.79000
44	.10779	99	.79514
45	.11442	100	.19975
46	.12137	101	.19532
47	.12863	102	.19054
48	.13626	103	.18437
49	.14422	104	.17856
50	.15257	105	.16962
51	.16126	106	.15488
52	.17031	107	.13409
53	.17972	108	.10068
54	.18946	109	.04545

(7-1-96)

02. Annuity. An annuity is a contract in which an individual pays a sum of money in return for periodic

payments for a fixed term of years. An annuity is a form of trust, but is evaluated using the asset transfer policy. The asset transfer penalty and sixty (60) month lookback apply if the annuity is irrevocable and does not provide fair market value. A revocable annuity is a resource in the amount for which it can be surrendered. ~~A revocable annuity surrendered for less than fair market value is subject to the asset transfer penalty. The penalty is assessed against the difference between the original purchase price and the sum of the amount received for the surrendered annuity plus annuity payments received to date.~~ A revocable annuity is a resource in the amount for which it can be surrendered. Early surrender of a revocable annuity is not an asset transfer for less than fair market value. (1-1-96)T(7-1-96)T

a. To provide fair market value, an irrevocable annuity must meet the life expectancy and interest tests. First, the client's life expectancy must equal or exceed the term of the annuity. Using Table 688.02, divide the face value of the annuity by the client's life expectancy at the time of purchase. The annuity meets the life expectancy test if the result equals the term of the annuity, or more. Second, determine if the annuity produces interest of five percent (5%) yearly, or more. The client can rebut the five percent (5%) interest test. The client must show single premium annuities were not offered by insurers rated exceptional or superior by an insurance rating firm such as A.M. Best Co. now or when the annuity was purchased. A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. If the annuity meets the life expectancy and interest tests, the client received fair market value. (1-1-96)T

b. If the irrevocable annuity does not provide fair market value, the asset transfer penalty applies. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year. (1-1-96)T

**TABLE 688.02 - LIFE EXPECTANCY TABLE.**

The Life Expectancy Table is as follows:

LIFE EXPECTANCY TABLE - FEMALE					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	78.79	40	40.61	80	9.11
1	78.42	41	39.66	81	8.58
2	77.48	42	38.72	82	8.06
3	76.51	43	37.78	83	7.56
4	75.54	44	36.85	84	7.08
5	74.56	45	35.92	85	6.63
6	73.57	46	35.00	86	6.20
7	72.59	47	34.08	87	5.79
8	71.60	48	33.17	88	5.41
9	70.61	49	32.27	89	5.05
10	69.82	50	31.37	90	4.71
11	68.63	51	30.48	91	4.40
12	67.64	52	29.60	92	4.11
13	66.65	53	28.72	93	3.84
14	65.67	54	27.86	94	3.59
15	64.68	55	27.00	95	3.36

LIFE EXPECTANCY TABLE - FEMALE					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
16	63.71	56	26.15	96	3.16
17	62.74	57	25.31	97	2.97
18	61.77	58	24.48	98	2.80
19	60.80	59	23.67	99	2.64
20	59.83	60	22.86	100	2.48
21	58.86	61	22.06	101	2.34
22	57.59	62	21.27	102	2.20
23	56.92	63	20.49	103	2.06
24	55.95	64	19.72	104	1.93
25	54.98	65	18.96	105	1.81
26	54.02	66	18.21	106	1.69
27	53.05	67	17.48	107	1.58
28	52.08	68	16.76	108	1.48
29	51.12	69	16.04	109	1.38
30	50.15	70	15.35	110	1.28
31	49.19	71	14.66	111	1.19
32	48.23	72	13.99	112	1.10
33	47.27	73	13.33	113	1.02
34	46.31	74	12.68	114	0.96
35	45.35	75	12.05	115	0.89
36	44.40	76	11.43	116	0.83
37	43.45	77	10.83	117	0.77
38	42.50	78	10.24	118	0.71
39	41.55	79	9.67	119	0.66

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	71.80	40	35.05	80	6.98
1	71.53	41	34.15	81	6.59
2	70.58	42	33.26	82	6.21

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
3	69.62	43	32.37	83	5.85
4	68.65	44	31.49	84	5.51
5	67.67	45	30.61	85	5.19
6	66.69	46	29.74	86	4.89
7	65.71	47	28.88	87	4.61
8	64.73	48	28.02	88	4.34
9	63.74	49	27.17	89	4.09
10	62.75	50	26.32	90	3.86
11	61.76	51	25.48	91	3.64
12	60.78	52	24.65	92	3.43
13	59.79	53	23.82	93	3.24
14	58.62	54	23.01	94	3.06
15	57.85	55	22.41	95	2.90
16	56.91	56	21.43	96	2.74
17	55.97	57	20.66	97	2.60
18	55.05	58	19.90	98	2.47
19	54.13	59	19.15	99	2.34
20	53.21	60	18.42	100	2.22
21	52.29	61	17.70	101	2.11
22	51.38	62	16.99	102	1.99
23	50.46	63	16.30	103	1.89
24	49.55	64	15.62	104	1.78
25	48.63	65	14.96	105	1.68
26	47.72	66	14.32	106	1.59
27	46.80	67	13.70	107	1.50
28	45.88	68	13.09	108	1.41
29	44.97	69	12.50	109	1.33
30	44.06	70	11.92	110	1.25
31	43.15	71	11.35	111	1.17
32	42.24	72	10.80	112	1.10
33	41.33	73	10.27	113	1.02
34	40.23	74	9.27	114	0.96

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
35	39.52	75	9.24	115	0.89
36	38.62	76	8.76	116	0.83
37	37.63	77	8.29	117	0.77
38	36.83	78	7.83	118	0.71
39	35.94	79	7.40	119	0.66

(7-1-96)

**(BREAK IN CONTINUITY OF SECTIONS)**

**691. TREATMENT OF ASSETS TRANSFERRED TO A TRUST.**

Assets transferred to a trust are treated as shown in Subsections 691.01 through 691.03 of these rules. (7-1-94)

01. Revocable Trust. The body (corpus) of a revocable trust is a resource. Payments from the trust to or for the client are income. Any other payments from the trust are considered an asset transfer, triggering an asset transfer penalty period. A revocable burial trust is a burial fund subject to treatment under Section 233 of these rules.  
~~(1-1-94)(7-1-96)T~~

02. Irrevocable Trust. The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the client, is a resource. Payments made to or for the client are income. Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. Any part of the trust from which payment cannot be made to, or for the benefit of, the client under any circumstances, is an asset transfer. The effective date of the transfer is the date the trust was established, or the date payments to the client were foreclosed. The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. An irrevocable burial trust is a burial fund subject to treatment under Section 233 of these rules unless any funds in the trust are payable for any purpose other than the client's funeral and related expenses. A trust may provide that funds not needed for the client's funeral expenses are available to reimburse Medicaid, or to go to the client's estate.  
~~(1-1-94)(7-1-96)T~~

03. Trust with Pension Money. Treat a trust established for the benefit of a person where all the money in the trust comes from the person's pensions, Social Security and his other income, as described in Subsection 691.01 or 691.02 of these rules, unless exempt from treatment as an asset transfer under Subsection 706.02 of these rules. The institutionalized person must be the sole beneficiary of the trust. The trust must be irrevocable. However, the trust document may include a revocability clause that will allow the trust to be revocable only for the circumstance where the client leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income. An income trust exempted from the asset transfer penalty under this Subsection, before July 1, 1994, and not meeting the requirements of this Subsection, as revised July 1, 1994, must be amended to keep the exemption. The client must obtain the necessary amendments within ninety (90) days of the date he was mailed a Department notice that his income trust no longer meets the exemption criteria. The trust must not provide for payments for a purpose other than for income used to calculate patient liability or client participation, unless the payments meet the hardship exemption in Subsection 693.12 of these rules. This hardship exemption is only for a trust for an HCBS client. Money paid into a pension trust is income for Medicaid eligibility the month received, unless the client lives in long-term care and is eligible for Medicaid except for excess income, or lives at home and is eligible for HCBS Medicaid except for excess income. The trust must be exempt from a trust penalty by Subsection 706.02 of these rules. Money paid into a pension trust is income for patient liability as provided in Subsection 611.07 of these rules. Income transferred to the trust as income used to calculate patient liability or client participation, and not used for that purpose, is subject to the asset transfer penalty in Section 690 of these rules, unless the income meets

the hardship exemption in Subsection 693.12 of these rules. This hardship exemption is only for a trust for an HCBS client. (7-1-96)

~~04. Burial Trust. A revocable burial trust is a resource. Funds in the trust not earmarked for burial are an asset transfer, unless payable to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho. An irrevocable burial trust with face value of five thousand dollars (\$5000) or less is not an asset transfer and is exempt from trust treatment. An irrevocable burial trust with face value over five thousand dollars (\$5000) is subject to trust treatment in Subsection 705.02. Purchase of an irrevocable burial trust with face value over five thousand dollars (\$5000) is an asset transfer subject to the asset transfer penalty, unless the funds in the trust not earmarked for the client's burial expenses are payable to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho. (1-1-96)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**693. PENALTY EXCEPTIONS FOR ASSET TRANSFERS.**

A client or spouse is not subject to the asset transfer penalty due to transfer of assets August 11, 1993 or later for less than fair market value or transfer to a trust, if one (1) of the conditions in Subsections 693.01 through 693.12~~5~~ of these rules is met. (7-1-96)(7-1-96)T

01. Home to Spouse. The asset transferred was a home and title to the home was transferred to the spouse. (1-1-94)

02. Home to Minor Child or Disabled Adult Child. The asset transferred was a home and title to the home was transferred to the child of the client or spouse. The child must be under age twenty-one (21) or blind or totally disabled using the definitions of disability and blindness used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. (1-1-94)

03. Home to Brother or Sister. The asset transferred was a home and title to the home was transferred to a brother or sister of the client or spouse. The brother or sister must have an equity interest in the transferred home, and reside in that home for at least one (1) year immediately before the month the client starts long-term care. (1-1-94)

04. Home to Adult Child. The asset transferred was a home and title to the home was transferred to a son or daughter of the client or spouse, other than a child under the age of twenty-one (21). The son or daughter must reside in the home of the client or spouse for a period of at least two (2) years immediately before the month the client started long-term care. The son or daughter must have provided care to the client which permitted him to live at home rather than enter long-term care. (1-1-94)

05. Benefit of Spouse. The assets were transferred to the client's spouse or to another person for the sole benefit of the spouse. (1-1-94)

06. Transfer from Spouse. The assets were transferred from the client's spouse to another person for the sole benefit of the client's spouse. (1-1-94)

07. Transfer to Child. The assets were transferred to the client's child, or to a trust established solely for the benefit of the client's child. The child must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. The child may be any age. (1-1-94)

08. Transfer to Trust for Person Under Sixty-Five (65). The assets were transferred to a trust for the sole benefit of a person under age sixty-five (65). "Sole benefit" means any remainder in the trust after the person's death must go to his estate, not to another person. The person must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. (1-1-94)

09. Intent to Get Fair Market Value. The client or spouse establishes to the Department's satisfaction he intended to dispose of the assets at fair market value or for other adequate consideration. (1-1-94)
10. Assets Returned. All assets transferred for less than fair market value have been returned to the client. (1-1-94)
11. No Medicaid Purpose. The client or spouse establishes to the Department's satisfaction the assets were transferred exclusively for a purpose other than to qualify for Medicaid. (1-1-94)
12. Undue Hardship. The Department determines denial of eligibility would work an undue hardship. Undue hardship exists if: (1-1-94)
- a. The client proves he is not able to pay for his nursing facility services or his HCBS services any other way and he assigns his rights to recover the asset to the state of Idaho; or (7-1-96)
  - b. The client proves he did not knowingly transfer the asset and he assigns his rights to recover the asset to the state of Idaho; or (7-1-96)
  - c. The HCBS client proves he would be deprived of food, clothing or shelter if all income transferred into a pension trust is protected from being used for costs other than client participation, and assigns his rights to recover the asset to the state of Idaho. Where undue hardship is established, the amount of income paid to meet the client's needs for food, clothing or shelter, is exempt from the asset transfer penalty, does not invalidate the trust, and is not income for eligibility. (7-1-96)
13. Exception to Fair Market Value. The Department determines the amount received is adequate, even if not fair market value. This exception is for three (3) situations: (7-1-96)
- a. A forced sale was done under reasonable circumstances. (7-1-96)
  - b. Little or no market demand exists for the type of asset transferred. (7-1-96)
  - c. A transfer of assets, to settle a legal debt approximately equal to the fair market value of the transferred asset, is adequate consideration. The existence of a legally enforceable debt must be proven. Proof includes a legally recorded document, completed when the debt began, showing the existence of the debt. Cancelled checks, receipts, promissory notes, mortgages, or written agreements executed by the client and the creditor when the debt began prove the debt. The written statement of facts made under oath, or testimony under oath, of at least two (2) persons not parties to the transaction proves the debt. The parties must not benefit from the transaction either directly or indirectly. They must have first-hand knowledge of the arrangements between the client and the creditor at the time the debt began. The statements must agree with the sworn statements of the client and creditor. A life estate is not necessarily adequate consideration. (7-1-96)
14. No Benefit to Client. The Department determines the client received no benefit from the asset. This exception is allowed for two (2) situations: (7-1-96)
- a. The client or spouse held title to the property only as a trustee for another person, with no beneficial interest to himself. (7-1-96)
  - b. The transfer was done to clear title to property, in which the client or spouse had no beneficial interest. (7-1-96)
15. Fraud Victim. The client or spouse is the victim of fraud, misrepresentation, or coercion, and the transfer was made on that basis. The client or spouse must take any and all possible steps to recover the assets or property, or its equivalent in damages. The client must assign recovery rights to the state of Idaho. (7-1-96)
16. ~~Burial Trust. The client owns an irrevocable burial trust with face value over five thousand dollars (\$5,000), or a revocable burial trust of any value, and funds in the trust not earmarked for the client's burial expenses are payable to the state of Idaho, up to the amount of Medicaid paid in the person's behalf by the state of Idaho.~~



(1-1-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. TREATMENT OF TRUSTS.**

These rules apply to all Medicaid clients. These rules apply to trusts established with the client's assets, starting August 11, 1993. These rules also apply to trusts created before August 11, 1993, but funded August 11, 1993 or later. These rules do not apply to a trust established by the testator through a will. A trust established from an estate or through the probate process is not a trust established by the testator through a will. A trust established by a will is treated using Section 276 of these rules. An annuity is a trust, but is evaluated as an asset transfer under Section 688 of these rules. A client has established a trust if his assets were used to form part or all of the body of the trust. The trust may be established by the client, the client's spouse, by a person (including a court or administrative body), with authority to act in place of, or on behalf of, the client or the client's spouse. The trust may be established by a person (including any court or administrative body) acting at the direction of or at the request of the client or spouse. These rules apply no matter why the trust was established, what discretion the trustees have, what restrictions are placed on making distributions from the trust, or what restrictions are placed on how the distributions are used. These rules apply whether the trust is revocable or irrevocable. (7-1-96)

01. Revocable Trust. The body (corpus) of a revocable trust is a resource. Payments from the trust to or for the client are income. Any other payments from the trust are considered an asset transfer, triggering an asset transfer penalty period. A revocable burial trust is a burial fund subject to treatment under Section 233 of these rules. (1-1-94)(7-1-96)T

02. Irrevocable Trust. The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the client, is a resource. Payments made to or for the client are income. Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. Any part of the trust from which payment cannot be made to, or for the benefit of, the client under any circumstances, is an asset transfer. The effective date of the transfer is the date the trust was established, or the date payments to the client were foreclosed. The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. An irrevocable burial trust is a burial fund subject to treatment under Section 233 of these rules unless any funds in the trust are payable for any purpose other than the client's funeral and related expenses. A trust may provide that funds not needed for the client's funeral expenses are available to reimburse Medicaid, or to go to the client's estate. (1-1-94)(7-1-96)T

03. Trust with Pension Money. Treat a trust established for the benefit of a person where all the money in the trust comes from the person's pensions, Social Security and his other income, as described in Section 691.01 or 691.02 of these rules, unless exempt from treatment as an asset transfer under Subsection 706.02 of these rules. The trust must be irrevocable. However, the trust document may include a revocability clause that will allow the trust to be revocable only for the circumstance where the client leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income. An income trust exempted from the asset transfer penalty under Section 691 of these rules, before July 1, 1994, and not meeting the requirements of Section 691 of these rules, as revised July 1, 1994, must be amended to keep the exemption. The client must obtain the necessary amendments within ninety (90) days of the date he was mailed a Department notice that his income trust no longer meets the exemption criteria. If the trust provides for payments for a purpose other than for income used to calculate patient liability or client participation, the trust is not exempt, unless the payments meet the hardship exemption in Subsection 693.12. Money paid into the pension trust is income for Medicaid eligibility the month received, unless the client lives in long-term care and is eligible for Medicaid except for excess income, or lives at home and is eligible for HCBS Medicaid except for excess income. The trust must be exempt from a trust penalty by Subsection 706.02 of these rules. Money paid into a pension trust is income for patient liability as provided in Subsection 611.07 of these rules. Income transferred to the trust as income used to calculate patient liability or client participation, and not used for that purpose, is subject to the asset transfer penalty in Section 690 of these rules, unless the income used for another purpose meets the hardship exemption in Subsection 693.12 of these rules. (1-1-96)T

~~04. Burial Trust. Treat an irrevocable burial trust with face value over five thousand dollars (\$5000) as described in Subsection 691.02 of these rules, unless exempt from treatment as an asset transfer under Subsection~~

~~693.16 of these rules. An irrevocable burial trust with face value over five thousand (\$5,000) dollars is subject to trust treatment in Subsection 705.02, unless it meets the exemption criteria in Subsection 706.04. An irrevocable burial trust with face value of five thousand dollars (\$5000) or less is not an asset transfer and is exempt from trust treatment.~~ (1-1-96)T

**706. EXEMPT TRUST.**

A trust, beginning August 11, 1993, is exempt from trust treatment under Section 705 of these rules and does not result in an asset transfer penalty if one (1) of the conditions in Subsections 706.01 through 706.03 of these rules is met. A trust exempt under this Section is not exempt from treatment under Section 707. (1-1-96)T

01. Trust for Disabled Person. The trust contains the assets of a person under age sixty-five (65). The trust must be irrevocable. The person must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. The trust is established for the person's benefit by his parent, grandparent, legal guardian or a court. The amount remaining in the trust after the person's death must be payable to the state of Idaho, up to the amount of Medicaid paid in the person's behalf by the state of Idaho. (7-1-96)

02. Trust with Pension Money. The trust is established for the benefit of a person. The person must live in long-term care and be eligible for Medicaid except for excess income or, if not living in long-term care, must be eligible for HCBS Medicaid except for excess income. All the money in the trust comes from the person's pensions, Social Security and his other income. The trust can include income earned by the trust. The trust must be irrevocable. However, the trust document may include a revocability clause that will allow the trust to be revocable only for the circumstance where the client leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income. An income trust exempted from the asset transfer penalty under Section 691 of these rules, before July 1, 1994, and not meeting the requirements of Section 691 of these rules, as revised July 1, 1994, must be amended to keep the exemption. The client must obtain the necessary amendments within ninety (90) days of the date he was mailed a Department notice that his income trust no longer meets the exemption criteria. A trust is not exempt if it provides for payments for a purpose other than for income used to calculate patient liability or client participation, unless the payment meets the conditions for a hardship waiver under Subsection 693.12 of these rules. The amount remaining in the trust after the person's death must be paid to the state of Idaho, up to the amount of Medicaid paid in the person's behalf by the state of Idaho. The trust may be dissolved without penalty when the client is no longer a long-term care or HCBS Medicaid client for a reason other than death. (1-1-96)T

03. Trust Managed by Nonprofit Association for Disabled Person. The trust must be irrevocable. The trust contains the assets of a disabled person. The person must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security or SSI benefits as contained in 20 CFR Part 416. The trust is established and managed by a nonprofit association. The nonprofit association must not be the client, his parent or his grandparent. A separate account is maintained for the person. The trust may pool accounts for investment and management purposes. Accounts in the trust are established solely for the benefit of disabled persons by the person's parent, grandparent, or legal guardian, by the person or by a court. To the extent the amount remaining in the trust is not distributed by the trust, the amount remaining in the trust after the person's death must be paid to the state of Idaho, up to the amount of Medicaid paid in the person's behalf by the state of Idaho. (7-1-96)

~~04. Burial Trust Over Five Thousand Dollars (\$5000). The trust must be irrevocable. Funds in the trust not earmarked for the client's burial expenses must be payable to the state of Idaho, up to the amount of Medicaid paid in the person's behalf by the state of Idaho.~~ (1-1-96)T

**707. PAYMENTS FROM AN EXEMPT TRUST FOR DISABLED PERSON OR POOLED TRUST.**

Cash payments from the exempt trust made directly to a client with an exempt trust for a disabled person, or a pooled trust, are income in the month received. Payments from the exempt trust made on behalf of the client for the client's food, clothing or shelter, are income in the month paid. The value of payments for the client's food, clothing or shelter is presumed to equal one-third (1/3) of the AABD payment standard for the client's living arrangement. The client is entitled to rebut this presumption. If the Department accepts the client's rebuttal, the value of the payments is the actual amount paid, up to the presumed value. See Subsections 611.05.e., 611.07, 691.03, 705.03 and 706.02 for treatment of payments from an exempt pension trust. (7-1-94)(7-1-96)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE**  
**DOCKET NO. 16-0309-9608**  
**NOTICE OF TEMPORARY AND PROPOSED RULES**

**EFFECTIVE DATE:** These temporary rules are effective May 1, 1996.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 17, 1996.

**DESCRIPTIVE SUMMARY:** The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety, or welfare.

This amendment to the Rules Governing Medical Assistance sets forth revised Department policy with regard to individuals and entities that should be denied the ability to enter into provider agreements with the Department of Health and Welfare. Currently, the Department's rules are inadequate to exclude certain individuals or entities, who although not excluded from program participation under IDAPA 16.03.09.190.05, have demonstrated an increased risk of program abuse. The Department should not be required to engage in business with such individuals. This includes individuals associated with entities that have previously been excluded or suspended, as well as individuals who have refused or otherwise avoided repaying the Department for any claims previously found to have been paid incorrectly.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Roberta Charlton at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before July 24, 1996.

DATED this 3rd day of July, 1996.

STACI WELSH  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
450 West State Street, 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone, (208) 334-5548 fax

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**TEXT OF DOCKET NO. 16-0309-9608**

**040. AGREEMENTS WITH PROVIDERS.**

01. In General. The Department will enter into written agreements with each provider or group of providers of supplies or services under the Program. Agreements may contain any terms or conditions deemed

appropriate by the Department. Each agreement will contain, among others, the following terms and conditions requiring the provider: (3-2-94)

a. To retain for a minimum of three (3) years any records necessary for a determination of the services the provider furnishes to recipients; and (11-10-81)

b. To furnish to the Bureau, the Secretary of the U.S. Department of Health and Human Services, the Fraud Investigation Bureau, or the Department of Law Enforcement any information requested regarding payments claimed by the provider for services; and (11-10-81)

c. To furnish to the Bureau, the Secretary of the U.S. Department of Health and Human Services, the Fraud Investigation Bureau, or the Department of Law Enforcement, information requested on business transactions as follows: (11-10-81)

i. Ownership of any subcontractor with whom the provider has had business transactions of more than twenty-five thousand dollars (\$25,000) during a twelve (12) month period ending on the date of request; and (11-10-81)

ii. Any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor during the five (5) year period ending on the date of request. (11-10-81)

02. Federal Disclosure Requirements. To comply with the disclosure requirements in 42 CFR 455, Subpart B, each provider, other than an individual practitioner or a group of practitioners, must disclose to the Department: (11-10-81)

a. The full name and address of each individual who has either direct or indirect ownership interest in the disclosing entity or in any subcontractor of five percent (5%) or more prior to entering into an agreement or at the time of survey and certification; and (11-10-81)

b. Whether any person named in the disclosure is related to another person named in the disclosure as a spouse, parent, or sibling. (11-10-81)

03. Termination of Provider Agreements. Provider agreements may be terminated with or without cause. (3-2-94)

a. The Department may, in its discretion, terminate a provider's agreement for cause based on its conduct or the conduct of its employees or agents, when the provider fails to comply with any term or provision of the provider agreement. Other action may also be taken, based on the conduct of the provider as provided in Section 190, and notice of termination shall be given as provided therein. Terminations for cause may be appealed as a contested case pursuant to the Rules Governing Contested Case Proceedings and Declaratory Ruling, IDAPA 16.05.03.000, et seq. (3-2-94)

b. Due to the need to respond quickly to state and federal mandates, as well as the changing needs of the state plan, the Department may terminate provider agreements without cause by giving written notice to the provider as set forth in the agreement. If an agreement does not provide a notice period, it shall be twenty-eight (28) days. Terminations without cause may result from, but are not limited to, elimination or change of programs or requirements, or the provider's inability to continue providing services due to the actions of another agency or board. Terminations without cause are not subject to contested case proceedings since the action will either affect a class of providers, or will result from the discretionary act of another regulatory body. (3-2-94)

04. Hospital Agreements. In addition to the provider enrollment agreement, each claim submitted by a hospital constitutes an agreement by which the hospital agrees to accept and abide by the Department's rules. Only a Medicare certified hospital, licensed by the state in which it operates, may enroll in the Idaho Medicaid program. Hospitals not participating as a Medicaid swing-bed provider, which are licensed for long-term care or as a specialty hospital which provides a nursing home level of care, will be reimbursed as a nursing facility. Hospitals not eligible for enrollment which render emergency care will be paid rates established in Idaho Department of Health and Welfare Rules, Title 03, Chapter 10, Section 456, "Rules Governing Medicaid Provider Reimbursement." (3-22-93)

05. Denial of Provider Agreement. The Department may deny provider status by refusing a request to enter into a provider agreement, refusing to extend an existing agreement, or refusing to enter into additional agreements with any individual or entity, that: (5-1-96)T

a. Fails to meet the qualifications required by rule or by any applicable licensing board: (5-1-96)T

b. Has previously been, or was a managing employee, or had an ownership interest, as defined in 42 C.F.R. § 455.101 (10-1-93), in any entity which was previously found by the Department to have engaged in fraudulent conduct, or abusive conduct related to the Medicaid program or has demonstrated an inability to comply with the requirements related to the provider status for which application is made, including, but not limited to submitting false claims or violating provisions of any provider agreement: (5-1-96)T

c. Has failed, or was a managing employee, or had an ownership interest, as defined in 42 C.F.R. Section 455.101 (10-1-93), in any entity that failed to repay the Department for any overpayments, or to repay claims previously found by the Department to have been paid improperly, whether the failure resulted from refusal, bankruptcy, or otherwise, unless prohibited by law; or (5-1-96)T

d. Employs as a managing employee, contracts for any management services, shares any ownership interests, or would be considered a related party to any individual or entity identified in Subsections 040.05.a. through 040.05.c., of this rule. (5-1-96)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES**

**DOCKET NO. 16-0411-9602**

**NOTICE OF PROPOSED RULES**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 39-4601 through 39-4608, Idaho Code.

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

- October 8, 1996, at 7:00 p.m., Holiday Inn Express, 2209 E. Sherman, Coeur d'Alene, Idaho;
- October 9, 1996, at 7:00 p.m., Boise State University, 1910 University Dr., Student Union Building, Farnsworth Room, Boise, Idaho;
- October 10, 1996, at 7:00 p.m., Quality Inn, 1555 Pocatello Creek Rd., Executive Room, Pocatello, Idaho;

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

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the proposed rules:

The Department has participated in negotiated rulemaking with parents, advocates, providers and staff since May 1995. A Notice of Intent to Promulgate Rules was published in the February 1, 1995 Idaho Administrative Bulletin, Volume 95-2, under docket number 16-0411-9501, page 245. The rewrite of the rules under the new docket number is a combined effort of this group. Changes to format and content were extensive enough to justify rewriting the existing chapter.

The term "Developmental Disabilities Centers" has been changed throughout the rules to "Developmental Disabilities Agencies".

The Policy section was rewritten to reflect the change in emphasis from center-based to home and community-based services to promote independence, participation and inclusion of people with developmental disabilities in their neighborhoods and communities.

New rules clarify the Department's role in prior authorization and advisory review. Prior authorization is not required for consumers who do not use Targeted Service Coordination or develop Individual Support Plans to coordinate all services, including Developmental Disabilities Agency services; however, Developmental Disabilities Agencies are required to submit consumer plans to the Department for an advisory review. Developmental Disabilities Agency responsibility for intake is rewritten in more detail when Targeted Service Coordination is used by consumers to coordinate all services. Agencies are required to develop Implementation Plans for consumer goals but are not required to develop Individual Service Plans when an Individual Support Plan exists.

Requirements for vehicle maintenance have been added to ensure safety during transportation.

16.04.11.922, Community Sites, is a new section with requirements for accessibility, safety, appropriate environments, and group size limitations when services are delivered in community settings.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning these proposed rules, contact Paul Swatsenbarg at (208) 334-5512.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 23, 1996.

DATED this 2nd day of October, 1996.

STACI WELSH  
Administrative Procedures Coordinator  
DHW - Legal Services Division  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-5548 fax

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**TEXT OF DOCKET NO. 16-0411-9602**

**IDAPA 16**  
**TITLE 04**  
**Chapter 11**

**RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES**

**000. LEGAL AUTHORITY.**

The following rules for the licensure of developmental disabilities agencies and the provision of services to persons with developmental disabilities in Idaho are adopted under the statutory authority vested in the Board of Health and Welfare, pursuant to the Developmental Disabilities Services and Facilities Act, Sections 39-4601 et seq., Idaho Code. ( )

**001. TITLE AND SCOPE.**

These rules govern the licensing of providers of rehabilitative and habilitative services to persons with developmental disabilities and the provision of services to eligible persons. These rules are to be cited as Idaho Department of Health and Welfare Rules, IDAPA 16, Title 04, Chapter 11, Rules Governing Developmental Disabilities Agencies. ( )

**002. POLICY.**

It is the policy of the Department of Health and Welfare to make developmental disability rehabilitative and habilitative services available through community agencies, throughout the state, as authorized or mandated by law only to the extent of funding and available resources as may be appropriated by the Idaho legislature. It is the responsibility of the Department to assure developmental disability rehabilitative and habilitative services are available to those persons diagnosed as having a developmental disability. Services shall be provided in community-based settings in natural environments such as home, work, leisure or center-based settings, based on consumer needs, interests or choices. Services provided by DDA's promote independence, participation and inclusion of people with developmental disabilities in their neighborhoods and communities. ( )

**003. DEFINITIONS.**

For the purpose of these rules the following terms are used, as herein defined. ( )

01. ACCESS Unit. Access to Care Coordination, Evaluation, Services and Supports. A regional multidisciplinary, transdivisional unit that has the responsibility of determining eligibility, authorizing services, and assuring quality services and supports for individuals with developmental disabilities. ( )

02. Annual. Every three hundred and sixty-five (365) days except during a leap year which equals three hundred and sixty-six (366) days. ( )

03. Audiologist. A person qualified to conduct hearing evaluation and therapy, who possesses a certificate of clinical competency in audiology or who will be eligible for certification within one (1) year of employment. Certification shall be from the American Speech, Language and Hearing Association (ASHA). ( )

04. Baseline. Current level of ability to complete a task independently, as a basis for initiating therapeutic intervention. ( )
05. Board. The Idaho State Board of Health and Welfare. ( )
06. Bureau of Developmental Disabilities. The section of the Department responsible for community programs for persons with developmental disabilities and which serves as the state developmental disability authority. ( )
07. Consumer. A person who has been identified as having a developmental disability as defined in this chapter and who is receiving services through a DDA. ( )
08. Department. The Idaho Department of Health and Welfare. ( )
09. Developmental Disabilities Agency (DDA). A developmental disabilities facility designated in accordance with these rules to provide (outpatient) rehabilitative or habilitative services to children or adults with developmental disabilities. ( )
10. Developmental Disabilities Facility. Any public or private organization or agency which provides developmental disabilities services on an inpatient, outpatient, residential, clinical or other programmatic basis, including community rehabilitation programs and developmental disabilities agencies. ( )
11. Developmental Disabilities Professional (DDP). A physician, psychologist, social worker, audiologist, speech and language pathologist specialist, developmental specialist, occupational therapist, physical therapist, or therapeutic recreation specialist employed by the developmental disabilities agency to provide evaluation and services as defined by the Department. ( )
12. Developmental Disability. A chronic disability of a person which appears before the age of twenty-two (22) years of age and: ( )
- a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and ( )
- b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and ( )
- c. Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. ( )
13. Developmental Specialist. A person qualified to conduct developmental evaluation and therapy, who possesses a bachelor's or master's degree in special education or a related field including early childhood education, speech and language pathologists, adult special education, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation and who has had one (1) year of training or one (1) year of experience in the field of developmental disabilities, or a combination of training and work experience. Persons employed as developmental specialists prior to October 6, 1988 will be exempted from the requirements of these rules, as long as there is not a gap of more than three (3) years of employment as a developmental specialist. Persons hired after October 6, 1988 are subject to the requirements of these rules. ( )
14. Director. The Director of the Idaho Department of Health and Welfare or his designee. ( )
15. Division of Family and Community Services. The division of the Department with responsibility for both community and institutional services for persons with developmental disabilities and mental illness. ( )



16. Evaluation. A process by which the need for services or progress toward identified goals is determined. It may include a comprehensive assessment or a specific skill assessment for the purpose of determining baseline or the need for further intervention for the discipline area being assessed. ( )

17. Habilitation. The process of developing skills and abilities. ( )

18. Initial License. A license issued to a DDA upon application when the Department determines that all application requirements have been met. An initial license can be issued for a period not to exceed one hundred and eighty (180) days from the initiation of services. This license allows the Department time to evaluate the agency's ongoing capability to provide services and to meet these rules. ( )

19. Normalization. The process of providing services which promote a life as much as possible like that of other citizens of the community, including living in the community and access to community resources. These services are designed to enhance the social image and personal competence of those being served. ( )

20. Objective. A behavioral statement of outcome developed to address an identified need of an individual. The need is identified by the consumer and guardian where applicable, and others the consumer has chosen to participate on his planning team, to be incorporated into the consumer's repertoire of functional behaviors. The objective is written in measurable terms which specify a target date for completion, no longer than two (2) years in duration, and criteria for successful attainment of the objective. ( )

21. Occupational Therapist. A person qualified to conduct occupational therapy evaluations and therapy, who is certified by the American Occupational Therapy Certification Board and licensed to practice in Idaho, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. ( )

22. Paraprofessional. A person such as an aide or therapy technician who is qualified to assist DDP's in providing services. ( )

23. Person Centered Planning Process. The means by which the consumer and those individuals selected by the consumer to be team members, identify the consumer's talents, skills, strengths, needs and desires. ( )

24. Physical Therapist. A person qualified to conduct physical therapy evaluations and therapy, who is registered to practice in Idaho, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. ( )

25. Physician. A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Sections 54-1801 et seq., Idaho Code. ( )

26. Provider. Any individual or organization furnishing services through the provisions of these rules. ( )

27. Provider Agreement. An agreement between a provider and third-party payor whereby the third-party payor agrees to pay the provider for furnishing developmental disabilities rehabilitative and habilitative services in accordance with these rules. ( )

28. Provisional License. A license issued to a DDA which is found not to be in substantial compliance with these rules but not to have deficiencies which jeopardize the health or safety of consumers. A provisional license can be issued for a specific period of time, not to exceed one hundred and eighty (180) days, while corrections are being completed. ( )

29. Psychologist. A person licensed by the State of Idaho in accordance with the provisions of Sections 54-2301 et seq., Idaho Code, to independently practice psychology, or who is exempt from such requirements and meets the minimum qualifications established by the Idaho Personnel Commission to perform the duties assigned in classified service as defined by the Department, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. ( )

30. Psychology Assistant. An individual who practices psychology under the supervision of a licensed psychologist as required by Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24, Title 12, Chapter 01, Rules of the Idaho State Board of Psychologist Examiners. ( )

31. Rehabilitation. The process of improving skills or level of adjustment to increase the person's ability to maintain satisfactory independent or dependent functioning. ( )

32. Rehabilitative and Habilitative Services. Evaluation and diagnostic services which include medical, social, developmental, psychological/psychiatric services, occupational therapy, physical therapy, and speech and hearing therapy. Treatment services which include individual, group and family-centered psychotherapy; individual and group speech and hearing therapy; individual and group physical therapy; individual and group developmental therapy, and individual and group occupational therapy. Evaluation, diagnostic and treatment services are to be provided on an outpatient basis and may be community-based, home-based, or center-based as consistent with the requirements of this chapter. ( )

33. Service. Evaluation, diagnosis, therapy, training, assistance, or support provided to a person with a developmental disability by a DDA. ( )

34. Social Worker. A person licensed in accordance with the Social Work Licensing Act, Sections 54-3201 et seq., Idaho Code, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. ( )

35. Speech and Language Pathologist. A person qualified to conduct speech/language evaluation and therapy, who possesses a certificate of clinical competency in speech-language pathology or who will be eligible for certification within one (1) year of employment. Certification shall be from the American Speech Language and Hearing Association (ASHA). ( )

36. State Developmental Disability Authority. The Division of Family and Community Services, Bureau of Developmental Disabilities, within the Department which has statewide responsibility for planning, coordinating and monitoring developmental disabilities services. ( )

37. Substantial Compliance. Deficiencies identified at the time of the survey by the licensing agency that do not present a serious risk to consumers' health or safety or seriously impede the agency's ability to provide habilitative or rehabilitative services. ( )

38. Supervision. Initial direction and procedural guidance by a DDP and periodic inspection of the actual work performed at the site of service delivery. ( )

39. Targeted Service Coordinator. A regionally enrolled provider of the Department who is qualified by training and experience to develop and coordinate individual supports and services for eligible consumers of the Department, as defined in IDAPA 16, Title 03, Chapter 09, Rules Governing Medical Assistance, Section 118. ( )

40. Temporary Developmental Disabilities Site Approval. A location, established by a fully licensed agency, to provide additional services for ninety (90) or less consecutive days. ( )

41. U.L. Underwriters Laboratories. ( )

**004. -- 099 (RESERVED).**

**100. LICENSING OF OTHER LICENSED FACILITIES.**

Hospitals, skilled nursing facilities, intermediate care facilities for persons with the mental retardation, community rehabilitation programs or other facilities or agencies licensed or certified under state law to provide medical, residential, professional or other services to persons with developmental disabilities need not be licensed under these rules unless the facility is seeking to provide rehabilitative and habilitative services to persons with developmental disabilities as described under Subsection 003.33 of these rules. ( )

**101. REQUIRED LICENSING.**

All agencies providing or seeking to provide rehabilitative or habilitative services to persons with developmental disabilities described in Subsection 003.33 of these rules shall be licensed unless exempt from licensing requirements described in Section 100 of these rules. ( )

**102. -- 199. (RESERVED).**

**200. THE ROLE OF DDA'S.**

Services shall be directed toward persons identified as having a developmental disability as defined in these rules. Agencies shall provide services to eligible consumers with developmental disabilities. ( )

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

**300. LICENSURE OF DDA'S.**

01. Application for Licensure. Any DDA shall apply for licensure under these rules. ( )

02. Eligibility to Contract. Any program not licensed under these rules is ineligible to enter into a contract with, or receive funds through, the Department for the purpose of providing rehabilitative and habilitative services to persons with developmental disabilities as outlined in Subsection 003.33 of these rules. ( )

03. Obligation to Contract. Licensure of an agency by the Department does not constitute an obligation by the state to enter into a contract with that agency or otherwise provide state or federal funding or services. ( )

**301. APPLICATION FOR LICENSURE.**

01. License Required. Before any agency, private or public, profit or nonprofit, can provide rehabilitative and habilitative services to persons with developmental disabilities under these rules, it shall make application for licensure. No consumer shall receive services through an agency until the licensing agency has approved the application for licensure. No funding for services will be paid by the Department until the agency is licensed. ( )

02. Conformity. Licensed agencies shall conform to all applicable rules and rules of the Department, such as Medicaid reimbursement procedures, background checks, fingerprinting requirements. ( )

03. Accessible Records. The DDA and records required under these rules shall be accessible during normal operations of the agency to the licensing agency for the purpose of inspection, with or without prior notification, pursuant to Sections 39-4605(4) and 39-108, Idaho Code. ( )

04. Open Application. Application for new agencies will be accepted on an open and continuous basis in accordance with Subsection 301.02. ( )

05. National Accreditation. The Department may adopt the policy of accepting national accreditation in lieu of state licensure for developmental disabilities agencies. ( )

06. Content of Application. Application shall be made to the licensing agency of the Department on a form provided by the Department. The application and supporting documents shall be received by the Department at least sixty (60) days prior to the planned opening date. The application shall include: ( )

a. Name, address and telephone number of the agency; and ( )

b. Types of services to be provided by the agency and the anticipated capacity of each service; and ( )

c. The service area of the agency; and ( )

d. The target population to be served and the service area to be covered by the program; and ( )

- e. The anticipated date for the initiation of services; and ( )
- f. A statement indicating the need for the agency's services; and ( )
- g. A statement which identifies the ownership and describes the management structure of the agency, including a copy of the corporation's articles of incorporation with designation as nonprofit or profit, public or private, and a copy of the bylaws; and ( )
- h. A statement that the agency is in compliance with these rules and all other applicable local, state and federal requirements, including an assurance that the agency is in compliance with the provisions of Subsection 925.02 governing nondiscrimination; and ( )
- i. A copy of the proposed organizational chart or plan for staffing of the agency; and ( )
- j. Staff qualifications including resumes, job descriptions and copies of state licenses for staff when applicable; and ( )
- k. When center-based services are to be provided, evidence of a local fire safety inspection; and ( )
- l. When center-based services are to be provided, evidence of compliance with local building and zoning codes; and ( )
- m. When center-based services are provided, written policy and procedures regarding emergency evacuation procedures; and ( )
- n. Staff and consumer illness policy, communicable disease policy and other health and hygiene policies and procedures; and ( )
- o. Written admission and transition policy; and ( )
- p. Program records system including completed examples of individual service plans, intervention techniques, and monitoring records; and ( )
- q. Fiscal record system including program billings and documentation of services provided consumers; and ( )
- r. Written description of the agency's quality assurance program; and ( )
- s. Any other information requested by the Department for determining the agency's compliance with these rules or the agency's ability to provide the services for which licensure is requested. ( )
- t. If the agency intends to seek a waiver or variance of any rule, then the application shall include a written request for a waiver or variance request and shall specify the particular rule and provide an explanation of the reasons for requesting the waiver or variance. ( )

07. Agency Review. Upon receipt of the application form and initial application materials, the licensing agency will review the materials to determine if the agency has in place systems, which if properly implemented, would result in regulatory compliance. ( )

08. Written Decision. A written decision with regard to licensure will be submitted to the agency by the licensing agency within thirty (30) days of the date the completed application packet is received in the licensing agency's office. ( )

**302. ISSUANCE OF TEMPORARY LICENSE.**

If an initial application for licensure is approved by the licensing agency, the agency will be issued a temporary

license. Prior to the expiration of the temporary license, the licensing agency will conduct an on-site review of the agency to determine if the agency is in substantial compliance with the requirements of this chapter. A provisional license shall not be issued immediately following a temporary license. ( )

**303. TEMPORARY SITE LIMITATION.**

Only fully licensed developmental disabilities agencies may apply for a temporary developmental disabilities site approval. ( )

**304. CHANGE OF PHYSICAL LOCATION.**

01. Notification of Change. Prior to changing physical locations, agencies providing center-based services shall notify the licensing agency of the plans to relocate and the address of the new program site thirty (30) days prior to the actual move. ( )

02. Evidence of Review. For the new physical location, agencies shall provide evidence of review and approval by the local fire and building authorities and a statement verifying that the new location is accessible to persons with developmental disabilities. ( )

**305. ISSUANCE OF A PROVISIONAL LICENSE, DENIAL OR REVOCATION OF LICENSE.**

The Department will issue a provisional license, or deny or revoke the license if, after investigation of the agency, it finds that the agency is not in substantial compliance with these rules. ( )

01. Intent to Issue Provisional License. At the time of a survey, the applicant will be notified of the intent to issue a provisional license, or deny or revoke the license and the reasons for the intended action. ( )

02. Applicant Notification. Within fifteen (15) days of the site review, the applicant will be notified in writing of the Department's decision and the reason(s) for the intended action, pursuant to Sections 307 and 308 of these rules. ( )

03. Request for Hearing. Within fifteen (15) days of the receipt date of the notice to issue a provisional license or deny or revoke the license, the applicant may request, in writing, a hearing with the Director and subsequently may appeal to the District Court. ( )

04. Contested Case Provisions. Upon receipt of the written request, a hearing will be scheduled and conducted in accordance with IDAPA 16, Title 05, Chapter 03, Rules Governing Contested Case Proceedings and Declaratory Rulings. A review decision will be sent to the applicant within thirty (30) days of the date of the conclusion of hearing. ( )

**306. ISSUANCE AND TRANSFER OF LICENSE.**

01. Issuance of License. A notice of licensure shall be issued by the Department when it determines, in accordance with the provisions of this section, that the agency requesting licensure is in substantial compliance with these rules. Agencies found to be in substantial compliance with these rules but failing to comply with every detail may be issued a license when failure to comply does not present a serious risk to the consumers' health or safety or seriously impede the agency's ability to provide rehabilitative or habilitative services. A license issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. ( )

02. License Return. The license is the property of the state and shall be returned to the state if it is revoked or suspended in accordance with Section 307 and 308 of these rules. ( )

03. License Not Transferable. The license is issued only to the agency named thereon and may not be transferred or assigned to any other person or entity without the written permission of the Department. ( )

04. Availability of License. The license shall be available. ( )

**307. EXPIRATION AND RENEWAL OF LICENSE.**

All licenses issued under the provisions of these rules, except for those facilities exempted pursuant to Section 100 of these rules, shall continue for a period of no greater than two (2) years unless revoked. No later than ninety (90) days before expiration, an agency may apply for renewal of the license. Applicants for renewal will also require a site review by the licensing agency. Licensing will be reviewed no less than every two (2) years. An agency shall be found to be in substantial compliance with these rules in order to receive renewal of the license. An application for renewal received less than ninety (90) days before expiration of the license shall be treated as an application to be acted upon after timely applications of renewal and initial applications. ( )

**308. PROVISIONAL LICENSE.**

If a new applicant or applicant for renewal is found not to be in substantial compliance with these rules but does not have deficiencies which jeopardize the health or safety of consumers, a provisional license may be issued by the Department for a one hundred and eighty (180) day period. At that time, the licensing agency will determine whether areas of concern have been corrected. If so, then the regular license will be issued. If not, the license will be denied or revoked. ( )

**309. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.**

After a provisional license has been issued, if areas of concern have not been corrected, an application for relicensure may be denied or a license revoked. ( )

**310. EMERGENCY REVOCATION.**

An agency's license may be immediately revoked when there is evidence of life-threatening danger or harm to consumers served. If, following investigation, the issue of the safety of consumers is resolved, then a license may be granted. ( )

**311. WAIVER OR VARIANCE.**

A variance or waiver to these rules in whole or in part may be granted if good cause is shown for such waiver; the health, welfare, or safety of consumers will not be endangered by granting such a waiver; the agency's ability to provide services will not be impeded by granting such a waiver; and precedent shall not be set by the granting of such a waiver. The waiver may be renewed if sufficient written justification is presented to the licensing agency. ( )

**312. -- 599. (RESERVED).**

**600. MANAGEMENT INFORMATION SYSTEM.**

All licensed DDA's seeking funding from the Department shall maintain a data base on consumer services. The agencies must be capable of providing the Department with basic consumer information such as, but not limited to, the number of persons with developmental disabilities served, diagnostic category, level of mental retardation, age, and sex. This information may be hand-tabulated or part of the agency's computerized information system. ( )

**601. -- 699. (RESERVED).**

**700. REPORTING.**

Agencies funded by the Department shall furnish progress and other reports as the Department may require, such as age by disability reports and annual consumer progress reports. ( )

**701. -- 749. (RESERVED).**

**750. QUALITY ASSURANCE.**

Each DDA defined under these rules shall develop and implement a quality assurance program. ( )

01. Purpose. The quality assurance program is an ongoing proactive internal review of the DDA designed to ensure: ( )

a. Services provided to consumers are high quality and consistent with individual choices, interests, and needs and current standards of practice; and ( )

b. Sufficient staff and material resources are available to meet the needs of each person served; and

- ( )
- and c. The environment in which center-based services are delivered is safe and conducive to learning; ( )
- d. Skill training activities are conducted in the natural setting where a person would commonly learn and utilize the skill, whenever appropriate; and ( )
- e. The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices. ( )
02. Program Components. The quality assurance program shall be described in writing and include: ( )
- a. Goals and procedures by which the purpose of the quality assurance program as described in Subsection 750.01 of these rules will be achieved; and ( )
- b. Person, discipline or department responsible for each goal; and ( )
- c. A system to ensure the correction of problems identified within a specified period of time; and ( )
- d. A method for assessing consumer satisfaction. ( )
03. Additional Requirements. The quality assurance program shall ensure that services provided: ( )
- a. Are developed with consumer and guardian where applicable, participation and actively promote personal choice and preference; and ( )
- b. Are age appropriate; and ( )
- c. Promote normalization; and ( )
- d. Provide opportunities for community participation and inclusion; and ( )
- e. Offer opportunities for consumers to exercise their rights; and ( )
- f. Are observable in practice. ( )

**751. -- 759. (RESERVED).**

**760. CONSUMER RIGHTS.**

- Each person receiving services through an agency designated under these rules shall be ensured the following rights: ( )
01. Sections 66-412 and 66-413, Idaho Code, provides the following rights: ( )
- a. Humane care and treatment; and ( )
- b. Not be put in isolation; and ( )
- c. Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; and ( )
- d. Be free of mental and physical abuse; and ( )

- e. Communicate by telephone or otherwise and to have access to private area to make telephone calls and receive visitors; and ( )
- f. Receive visitors at all reasonable times and to associate freely with persons of his own choice; and ( )
- g. Voice grievances and to recommend changes in policies or services being offered; and ( )
- h. Practice his own religion; and ( )
- i. Wear his own clothing and to retain and use personal possessions; and ( )
- j. Be informed of his medical and habilitative condition, of services available at the agency and the charges for the services; and ( )
- k. Reasonable access to all records concerning himself; and ( )
- l. Refuse services; and ( )
- m. Exercise all civil rights, unless limited by prior court order. ( )
- 02. Additional Consumer Rights. The agency shall also ensure the following rights. The right to:
  - a. Privacy and confidentiality; and ( )
  - b. Be treated in a courteous manner; and ( )
  - c. Receive a response from the agency to any request made within a reasonable time frame; and ( )
  - d. Receive services which enhance the consumer's social image and personal competencies and, whenever possible, promote inclusion in the community; and ( )
  - e. Refuse to perform services for the agency. If the consumer is hired to perform services for the agency the wage paid shall be consistent with state and federal law; and ( )
  - f. Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; and ( )
  - g. All other rights established by law; and ( )
  - h. Be protected from harm. ( )
- 03. Method of Informing Consumers of Their Rights. Each agency shall ensure that each person receiving services is informed of his rights in the following manner: ( )
  - a. Upon initiation of services, each consumer and guardian, where applicable, shall be provided with a packet of information which outlines rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This packet shall be written in easily understood terms. ( )
  - b. When providing center-based services, agencies shall prominently post a list of the rights contained in this chapter. ( )
  - c. Each consumer and guardian, where applicable, shall be provided with a verbal explanation of their rights in a manner that will best promote individual understanding of these rights. ( )



**761. APPLICANT SCREENING**

The agency shall develop policies and procedures which ensure that individuals hired do not have a conviction or prior employment history of abuse, neglect, mistreatment, or exploitation of a child or vulnerable adult. ( )

**762. OBLIGATION TO REPORT**

All confirmed or suspected incidents of mistreatment, neglect, exploitation or abuse of consumers shall be reported to the adult or child protection authority. ( )

**763. DEVELOPMENT OF POSITIVE SOCIAL BEHAVIORS.**

Each DDA shall develop and implement written policies and procedures that address the development of positive social behaviors and the management of inappropriate behavior. These policies and procedures shall include: ( )

01. Positive Social Skills. Focusing on increasing positive social skills; and ( )
02. Positive Approaches/Least Restrictive Alternatives. Ensuring and documenting the use of positive approaches and least restrictive alternatives; and ( )
03. Protected Rights. Ensuring that the safety, welfare and human and civil rights of consumers are adequately protected; and ( )
04. Underlying Causes. Addressing the evaluation or assessment of the possible underlying causes of the inappropriate behavior and what the consumer may be attempting to communicate by the behavior; and ( )
05. Objectives and Plans. Ensuring that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior and any other behaviors which significantly interfere with the consumer's independence or ability to participate in the community; and ( )
06. Training Alternate Behavior. Ensuring that programs to manage inappropriate consumer behavior include training of the appropriate alternative behavior(s); and ( )
07. Consumer Involvement. For plans developed by the agency ensuring the consumer is involved, whenever possible, in developing the plan to manage inappropriate behavior. When plans used by the agency are developed by another service provider the agency shall not be held accountable for ensuring consumer involvement in the development of the plan; and ( )
08. Written Informed Consent. Ensuring that programs developed by the agency to manage inappropriate consumer behavior are conducted only with the written informed consent of the consumer and guardian where applicable. When programs used by the agency are developed by another service provider the agency shall obtain a copy of the informed consent; and ( )
09. Review and Approval. Ensuring that programs developed by the agency to manage inappropriate behavior are only implemented after the review and written approval of a DDP. If the program contains restrictive or aversive components, the agency psychologist will also review and approve, in writing, the plan prior to implementation. When programs implemented at the agency are developed by another service provider the agency shall obtain a copy of these reviews and approvals; and ( )
10. Appropriate Use of Interventions. Ensuring that interventions used to manage inappropriate consumer behavior are never used: ( )
  - a. For disciplinary purposes; or ( )
  - b. For the convenience of staff; or ( )
  - c. As a substitute for a needed training program; or ( )
  - d. By untrained or unqualified staff. ( )

764. -- 799. (RESERVED).

**800. STANDARDS FOR DDA'S PROVIDING SERVICES TO CONSUMERS WITH AUTHORIZED INDIVIDUAL SUPPORT PLANS.**

Each DDA shall provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities who have developed an Individual Support Plan with a Targeted Service Coordinator through a person centered planning process. ( )

01. Intake. ( )

a. To ensure the health and safety of the consumer, a medical profile sheet which contains relevant medical and identifying information about the consumer and family, and accurately reflects the current status and needs of the consumer shall be obtained or completed prior to the delivery of services. ( )

b. Prior to the delivery of services current and accurate comprehensive evaluations or specific skill assessments shall be completed or obtained, as necessary, to effectively plan the consumer's program. To be considered current, evaluations and assessments shall accurately reflect the current status of the consumer. ( )

02. Evaluations. ( )

a. Comprehensive assessments which are completed by the agency shall: ( )

b. Be conducted by qualified professionals for the respective disciplines as defined in this chapter; ( )

c. Be identified as a service on the Individual Support Plan; ( )

03. Specific Skill Assessments. Specific skill assessments which are completed by the agency shall: ( )

a. Be completed by qualified professionals for the respective disciplines as defined in this chapter; and ( )

b. Be identified as a service or need on the Individual Support Plan; and ( )

c. Be conducted for the purposes of determining baselines, or the need for further interventions. ( )

04. Individual Support Plan. Any services provided by the DDA must be included on the plan and authorized by the Regional ACCESS Unit before a consumer can receive the service from the agency. ( )

05. Implementation Plan. The DDA shall be required to develop an Implementation Plan for each service or support which is included on the consumer's Individual Support Plan provided by the agency as outlined in these rules. The Implementation Plan shall include: ( )

a. The consumer's name; and ( )

b. The specific skill area; and ( )

c. A baseline statement addressing the consumer's specific skills and abilities related to the specific skill to be learned; and ( )

d. Measurable, behaviorally stated objectives which are developed from an identified service or support in the Individual Support Plan; and ( )

e. Written instructions to staff such as curriculum, lesson plans, locations, activity schedules, type and ( )

frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, shall be individualized and revised as necessary to promote consumer progress toward the stated objective. ( )

f. Identification of the specific environment(s) where services shall be provided. ( )

g. These implementation plans shall be initiated within fourteen (14) calendar days of the initiation of services. ( )

h. The target date for completion. ( )

06. ACCESS Unit Authorization. ACCESS Unit prior authorization is required in the following circumstances: ( )

a. When revisions in the Implementation Plan change the type and amount of services listed on the Individual Support Plan; and ( )

b. At the consumer's annual review of DDA services as part of the annual update of the Individual Support Plan. ( )

07. Program Documentation. Each consumer's record shall include documentation of the consumer's participation in and response to services provided. This documentation shall include at a minimum: ( )

a. Daily entry of all activities conducted toward meeting consumer objectives; and ( )

b. Sufficient progress data to accurately assess the consumer's progress toward each objective; and ( )

c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review shall include the DDP's dated initials; and ( )

d. Documentation of notification of the consumer and when applicable, the consumer's guardian. ( )

08. Program Changes. ( )

a. DDA shall coordinate the consumer's DDA program with other service providers to maximize learning. ( )

b. Documentation of Implementation Plan Changes. Documentation of Implementation Plan changes will be included in the consumer's record. This documentation shall include at a minimum, the reason for the change, documentation of coordination with other service providers, where applicable, the date the changes was made and the signature of the person making the change complete with date and title. A copy of an ISP will suffice for compliance to this requirement. ( )

09. Records. Each DDA licensed under these rules shall maintain accurate, current and complete consumer and administrative records. Each record of consumers with Targeted Service Coordinators shall contain the following information: ( )

a. Documentation which verifies that the services provided are recommended by a physician. A copy of an Individual Support Plan will suffice for compliance to this requirement; and ( )

b. When evaluations are completed or obtained by the agency the consumer's record shall include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and ( )

c. A copy of the Individual Support Plan authorized by the ACCESS Unit; and ( )

d. Implementation Plans. Program documentation and monitoring records which comply with all applicable sections of these rules; and ( )

e. The case record shall be divided into program/discipline areas identified by tabs, such as, Individual Support Plan, medical, social, psychological, speech, developmental. ( )

**801. STANDARDS FOR DDA'S PROVIDING SERVICES TO CONSUMERS WITHOUT TARGETED SERVICE COORDINATORS.**

Each DDA shall provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities who have chosen not to access a Targeted Service Coordinator, to be available and accessible throughout its service area. ( )

01. Eligibility Documentation. Prior to the delivery of services, current and accurate comprehensive evaluations or specific skills assessments shall be completed or obtained, as necessary to determine eligibility as defined in Section 66-402, Idaho Code, and the Department's current interpretive guidelines, and to effectively plan the consumer's program. ( )

02. Intake. To ensure the health and safety of the consumer, medical information which accurately reflects the current status and needs of the consumer shall be obtained prior to the delivery of services. When this information is not available, a comprehensive medical evaluation shall be completed prior to the provision of services. ( )

03. Evaluations. ( )

a. Comprehensive evaluations which are completed by the agency shall be conducted by qualified professionals for the respective disciplines as defined in this chapter, recommended by a physician, identify accurate, current and relevant consumer strengths, needs and interests as applicable to the respective discipline, recommend the type and amount of therapy necessary to address the consumer's needs. ( )

b. Prior to the delivery of ongoing services in a specific discipline a comprehensive medical, medical/social assessment shall be completed or obtained. ( )

c. Evaluation or specific skill assessments from additional disciplines such as speech and language pathologists or physical therapists, shall also be completed or obtained as necessary to meet the consumer's needs. ( )

d. All evaluations shall be completed within forty-five (45) calendar days of the date recommended by the physician. If not completed within this time frame, the consumer's records must contain consumer based documentation justifying the delay. ( )

e. A current psychological or psychiatric evaluation shall be completed or obtained when the consumer is receiving a behavior modifying drug(s), or prior to the initiation of restrictive interventions to modify inappropriate behavior(s), or an evaluation is necessary to determine eligibility for services or establish a diagnosis, or the consumer has a primary or secondary diagnosis of mental illness, or when otherwise required in this chapter. ( )

f. Comprehensive evaluations and specific skill assessments completed or obtained by the DDA shall be current. To be considered current, evaluations and assessments shall accurately reflect the current status of the consumer. ( )

04. Individual Program Plan. When a consumer has not developed an Individual Support Plan with a Targeted Service Coordinator through a person centered planning process, the DDA is required to complete an Individual Program Plan and the following shall apply: ( )

a. The Individual Program Plan shall be developed following obtainment or completion of all applicable evaluations consistent with the requirements of this chapter. ( )

b. The planning process shall include the consumer and guardian, if applicable, and others the individual chooses to have in attendance. The consumer and guardian where applicable, will be provided a copy of the completed individual program plan. If the consumer and guardian where applicable, is unable to participate, the reason shall be documented in the consumer's record. ( )

05. Program Plan Components. The Individual Program Plan shall promote self-sufficiency, the consumer's choice in program objectives and activities and encourage the consumer's participation and inclusion in the community. The Individual Program Plan shall include: ( )

a. The consumer's name and medical diagnosis; and ( )

b. The name of the DDP, the date of the planning meeting, and the name and titles of those present at the meeting; and ( )

c. Documentation that the plan is recommended by a physician; and ( )

d. The type, amount and duration of therapy to be provided such as individual speech therapy, thirty (30) minutes two (2) times per week; group developmental therapy, two and one-half (2 1/2) hours, five (5) days per week; and ( )

e. A list of the consumer's current personal goals, interests and choices; and ( )

f. An accurate, current and relevant list of the consumer's specific developmental and behavioral strengths; and ( )

g. An accurate, current and relevant list of the consumer's specific developmental and behavioral needs. This list will identify which needs are a priority based on the consumer's choices and preferences. An Individual Program Plan objective shall be developed for each priority need; and ( )

h. A list of the measurable, behaviorally stated objectives, which correspond to the list of priority needs. An Implementation Plan shall be developed for each objective. ( )

i. The discipline or DDP responsible for each objective; and ( )

j. The target date for completion; and ( )

k. The review date; and ( )

l. An individual transition plan designed to facilitate independence, personal goals and interests. The transition plan may include vocational goals/objectives directed toward paid employment. The transition plan shall specify criteria for transition into alternative settings vocational training, supported or independent employment, volunteer opportunities, community based organizations and activities, or less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. ( )

06. Support Documentation. The Individual Program Plan shall be supported by documentation included in the consumer's record. ( )

07. Frequency of Plan Development. Members of the planning team shall meet at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the consumer. ( )

08. Physician Recommendation. There shall be documentation that the plan is recommended by a physician prior to implementing the Individual Program Plan and when revisions in the plan change the type, amount, or duration of the service provided, and at the annual review. ( )

09. Regional Advisory Review. The Individual Program Plans shall be submitted to the Regional

ACCESS Units for an advisory review to ensure that services are reimbursable and within the scope and duration of DDA services. Services may begin prior to advisory review. Agencies will work to resolve concerns identified in the advisory review. Notification of findings of the advisory review will become part of the consumer's record. ( )

10. Implementation Plan. The DDA shall be required to develop an Implementation Plan for each objective listed on the Individual Program Plan. The implementation Plan shall include: ( )

- a. The consumer's name; and ( )
- b. The measurable, behaviorally stated Individual Program Plan objective; and ( )
- c. Baseline assessment to determine the consumer's specific skills and abilities related to the specific skill to be learned; and ( )

d. Written instructions to staff such as curriculum, lesson plans, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, shall be individualized and revised as necessary to promote consumer progress towards the stated objective; and ( )

- e. Identification of the specific location where services shall be provided; and ( )
- f. These implementation plans shall be completed within fourteen (14) calendar days of the initiation of services; and ( )
- g. The target date for completion. ( )

11. Program Documentation. Each consumer's record shall include documentation of the consumer's participation in and response to services provided. This documentation shall include at a minimum: ( )

- a. Daily entry of all activities conducted toward meeting consumer objectives; and ( )
- b. Sufficient progress data to accurately assess the consumer's progress toward each objective; and ( )
- c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review shall include the DDP's dated initials. ( )

12. Documentation of Program Changes. Documentation of all changes in the individual program plan or implementation plan shall be included in the consumer's record. This documentation shall include at a minimum; ( )

- a. The reason for the change; and ( )
- b. The date the change was made; and ( )
- c. Signature of the person making the change complete with date and title; and ( )
- d. Documentation of notification of the consumer and, when applicable, the consumer's guardian. ( )

13. Records. Each DDA licensed under these rules shall maintain accurate, current and complete consumer and administrative records. Each consumer record shall support the individual's choices, interests and needs which result in the type and amount of each service provided. Each agency shall have an integrated consumer records system to provide past and current information and to safeguard consumer confidentiality pursuant to these rules. Each record of consumers without a Targeted Service Coordinator shall contain the following information: ( )

- a. Profile sheet containing necessary identifying information about the consumer and family; and

- ( )
- b. Medical/social history containing relevant medical and social history and information on the consumer and family; and ( )
- c. Documentation which verifies that the services provided are recommended by a physician; and ( )
- d. When evaluations are completed or obtained by the agency the consumer's record shall include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and ( )
- e. Individual Program Plan, when developed by the agency; and ( )
- f. Implementation Plans, program documentation and monitoring records which comply with all applicable sections of these rules; and ( )
- g. The case records shall be divided into program/discipline areas identified by tabs, such as, Individual Program Plan, medical, social, psychological, speech, developmental. ( )

**802. FUNDS.**

Agencies which receive fund under these rules shall maintain accurate records of the receipt, obligation and disbursement of funds. Reimbursement for services is contingent upon documentation in consumer records which supports the need for the type and amount of each service. ( )

**803. ACCESSIBILITY.**

Records shall be accessible during normal operation of the agency to the Department for the purpose of inspection, with or without prior notification, pursuant to Section 39-108, Idaho Code. ( )

**804. REQUIRED SERVICES.**

Services provided shall be sufficient in quantity and quality to meet the needs of each person receiving services, and shall be provided by qualified professionals for the respective disciplines defined in this chapter. The following services, individual, group, community-based and home-based shall be available as recommended by the physician and based on consumer needs, interests, or choices to eligible consumers either by employees of the agency or through formal written agreement and shall comply with all applicable rules of this chapter: ( )

01. Psychotherapy. Psychotherapy services when provided by a physician, psychiatrist, psychologist, psychology assistant, or social worker in accordance with the objectives specified. Psychotherapy services available shall include the following: ( )

- a. Individual psychotherapy; and ( )
- b. Group psychotherapy in which there shall be a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and ( )
- c. Family-centered psychotherapy which shall include the consumer and one (1) other family member at any given time. ( )

02. Speech and Hearing Therapy. Speech and hearing therapy services provided in accordance with the specified objectives. ( )

03. Physical Therapy. Physical therapy services provided by a licensed physical therapist in accordance with the specified objectives. ( )

04. Developmental Therapy. Developmental therapy services: ( )

- a. Shall be provided by qualified developmental disabilities staff in accordance with objectives specified; and ( )

b. Therapy shall be directed toward the rehabilitation/habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living or economic self-sufficiency. ( )

05. Occupational Therapy. Occupational therapy services provided by a licensed occupational therapist in accordance with the specified objectives. ( )

06. Optional Services. ( )

a. Consultation for the purpose of prescribing, monitoring, or administering medications. These consultations shall be provided by a physician or licensed nurse practitioner in direct face-to-face contact with the consumer and incorporated into the individual plan with the type, amount, duration of the service specified. ( )

b. Psychiatric evaluations and services for the purpose of establishing a diagnosis, identifying consumer strengths and needs, and recommending or implementing interventions to address each need. These evaluations and services shall be conducted by a physician in direct face-to-face contact with the consumer and incorporated into the consumer's individual plan with the type, amount, and duration of service specified. ( )

**805. -- 809. (RESERVED).**

**810. STAFFING REQUIREMENTS FOR AGENCIES.**

01. Physician. The agency shall have a physician available a sufficient amount of time to: ( )

a. Review medical/social history information for the purpose of ordering appropriate evaluations; and ( )

b. Perform necessary medical assessments; and ( )

c. Review and recommend the services identified in the Individual Program Plans; and ( )

d. Participate in annual reviews of consumer services to determine continued appropriateness of the plan if applicable. ( )

02. Professionals. The agency shall have available, at a minimum, the qualified DDP as employees of the agency or through formal written agreement: ( )

a. Audiologist or speech and language pathologist; and ( )

b. Developmental specialist; and ( )

c. Occupational therapist; and ( )

d. Physical therapist; and ( )

e. Physician; and ( )

f. Psychologist; and ( )

g. Social worker. ( )

**811. -- 819. (RESERVED).**

**820. PAYMENT PROCEDURES.**

Payment for services shall be in accordance with rates, forms, policies and procedures established by the Department. Payment for services is contingent upon documentation in each consumer's record which supports the



type and amount of each service based on the agency's integrated records system and compliance with the requirements specified under Section 802 of this chapter. ( )

**821. COOPERATION OF SERVICES.**

Each DDA shall act in cooperation with other agencies providing services to consumers to maximize learning. Services with which coordination and integration shall occur include: ( )

01. Children's Services. DDA shall refer a child of mandatory school attendance age, seven (7) through sixteen (16), to the local school district for consideration for education and related services found in Public Law 101-476. The DDA may provide services beyond those that the school is obligated to provide during regular school hours. These related services include audiology, psychotherapy services, physician's services, developmental therapy, occupational therapy, physical therapy and speech pathology. The consumer's record shall contain an Individualized Educational Program for each child of school age, including any recommendations for Extended School Year. The DDA shall send a current copy of the child's Individual Program Plan to their school. ( )

02. Services through School District. Services provided through a school district contract and reimbursed by the school district are not required to meet DDA rules, nor are they reimbursable as DDA services. ( )

**822. -- 899. (RESERVED).**

**900. ADDITIONAL STANDARDS FOR PERSONNEL PROVIDING DEVELOPMENTAL DISABILITY SERVICES.**

01. Professionals. Except as provided in Subsection 900.02 of this section, all personnel employed by an agency for the purpose of providing developmental disability services after October 6, 1988, shall be DDP's. ( )

02. Paraprofessionals. Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental disability services if they are under the supervision of a DDP. ( )

a. The agency shall assure adequate professional supervision during its service hours; and ( )

b. There shall be a minimum of one (1) qualified staff, who may be a paraprofessional or a DDP, providing direct services for every twelve (12) individuals. Additional staff shall be added, as necessary, to meet the needs of each individual served; and ( )

c. Aides or therapy technicians utilized to assist in the provision of physical therapy services may do so only when a physical therapist is present at the site of service delivery; and ( )

d. Paraprofessionals shall not conduct consumer evaluations or establish the Implementation Program Plan. These activities shall be conducted by a DDP; and ( )

e. A professional shall, on a weekly basis or more often if necessary, give instructions, review progress and provide training on the program(s) and procedures to be followed; and ( )

f. A professional shall, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional to assure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ( )

03. Specified Service Providers. In accordance with Section 800 of these rules, only specified developmental disability service providers may provide service within the designated element of service. ( )

04. Administrative Staffing. The program administrator shall be accountable for all service elements of a developmental disability program and shall be employed on a continuous regularly scheduled basis. ( )

a. The program administrator shall be a DDP as defined in Subsection 003.11 of these rules. ( )

b. If the administrator is not a DDP, a DDP shall be employed on a continuous regularly scheduled basis and shall be responsible for the service elements of the developmental disabilities program; ( )

c. Either the program administrator or the DDP shall have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with developmental disabilities. ( )

**901. VOLUNTEERS.**

If volunteers are utilized, the program shall establish policies and procedures governing the screening, training and utilization of volunteer workers for delivery of services. ( )

**902. TRAINING.**

Each agency designated under these rules shall provide ongoing training for staff and volunteers. ( )

01. Annual Training. A minimum of twelve (12) hours of formal training shall be provided. ( )

a. Within ninety (90) days of employment, each staff member will be certified in first aid and CPR; and ( )

b. In addition, a minimum of twelve (12) hours of training areas including fire safety, behavior management, and skill development in the area of rehabilitation or habilitation of persons with developmental disabilities on an annual basis. ( )

02. Sufficient Training. Training of staff and volunteers shall be sufficient to ensure the following as applicable to their work assignments and responsibilities: ( )

a. Correct and consistent implementation of consumer individual program plans and implementation plan, to achieve individual objectives; and ( )

b. Optimal independence of all individuals receiving services is encouraged, supported and reinforced through appropriate activities, opportunities, and training; and ( )

c. Correct and appropriate use of assistive technology used by individuals obtaining services; and ( )

d. Accurate record keeping and data collection procedures; and ( )

e. Consistent use of behavioral and developmental programming principles and the use of positive behavioral intervention techniques; and ( )

f. Adequate observation, review and monitoring of staff, volunteer and consumer performance to promote the achievement of consumer objectives; and ( )

g. Each consumer's rights, confidentiality, safety and welfare; and ( )

h. The proper implementation of all policies and procedures developed by the agency. ( )

**903. -- 919. (RESERVED).**

**920. PHYSICAL PLANT.**

The requirements under this section apply when an agency is providing center-based services. ( )

01. Accessibility. Agencies designated under these rules shall be responsive to the needs of the service area and persons receiving services and accessible to persons with disabilities as defined in 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and the uniform federal accessibility standard. ( )

02. Environment. The agency shall be designed and equipped to meet the needs of each consumer including, but not limited to, factors such as sufficient space, equipment, lighting and noise control. ( )

03. Capacity. Agencies shall serve no more than forty (40) persons with developmental disabilities on site at a given time. Agencies may apply to the Director for a waiver pursuant to these rules. The decision of the Director may be reviewed by the Board. Agencies are encouraged to include persons without disabilities in their programs or to integrate persons with disabilities into community activities for part of the day. ( )

04. Fire and Safety Standards. ( )

a. Buildings on the premises used as facilities shall meet all local and state codes concerning fire and life safety that are applicable to DDA. The owner/operator shall have the facility inspected at least annually by the local fire authority. In the absence of a local fire authority, such inspections shall be obtained from the Idaho State Fire Marshall's office. A copy of the inspection shall be made available to the licensing agency upon request and shall include documentation of any necessary corrective action taken on violations cited; and ( )

b. The facility shall be structurally sound and shall be maintained and equipped to assure the safety of consumers, employees and the public; and ( )

c. On the premises of all facilities where natural or man-made hazards are present, suitable fences, guards or railings shall be provided to protect consumers; and ( )

d. The premises and all buildings used as facilities shall be kept free from the accumulation of weeds, trash and rubbish; and ( )

e. Portable heating devices shall be prohibited except units that have heating elements that are limited to not more than two hundred and twelve (212) degrees Fahrenheit. The use of unvented, fuel-fired heating devices of any kind shall be prohibited. All portable space heaters must be U.L. approved as well as approved by the local fire or building authority. ( )

f. Quantities of flammable or combustible materials deemed hazardous by the licensing agency shall not be stored in the facility; and ( )

g. All hazardous or toxic substances shall be properly labeled and stored under lock and key; and ( )

h. Water temperatures in areas accessed by consumers shall not exceed one hundred and twenty (120) degrees Fahrenheit; and ( )

i. Portable fire extinguishers shall be installed throughout the facility. Numbers, types and location shall be directed by the applicable fire authority noted in Subsection 920.04.a. of these rules; and ( )

j. Electrical installations and equipment shall comply with all applicable local or state electrical requirements. In addition, equipment designed to be grounded shall be maintained in a grounded condition and extension cords and multiple electrical outlet adapters shall not be utilized unless U.L. approved and the numbers, location, and use of them are approved, in writing, by the local fire or building authority. ( )

k. There shall be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers shall be posted near the telephone; and ( )

l. Furnishings, decorations or other objects shall not obstruct exits or access to exits. ( )

05. Evacuation Plans. Evacuation plans shall be posted throughout the building. Plans shall indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building. ( )

a. Emergency plans and training requirements: ( )

b. There shall be written policies and procedures covering the protection of all persons in the event of fire or other emergencies; and ( )

c. All employees shall participate in fire and safety training upon employment and at least annually thereafter; and ( )

d. All employees and consumers shall engage in quarterly fire drills. At least two (2) of these fire drills shall include evacuation of the building; and ( )

e. A brief summary of the fire drill and the response of the employees and consumers shall be written and maintained on file. The summary shall indicate the date and time the drill occurred, problems encountered and corrective action taken. ( )

06. Food Preparation and Storage. ( )

a. If foods are prepared in the agency, they shall be prepared by sanitary methods. ( )

b. Except during actual preparation time, cold perishable foods shall be stored and served under forty-five (45) degrees Fahrenheit and hot perishable foods shall be stored and served over one hundred and forty (140) degrees Fahrenheit. ( )

c. Refrigerators and freezers used to store consumer lunches and other perishable foods used by consumers, shall be equipped with a reliable, easily-readable thermometer. Refrigerators shall be maintained at forty-five (45) degrees Fahrenheit or below. Freezers shall be maintained at zero (0) to ten (10) degrees Fahrenheit or below. ( )

d. When meals are prepared or provided for by the agency, meals will meet the nutritional, dietary and individual needs of each consumer. ( )

07. Housekeeping and Maintenance Services. ( )

a. The interior and exterior of the agency shall be maintained in a clean, safe and orderly manner and shall be kept in good repair; and ( )

b. Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; and ( )

c. All housekeeping equipment shall be in good repair and maintained in a clean, safe and sanitary manner; and ( )

d. The agency shall be maintained free from infestations of insects, rodents and other pests; and ( )

e. The facility shall maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means. ( )

08. Vehicle Safety. If the DDA provides transportation, a preventive maintenance program will be in place for each agency owned or leased vehicle, including but not limited to: ( )

a. Inspections, liability insurance, licensed drivers, and other maintenance to insure safety; and ( )

b. Coordination with transportation providers when the DDA does not provide the transportation. ( )

**921. HEALTH.**

01. Policies and Procedures. The agency shall develop policies and procedures which describe how the agency will assure that staff is free from communicable disease and how it will protect consumers from exposure to other individuals exhibiting symptoms of illness. ( )

02. Employees. Each employee with direct contact with consumers shall be free of communicable disease and infected skin lesions while on duty. ( )

03. Handling of Consumer's Medications. Personnel of the agency shall not administer medications unless legally authorized to do so. Personnel may assist the consumer to take his own medication under the following conditions: ( )

a. The medication shall be brought by the consumer in a prepackaged container which is appropriately labeled with the name of the medication, dosage and time and amount to be taken. Each medication shall be packaged separately to avoid mistakes in identification unless packaged in Medisets or a similar system. ( )

b. Only licensed nurses and other professionals legally authorized to administer medications may give consumers injectable medications. ( )

c. No medications shall be given except under the verbal or written orders of a physician. Evidence of the written or verbal order shall be maintained in the consumer's record. Medisets labeled by a pharmacist and supplied to the consumer on a weekly basis may serve as written evidence of a physician's order. An original prescription bottle labeled by a pharmacist describing the current physician's orders/instructions for use, may also serve as written evidence of a physician's orders. ( )

d. The agency shall be responsible for the safeguarding of the consumer's medications while he is at the agency or in the community. ( )

e. Medications which are no longer used by the consumer shall not be retained by agency staff. These shall be returned to the pharmacist, the consumer, or person responsible for the consumer's home care. ( )

f. Medications shall not be borrowed between consumers. ( )

04. Accident/Injury Reports. Accident/injury reports shall be completed for all such incidents experienced by consumers receiving services. ( )

**922. COMMUNITY SITES.**

The requirements under this section apply when an agency is providing community-based services. ( )

01. Accessibility. The community-based setting shall be accessible, safe and appropriate for each consumer. ( )

02. Environment. The community-based setting shall be designed and equipped to meet the needs of each consumer including, but not limited to, factors such as sufficient space, equipment, lighting, and noise control. ( )

03. Training Group Size Sessions. The community-based services shall occur in integrated inclusive settings and with no more than three (3) consumers per trainer at each training session. ( )

**923. ANNUAL PROGRESS REPORT AND PLAN.**

By June 30 of each year, each DDA shall submit an annual progress report and plan covering the current fiscal year to the state developmental disability authority. ( )

**924. STATE PLAN.**

Each agency shall be required, as needed, to participate in the state developmental disabilities plan development by completing an annual needs assessment survey or public hearing on services for Idahoans with disabilities. ( )

**925. AFFIRMATIVE ACTION.**

01. Equal Employment Opportunity. It is the policy of the Department to promote the objectives of equal employment opportunity and fair labor practice laws of the United States and the State of Idaho. ( )

02. Nondiscrimination. No employee of a agency designated under these rules will, in the course of serving consumer needs, discriminate against any individual on the basis of race, color, national origin, religion, sex, age, or physical/mental disability. ( )

**926. -- 997. (RESERVED).**

**998. ADMINISTRATIVE PROVISIONS.**

Contested case hearings shall be governed according to the provisions of IDAPA 16, Title 05, Chapter 03, Rules Governing Contested Case Proceedings and Declaratory Rulings. ( )

**999. CONFIDENTIALITY OF RECORDS.**

Any disclosure of information obtained by the Department is subject to the restrictions contained in IDAPA 16, Title 05, Chapter 01, Rules Governing the Protection and Disclosure of Department Records. In addition: ( )

01. Storage of Records. All consumer information including, but not limited to, consumer records shall be maintained and stored in a manner which ensures consumer confidentiality. ( )

02. Written Consent. Consumer information and records shall not be provided to individuals or agencies not legally authorized to receive it without the informed written consent of the consumer and guardian where applicable. ( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.09 - RULES GOVERNING FAMILY SELF SUPPORT**  
**DOCKET NO. 16-0609-9502**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1997 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5442 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-201 through 56-233, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted as proposed. The original text of the proposed rules was published in the October 4, 1995 Administrative Bulletin, Volume 95-10, pages 130 through 132.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Ellen Welch at (208) 334-0661.

DATED this 3rd day of July, 1996.

Staci Welsh  
Administrative Procedures Coordinator  
DHW - Legal Services Division  
450 West State Street - 10th Floor  
PO Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-5548 fax

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**IDAPA 16**  
**TITLE 06**  
**Chapter 09**

**RULES GOVERNING FAMILY SELF SUPPORT**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 95-10, October 4, 1995  
Pages 130 through 132.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**

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

**16.06.10 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM FOR AT-RISK FAMILIES**

**DOCKET NO. 16-0610-9502**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1997 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5442 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-201 through 56-233, Idaho Code.

**DESCRIPTIVE SUMMARY:** This Chapter of rules is being repealed as proposed. The original notice of the proposed repeal was published in the October 4, 1995 Administrative Bulletin, Volume 95-10, pages 133 through 134.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Ellen Welch at (208) 334-0661.

DATED this 3rd day of July, 1996.

Staci Welsh  
Administrative Procedures Coordinator  
DHW - Legal Services Division  
450 West State Street - 10th Floor  
PO Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-5548 fax

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**IDAPA 16  
TITLE 06  
Chapter 10**

**RULES GOVERNING IDAHO CHILD CARE PROGRAM  
FOR AT RISK FAMILIES**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 95-10, October 4, 1995  
Pages 133 through 134.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
16.06.11 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM  
FOR TITLE IV-A (NON-JOBS)**

**DOCKET NO. 16-0611-9502**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1997 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5442 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-201 through 56-233, Idaho Code.

**DESCRIPTIVE SUMMARY:** This Chapter of rules is being repealed as proposed. The original text of the proposed repeal was published in the October 4, 1995 Administrative Bulletin, Volume 95-10, pages 135 through 136.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Ellen Welch at (208) 334-0661.

DATED this 3rd day of July, 1996.

Staci Welsh  
Administrative Procedures Coordinator  
DHW - Legal Services Division  
450 West State Street - 10th Floor  
PO Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-5548 fax

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**IDAPA 16  
TITLE 06  
Chapter 11**

**RULES GOVERNING THE IDAHO CHILD CARE PROGRAM  
FOR TITLE IV-A (NON-JOBS)**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 95-10, October 4, 1995  
Pages 135 through 136.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM**

**DOCKET NO. 16-0612-9502**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1997 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5442 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-201 through 56-233, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted as proposed. The original text of the proposed rules was published in the October 4, 1996 Administrative Bulletin, Volume 95-10, pages 137 through 163.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Ellen Welch at (208) 334-0661.

DATED this 3rd day of July, 1996.

Staci Welsh  
Administrative Procedures Coordinator  
DHW - Legal Services Division  
450 West State Street - 10th Floor  
PO Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-5548 fax

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**IDAPA 16**  
**TITLE 06**  
**Chapter 12**

**RULES GOVERNING THE IDAHO CHILD CARE PROGRAM**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 95-10, October 4, 1995  
Pages 137 through 163.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1997 Idaho State Legislature  
for final adoption.**

**IDAPA 17 - INDUSTRIAL COMMISSION**  
**17.02.07 - PROCEDURES TO OBTAIN COMPENSATION**  
**DOCKET NO. 17-0207-9601**  
**NOTICE OF PROPOSED RULES**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 72-432, 72-448, 72- 508, 72-602, 72-701, 72-702, 72-703, and 72-704, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule- making will be held as follows:

Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 26, 1996.

The hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements contact Commission Secretary Pat Ramey at (208) 334-6000.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the proposed rule:

These are new rules which provide for the implementation of a form for reporting work-related injuries and occupational diseases that is compatible with emerging standards for electronic submission of data. They will allow for more timely entry of information into the database system from which statistical reports are generated, reduce the paper that the Industrial Commission currently receives, and reduce the cost of reporting for sureties, employers, and the Commission.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Maureen Bock, Benefits Administration, at (208) 334-6000.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 26, 1996.

DATED this 6th day of May, 1996.

P. Maureen Bock, Administrator  
Benefits Administration  
P. O. Box 83720  
Boise, Idaho 83720-0041  
Telephone: (208) 334-6000/Fax: (208) 334-2321

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**TEXT OF DOCKET NO. 17-0207-9601**

**IDAPA 17**  
**TITLE 02**  
**Chapter 07**

**PROCEDURES TO OBTAIN COMPENSATION**

**000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to the provisions of Sections 72-432, 72-448, 72-508, 72-602, 72-701, 72-702, 72-703, 72-704, Idaho Code. ( )

**001. TITLE AND SCOPE.**

These rules shall be cited as IDAPA 17, Title 02, Chapter 07, Procedures to Obtain Compensation, and shall apply to claims for compensation arising under the Workers' Compensation Act. ( )

**002. WRITTEN INTERPRETATIONS.**

No written interpretations of these rules exist. ( )

**003. ADMINISTRATIVE APPEALS.**

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Industrial Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ( )

**004. -- 009. (RESERVED.)**

**010. DEFINITIONS.**

The following definitions shall be applicable to these rules. ( )

01. Commission. Means the Idaho Industrial Commission. ( )

02. Claim. Means Industrial Commission (IC) Form 1A-1 entitled "Workers Compensation First Report of Injury or Illness." If an application for hearing, referred to as a Complaint in the Judicial Rules, has been filed with the Commission, the IC Form 1A-1 is not required. ( )

03. Notice. Means both the employer's actual and constructive knowledge of the accident, injury or occupational disease. ( )

04. Employer. Is defined in Idaho Code, Section 72-102(11) and, for the purposes of these rules, includes sureties and adjusters. ( )

05. Claimant. Means a worker who is seeking to recover benefits under the Workers' Compensation Law. ( )

**011. SUBMISSION OF FIRST REPORTS OF INJURY AND CLAIMS FOR COMPENSATION TO THE INDUSTRIAL COMMISSION.**

01. Purpose. The Industrial Commission seeks to develop a form for reporting work-related injuries and occupational diseases that is compatible with emerging standards for electronic submission of data. This will allow for more timely entry of information into the database system from which statistical reports are generated, reduce the paper that the Commission currently receives, and is expected to reduce the cost of reporting for sureties, employers and the Commission. ( )

02. Procedure For Submitting Claims. In order to comply with Idaho Code § 72-602, Form 1A-1 shall be submitted to the Commission in substantially the same form as set forth below. At such time as the Commission institutes a system for on-line reporting of claims, claims may be submitted electronically. Fields that require clarification are listed below with explanations and/or applicable coding information: ( )

a. Dates: Use MM/DD/YYYY format. ( )

b. SIC Code: Code that represents the nature of employer's business as it is contained in the Standard Industrial Classification Manual published by the Federal Office of Management and Budget. ( )

c. Carrier: The surety issuing a contract of insurance and assuming financial responsibility on behalf of the employer of the claimant. In the case of a self-insured, the self-insured's information should be submitted. ( )

d. Claims Administrator: The name of the surety, adjuster, state fund, or self-insured responsible for administering the claim. ( )

e. Employment status: This is the claimant's work status. The valid choices are full-time, not employed, disabled, unknown, part-time apprentice, seasonal, part-time, on strike, retired, full-time apprentice, volunteer, or piece worker. ( )

f. Date disability began: The first day on which the claimant lost time from work due to the injury or disease. ( )

g. Type of injury/illness: Brief description of nature of injury or illness or the appropriate National Council on Compensation Insurance (NCCI) Detailed Claim Information (DCI) code. ( )

h. Part of body affected: Brief description or the appropriate DCI code(s). ( )

i. Department or location where accident or illness exposure occurred: Enter requested information or, if the accident or illness exposure did not occur on the employer's premises, enter address or location as specifically as possible. ( )

j. Nature of injury: Brief description or the appropriate DCI code(s). ( )

k. Work process the employee was engaged in when accident or illness exposure occurred: Describe the work process the employee was engaged in when the accident or illness exposure occurred, such as building maintenance. Enter "NA" for not applicable if employee was not engaged in a work process. ( )

03. Retaining Claims Files. All employers shall maintain their respective claim files in accordance with Section 051. Upon request of the Commission, employers shall provide to the Commission, in whole or in part according to the request, a copy of the claim file at no cost to the Commission. ( )

a. All employers shall retain complete copies of claims files for the life of the claim or a minimum of five (5) years from the date of closure, whichever is shorter. ( )

b. For time-loss claims, closure will be the date upon which the employer files the final summary of payments. The Commission recommends that an employer retain a closed claim file for a minimum of five (5) years. ( )

04. Filing Not An Admission. Filing a claim is not an admission of liability and is not conclusive evidence of any fact stated therein. If a claim is submitted electronically, no signatures are required. ( )

05. Filing Considered Authorization. Filing of a claim shall be considered an authorization for the release of medical records that are relevant to or bearing upon the particular injury or occupational disease for which the claimant is seeking compensation. ( )

06. Report Form and Content. ( )

a. The Notice of Injury and Claim for Benefits required by this rule shall be submitted on eight and one-half by eleven inches (8 1/2" X 11") paper in a format substantially similar to that which follows. If the employer seeks to request additional information, the employer shall submit the proposed changes to the Commission for approval. Changes shall not be implemented prior to the receipt of the Commission's approval. ( )

b. Employers wishing to report electronically shall sign a written information sharing agreement with the Commission. This agreement will provide the effective date to send and receive electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements. The agreement must be signed by the employer and approved by the Commission prior to initial data submission. To ensure the accuracy of reported data, the Commission may make periodic audits of employer files. ( )

07. Timely Response Requirement. When the Commission requests additional information in order to process the Claim, the claimant or employer shall provide the requested information promptly. The Commission request may be either in writing or telephonic. ( )

**012. -- 999. (RESERVED).**

WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

GENERAL	EMPLOYER (NAME & ADDRESS INCL ZIP)		CARRIER/ADMINISTRATOR CLAIM NUMBER		REPORT PURPOSE CODE			
			JURISDICTION	JURISDICTION CLAIM NUMBER				
			INSURED REPORT NUMBER					
			EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)		LOCATION #			
	SIC CODE	EMPLOYER FEIN		PHONE #				
CLAIMS ADMIN	CARRIER (NAME, ADDRESS & PHONE NUMBER)		POLICY PERIOD	CLAIMS ADMIN (NAME, ADDRESS & PHONE NO.)				
			TO					
			CHECK IF SELF INSURED					
	CARRIER FEIN	POLICY NUMBER OR SELF-INSURED NUMBER		ADMINISTRATOR FEIN				
	AGENT NAME & CODE NUMBER							
EMPLOYEE	LEGAL NAME (LAST, FIRST, MIDDLE)		BIRTH DATE	SOCIAL SECURITY NUMBER	DATE HIRED	STATE OF HIRE		
	ADDRESS (INCL ZIP)		SEX	MARITAL STATUS	OCCUPATION /JOB TITLE			
			M MALE	U UNMARRIED/SINGLE/DIV.				
			F FEMALE	M MARRIED	EMPLOYMENT STATUS			
			U UNKNOWN	S SEPARATED				
	PHONE		# OF DEPENDENTS	K UNKNOWN	NCCI CLASS CODE			
	WAGE RATE	PER:	DAY	MONTH	# DAYS WORKED/ WK	FULL PAY FOR DATE OF INJURY?		
			WEEK	OTHER:		DID SALARY CONTINUE?		
						YES NO YES NO		
OCCURRENCE	TIME EMPLOYEE BEGAN WORK	AM	DATE OF INJURY/ILLNESS	TIME OCCURED	AM	LAST WORK DATE	DATE EMPLOYER NOTIFIED	DATE DISABILITY BEGAN
		PM			PM			
	EMPLOYER CONTACT NAME/PHONE NUMBER			TYPE OF INJURY/ILLNESS		PART OF BODY AFFECTED		
	DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES?			YES	TYPE OF INJURY/ILLNESS CODE		PART OF BODY AFFECTED CODE	
				NO				
	DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE USING UPON OCCURRENCE			
	SPECIFIC ACTIVITY EMPLOYEE ENGAGED IN AT TIME OF OCCURRENCE				WORK PROCESS THE EMPLOYEE WAS ENGAGED IN AT TIME OF OCCURRENCE			
	HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DIRECTLY INJURED THE EMPLOYEE OR MADE EMPLOYEE ILL				DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT CAUSED INJURY CODE			
DATE RETURNED TO WORK		IF FATAL, DATE OF DEATH		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED?		YES	NO	
						YES	NO	
TREATMENT	PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)		HOSPITAL (NAME & ADDRESS)		INITIAL TREATMENT			
					0	NO MEDICAL TREATMENT		
OTHER	SIGNATURE OF INJURED EMPLOYEE, OR SIGNATURE ON FILE, DATE		WITNESS TO ACCIDENT (NAME & PHONE NUMBER)		1	MINOR: BY EMPLOYER		
					2	MINOR CLINIC/HOSP		
					3	EMERGENCY CARE		
					4	HOSPITALIZED > 24 HR		
					5	ANTICIPATED MAJOR MED/LOST TIME		
	DATE ADMINISTRATOR NOTIFIED	DATE PREPARED	PREPARER'S NAME & TITLE		PREPARER'S PHONE NUMBER			

TC FORM 13-1

**IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION**  
**26.01.34 - RULES GOVERNING THE ADMINISTRATION OF THE**  
**RECREATIONAL VEHICLE ACCOUNT**

**DOCKET NO. 26-0134-9601**

**NOTICE OF TEMPORARY AND PROPOSED RULE-MAKING**

**EFFECTIVE DATE:** These temporary rules will be effective from July 3, 1996 until replaced by permanent rules at the conclusion of the 1997 legislative session.

**SUBJECT:** Temporary and permanent Rules Governing the Administration of the Recreational Vehicle Account.

**ACTION:** The proposed action, under Docket No. 26-0134-9601, involves a revision of the eligibility requirements for RV grant funds, together with minor housekeeping changes. The proposed change will allow Indian Tribes to apply for RV grant funds along with local, state, and governmental entities. Temporary and permanent rules will be promulgated concurrently. Temporary rules are necessary to confer a benefit and to allow Indian Tribes to apply for RV grant funds during the 1997 grant cycle.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated a proposed rule-making. The proposed action is authorized pursuant to Section 67-4223(a) and (e), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the Administrative Bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later.

Any hearing sites will be accessible to the physically disabled. Interpreters for persons with hearing impairments and Braille or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements, contact Rinda Just, Deputy Attorney General, at (208) 334-4120 (relay service is available by calling 1-800-377-1363 (voice) or 1-800-377-3529 (TDD)).

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

IDAPA 26.01.34.010 (definitions), is changed to replace the term "sponsor" with the term "applicant," and to replace the phrase "public agency" with the phrase "public entity" which has been defined to include Indian Tribes. "Recreational Vehicle Program" is added as a defined term. These changes in defined terms appear throughout the proposed rule.

IDAPA 26.01.34.100.06 has been changed to delete the requirement that requests for extension be submitted thirty (30) days prior to the end of the project period.

IDAPA 26.01.34.125 has been revised to include universal accessibility, site acceptability, and public comment as items that must be present in a complete application.

IDAPA 26.01.34.175 revises the objective criteria which may be used in rating applications.

IDAPA 26.01.34.250 has been revised to clarify that design and engineering costs incurred within the year prior to the application may be eligible costs.

IDAPA 26.01.34.425 Requirement that project sponsors disseminate news releases about the project eliminated.

Minor nonsubstantive changes appear throughout the rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rinda Just, Deputy Attorney General, P. O. Box 83720, Boise ID 83720-0010, (208) 334-4120 (relay service is available by calling 1-800-377-1363 (voice) or 1-800-377-3529 (TDD)).

Anyone may submit written comment regarding the proposed rules. All written comments and data concerning the proposed rule must be directed to Rinda Just, Deputy Attorney General, and must be postmarked or delivered on or before July 24, 1996.

Dated this 22nd day of May, 1996

Rinda Just, Deputy Attorney General  
P. O. Box 83720  
Boise, ID 83720-0010  
(208) 334-4120 (relay service is available, see numbers listed above).

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**TEXT OF DOCKET NO. 26-0134-9601**

**010. DEFINITIONS.**

Certain terms used herein are defined as follows: (7-1-93)

01. Applicant. A public entity identifying a need for a project which supplies initial support data and requests funding assistance for a project through the Recreational Vehicle Account. (7-3-96)T

042. Board. The Idaho Park and Recreation Board, a bipartisan, six (6) member board, appointed by the governor. (7-1-93)

023. Department. The Idaho Department of Parks and Recreation, ~~Statehouse Mail, Boise, ID 83720-8000.~~ (7-1-93)(7-3-96)T

034. Director. The chief administrator of the Idaho Department of Parks and Recreation. (7-1-93)

045. Project. An effort in compliance with Idaho statutes and rules for which RV grant funds shall be used to assist the ~~sponsor~~ applicant in achieving the goals of the Recreational Vehicle Program. (7-1-93)(7-3-96)T

056. Public Agency Entity. The state, federal or local government or a subdivision thereof, or an Indian Tribe. (7-1-93)(7-3-96)T

067. Recreational Vehicle Advisory Committee. A six (6) member committee appointed by the Idaho Park and Recreation Board to advise the board and department on matters involving the RV Account. (7-1-93)

08. Recreational Vehicle Program (RV Program). The subdivision of the Recreation Resources Bureau, Idaho Department of Parks and Recreation, which is responsible for administration of the RV Account. (7-3-96)T

079. RV Account. The Recreational Vehicle Account. (7-1-93)

0810. RV Program Coordinator. The staff administrator of the RV Program. (7-1-93)

09. Sponsor. ~~A public agency identifying a need for a project which supplies initial support data and requests funding assistance for a project through the Recreational Vehicle Program.~~ (7-1-93)

4011. Staff. An individual employed by the Idaho Department of Parks and Recreation. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**



**050. GENERAL PROVISIONS OF THE RECREATIONAL VEHICLE PROGRAM.**

It is the intent of the department, through the Recreational Vehicle Program, to provide funds and planning assistance to public ~~agencies~~entities for the acquisition, lease, development, improvement and maintenance of facilities designed to promote the health, safety, and enjoyment of recreational vehicle users. (7-1-93)(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**075. ELIGIBLE ~~SPONSORS~~APPLICANTS FOR RECREATIONAL VEHICLE ACCOUNT GRANT FUND.**

Public ~~agencies~~entities, as described in Section 010 of this chapter, are eligible to ~~request~~apply for and receive Recreational Vehicle Grants. (7-1-93)(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PROJECT TIME PERIOD.**

01. Grant Cycle. ~~Requests~~Applications for projects will be accepted and considered at least once per state fiscal year (July 1 through June 30). (7-1-93)(7-3-96)T

02. Application Deadlines. The department will announce the availability of funds at least sixty (60) days prior to the closing date for receipt of applications. (7-1-93)

03. Board Consideration. Project ~~requests~~applications may be considered at any board meeting. (7-1-93)(7-3-96)T

04. Exception. Project ~~requests~~applications under ten thousand dollars (\$10,000) may be considered, as necessary, on a case by case basis throughout the year. (7-1-93)(7-3-96)T

05. Expenditure Of Grant Funds. The ~~sponsor~~applicant will have only the designated state fiscal year in which to expend grant funds unless an extension is granted. If the grant funds are not expended within the designated state fiscal year, the grant may be cancelled unless an extension of time is granted by the department. If the project is not completed within two (2) years of approval, the project may be cancelled and allocated funds returned to the Recreational Vehicle Account. (7-1-93)(7-3-96)T

06. Requests For Extension. A written request for an extension of the project period must be received by the department ~~at least thirty (30) days~~ prior to the end of the original project period. Approval or denial of time extensions will be decided by the RV Program Coordinator after consultation with the RV Advisory Committee. (7-1-93)(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. ~~REQUEST~~APPLICATION PROCEDURES.**

~~Request~~Application forms and accompanying background information ~~relevant to the request process~~ will be provided to the ~~sponsor~~applicant by the department or its representative. General procedures for completion of the ~~request~~application process are: (7-1-93)(7-3-96)T

01. Preliminary Procedures. The ~~sponsor~~applicant's representative will review the project with the RV Program Coordinator or appropriate RV Committee Member to ensure that the prospective project meets the criteria of the RV ~~grant p~~Program, and that the ~~request~~application process is understood. When possible, the RV Program Coordinator or RV Committee Member will conduct an on-site inspection of the prospective project for preliminary fact finding to ensure the viability of the project. After initial consultation, the ~~sponsor~~applicant will submit IDPR Form REV 50.4, "~~State Recreational Vehicle Account - Grant Request Form~~" "Idaho Department of Parks and

Recreation Grant Application” to the RV Program Coordinator. The date and time of receipt of the request application will be recorded by the RV Program Coordinator. The RV Program Coordinator will then review the request application to ensure that it meets the basic criteria in regard to: (7-1-93)(7-3-96)T

- a. Eligibility of sponsor applicant. (7-1-93)(7-3-96)T
- b. Compliance with legislative intent. (7-1-93)
- c. Sponsor's Applicant's control of site. (7-1-93)(7-3-96)T
- d. Completeness of request application. (7-1-93)(7-3-96)T
- e. Universal accessibility. (7-3-96)T
- f. Site's acceptability for intended use. (7-3-96)T

02. Public Comment Required. Prior to project evaluation, the applicant shall seek public comment on the proposed project. The applicant shall include the results of any call for public input with the application. (7-3-96)T

023. Evaluation. If the request application meets these basic criteria, it will be referred to the RV Committee for evaluation. (7-1-93)(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. APPROVAL.**

Approval or denial of all grant requests applications will be decided by the director or board working from based on the recommendation of the RV Advisory Committee or RV Program Coordinator. (7-1-93)(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**175. PRIORITY RATING OF REQUEST APPLICATIONS.**

The RV Advisory Committee members will rate each request application using the objective criteria as outlined in IDPR Form REV-50.3 provided by staff. These ratings will be ranked to establish the priority list for recommendations to the board. The criteria may include, but are not limited to: (7-1-93)(7-3-96)T

- 01. User Needs. (7-1-93)
- a. Compliance with program intent. (7-1-93)
- ba. Relation to current program priorities. (7-1-93)
- eb. Amount of area RV use. (7-1-93)
- dc. Duplication of area facilities. (7-1-93)
- ed. Conflicts with private sector. (7-1-93)
- 02. Project Concepts. (7-1-93)
- a. Universal accessibility. (7-1-93)
- b. Site's acceptability for intended use. (7-1-93)

- ea. Design standards. (7-1-93)
- ~~eb.~~ Accuracy of cost estimates. (7-1-93)
- ec. Project time period. (7-1-93)
- 03. Administration. (7-1-93)
  - a. Maintenance and operations of facility. (7-1-93)
  - b. Commitment of matching funds. (7-1-93)
  - c. History of prior RV grant management by ~~sponsor~~applicant. ~~(7-1-93)~~(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. AUTHORITY FOR FUNDING APPROVAL.**

Projects up to ten thousand dollars (\$10,000) may be approved by the director upon recommendation of the RV Program Coordinator ~~or the RV Advisory Committee~~. Projects ten thousand dollars (\$10,000) and over will be presented to the board for approval. Cost increases for approved projects may be awarded as follows:

~~(7-1-93)~~(7-3-96)T

01. Maximum Percentage Increase. Increases may not exceed fifteen percent (15%) of the original grant amount. Increases of more than fifteen percent (15%) shall be reviewed as a separate project in the priority rating process. Should the revised project not receive approval for the cost increase, the ~~sponsor~~applicant will be required to complete the scope of the project at ~~sponsor~~applicant expense, or return any RV Account funds paid to them.

~~(7-1-93)~~(7-3-96)T

02. Approval Authority. Increases of more than ten thousand dollars (\$10,000), and those that bring the total grant amount over ten thousand dollars (\$10,000), shall be presented to the board for approval. All other increases may be approved by the director.

(7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. ~~SPONSOR~~APPLICANT OBLIGATIONS.**

01. Project Completions. Except as provided herein, upon departmental approval of a grant ~~request~~application, and acceptance of the grant by the ~~sponsor~~applicant, the ~~sponsor~~applicant shall be obligated to complete all elements of a project as described on the approved grant ~~request~~application and grant agreement forms.

~~(7-1-93)~~(7-3-96)T

02. Project Management. Except as provided herein, the ~~sponsor~~applicant shall be obligated to manage the project as specified in the grant ~~request~~application and grant agreement form.

~~(7-1-93)~~(7-3-96)T

03. Grant Modification. Only for good cause and detailed justification shown in writing, and upon approval by the department, may the terms and obligations of the grant ~~request~~application and agreement forms be modified.

~~(7-1-93)~~(7-3-96)T

04. Failure To Comply. Failure by the ~~sponsor~~applicant to comply with such terms and obligations shall result in the immediate revocation of an approved grant or will constitute a conversion pursuant to Section 325. of this chapter, as applicable.

~~(7-1-93)~~(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. DISBURSEMENT OF FUNDS.**

01. Pre-Application Activities. Projects, or any part thereof, either paid for by the ~~sponsor~~applicant or completed prior to receipt by the department of a completed ~~Form REV 50.4, Grant Request Form~~Grant Application Form, shall be ineligible for grant funding or to be considered as match. ~~However, costs for design and engineering incurred within one (1) year prior to the receipt by the department of the Grant Application Form may be considered for reimbursement, or as match, provided they are listed as a scope element on the application.~~ (7-1-93)(7-3-96)T

02. Documentation. All costs incurred on a project shall have prior approval, be documented, and be described in the grant agreement to be eligible for reimbursement, advanced funding, or to be considered as match. (7-1-93)

03. Reimbursement. Except as herein provided, funds will be disbursed by reimbursement only after the ~~sponsor~~applicant has acquired goods or upon substantial completion of the project. (7-1-93)(7-3-96)T

04. Partial Payments. Partial payments may be made during the course of a project by reimbursement only upon presentation of billings showing satisfactory evidence of partial compliance with the grant agreement form. (7-1-93)

05. Advances. Consideration of disbursement of funds on an advance basis will only be made if substantiating evidence is provided in writing to the RV Program Coordinator documenting that an emergency exists, or that the project is in jeopardy. The decision on the advancement of funds will be made by the director or the director's designee. If actual costs are less than the advanced grant amount, the difference shall be returned to the RV Grant Account ~~within forty-five (45) days of the completion of the project.~~ (7-1-93)(7-3-96)T

06. Repayment Of Advances. If, after receiving advanced funds, the project does not commence by the end of the project period, the ~~project sponsor~~applicant shall return the amount of the advance, plus any interest accrued as a result of the applicant having the advanced funds on deposit with a bank, to the Idaho Department of Parks and Recreation RV Account, unless an extension is approved in writing by the RV Program Coordinator. (7-1-93)(7-3-96)T

07. Time For Seeking Reimbursement. The ~~project sponsor~~applicant will submit copies of all vouchers, cancelled checks, bid notices and documents and invoices for reimbursement within forty-five (45) days of the completion of the project as signified by notice of completion or final inspection by the department. (7-1-93)(7-3-96)T

08. Deductions. ~~In the event that materials are supplied to a project sponsor by the department, the cost of such materials shall be deducted from the original grant amount.~~ (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**275. CONSTRUCTION PROCEDURES.**

01. Compliance With Laws. The ~~project sponsor~~applicant is responsible for obtaining state plumbing and electrical permits where applicable, and to acquire local building permits as needed. It is also the responsibility of the ~~sponsor~~applicant to follow all applicable state, federal, municipal or county bidding laws. Construction shall comply with the then current codes and standards as set by the Uniform Building Code, Uniform Plumbing Code, and the National Electric Code. (7-1-93)(7-3-96)T

02. Americans With Disabilities Act. ~~Sponsors~~Applicants shall assure that persons with disabilities are not precluded from using ~~RV Account-assisted~~ facilities, programs or services paid for with RV Account funds. ~~Sponsors~~Applicants shall ensure that facilities constructed with RV Account ~~assistance~~funds meet requirements guidelines as set by the Americans with Disabilities Act. (7-1-93)(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**325. PROJECT CONVERSION.**

No Recreational Vehicle Account funded projects shall, without prior written approval of the department, be converted to uses other than the benefit of recreational vehicle users. The department shall approve such conversion only when the RV Account grant funds spent on the project can be returned to the RV Account by the ~~sponsor~~applicant, or the ~~sponsor~~applicant can provide an immediate substitution of another RV projects of at least equal fair market value and of reasonable equivalent usefulness and location. The department has authority to disapprove conversion requests and to reject proposed project substitutions. ~~(7-1-93)(7-3-96)T~~

01. Creating A Conversion. A conversion may involve one of the following situations: (7-1-93)
  - a. Project interests are conveyed for non-RV uses. (7-1-93)
  - b. Non-RV uses (public or private) are made of the project, the project area, or a portion thereof. (7-1-93)
  - c. Non-eligible RV facilities are developed within the project area. (7-1-93)
02. Resolving A Conversion. If there is a project conversion, the ~~sponsor~~applicant is responsible for either: ~~(7-1-93)(7-3-96)T~~
  - a. Repaying the RV Account an amount determined by investment amortization through use, project life expectancy, and depreciation or appreciation of the property, facilities or equipment by a department approved appraisal; or (7-1-93)
  - b. Making an immediate substitution of reasonable equivalent usefulness and location as that being converted. It shall, however, be administered by the same political jurisdiction as the converted project. (7-1-93)
03. Compliance With Laws. All conversions shall abide by all pertinent state and federal laws. (7-1-93)
04. Alternatives. The department will only consider a conversion request if all practical alternatives to the conversion have been evaluated and rejected on a sound basis. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. REAL PROPERTY.**

Real property (land, land improvements, structures and appurtenances thereto) purchased in whole or in part with RV Account funds shall become the property of the ~~sponsor~~applicant subject to the condition that the ~~sponsor~~applicant shall use the land or property for the authorized purpose of the original grant as long as needed. ~~(7-1-93)(7-3-96)T~~

01. Appraisals. A real estate appraisal is required for all real property to be acquired with grant funds. All appraisals shall be prepared according to department procedures. The appraisal shall be paid for by the ~~project~~ ~~sponsor~~applicant. The selection of the appraiser shall be approved by the department. ~~(7-1-93)(7-3-96)T~~
02. Appraisal Review. The department will review appraisals as necessary. Any appraisal report that does not meet content requirements or use correct analysis procedures shall be corrected to the satisfaction of the department. (7-1-93)
03. Negotiated Price. An approved appraisal is an acceptable estimate of property value. The negotiation between a willing seller and a willing buyer may set a price that is higher than the appraisal, and this value can be considered along with the appraised value in establishing the reasonable limits of assistance. If the

~~sponsor~~applicant believes that the negotiated price is a better indication of market value, yet is higher than the appraised value, a detailed statement of this difference shall be submitted to the department. ~~(7-1-93)~~(7-3-96)T

04. Adequate Title. The ~~sponsor~~applicant shall have clear title to, or adequate control and tenure of, the real property (land, land improvements, structures and appurtenances thereto) to be developed. The ~~sponsor~~applicant shall list all outstanding rights or interests held by others in the property to be developed. In the event that the real property becomes unusable for its intended purpose, the ~~sponsor~~applicant assumes the responsibility for having to convert the project as described in Section 325 of this chapter. ~~(7-1-93)~~(7-3-96)T

05. Limitation On Use. Property rights obtained with grant funds shall be free of all reservations or encumbrances which would limit the use of the site disproportionate to the public benefit. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**375. SIGNING OF PROJECTS.**

Upon completion of a project, project ~~sponsors~~applicants will be required to display signs acknowledging the use of RV Account funds on the project. The department will furnish signs to be used for this purpose. ~~(7-1-93)~~(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. PROJECT LIABILITY.**

Project ~~sponsors~~Applicants, through a signed agreement, will assume all project liability and hold the department harmless. ~~(7-1-93)~~(7-3-96)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~425. PUBLICITY OF PROJECT.~~**

~~Upon completion of a project, project sponsors will be required to prepare and disseminate news releases announcing the completion of the project. Acknowledgment of RV Account assistance shall be included in the news release.~~ ~~(7-1-93)~~

**~~450~~25. PUBLIC USE/NONDISCRIMINATION.**

Physical facilities and equipment purchased with RV Account funds shall be available for public use, regardless of race, religion, gender, age, handicap or national origin. ~~(7-1-93)~~(7-3-96)T

**~~426. -- 449999. (RESERVED).~~**

**~~451. -- 999. (RESERVED).~~**

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0101-9601**  
**NOTICE OF PROPOSED RULE**

**ACTION:** The action, under 35-0101-9601, concerns the proposed repeal of rules governing the State Tax Commission, IDAPA. 35, Title 01, Chapter 01, Rules Governing Income Taxes.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rule-making will be held as follows:

On August 21, 1996 - 10:00 a.m.  
Room 1CR5  
Idaho State Tax Commission  
800 Park Blvd., IV  
Boise, Idaho

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements contact the undersigned at (208) 334-7530.

**DESCRIPTIVE SUMMARY:**

The State Tax Commission proposes to repeal the entirety of the existing Chapter 01, Title 01, IDAPA 35, which contains its rules relating to the implementation of Idaho income taxes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Janice Boyd at (208) 334-7530.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before August 21, 1996.

Dated this 22nd day of May, 1996.

Janice Boyd,  
State Tax Commission  
800 Park, Plaza IV  
P.O. Box 36  
Boise, Id 83722  
(208) 334-7530

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**THIS RULE IS REPEALED IN ITS ENTIRETY.**

**IT IS REPLACED BY A NEW RULE THAT IS PUBLISHED IN THIS BULLETIN  
UNDER DOCKET 39-0344-9602  
IMMEDIATELY FOLLOWING THIS NOTICE.**

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0101-9602**  
**NOTICE OF PROPOSED RULE**

**ACTION:** The action, under 35-0101-9602, concerns the proposed adoption of rules governing the State Tax Commission, IDAPA. 35, Title 01, Chapter 01, Rules Governing Income Taxes.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rule-making will be held as follows:

On August 21, 1996 - 10:00 a.m.  
Room 1CR5  
Idaho State Tax Commission  
800 Park Blvd., IV  
Boise, Idaho

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements contact the undersigned at (208) 334-7530.

**DESCRIPTIVE SUMMARY:** The State Tax Commission proposes to promulgate an entirely new chapter, IDAPA 35.01.01. The new chapter restates and clarifies existing policies relating to Idaho income taxes while deleting mere restatements of the code. In addition to rearrangement and clarification of language, the new chapter implements and reflects 1995 and 1996 legislative changes. Existing income tax rules relating to administration and enforcement are moved to a new chapter, to be published as a separate docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Janice Boyd at (208) 334-7530.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before August 21, 1996.

Dated this 22nd day of May, 1996.

Janice Boyd,  
State Tax Commission  
800 Park, Plaza IV  
P.O. Box 36  
Boise, Id 83722  
(208) 334-7530

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**TEXT OF DOCKET NO. 35-0101-9602**

**IDAPA 35**  
**TITLE 01**  
**Chapter 01**  
**INCOME TAX ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY (Rule 000).**

In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Income Tax Act. The rules relating to the administration and enforcement



of income taxes as well as other taxes, such as sales taxes, are promulgated as IDAPA 35.02.01. ( )

**001. TITLE AND SCOPE (Rule 001).**

These rules shall be cited as IDAPA 35.01.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35, Title 01, Chapter 01, "Income Tax Administrative Rules." They shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on income of all persons who derive income from Idaho sources or who enjoy benefits of Idaho residence. ( )

**002. WRITTEN INTERPRETATIONS (Rule 002).**

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, the Tax Commission has written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. To the extent that these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code, they are available for public inspection and copying at the main office of the Tax Commission. ( )

**003. ADMINISTRATIVE APPEALS (Rule 003).**

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ( )

**004. PUBLIC RECORDS (Rule 004).**

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code, to the extent these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code. ( )

**005. -- 009. (RESERVED).**

**010. DEFINITIONS (Rule 010).**

Section 63-3003, Idaho Code. ( )

01. Administration and Enforcement Rules. The term Administration and Enforcement Rules refers to IDAPA 35.02.01, relating to the administration and enforcement of Idaho taxes. ( )

02. Due Date. As used in these rules, due date means the date prescribed for filing without regard to extensions. ( )

03. Employee. An employee is an individual who performs services for another individual or organization that controls what services are performed and how they are performed. ( )

04. Employer. An employer is any person or organization for whom an individual performs services as an employee. ( )

05. Mathematical Error. A mathematical error includes arithmetical errors, incorrect computations, omissions, defects in a return, and entries on the wrong line. ( )

06. Sale. A sale is defined as a transaction in which title passes from the seller to the buyer, or when possession and the burdens and benefits of ownership are transferred to the buyer. A sale may have occurred even if the buyer does not have the right to possession until he partially or fully satisfies the terms of the contract. ( )

07. Tax Home. For income tax purposes, the term tax home refers to the taxpayer's principal place of business, employment, station, or post of duty regardless of where he maintains his personal or family residence. Thus, a taxpayer domiciled or residing in Idaho with a permanent post of duty in another state is an Idaho resident for Idaho income tax purposes. However, he is not entitled to a deduction for travel expenses incurred in the other state since that is his tax home. ( )

08. Terms. Terms not otherwise defined in the Idaho Income Tax Act or these rules shall have the same meaning as is assigned to them by the Internal Revenue Code including Section 7701 relating to definitions of terms. ( )

09. These Rules. The term these rules refers to IDAPA 35.01.01, relating to Idaho income tax. ( )

10. Wages. The term wages relates to all compensation for services performed regardless of the form of payment ( )

**011. -- 014. (RESERVED).**

**015. INTERNAL REVENUE CODE (Rule 015).**

Section 63-3004, Idaho Code. ( )

01. Interpretations. Interpretations of the Internal Revenue Code may be found in various sources. These sources include decisions of the Tax Court, Congressional Committee Reports, General Counsel Memoranda, Decisions of the Federal and State Courts on federal income tax issues and Treasury Regulations. These interpretations are adopted by this reference to the extent that they are not in conflict with or inconsistent with the Idaho Code or administrative rules. ( )

02. Tax Commission Granted Discretion in Determining Correctness of Tax Return. Discretion granted to the Secretary of the Treasury to determine or reallocate items of income or adjustments to income, deductions, expenses, credits or other subjects of taxation by the Internal Revenue Code may also be exercised by the Tax Commission and its authorized agents, employees and deputies to enforce and administer the Idaho Income Tax Act and these rules. ( )

**016. -- 024. (RESERVED).**

**025. TAXABLE YEAR AND ACCOUNTING PERIOD (Rule 025).**

Section 63-3010, Idaho Code. ( )

01. In General. A taxpayer shall file his Idaho return for the same taxable year as filed for federal income tax purposes. Taxable year is the fixed period used for purposes of computing income. It generally corresponds to the taxpayer's annual accounting period unless a short-period return is required. ( )

02. Change of Accounting Period. ( )

a. If a taxpayer changes his accounting period for federal income tax purposes, he shall make the same change for the same period for Idaho income tax purposes. If prior approval of the Commissioner of the Internal Revenue Service is required, a copy of that approval shall accompany the Idaho short-period return. ( )

b. If a change does not require prior approval of the Commissioner of the Internal Revenue Service, the change shall be noted on the Idaho short-period return, along with a statement that no prior approval was required and the authority cited. ( )

**026. -- 029. (RESERVED).**

**030. RESIDENT (Rule 030).**

Section 63-3013, Idaho Code. ( )

01. Resident. The term resident applies to individuals, estates, and trusts. ( )

a. An individual is a resident if he meets either of the tests set forth in Section 63-3013, Idaho Code. For the rules relating to the residency status of aliens, see Rule 031 of these rules. For the rules relating to the residency status of members of the Armed Forces, see Rule 032 of these rules. For the rules relating to Native Americans, see Rule 033 of these rules. ( )

b. For the rules relating to the residency status of estates, see Rule 034 of these rules. ( )

c. For the rules relating to the residency status of trusts, see Rule 035 of these rules. ( )

02. Domicile. The term domicile means the place where an individual has his true, fixed, permanent

home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. ( )

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile. ( )

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(c), Idaho Code. ( )

c. An individual meeting the safe harbor exception set forth in Section 63-3013(c), Idaho Code, is not considered a resident of Idaho. Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. ( )

**031. ALIENS (Rule 031).**

Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. ( )

01. Idaho Residency Status. For purposes of the Idaho Income Tax Act, an alien may be either a resident, part-year resident, or nonresident. The individual's residency status for federal income tax purposes does not determine the Idaho residency status of an alien taxpayer. An alien shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. ( )

02. Computation of Idaho Taxable Income. ( )

a. To compute the Idaho taxable income of an alien, the first step is to determine his taxable income. This will depend on whether the alien is a resident, nonresident, or dual status alien for federal income tax purposes. ( )

b. Once the alien's taxable income has been computed, the amount of income subject to Idaho income tax depends on the alien's Idaho residency status. In general, if the alien qualifies as an Idaho resident, he is subject to Idaho income tax on all his taxable income regardless of its source. If the alien qualifies as a part-year resident or nonresident of Idaho, the amount of his taxable income subject to Idaho income tax is determined pursuant to Section 63-3026A, Idaho Code, and Rules 250 through 259 of these rules. ( )

c. In the case of a nonresident alien who does not elect to be treated as a resident for federal income tax purposes, the standard deduction is zero (0). ( )

03. Filing Status. An alien shall use the same filing status for the Idaho return as used on the federal return. ( )

**032. MEMBERS OF THE ARMED FORCES (Rule 032).**

01. Idaho Residency Status. Section 574 of the Soldiers' and Sailors' Civil Relief Act provides that an individual on active duty with the United States Armed Forces is not a resident of or domiciled in Idaho solely as a result of being stationed in Idaho. ( )

a. A qualifying service member is an Idaho resident only if he is domiciled in Idaho for the entire taxable year. The domicile of a qualified service member is presumed to be that member's military home of record until the qualified service member establishes a new domicile. ( )

b. A qualified service member who is domiciled in Idaho for less than the entire taxable year is a part-year resident. ( )

c. A qualified service member who is not domiciled in Idaho anytime during the taxable year is a nonresident. ( )

d. The Soldiers' and Sailors' Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. ( )

02. Active Duty Military Pay. ( )

a. Section 574 of the Soldiers' and Sailors' Civil Relief Act provides that the active duty military pay of a qualified member of the United States Armed Forces who is not domiciled in Idaho is exempt from Idaho income tax. The active duty military pay is not considered income from services performed within, or from sources within, Idaho. See Section 63-3026A(3)(c), Idaho Code. ( )

b. The active duty military pay of a service member who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(j), Idaho Code, provides that compensation paid by the United States Armed Forces for military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. See Section 63-3022(j), Idaho Code, for the specific qualifications of this deduction. ( )

03. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered active duty military pay. Therefore, Subsection 032.02 does not apply. ( )

a. Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. ( )

b. For purposes of this rule, a former active duty service member whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. ( )

04. Nonmilitary Income. All Idaho source income earned by a military service member is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. ( )

05. Nonmilitary Spouse. Subsection 032.02 does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. ( )

**033. NATIVE AMERICANS (Rule 033).**

01. Idaho Residency Status. A Native American shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. Membership in an Indian tribe does not affect that individual's Idaho residency status. ( )

02. Certain Income Exempt From Idaho Income Taxation. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxed on income derived within the reservation. ( )

a. Income derived outside a federally recognized Indian reservation is not exempt. ( )

b. Income derived within a federally recognized Indian reservation by an individual who is not an enrolled member of a federally recognized Indian tribe is not exempt. ( )

**034. ESTATES -- RESIDENCY STATUS (Rule 034).**

01. Resident Estates. An estate is treated as a resident estate if an Idaho court appoints the fiduciary of the estate or if the administration of the estate takes place in Idaho. Administration of the estate includes: ( )

a. Conducting estate business; ( )

- b. Investing assets of the estate; ( )
- c. Making administrative decisions; ( )
- d. Record-keeping; and ( )
- e. Preparation and filing of tax returns. ( )

02. Nonresident Estates. An estate is treated as a nonresident estate if a court outside Idaho appoints the fiduciary of the estate and the administration of the estate takes place in another state. The tax liability of a nonresident estate is computed in the same manner as a nonresident individual. ( )

**035. TRUSTS -- RESIDENCY STATUS (Rule 035).**

01. Resident Trusts. A trust is treated as a resident trust if three (3) or more of the following conditions exist: ( )

- a. The domicile or residency of the grantor is in Idaho; ( )
- b. The trust is governed by Idaho law; ( )
- c. Trust property is located in Idaho; ( )
- d. The domicile or residency of a trustee is in Idaho; ( )

e. The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing assets of the trust, making administrative decisions, record-keeping and preparation and filing of tax returns. ( )

02. Nonresident Trusts. If the trust does not qualify as a resident trust, it is treated as a nonresident trust. The tax liability of a nonresident trust is computed in the same manner as a nonresident individual. ( )

03. Residency Status of a Trust. For purposes of determining the residency status of a trust, no distinction is made between inter vivos trusts and testamentary trusts, or between revocable trusts and irrevocable trusts. ( )

**036. -- 039. (RESERVED).**

**040. PART-YEAR RESIDENT (Rule 040).**

Section 63-3013A, Idaho Code. ( )

01. In General. A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. ( )

a. An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. ( )

b. For the rules relating to the determination of an individual's domicile, see Subsection 030.02. ( )

02. Temporary or Transitory Purpose. For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. ( )

a. The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment

conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho. ( )

b. An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. ( )

c. Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. ( )

**041. -- 044. (RESERVED).**

**045. NONRESIDENT (Rule 045).**

Section 63-3014, Idaho Code. ( )

01. Traveling Salesmen. ( )

a. A nonresident salesman who works in Idaho is subject to Idaho taxation regardless of the location of his post of duty or starting point. ( )

b. If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 262 of these rules. ( )

02. Transportation Employees Covered By Title 49, Section 11504, United States Code. Compensation paid to an interstate rail or motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: ( )

a. An operator, including an independent contractor, of a commercial motor vehicle; ( )

b. A mechanic; ( )

c. A freight handler; and ( )

d. An individual, other than an employer, who in the course of his employment directly affects commercial motor vehicle safety. Employees of the United States, a state, or a local government are not included. Employer, as used in this rule, means a person engaged in business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it. See Title 49, Section 31132(3), United States Code. ( )

03. Air Carrier Employees Covered By Title 49, Section 40116(f), United States Code. The pay of an employee of an air carrier having regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: ( )

a. The employee's state of residence, and ( )

b. The state in which the employee earns more than fifty percent (50%) of the pay from the air carrier. ( )

**046. -- 099. (RESERVED).**

**100. ADJUSTMENTS TO TAXABLE INCOME -- IN GENERAL (Rule 100).**

Section 63-3022, Idaho Code. Rules 101 through 249 of these rules discuss the additions to and subtractions from taxable income required when computing the Idaho taxable income of corporations, partnerships, and resident individuals, estates and trusts. For the rules relating to the adjustments to taxable income required of nonresident and part-year resident individuals and nonresident trusts and estates, see Rules 250 through 259 of these rules. ( )

**101. -- 104. (RESERVED).**

**105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (Rule 105).**

Section 63-3022, Idaho Code. ( )

01. Interest and Dividend Income Exempt from Federal Taxation. As provided in Section 63-3022(a), Idaho Code, add certain interest and dividend income that is exempt from federal income tax. For example, add interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code. ( )

a. Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. ( )

b. Expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, that are related to the production of interest and dividend income required to be added to taxable income, shall offset the amount of the interest and dividend income. The allowable offset may not exceed the reportable amount of interest and dividend income. An unused offset may not be carried back or carried over. A schedule showing the interest, dividends, and related offsets shall be attached to the return. ( )

02. State Taxes. As provided in Section 63-3022(b), Idaho Code, add state income taxes deducted in computing taxable income. This includes taxes paid to states other than Idaho and amounts paid by a pass-through entity. ( )

03. Net Operating Loss Deduction. As provided in Section 63-3022(c), Idaho Code, add any net operating loss deduction included in taxable income. ( )

04. Capital Loss Carryover Deduction. As provided in Section 63-3022(k), Idaho Code: ( )

a. A corporation shall add a capital loss deducted in computing taxable income if the capital loss occurred during a taxable year when the corporation did not transact business in Idaho. ( )

b. An individual shall add a capital loss deducted in computing taxable income if the capital loss was incurred in a business activity not taxable by Idaho at the time it was incurred. ( )

**106. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS (Rule 106).**

Section 63-3022, Idaho Code. ( )

01. Dividends Received Deduction. As provided in Section 63-3022(e), Idaho Code, add the federal dividends received deduction subtracted in computing taxable income. ( )

02. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022(a)(1), Idaho Code, a corporation shall add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. To calculate the addition or offset, the taxpayer shall multiply the total interest expense otherwise allowable by one of the following ratios: ( )

a. The ratio of the taxpayer's average adjusted basis of the applicable obligations to the average adjusted basis of all assets; or ( )

b. The ratio of the taxpayer's interest income from the applicable obligations to the taxpayer's total income, including tax-exempt income, for the taxable year. ( )

03. Interest Expense Attributable to Nonbusiness Activities. If dividends or interest income is determined to be nonbusiness income, a multistate corporation's interest expense may be nonbusiness interest expense. This nonbusiness interest expense shall be added to taxable income. Because this addition serves to offset nonbusiness dividends and interest income, it is often referred to as a nonbusiness interest expense offset. For purposes of this subsection, interest expense means the aggregate interest expense deductible in determining taxable income less reductions required by Section 63-3022(a)(1), Idaho Code. Dividends and interest income do not include income that is exempt from Idaho income tax pursuant to Section 63-3022(g), Idaho Code. See Section 63-3027, Idaho Code, and Rules 330 and 335 of these rules for the definitions of business income and nonbusiness income. This addition or offset of nonbusiness interest expense is the lesser of: ( )

a. The interest expense less the sum of business dividends and business interest income; or ( )

b. The sum of nonbusiness dividends and nonbusiness interest income. ( )

**107. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS AND PARTNERSHIPS (Rule 107).**  
Section 63-3022, Idaho Code. ( )

01. Income of Nonresident Officers, Directors, Shareholders, Partners, or Members. As provided in Section 63-3022(h), Idaho Code, a C corporation with fifty percent (50%) or more of its income taxable to Idaho, an S corporation, or a partnership may be required to include in its Idaho taxable income the amounts in Subsections 107.01.a. and 01.b.. ( )

a. Compensation Reportable to Idaho. ( )

i. Corporations. A corporation described in Subsection 107.01 may be required to add the Idaho compensation paid by the corporation to a nonresident officer, director, shareholder, or member. ( )

ii. Partnerships. A partnership may be required to add the Idaho compensation paid by the partnership to a nonresident partner or member. ( )

iii. Idaho compensation is determined pursuant to Rule 262 of these rules. ( )

b. Pass-Through Items Reportable to Idaho. ( )

i. S Corporations. An S corporation may be required to add the pass-through items reportable as Idaho source income by a nonresident shareholder. ( )

ii. Partnerships. A partnership may be required to add the pass-through items reportable as Idaho source income by a nonresident partner or member. ( )

02. Capital Loss. As provided in Section 63-3022(k), Idaho Code, S corporations and partnerships are required to add a capital loss provided for in Section 1212, Internal Revenue Code, when paying the tax for nonresident shareholders and partners. ( )

**108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (Rule 108).**  
Section 63-3022, Idaho Code. ( )

01. Lump Sum Distributions. As provided in Section 63-3022(n), Idaho Code, add the taxable amount of a lump sum distribution deducted pursuant to Section 402(d)(3), Internal Revenue Code. ( )

02. Withdrawals from a Medical Savings Account. As provided in Section 63-3022K, Idaho Code, add



the amount of a withdrawal from a medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. ( )

**109. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF ESTATES AND TRUSTS (Rule 109).**

Section 63-3022, Idaho Code. As provided in Section 63-3022(i), Idaho Code, an estate or trust may be required to add the distributable net income reportable as Idaho source income by a nonresident beneficiary. ( )

**110. -- 119. (RESERVED).**

**120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (Rule 120).**

Section 63-3022, Idaho Code. ( )

01. State Income Tax Refund. Subtract from taxable income a state income tax refund included in taxable income, unless the refund has already been subtracted pursuant to Section 63-3022(b), Idaho Code. ( )

02. Idaho Net Operating Loss. As provided in Section 63-3022(d), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 and 201 of these rules. ( )

03. Income Not Taxable by Idaho. As provided in Section 63-3022(g), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: ( )

a. Interest income from obligations issued by the United States. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset applicable to corporations, see Rule 106 of these rules. ( )

b. Idaho lottery winnings exempt by Section 67-7439, Idaho Code. ( )

04. Federal Alcohol Fuels Credit. As provided by Section 63-3022(m), Idaho Code, subtract the federal alcohol fuels tax credit included in taxable income pursuant to Section 87, Internal Revenue Code. ( )

05. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the value of technological equipment donated to qualifying institutions. ( )

**121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (Rule 121).**

Section 63-3022, Idaho Code. ( )

01. Income Not Taxable by Idaho. As provided in Section 63-3022(g), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: ( )

a. Certain income earned by Native Americans. See Rule 033 of these rules. ( )

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. ( )

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(j), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. ( )

03. Standard or Itemized Deduction. As provided in Section 63-3022(l), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If state income taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. See Subsection 105.02 of these rules. ( )

a. An additional deduction is allowed by Section 63-3022(l), Idaho Code, for contributions to the state of Idaho for credit to the medical assistance account if the contributions have not been previously deducted in computing Idaho taxable income. ( )

b. An additional deduction is allowed by Section 63-3022(l), Idaho Code, for certain expenditures incurred in providing a qualified family member with personal care services if the expenditures have not been previously deducted in computing Idaho taxable income. ( )

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(o), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. The term railroad retirement benefits means Tier I, Tier II, and supplemental benefits paid by the Railroad Retirement Board. Supplemental benefits, for purposes of this rule, include railroad unemployment and sickness benefits. ( )

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(p), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. ( )

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. ( )

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. ( )

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. ( )

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. ( )

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. ( )

11. Participation in a Residential Conservation or Weatherization Program. As provided in Section 63-3022F, Idaho Code, a deduction is allowed for amounts included in taxable income as a result of the taxpayer's participation in a qualified residential conservation or weatherization program. ( )

12. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. ( )

13. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified

property. ( )

14. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. ( )

15. Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to a medical savings account. ( )

**122. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO CORPORATIONS (Rule 122).**

Section 63-3022, Idaho Code. As provided in Section 63-3022(f), Idaho Code, subtract the amount reported as a dividend pursuant to Section 78, Internal Revenue Code. ( )

**123. -- 127. (RESERVED).**

**128. IDAHO ADJUSTMENTS -- PASS-THROUGH ENTITIES (RULE 128).**

01. In General. An adjustment to a partnership, S corporation, estate or trust allowed or required by Idaho statute generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. ( )

a. Partnerships. An adjustment passes through to a partner based on that partner's distributive share of partnership profits. ( )

b. S Corporations. An adjustment passes through to a shareholder based on that shareholder's pro rata share of income or loss. ( )

c. Estates and Trusts. An adjustment passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. ( )

02. Limitations. Deductions claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. ( )

03. Different Taxable Year Ends. If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the adjustment shall be claimed in the same taxable year that income or loss from that entity is reported for federal income tax purposes. ( )

04. Information Provided by a Pass-Through Entity. The pass-through entity shall prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each adjustment. Copies of these schedules shall be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the adjustment is allowed or required. ( )

05. Pass-Through Entities That Pay Tax. Generally, a pass-through entity shall report the same Idaho adjustments as those allowed to the nonresident partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. However, a pass-through entity is not allowed a deduction for an Idaho net operating loss, a capital loss pursuant to Section 1212, Internal Revenue Code, an Idaho capital gains deduction, or any other adjustment that is not specifically allowed by statute or rule to an entity such as the one paying the tax. ( )

**129. (RESERVED).**

**130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (Rule 130).**

Section 63-3022A, Idaho Code. ( )

01. Qualified Benefits. Subject to limitations, the following benefits qualify for the deduction: ( )

a. Civil service retirement annuities paid by the United States Government. ( )

b. Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. ( )

c. Retirement benefits paid as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967 or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. ( )

d. Retirement benefits paid by the United States Government to a retired member of the military services. ( )

02. Unremarried Widow. An unremarried widow of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. ( )

03. Disabled Individual. For purposes of this deduction, an individual is classified as disabled if he is retired and receives qualified benefits pursuant to a disability provision of the retirement fund. ( )

04. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income shall be published each year in the instructions for preparing Idaho individual income tax returns. ( )

**131. -- 139. (RESERVED).**

**140. DEDUCTION FOR INSULATION OF RESIDENCES (Rule 140).**  
Section 63-3022B, Idaho Code. ( )

01. Additional Insulation. The deduction may be taken for additional insulation installed in a residence, or existing addition to a residence but may not be taken for insulation to replace existing insulation. ( )

02. Qualifying Date. The insulation must be installed in a residence, or addition to a residence, that existed on or before January 1, 1976. A residence, or addition to a residence, constructed after January 1, 1976, does not qualify. ( )

03. Types of Insulation. To qualify for the deduction, the insulation must be commonly used as insulation material in the building industry. In addition to the fiberglass insulation indicated in the statute, other types of insulation material may also qualify for the deduction including: ( )

a. Rockwool; ( )

b. Urethane foam; ( )

c. Polyurethane foam; ( )

d. Styrofoam; and ( )

e. Calcium silicate. ( )

04. Siding. Siding is not considered insulation. If a layer of insulation is placed beneath siding, the cost of the insulation is deductible if it otherwise qualifies. If the siding consists of an outer shell for protection against the weather and an inner layer of insulating material, the insulating material qualifies if the cost is separately identified by the seller. ( )

**141. -- 149. (RESERVED).**

**150. DEDUCTION FOR ALTERNATIVE ENERGY DEVICES (Rule 150).**

Section 63-3022C, Idaho Code.

( )

01. Qualifying Residence. The deduction applies only to a residence of an individual and does not apply to rental housing, unless the renter, rather than the owner, installs and pays for the device. ( )

02. Converted Rental Unit. If a residence served by an alternative energy device is converted by the owner from a rental unit to his residence, the owner is entitled to any remaining allowable deduction for the year of the conversion based on the portion of the year that the residence served as his residence. For each subsequent year, the owner is entitled to the full amount of the allowable deduction for that year assuming the residence continues to be the owner's residence. ( )

03. Purchase of a Residence. If a residence served by an alternative energy device is sold, both the seller and the buyer are entitled to a portion of the allowable deduction for the year of the sale based on the fraction of the year each individual had ownership of the residence. The new owner is entitled to any allowable deduction remaining for each subsequent year. The deduction is allowed even if the new owner previously rented the residence as his personal residence. No more than a five thousand dollar (\$5,000) deduction may be prorated in any year. ( )

04. Common Distribution System. ( )

a. If the alternative energy device is dependent on and a part of a common distribution system such as a common solar collector facility or a common pipeline that distributes geothermally heated water, the common system is an alternative energy device if owned by the users of the facility. ( )

b. For purposes of determining the amount of the deduction, each common owner may claim the cost of the portion of the alternative energy system owned solely by that owner that serves only his residence, plus his pro rata share of the costs of installation of the common system. The pro rata share of the cost shall be the actual cost charged to the residential owner for the common system if the costs are allocated by a method that is reasonably related to the actual cost of providing the alternative energy to the various residential owners. ( )

c. The developer of a common system should provide a statement to each common owner identifying his allocable cost of the common system. If a statement is not provided, the common owners may agree to a reasonable allocation. If the common owners are unable to determine a reasonable allocation, they may petition the Tax Commission to make the determination. ( )

**151. -- 159. (RESERVED).**

**160. DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE SERVICES (Rule 160).**

Section 63-3022D, Idaho Code. Section 21, Internal Revenue Code, provides for a credit against federal income tax of a percentage of the authorized employment-related expenses incurred for the care of qualifying individuals. The allowable household and dependent care service expense is a deduction in computing Idaho taxable income. The provisions of the Internal Revenue Code determine which dependents qualify, the maximum allowable expenses, and the qualified payees. ( )

**161. -- 164. (RESERVED).**

**165. ADDITIONAL HOUSEHOLD DEDUCTION FOR ELDERLY OR DEVELOPMENTALLY DISABLED DEPENDENTS (Rule 165).**

Section 63-3022E, Idaho Code.

( )

01. Developmentally Disabled Defined. For purposes of the deduction allowed by Section 63-3022E, Idaho Code, developmentally disabled means a chronic disability that meets all of the following conditions: ( )

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism, or other condition closely related to or similar to one (1) of these impairments that requires similar treatment or services.

The other condition must result in impairments of general intellectual functioning or adaptive behavior similar to those required for individuals with mental retardation. ( )

b. Has continued or can be expected to continue indefinitely. ( )

c. Has substantial functional limitations in three (3) or more areas of major life activity. Individuals with mild mental retardation, controlled epilepsy, and mild cerebral palsy may not be viewed as developmentally disabled since the criteria of substantial handicap may not be met. Individuals who succeed in developing skills to function adequately in five (5) or more major life skill areas will no longer meet the definition of developmental disability. The following are areas of major life activity: ( )

i. Self-care; ( )

ii. Receptive and expressive language; ( )

iii. Learning; ( )

iv. Mobility; ( )

v. Self-direction; ( )

vi. Capacity for independent living; and ( )

vii. Economic self-sufficiency. ( )

d. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and individually planned and coordinated. Individuals who have limited or no need for services specific to disabilities do not qualify. ( )

02. Qualifying Individual. ( )

a. Immediate Family Member. An immediate family member is an individual who meets the member of household or relationship test for being claimed as a dependent on the taxpayer's federal income tax return. The family member must receive over one-half (1/2) of his support from the taxpayer. A spouse does not qualify as an immediate family member. ( )

b. Additional Household Deduction for Elderly. For purposes of the additional household deduction for the elderly, a qualifying individual must be an immediate family member. ( )

c. Additional Household Deduction for Developmentally Disabled Dependents. For purposes of the additional household deduction for a developmentally disabled dependent, a qualifying individual includes an immediate family member, the taxpayer, or his spouse. ( )

03. Fractions of Years. The deduction shall be prorated at eighty-three dollars (\$83) per month if the qualified individual lives in the taxpayer's household for less than a full year. A fraction of a calendar month exceeding fifteen (15) days shall be treated as a full month. ( )

**166. -- 169. (RESERVED).**

**170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (Rule 170).**  
Section 63-3022H, Idaho Code. ( )

01. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction will not reduce the amount of the deduction, unless the Idaho capital gains deduction would otherwise exceed net capital gain included in Idaho taxable income. See Subsection 170.03 for an explanation of the net capital gain limitation. ( )

02. Examples. ( )

a. A taxpayer sells two (2) parcels of Idaho real property held more than five (5) years. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in a net capital gain from qualified property of two thousand five hundred dollars (\$2,500) and an Idaho capital gains deduction of one thousand five hundred dollars (\$1,500). ( )

b. A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property held more than five (5) years. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction, resulting in a deduction of twelve thousand dollars (\$12,000). ( )

03. Net Capital Gain Limitation. ( )

a. The Idaho capital gains deduction is allowed only if the taxpayer reports a net capital gain, as defined in Section 1222(11), Internal Revenue Code, on his federal income tax return. In addition, the Idaho capital gains deduction may not exceed the net capital gain included in taxable income. ( )

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property held more than five (5) years. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the net capital gain from qualified property is greater than the net capital gain included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the net capital gain included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the net capital gain from the qualified property. ( )

04. Ordinary Income Limitation. The Idaho capital gains deduction may not include any gains treated as ordinary income pursuant to the Internal Revenue Code. For example, any gain from the sale, exchange, or involuntary conversion of certain depreciable property treated as ordinary income pursuant to Section 1245, Internal Revenue Code, may not be included when computing the Idaho capital gains deduction. ( )

**171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (Rule 171).**

Section 63-3022H, Idaho Code. ( )

01. Timber. As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: ( )

a. Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and ( )

b. Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. ( )

02. Holding Periods. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow the definitions provided by Section 1223, Internal Revenue Code. ( )

03. Holding Periods of S Corporation and Partnership Interests. ( )

a. Property Distributed by an S Corporation to a Shareholder or a Partnership to a Partner. The holding period of property received from an S corporation or partnership includes the S corporation's or partnership's holding period, limited to the length of time the shareholder or partner held his interest in the income of the S corporation or

partnership. See Subsection 173.02 of these rules. ( )

b. Property Contributed by a Shareholder to an S Corporation or a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The non-contributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period, limited to the length of time the shareholder or partner has held his interest in the S corporation or partnership. ( )

**172. IDAHO CAPITAL GAINS DEDUCTION -- REVENUE-PRODUCING ENTERPRISE (Rule 172).**  
Section 63-3022H, Idaho Code. ( )

01. In General. Only the activities listed in Section 63-3022H(7), Idaho Code, qualify as a revenue-producing enterprise. A revenue-producing enterprise does not include retail sales, professional, managerial, or repair services. ( )

02. Multiple Activities. If a business is engaged in both revenue-producing and nonrevenue-producing activities, tangible personal property must be used in the revenue-producing activity to qualify for the Idaho capital gains deduction. ( )

**173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (Rule 173).**  
Section 63-3022H, Idaho Code. ( )

01. In General. ( )

a. Qualified property held by an S corporation or partnership may be eligible for the Idaho capital gains deduction. The deduction is claimed on the return of an individual shareholder or individual partner. ( )

b. Partnerships and S corporations electing to pay the tax for a nonresident individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. ( )

02. Limitation of Interest in Pass-Through Entity. ( )

a. An individual may claim an Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation or partnership only to the extent that he held his interest in income of the S corporation or partnership for the required holding period. A shareholder's interest in income of the S corporation is his pro rata share of the income or loss. A partner's interest in income of the partnership is his distributive share of partnership profits. The individual must also meet any gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. ( )

b. Example. A shareholder in an S corporation had a fifty percent (50%) interest in income in years one (1) through three (3). In year four (4) the shareholder sold half his stock. During years four (4) through eight (8) the shareholder had a twenty-five percent (25%) ownership interest. In year nine (9) the shareholder purchased additional stock and his ownership interest increased to fifty percent (50%). In year ten (10) the S corporation recognizes a capital gain on the sale of Idaho real property held since year one (1). The shareholder reports fifty percent (50%) of the gain on his tax return for year ten (10), but is entitled to a capital gains deduction on only twenty-five percent (25%) of the total gain. His capital gains deduction is limited to twenty-five percent (25%) of the gain since he did not hold his fifty percent (50%) ownership interest for the full five (5) years preceding the date of the sale of the property. ( )

03. Multistate Entities. A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. ( )

04. Examples. ( )



a. XYZ Farms, a multistate partnership, sold a parcel of Idaho farmland purchased seven (7) years ago. The sixty thousand dollar (\$60,000) gain is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of nine thousand dollars (\$9,000), computed as follows: ( $\$60,000 \times 75\% = \$45,000$  gain apportioned to Idaho  $\times 1/3 = \$15,000$  attributable to each partner  $\times 60\% = \$9,000$  capital gains deduction allowable on each partner's nonresident return). ( )

b. XYZ Farms, a multistate partnership, sold a parcel of Idaho real estate held for investment for the past seven (7) years. The sixty thousand dollar (\$60,000) gain is determined to be nonbusiness income and is allocated to Idaho. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), computed as follows: ( $\$60,000$  gain allocated to Idaho  $\times 1/3 = \$20,000$  partner's share  $\times 60\% = \$12,000$  Idaho capital gains deduction allowable on each partner's nonresident return). ( )

**174. -- 179. (RESERVED).**

**180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (Rule 180).**

Section 63-3022J, Idaho Code. ( )

01. Limitations. The deduction for donations of technological equipment is limited to the taxable income of the taxpayer. Any amount in excess of taxable income is not allowed as a carryback or carryover. ( )

02. Fair Market Value. Fair market value is determined pursuant to Section 170, Internal Revenue Code. ( )

03. Pass-Through of Deduction. ( )

a. See Rule 128 of these rules for the general rules relating to deductions of pass-through entities. ( )

b. The limitations in Subsection 180.01 apply at the entity level. The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. ( )

**181. -- 184. (RESERVED).**

**185. ADOPTION EXPENSES (Rule 185).**

Section 63-3022I, Idaho Code. ( )

01. In General. Subject to the limitations of Subsection 185.02, adoptive parents may deduct from taxable income legal and medical expenses related to the adoption of a child. Travel expenses related to the adoption may not be deducted. ( )

02. Maximum Deduction. The deduction allowed for a successful adoption is limited to a maximum of three thousand dollars (\$3,000), regardless of whether the deduction is claimed in one (1) or more years. If a taxpayer adopts more than one (1) child, he is allowed a deduction not to exceed three thousand dollars (\$3,000) for the adoption of each child. ( )

03. Ineligible Expenses. ( )

a. The costs associated with an unsuccessful attempt to adopt a child do not qualify for the deduction. ( )

b. A deduction is not allowed for expenses incurred in violation of state or federal law or for a surrogate parenting arrangement. ( )

04. Year Deduction Allowed. The deduction is allowed in the taxable year the expense is paid. A taxpayer shall file an amended return if he claimed any adoption expenses related to an unsuccessful attempt to adopt in a previous taxable year. ( )

05. Financial Assistance. Eligible expenses shall be reduced by amounts received as financial aid for the adoption, or from a grant pursuant to a federal, state, or local program. ( )

**186. -- 189. (RESERVED).**

**190. MEDICAL SAVINGS ACCOUNTS (Rule 190).**

Section 63-3022K, Idaho Code. ( )

01. Submitting Information Returns. Information returns reporting medical savings account information shall be submitted to the Tax Commission by the depository on Idaho Form MSA-1, or on magnetic media if filing two hundred fifty (250) or more returns. Depositories reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. ( )

02. Withdrawal to Pay Eligible Medical Expenses. ( )

a. A withdrawal from a medical savings account to reimburse the taxpayer for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. ( )

b. Example. A taxpayer's medical savings account had a balance of three hundred dollars (\$300) on March 1. On that day, he paid a medical expense costing four hundred dollars (\$400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars (\$200) into his medical savings account. On March 11 he withdrew four hundred dollars (\$400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars (\$300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars (\$200) for the contribution to the account. However, he must include one hundred dollars (\$100) in Idaho taxable income in addition to paying a penalty of ten dollars (\$10). ( )

03. Pretax Contributions. Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. ( )

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

**200. NET OPERATING LOSS -- CORPORATIONS (Rule 200).**

Section 63-3021, Idaho Code. ( )

01. Unitary Taxpayers. Each corporation included in a unitary group must determine its respective share of the Idaho apportioned net operating loss incurred by the unitary group for the taxable year. A corporation's share of the net operating loss is computed using its Idaho apportionment factor for the year of the loss. The corporation must add or subtract its nonbusiness income or loss allocated to Idaho to its share of the apportioned loss. ( )

02. Net Operating Losses That Survive a Merger. Pursuant to Section 381, Internal Revenue Code, and the limitation provisions of Section 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation survive a merger if the following criteria are met: the liquidated or merged entity had an Idaho business activity and incurred an Idaho net operating loss; and the subject transaction met all federal laws, criteria, and procedures including the continuity of business requirements. ( )

a. Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity requirements. ( )

b. If the pre-merger corporation conducted multistate operations, the Section 382, Internal Revenue Code, loss limitation is limited further by the pre-merger loss corporation's Idaho apportionment factor for the last taxable year preceding the date of the merger. ( )

**201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (Rule 201).** ( )  
Section 63-3022(d), Idaho Code. ( )

01. Definitions For Purposes of Net Operating Loss Carrybacks and Carryovers. ( )

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. ( )

b. A net operating loss is absorbed when it has been fully subtracted in computing Idaho taxable income. ( )

02. Adjustments in Carryback and Carryover Years. ( )

a. Adjustments to income in a carryback or carryover year shall be made for purposes of determining how much, if any, of the net operating loss may be carried over to subsequent years. ( )

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. ( )

c. Adjustments may be made even though the year is closed due to the statute of limitations. ( )

03. Net Operating Loss Carrybacks. ( )

a. Except as provided in Subsection 201.03.c., the net operating loss carryback, not to exceed one hundred thousand dollars (\$100,000) per taxpayer, is applied to the third preceding taxable year and if not absorbed, the difference applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding year. The loss not absorbed in the carryback years may be subtracted from taxable years arising in the succeeding fifteen (15) years, in order, until absorbed. ( )

b. For a unitary group of corporations, each corporation having a net operating loss that results from its share of the Idaho apportioned loss adjusted for its nonbusiness income or nonbusiness loss is limited to a maximum carryback of one hundred thousand dollars (\$100,000). ( )

c. The taxpayer may elect to forego the carryback provision of Subsection 201.03.a., and deduct the net operating loss in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. ( )

d. Timing and Method of Electing to Forego Carryback. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. The election referred to in this subsection is made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: ( )

i. The name, address, and taxpayer's social security number or employer identification number; ( )

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(d)(1), Idaho Code, to forego the carryback provision; and ( )

iii. The amount of the net operating loss. ( )

e. If the election is made on an amended or original return filed subsequent to the time allowed in Subsection 201.03.d., it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.03.a. ( )

04. Order in Which Losses Are Applied in a Year. Loss carryovers are deducted before deducting any

loss carrybacks applicable to the same taxable year. ( )

05. Documentation Required When Claiming a Net Operating Loss Deduction. A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. ( )

**202. -- 249. (RESERVED).**

**250. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME SUBJECT TO IDAHO TAXATION (Rule 250).**

Sections 63-3026A(1) and (2), Idaho Code. ( )

01. Tax on Income From Idaho Sources. All income earned or received from sources within Idaho is subject to Idaho income taxation. For nonresidents and part-year residents, income from sources within Idaho shall be determined in accordance with Section 63-3026A(3), Idaho Code, and Rules 260 through 265 of these rules. ( )

02. Tax on Income Received by Individuals Residing in or Domiciled in Idaho. All income earned or received by an individual who resides in or is domiciled in Idaho is subject to Idaho income taxation without regard to the source of the income. ( )

03. Receipt of Income. For cash basis taxpayers, income is considered earned or received when it is actually or constructively received, except as provided in Subsection 250.04. ( )

04. Receipt of Pass-Through Items of Income and Losses. ( )

a. For a cash basis taxpayer who is a shareholder in an S corporation, or a partner in a partnership, the income, gains, losses and other pass-through items from the S corporation or partnership are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a shareholder or partner for the entire taxable year, the pass-through items are treated as received ratably during the period the taxpayer was a shareholder of the S corporation or partner of the partnership. ( )

b. For a cash basis taxpayer who is a beneficiary of an estate or trust, the income, gains, losses and other pass-through items from the estate or trust are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a beneficiary of the estate or trust for the entire taxable year, the pass-through items are treated as received ratably during the period the taxpayer was a beneficiary of the estate or trust. ( )

**251. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- COMPUTATION OF IDAHO TAXABLE INCOME (Rule 251).**

Section 63-3026A, Idaho Code. ( )

01. Idaho Gross Income. To determine the Idaho taxable income of nonresident and part-year resident individuals, first compute the taxpayer's Idaho gross income. ( )

a. For a nonresident, Idaho gross income means gross income derived from or related to sources within Idaho. ( )

b. For a part-year resident, Idaho gross income means gross income derived from or related to sources within Idaho that was earned or received during the portion of the taxable year when the individual was not residing in and not domiciled in Idaho, plus gross income derived from all sources that was earned or received during the portion of the taxable year when the individual was residing in or domiciled in Idaho. ( )

02. Idaho Adjusted Gross Income. From Idaho gross income, make the applicable adjustments provided in Rule 252 of these rules to arrive at Idaho adjusted gross income. ( )

03. Idaho Adjusted Income. From Idaho adjusted gross income, make the applicable additions and subtractions set forth in Rules 253 and 254 of these rules to arrive at Idaho adjusted income. ( )

04. Idaho Taxable Income. From Idaho adjusted income, subtract the exemption and deduction amounts as provided in Rule 255 of these rules to arrive at Idaho taxable income. ( )

**252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (Rule 252).**  
Section 63-3026A(6), Idaho Code. ( )

01. Payments to an Individual Retirement Account (IRA). To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. Multiply the deduction allowed for federal purposes by the percentage. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Proposed Treasury Regulation Section 1.219(a)-1(b)(3). Idaho compensation is determined pursuant to Rule 262 of these rules. ( )

02. Payments to a Keogh Retirement Plan, Simplified Employee Pension (SEP) Plan, Self-Employment Tax, and Self-Employment Health Insurance. To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. Multiply the self-employment deductions allowed for federal purposes by the percentage. ( )

03. Penalty on Early Withdrawal of Savings. To determine the allowable adjustment, calculate a percentage by dividing the interest income of the time savings deposit subject to the penalty that is required to be included as Idaho income by the total interest income of the time savings deposit. Multiply the penalty deduction allowed for federal purposes by the percentage. ( )

04. Alimony Payments. The deduction for alimony payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho gross income bears to gross income. ( )

05. Moving Expenses. The deduction for moving expenses allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho gross income bears to gross income. ( )

**253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN COMPUTING IDAHO ADJUSTED INCOME (Rule 253).**  
Section 63-3026A(6), Idaho Code. ( )

01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code. Add interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho. However, do not include interest received from obligations of the state of Idaho or any political subdivision of Idaho. This interest is exempt from Idaho income tax. ( )

02. Net Operating Loss Deduction. Add any net operating loss deduction included in Idaho gross income. ( )

03. Capital Loss. Add capital losses included in Idaho gross income if the loss was incurred while not residing in and not domiciled in Idaho, or if the loss relates to an activity not taxable by Idaho at the time the loss was incurred. ( )

04. Lump Sum Distributions. Add the amount of a lump sum distribution, deducted from gross income pursuant to Section 402(d), Internal Revenue Code, received while residing in or domiciled in Idaho. This includes both the ordinary income portion and the amount eligible for the capital gain election. ( )

05. Medical Savings Account. Add the amount withdrawn from a medical savings account to the extent the withdrawal is treated as income by Idaho law. ( )

**254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (Rule 254).**  
Section 63-3026A(6), Idaho Code. ( )

01. Net Operating Loss Carryover. Subtract the net operating loss carryover allowed by Section 63-3022(d), Idaho Code, to the extent the loss was incurred while residing in or domiciled in Idaho or to the extent the loss was from business activity taking place in Idaho. A net operating loss incurred from a business activity not taxable by Idaho may not be subtracted. ( )
02. State Income Tax Refund. Subtract state income tax refunds included in Idaho gross income. ( )
03. Income Not Taxable by Idaho. Subtract income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States, if that income is included in Idaho gross income and has not been previously subtracted. Income not taxable by Idaho includes: ( )
- a. Interest from United States Government Obligations. Subtract interest received from securities issued by the United States Government to the extent the interest is included in Idaho gross income. ( )
- b. Idaho Lottery Winnings. Idaho lottery winnings exempt pursuant to Section 67-7439, Idaho Code. ( )
- c. Native Americans. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxable on income derived from within the reservation. See Rule 033 of these rules. ( )
- d. Transportation Employees. Certain income earned by transportation employees covered by Title 49, Section 11504, United States Code, and air carrier employees covered by Title 49, Section 40116(f), United States Code. See Rule 045 of these rules. ( )
04. Military Pay. Subtract qualified military pay included in Idaho gross income earned for military service performed outside Idaho. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not report his military pay as Idaho gross income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. ( )
05. Social Security and Railroad Retirement Benefits. Subtract social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, to the extent the benefits are included in Idaho gross income. ( )
06. Household and Dependent Care Expenses. Subtract the allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, calculate a percentage by dividing Idaho earned income by total earned income. Multiply the qualified expenses by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. ( )
07. Insulation and Alternative Energy Device Expenses. Subtract expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code. ( )
08. Deduction for Dependents Sixty-five (65) or Older or With Developmental Disabilities. Subtract one thousand dollars (\$1,000) for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. ( )
09. Adoption Expenses. Subtract the allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code. To determine the allowable portion, calculate a percentage by dividing Idaho gross income by total gross income. Multiply the deduction allowable pursuant to Section 63-3022I, Idaho Code, by the percentage. ( )

10. Capital Gains Deduction. Subtract the Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code. ( )

11. Medical Savings Account. ( )

a. Subtract contributions to a medical savings account that meet the requirements of Section 63-3022K, Idaho Code. ( )

b. Subtract interest earned on a medical savings account to the extent included in Idaho gross income. ( )

12. Contributions to a Medical Assistance Account. Subtract contributions to the state of Idaho for credit to the medical assistance account. ( )

13. Expenditures for Personal Care Services. Subtract expenses incurred for personal care services that meet the requirements of Section 63-3022(1)(1)(b) or 63-3022(1)(2)(c), Idaho Code. The deduction is limited to one thousand dollars (\$1,000) for each qualified individual for expenses that have not been reimbursed or previously subtracted in computing Idaho taxable income. ( )

14. Technological Equipment Donation. Subtract donations of technological equipment allowed by Section 63-3022J, Idaho Code. See Rule 180 of these rules. ( )

15. Federal Alcohol Fuels Credit. As allowed by Section 63-3022(m), Idaho Code, subtract the amount included in Idaho gross income for the federal alcohol fuels credit. ( )

16. Worker's Compensation Insurance. As allowed by Section 63-3022(p), Idaho Code, a self-employed individual may subtract the cost of premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. ( )

**255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (Rule 255).**  
Section 63-3026A(4). ( )

01. In General. The exemptions and deductions allowable for federal purposes, except for the deduction of state income taxes, are allowed in part in computing Idaho taxable income. ( )

02. Proration Percentage. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, multiply the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(1), Idaho Code, by the proration percentage. The proration percentage is calculated by dividing Idaho adjusted income by total adjusted income. Round the percentage to the nearest whole percent. The percentage may not exceed one hundred percent (100%), nor be less than zero (0). ( )

a. Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(j), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. ( )

b. Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage shall be between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage shall be zero (0). ( )

256. -- 259. (RESERVED).

**260. INCOME FROM IDAHO SOURCES (Rule 260).**

Section 63-3026A(3), Idaho Code.

( )

01. In General. Income from Idaho sources is the gross income, or portion thereof, that is derived from a business, trade, profession, or occupation carried on within Idaho or from any property, trust, estate, or any other source with a situs in Idaho. Income of a nonresident that is derived from property located both within and without Idaho during the taxable year, or from business transactions that occur both within and without Idaho during the taxable year, is attributed to Idaho based on the principles set forth in Rules 261 through 265 of these rules.

( )

02. Income From Intangible Property. Generally, gross income from intangible property is sourced to the state of the owner's domicile. There are three (3) exceptions to this rule.

( )

a. If the intangible property is utilized in connection with the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income.

( )

b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold.

( )

c. Interest income paid by an S corporation to a shareholder or a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation.

( )

**261. INCOME FROM ESTATES AND TRUSTS (Rule 261).**

Section 63-3026A(3), Idaho Code. All income of an estate or trust distributed or distributable to a nonresident beneficiary is income derived from or related to sources within Idaho if the estate or trust is treated as a resident pursuant to Rules 034 and 035 of these rules. If the estate or trust is treated as a nonresident, only those items of income, gain, loss and deduction of the estate or trust that are derived from or related to sources within Idaho are Idaho source income of the beneficiary.

( )

**262. IDAHO COMPENSATION (Rule 262).**

Section 63-3026A(3).

( )

01. In General. If an individual performs personal services, either as an employee, agent, independent contractor or otherwise, both within and without Idaho, the portion of his total compensation that constitutes Idaho source income is determined by multiplying that total compensation by the Idaho compensation percentage.

( )

02. Definitions.

( )

a. The Idaho compensation percentage is the percentage computed by dividing Idaho work days by total work days.

( )

b. The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year.

( )

c. Total work days means the total number of days the taxpayer provided personal services for that employer or principal both within and without Idaho during the calendar year. For example, a taxpayer working a five (5) day work week may assume total work days of two hundred sixty (260) less any vacation, holidays, sick leave days and other days off.

( )

d. Total compensation means all salary, wages, commissions, contract payments, and other compensation for services, including sick leave pay, holiday pay and vacation pay, that is taxable pursuant to the



Idaho Income Tax Act if earned by a resident of Idaho. ( )

03. Work Days. Work days include only those days the taxpayer actually performs personal services for the benefit of the employer or principal. Vacation days, sick leave days, holidays, and other days off from work are considered nonwork days whether compensated or not. Total work days must equal Idaho work days plus non-Idaho work days. The taxpayer has the burden of establishing non-Idaho work days. Documentation establishing non-Idaho work days may be required to support the Idaho compensation percentage used by the taxpayer. ( )

04. Multiple Employers. If a taxpayer performs personal services both within and without Idaho for more than one employer or principal, he shall determine an Idaho compensation percentage separately for each employer or principal. ( )

05. Alternative Method. If the Idaho compensation percentage does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may submit an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. ( )

a. The taxpayer shall fully explain the alternative method in a statement attached to his Idaho individual income tax return. ( )

b. The alternative method may be used in lieu of the method in Subsection 262.01 unless the Tax Commission expressly denies its use. ( )

**263. DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (Rule 263).**  
Section 63-3026A(3), Idaho Code. ( )

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. ( )

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. ( )

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: ( )

- a. Ordinary income or loss from trade or business activities; ( )
- b. Net income or loss from rental real estate activities; ( )
- c. Net income or loss from other rental activities; ( )
- d. Interest income; ( )
- e. Dividends; ( )
- f. Royalties; ( )
- g. Capital gain or loss; ( )
- h. Other portfolio income or loss; ( )
- i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. ( )

**264. INCOME FROM REAL AND TANGIBLE PERSONAL PROPERTY (Rule 264).**

Section 63-3026A(3), Idaho Code. ( )

01. In General. Rents, royalties, profits, gains, losses and other items of income from the ownership or disposition of real or tangible personal property located in Idaho is Idaho source income. ( )

02. Property Located Within and Without Idaho. ( )

a. If the property is located or used within and without Idaho, specific allocation of the income, gain, or loss is appropriate if the gross receipts and related deductions and expenses are readily identifiable from the location or use of the property in Idaho. ( )

b. To the extent income derived from real property located both within and without Idaho cannot be specifically allocated, the rents, profits, gains, losses or other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the average value of the property located in Idaho and the denominator is the average value of the property located both within and without Idaho. The value of real property is determined by the original cost of the land and improvements. The average value is determined by averaging the values at the beginning and end of the taxable year. However, the Tax Commission may require the averaging of monthly values during the taxable year if required to properly reflect the average value of the taxpayer's property. ( )

c. To the extent income derived from tangible personal property used both within and without Idaho cannot be readily allocated, the rents, royalties, gains, losses, and other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the total number of days the property was used in Idaho during the taxable year, and the denominator is the total number of days the property was used both within and without Idaho during the taxable year. ( )

03. Alternative Method. If either fraction in Subsection 264.02 does not fairly represent the extent of the property's use in Idaho, the taxpayer may propose an alternative method. For example, acres may be a more appropriate measure than average value in some cases. ( )

a. The taxpayer shall fully explain the alternative method in a statement attached to his Idaho individual income tax return. ( )

b. The method proposed by the taxpayer may be used in lieu of the method in Subsection 264.02 unless the Tax Commission expressly denies its use. ( )

**265. SOLE PROPRIETORSHIPS OPERATING WITHIN AND WITHOUT IDAHO (Rule 265).**

Section 63-3026A(3), Idaho Code. ( )

01. In General. A sole proprietorship that operates within and without Idaho shall apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of proprietorship income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. ( )

02. Application of Rule. This rule also applies to farming activities operated as a sole proprietorship. ( )

**266. -- 299. (RESERVED).**

**300. TAX ON CORPORATIONS (Rule 300).**

Sections 63-3025 and 63-3025A, Idaho Code. ( )

01. Excise Tax. A corporation excluded from the tax on corporate income imposed by Section 63-3025, Idaho Code, is subject to the excise tax imposed by Section 63-3025A, Idaho Code. If a corporation is subject to the excise tax imposed by Section 63-3025A, Idaho Code, it is not subject to the tax on corporate income imposed by Section 63-3025, Idaho Code. ( )

02. Minimum Tax. A name-holder or inactive corporation that is authorized to do business in Idaho shall pay the minimum tax of twenty dollars (\$20) even though the corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 300.03. ( )

03. Nonproductive Mining Corporations. A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. A corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. ( )

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

**310. ELECTIONS FOR MULTISTATE CORPORATIONS (Rule 310).**

Section 63-3027, Idaho Code. ( )

01. Available Options. A multistate corporation transacting business in Idaho may elect to be taxed pursuant to the provisions of the Idaho Income Tax Act or pursuant to the Multistate Tax Compact, Section 63-3701, Idaho Code. This provides three (3) options: ( )

a. Apportionment and allocation pursuant to Section 63-3027, Idaho Code. ( )

b. Apportionment and allocation pursuant to Article III, Section 1 of the Multistate Tax Compact. However, if this option is elected, business income shall be apportioned using the apportionment formula pursuant to Section 63-3027(i), Idaho Code. ( )

c. Tax based on one percent (1%) of sales pursuant to Article III, Section 2 of the Multistate Tax Compact and Section 63-3702, Idaho Code. This option is available to corporations whose only activity in Idaho consists of sales that are not in excess of one hundred thousand dollars (\$100,000) during the taxable year. ( )

02. Electing an Option. A multistate corporation shall file pursuant to Section 63-3027, Idaho Code, unless it elects to report and pay income tax pursuant to one of the options specified in Subsections 310.01.b. and 01.c. The election is made by attaching a written statement of the election to the return. The statement must affirmatively state each element required by statute to qualify for the option elected. The return must include any additional schedules needed to show how the tax due was computed. The election may not be changed for a taxable year after the return for that year has been filed. ( )

**311. -- 319. (RESERVED).**

**320. APPLICATION OF MULTISTATE RULES (Rule 320).**

Section 63-3027, Idaho Code. ( )

01. Prologue. Rules 320 through 699 of these rules are intended to set forth the application of the apportionment and allocation provisions of Section 63-3027, Idaho Code. The only exceptions to these allocation and apportionment rules are those set forth in these rules pursuant to the authority of Sections 63-3027(s) and 63-3027(u), Idaho Code. ( )

02. Taxpayers Conducting Business Within and Without Idaho. Section 63-3027, Idaho Code, and related rules apply to C corporations conducting business within and without Idaho, and to other taxpayers if required by other provisions of the Idaho Code and related rules. However, only C corporations may use the combined report to determine Idaho taxable income. See Rule 360 of these rules. ( )

**321. -- 324. (RESERVED).**

**325. DEFINITIONS FOR PURPOSES OF MULTISTATE RULES (Rule 325).**

Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: ( )

01. **Affiliated Corporation and Affiliated Group.** An affiliated corporation is a corporation that is a member of a commonly owned group of which the taxpayer is also a member. The commonly owned group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. ( )

02. **Allocation.** Allocation refers to the assignment of nonbusiness income to a particular state. ( )

03. **Apportionment.** Apportionment refers to the division of business income between states in which the business is conducted by the use of a formula containing apportionment factors. ( )

04. **Business Activity.** Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer. ( )

05. **Combined Group.** Combined group means the group of corporations that comprise a unitary business and are includable in a combined report pursuant to Section 63-3027(t) or 63-3027B, Idaho Code, if the water's edge election is made. ( )

06. **Combined Report.** Combined report refers to the computational filing method to be used by a unitary business which is conducted by a group of corporations wherever incorporated rather than a single corporation. ( )

07. **Group Return.** A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. ( )

08. **MTC.** The Multistate Tax Commission. ( )

09. **Multistate Corporation.** A multistate corporation is a corporation that operates in more than one state. For purposes of this definition, state is defined in Section 63-3027(a)(6), Idaho Code. ( )

10. **Unitary Business.** Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. ( )

**326. -- 329. (RESERVED).**

**330. BUSINESS INCOME (Rule 330).**

Sections 63-3027(a)(1), Idaho Code. ( )

01. **In General.** All transactions and activities of the taxpayer that depend on or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and are transactions and activity arising in the regular course of, and constitute integral parts of, a trade or business. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administering these rules, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income. ( )

02. **Classification of Income.** ( )

a. **Classifying income by labels** such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., does not determine whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. ( )

b. **The critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business.** The transactional test is met if income or loss is derived from a transaction in the regular course of business. The

functional test is met if income or loss is derived from property acquired, managed or disposed of in the regular course of business. If either the transactional or the functional test is met, the resulting income or loss is business income or loss. ( )

03. Investment Income. Income arising from the ownership or sale or other disposition of investments is presumed to be business income because of the following: ( )

- a. The regularity with which most corporate taxpayers engage in investment activities; ( )
- b. The source of capital for investments arises in the ordinary course of a taxpayer's business; ( )
- c. The income from investments is used in the ordinary course of the taxpayer's business; and ( )
- d. The investment assets are used for general credit purposes. ( )

04. Dividends and Other Intangible Income. Dividends and other intangible income shall be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. ( )

**331. -- 334. (RESERVED).**

**335. NONBUSINESS INCOME (Rule 335).**

Section 63-3027(a)(4), Idaho Code. ( )

01. Nonbusiness Income. Nonbusiness income is all income other than business income. All deductions relating to the production of nonbusiness income shall be allocated with the income produced. Any allowable deduction that applies to both business and nonbusiness income of the taxpayer shall be prorated to those classes of income to determine income subject to tax. When used in these rules, the term nonbusiness income includes nonbusiness losses unless the context clearly indicates otherwise. ( )

02. Allocated to Idaho. Nonbusiness income, net of interest and other related expense offsets, that is attributable to Idaho is allocated to Idaho. ( )

03. Allocated to Other States. Nonbusiness income, together with interest and other related expense offsets, is allocated to other states if it is not attributable to Idaho. ( )

**336. -- 339. (RESERVED).**

**340. SINGLE TRADE OR BUSINESS OF A CORPORATION OR AN AFFILIATED GROUP OF CORPORATIONS -- APPLICATION OF DEFINITIONS (Rule 340).**

Section 63-3027, Idaho Code. ( )

01. Apportionment. All income of a trade or business shall be reported and apportioned even though only one (1), or less than all, of the corporation's business divisions or unitary group's affiliates operated in Idaho during the taxable year. The apportionment formula cannot be computed separately for each division, department, or affiliate of a single trade or business. ( )

02. Single Trade or Business. The determination of whether the activities of a corporation or an affiliated group constitute a single trade or business or more than one trade or business is based on the facts in each case. The activities of the corporation or affiliated group are considered a single business if evidence indicates that the segments being considered are integrated with, depend on, or contribute to each other and the operations of the corporation or affiliated group as a whole. The following factors indicate a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the corporation or affiliated group constitute

a single trade or business: ( )

a. Same Type of Business. A corporation or affiliated group is generally engaged in a single trade or business if all its activities are in the same general line. For example, a taxpayer operating a chain of retail grocery stores is almost always engaged in a single trade or business. ( )

b. Steps in a Vertical Process. A corporation or affiliated group is almost always engaged in a single trade or business if its various divisions or affiliates are engaged in different steps in a large, vertically structured enterprise. For example, a taxpayer that explores for and mines copper ores and fabricates the refined copper into consumer products is engaged in a single trade or business, regardless of the fact that the various steps in the process are operated substantially independent of each other with only general supervision from the enterprise's executive offices. ( )

c. Strong Centralized Management. A corporation or affiliated group is considered one trade or business if there is a strong central management, coupled with the existence of centralized departments for functions such as financing, advertising, research, or purchasing. For example, a corporation or affiliated group is considered one trade or business if the central executive officers are normally involved in the operations of the divisions or affiliates and centralized offices perform the normal matters for the divisions or affiliates that a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing. ( )

03. More Than One Trade or Business. A taxpayer may have more than one trade or business. In this case the taxpayer shall determine the business income attributable to each separate trade or business. The income of each business is apportioned taking into consideration the instate and outstate factors that relate to that trade or business. ( )

**341. -- 344. (RESERVED).**

**345. BUSINESS AND NONBUSINESS INCOME -- APPLICATION OF DEFINITIONS (Rule 345).**

Section 63-3027, Idaho Code. ( )

01. In General. This rule is used to determine whether income is business or nonbusiness income. Income, such as dividends, interest, rents, royalties, service and administrative charges, received from subsidiary or affiliated corporations not included in a combined filing, is business income. The examples in this rule are illustrative only and do not cover all pertinent facts. ( )

02. Rental Income. Rental income from real and tangible property is business income if the property for which the rental income was received is used in the taxpayer's trade or business or is incidental to it. ( )

03. Examples of Rental Income. ( )

a. A taxpayer operates a multistate car rental business. The income from car rentals is business income. ( )

b. A taxpayer is engaged in the construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of equipment when the equipment is not needed on any particular project. The rental income is business income. ( )

c. A taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five (5) story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its corporate headquarters. The remaining two (2) floors are leased to others. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. The rental income is business income. ( )

d. A taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later the plant was closed and offered for sale. The plant was rented temporarily from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is business income and the gain on the

sale of the plant is business income. ( )

04. Gains or Losses from Sale of Assets. Gain or loss from the sale, exchange or other disposition of real and tangible or intangible personal property is business income if the property, while owned by the taxpayer, was used in the taxpayer's trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income. ( )

05. Examples of Gains or Losses. ( )

a. In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from the sales are business income. ( )

b. A taxpayer constructed a plant for use in its multistate manufacturing business. Twenty (20) years later the property was sold at a gain while the taxpayer was using it. The gain is business income. ( )

c. Assume the same facts as in Subsection 345.05.b., except that the plant was closed and offered for sale. The plant was sold eighteen (18) months later. The gain is business income. ( )

d. Assume the same facts as in Subsection 345.05.b., except that the plant was rented while being held for sale. Both the rental income and the gain on the sale of the plant are business income. ( )

06. Interest Income. Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is related to or incidental to the trade or business operation. ( )

07. Examples of Interest Income. ( )

a. A taxpayer operates a multistate chain of department stores, selling for cash or credit. Service charges, interest, or time-price differentials and similar payments are received with respect to installment sales and revolving charge accounts. These amounts are business income. ( )

b. A taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment earned interest. The interest income is business income. ( )

c. A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer has special accounts to cover items such as worker's compensation claims, rain and storm damage, machinery replacement, etc. The money in those accounts is invested. Also, the taxpayer temporarily invests funds intended to pay federal, state, and local tax obligations. The interest income is business income. ( )

d. A taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income. ( )

e. A taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling two hundred thousand dollars (\$200,000) which it regularly invests in short-term, interest-bearing securities. The interest income is business income. ( )

08. Dividends. Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is related to or incidental to the trade or business operations. ( )

09. Examples of Dividends. ( )

a. A taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income. ( )

b. A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer has special accounts to cover items such as worker's compensation claims, etc. A part of the money in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and dividends are business income. ( )

c. A taxpayer and several unrelated corporations own all the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock to obtain a source of supply of materials used in its manufacturing business. The dividends are business income. ( )

d. A taxpayer is engaged in a multistate construction business. Much of its construction work is performed for various federal and state governmental agencies. According to state and federal laws that apply to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets, cash and marketable securities, to current liabilities. To maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and dividends received are business income. ( )

e. A taxpayer receives dividends from the stock of its subsidiary or affiliate that acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income. ( )

10. Patent and Copyright Royalties. Royalties from patents and copyrights are business income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is related to or incidental to the trade or business operations. ( )

11. Examples of Patent and Copyright Royalties. ( )

a. A taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on some of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties are business income. ( )

b. A taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are used later by the taxpayer in its business. Royalties received on these copyrights are business income. ( )

**346. -- 349. (RESERVED).**

**350. PRORATION OF DEDUCTIONS (Rule 350).**

Section 63-3027, Idaho Code. ( )

01. In General. In most cases a taxpayer's allowable deduction applies only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction applies to the business income of more than one trade or business, to several items of nonbusiness income, or to both. In these cases the deduction shall be prorated among the trades or businesses and the items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it applies. ( )

02. Year to Year Consistency. If a taxpayer departs from or modifies the method used for prorating any deduction in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. ( )

03. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in applying or prorating any deduction, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. ( )



**351. -- 354. (RESERVED).**

**355. APPLICATION OF SECTION 63-3027 -- APPORTIONMENT (Rule 355).**

Section 63-3027, Idaho Code. If a corporation has business activity both within and without Idaho, and is taxable in another state as a result of this business activity, the portion of the net income or net loss derived from sources in Idaho shall be determined by apportionment pursuant to Section 63-3027, Idaho Code. ( )

**356. -- 359. (RESERVED).**

**360. APPLICATION OF SECTION 63-3027 -- COMBINED REPORT (Rule 360).**

Section 63-3027, Idaho Code. If a particular trade or business is carried on by a corporation and one (1) or more affiliates, nothing in these rules shall preclude using a combined report in which the entire business income of the trade or business is apportioned pursuant to Section 63-3027, Idaho Code. The use of the combined report is restricted to C corporations. ( )

**361. -- 364. (RESERVED).**

**365. USE OF THE COMBINED REPORT (Rule 365).**

Section 63-3027, Idaho Code. ( )

01. In General. Use of the combined report does not disregard the separate corporate identities of the members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary business income reportable to Idaho by the separate corporate members of the unitary group. For purposes of this rule, included corporation means a corporation required to file an Idaho income tax return as a result of its own activities in Idaho and using a combined report. ( )

02. Separate Computations. Each included corporation shall: ( )

a. Be responsible for computing and paying its tax including any minimum tax due pursuant to Sections 63-3025 and 63-3025A, Idaho Code, as determined by the combined report. ( )

b. Separately compute Idaho tax credits and limitations, except the investment tax credit, which is applied pursuant to Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules. ( )

c. Separately determine and pay the permanent building fund tax required by Section 63-3082, Idaho Code. ( )

03. Net Operating Loss. The Idaho net operating loss carryover or carryback for each included corporation is limited to its share of the combined net operating loss apportioned to Idaho for each taxable year. See Rule 200 of these rules. ( )

04. Nexus. Each corporation shall determine whether it has nexus in Idaho based on its activities or those conducted on its behalf. ( )

05. Throwback Sales. When a corporation's activities conducted in a state are within the protection of Public Law 86-272, the principle established in Appeal of Joyce, Inc., California State Board of Equalization, November 23, 1966, commonly known as the Joyce Rule, shall apply. Therefore, only the activities conducted by or on behalf of the corporation shall be considered for this purpose. ( )

06. Filing Returns. Each included corporation may file a separate return reporting its share of the combined net income or loss of the unitary group. In the alternative, the unitary group may elect to file a group return for all the included corporations. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements in this rule. ( )

**366. -- 369. (RESERVED).**

**370. APPLICATION OF SECTION 63-3027 -- ALLOCATION (Rule 370).**

Section 63-3027, Idaho Code. A taxpayer subject to the taxing jurisdiction of Idaho shall allocate all of its nonbusiness income or loss within or without Idaho pursuant to Section 63-3027, Idaho Code. ( )

**371. -- 374. (RESERVED).**

**375. CONSISTENCY AND UNIFORMITY IN REPORTING (Rule 375).**

Section 63-3027, Idaho Code. ( )

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for classifying income as business income or nonbusiness income in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. ( )

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in classifying business and nonbusiness income, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. ( )

**376. -- 384. (RESERVED).**

**385. TAXABLE IN ANOTHER STATE -- IN GENERAL (Rule 385).**

Section 63-3027(c), Idaho Code. ( )

01. In General. A taxpayer is subject to the allocation and apportionment provisions of Section 63-3027, Idaho Code, if it has income from business activity that is taxable both within and without Idaho. A taxpayer's income from business activity is taxable without Idaho if the taxpayer is taxable in another state within the meaning of Section 63-3027(c), Idaho Code, as a result of that business activity. A taxpayer is taxable in another state if it meets either of the following tests: ( )

a. The taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, as a result of its business activity in another state; or ( )

b. Another state has jurisdiction to subject the taxpayer to a net income tax as a result of its business activity, regardless of whether the state imposes the tax on the taxpayer. ( )

02. Not Taxable in Another State. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in the other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business. ( )

**386. -- 389. (RESERVED).**

**390. TAXABLE IN ANOTHER STATE -- WHEN A TAXPAYER IS SUBJECT TO TAX (Rule 390).**

Section 63-3027(c)(1), Idaho Code. ( )

01. Subject to Tax. A taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, if it carries on business activity in a state and that state imposes one of those taxes on it. A taxpayer that claims it is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, shall furnish the Tax Commission, at its request, evidence to support this claim. The Tax Commission may request that evidence include proof the taxpayer has filed the required tax return in the other state and has paid any taxes imposed by the law of that state. The taxpayer's failure to provide proof may be considered in determining whether the taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code. ( )

02. Concept of Taxability. The concept of taxability in another state is based on the premise that every state in which the taxpayer transacts business may impose an income tax even though every state does not do so. A state may impose other types of taxes as a substitute for an income tax. Only those taxes specified in Section 63-3027(c)(1), Idaho Code, that are revenue producing rather than regulatory in nature shall be considered in determining taxability in another state. ( )

03. Examples of Taxability. ( )

a. State A requires each corporation that qualifies or registers in State A to pay the Secretary of State an annual license fee or tax for the privilege of doing business in the state, regardless of whether it exercises the privilege. The amount paid is determined according to the total authorized capital stock of the corporation; the rates progressively increase. The statute sets a minimum fee of fifty dollars (\$50) and a maximum fee of five hundred dollars (\$500). Failure to pay the tax bars a corporation from using the state courts to enforce its rights. State A also imposes a corporation income tax. Corporation X is qualified in State A and pays the required fee to the Secretary of State, but does not transact business in State A, although it may use the courts of State A. Corporation X is not taxable in State A. ( )

b. Assume the same facts as in Subsection 390.03.a., except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is subject to the net income tax of State A and is taxable in State A. ( )

c. State B requires all corporations qualified or registered in State B to pay the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of: outstanding capital stock, and surplus and undivided profits. The fee or tax base attributable to State B is determined by a three (3) factor apportionment formula. Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is taxable in State B. ( )

d. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based on its business activity in the state, but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax. ( )

04. Voluntary Tax Payment. A taxpayer is not subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, if the taxpayer voluntarily files and pays the tax when not required to do so by the laws of that state. ( )

05. Minimum Tax or Fee. A taxpayer is not subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code if it pays a minimal fee for qualification, organization, or the privilege of doing business in that state, but: ( )

a. Does not transact business in that state; or ( )

b. Engages in business activity not sufficient for nexus, and the minimum tax bears no relationship to the taxpayer's business activity within that state. ( )

c. Example. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the fifty dollar (\$50) minimum tax, although it does not transact business in State A. Corporation X is not taxable in State A. ( )

**391. -- 394. (RESERVED).**

**395. TAXABLE IN ANOTHER STATE -- WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (Rule 395).**

Section 63-3027(c)(2), Idaho Code. ( )

01. In General. The test in Section 63-3027(c)(2), Idaho Code, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of the business activity pursuant to the Constitution and statutes of the United States. Jurisdiction to tax is not present if the state is prohibited from imposing the tax due to Public Law 86-272, Title 15, Sections 381 through 385, United States Code. ( )

a. When determining if a state has jurisdiction to subject a taxpayer to a net income tax, the jurisdictional standards applicable to a state of the United States shall also apply to the District of Columbia, the

Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. ( )

b. The provisions of a treaty between a state and the United States are not considered when determining jurisdiction to tax. ( )

02. Example. Corporation X is engaged in manufacturing farm equipment in State A and in Foreign Country B. Both State A and Foreign Country B impose a net income tax but Foreign Country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and Foreign Country B. ( )

**396. -- 449. (RESERVED).**

**450. APPORTIONMENT FORMULA (Rule 450).**

Section 63-3027(i), Idaho Code. ( )

01. Apportionment Factors. All of a taxpayer's business income shall be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(i), Idaho Code. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor. ( )

02. Intercompany Transactions. All intercompany transactions shall be eliminated when computing the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report. ( )

03. Rounding. The individual factors and the average apportionment factor shall be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped. ( )

**451. -- 459. (RESERVED).**

**460. PROPERTY FACTOR -- IN GENERAL (Rule 460).**

Section 63-3027(k), Idaho Code. ( )

01. In General. The property factor of the apportionment formula for each trade or business of the taxpayer includes all real and tangible personal property owned or rented by the taxpayer and used during the taxable year in the regular course of its trade or business. The term real and tangible personal property includes land, buildings, fixtures, inventory, equipment, and other property of a tangible nature, but does not include coin or currency. ( )

02. Nonbusiness Income. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor depends on the facts of each case. ( )

03. Average Value. The property factor shall reflect the average value of property includable in the factor. See Rule 490 of these rules. ( )

04. Denominator. The denominator of the factor may not exceed the sum of all the numerators. ( )

**461. -- 464. (RESERVED).**

**465. PROPERTY FACTOR -- PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME (Rule 465).**

Section 63-3027(k), Idaho Code. ( )

01. In General. ( )

a. Property shall be included in the property factor if it is used, is available for use, or capable of being used during the taxable year in the regular course of the taxpayer's trade or business. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. ( )

b. Property or equipment under construction during the taxable year, except inventoriable goods in process, shall be excluded from the factor until the property is used in the regular course of the taxpayer's trade or business. ( )

c. If the property is partially used in the regular course of the taxpayer's trade or business while under construction, the value of the property shall be included in the property factor to the extent used. ( )

d. Property used in the regular course of the taxpayer's trade or business shall remain in the property factor until it is permanently withdrawn by an identifiable event such as its sale, abandonment, or any event or circumstance that renders the property incapable of being used in the regular course of the taxpayer's trade or business. ( )

02. Examples. ( )

a. A taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one (1) year later. The value of the manufacturing plant is included in the property factor until the plant is sold. ( )

b. Assume the same facts as in Subsection 465.02.a., except the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold. ( )

**466. -- 469. (RESERVED).**

**470. PROPERTY FACTOR -- CONSISTENCY IN REPORTING (Rule 470).**

Section 63-3027(k), Idaho Code. ( )

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for valuing property, or for excluding or including property in the property factor in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. ( )

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in valuing property and in excluding or including property in the property factor, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. ( )

**471. -- 474. (RESERVED).**

**475. PROPERTY FACTOR -- NUMERATOR (Rule 475).**

Section 63-3027(k), Idaho Code. ( )

01. In General. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Idaho during the taxable year in the regular course of the taxpayer's trade or business. ( )

02. Property in Transit. Property of the taxpayer that is in transit between locations shall be considered

to be at the destination for purposes of the property factor. If property in transit between a buyer and seller is included by a taxpayer in the denominator of its property factor, it shall be included in the numerator according to the state of destination. ( )

03. Mobile or Movable Property. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment located within and without Idaho during the taxable year shall be determined on the basis of total time and use in Idaho as a percentage of total time and use everywhere. An automobile assigned to a traveling employee shall be included in the numerator of the state to which the employee's compensation is assigned for the payroll factor or in the numerator of the state in which the automobile is licensed. ( )

**476. -- 479. (RESERVED).**

**480. PROPERTY FACTOR -- VALUATION OF OWNED PROPERTY (Rule 480).**

Section 63-3027(1), Idaho Code. ( )

01. In General. Property owned by a taxpayer shall be valued at its original cost. As a general rule, original cost is deemed to be the basis of the property for federal income tax purposes, prior to any federal adjustments at the time of acquisition and adjusted by subsequent capital additions or improvements and partial disposition, by reason of sale, exchange, abandonment, etc. However, capitalized intangible drilling and development costs of producing property shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes. ( )

02. Examples. ( )

a. A taxpayer acquired a factory building in Idaho at a cost of five hundred thousand dollars (\$500,000). Eighteen (18) months later the taxpayer remodeled the building for a cost of one hundred thousand dollars (\$100,000). The taxpayer files its return on the calendar year basis. The taxpayer claimed a depreciation deduction of twenty-two thousand dollars (\$22,000) on its current year return. The value of the building included in the numerator and denominator of the property factor is six hundred thousand dollars (\$600,000). The depreciation deduction is not taken into account in determining the value of the building for purposes of the factor. ( )

b. During the current taxable year, X Corporation merged into Y Corporation in a tax-free reorganization pursuant to the Internal Revenue Code. At the time of the merger, X Corporation owned a factory that it built five (5) years earlier at a cost of one million dollars (\$1,000,000). X has been depreciating the factory at the rate of two percent (2%) per year. Its basis in X's hands at the time of the merger is nine hundred thousand dollars (\$900,000). Since Y acquired the property in a tax-free transaction, Y includes the property in its property factor at X's original cost of one million dollars (\$1,000,000). ( )

03. Unknown Original Cost. If the original cost of property cannot be determined, the property is included in the factor at its fair market value on the date it was acquired. ( )

04. Inventory. Inventory shall be included in the factor according to the valuation method used for federal income tax purposes. ( )

05. Gifts or Inheritance. Property acquired by gift or inheritance shall be included in the factor at its basis pursuant to the Internal Revenue Code. ( )

**481. -- 484. (RESERVED).**

**485. PROPERTY FACTOR -- VALUATION OF RENTED PROPERTY (Rule 485).**

Section 63-3027(1), Idaho Code. ( )

01. In General. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute business income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business. See Rules 560 and 565 of

these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. ( )

02. Examples of Subrents. ( )

a. A taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income, they are not deducted from rent paid by the taxpayer for the food market. ( )

b. A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to other businesses. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer. ( )

03. Annual Rental Rate. Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year shall be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month to month basis, the rent may not be annualized. ( )

04. Examples of Annual Rental Rate. ( )

a. Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid pursuant to a lease with five (5) years remaining is two thousand five hundred dollars (\$2,500) a month. The rent for the short taxable year January 1 to April 30 is ten thousand dollars (\$10,000). After the rent is annualized the net rent is thirty thousand dollars (\$30,000) or  $(\$2,500 \times 12)$ . ( )

b. Assume the same facts as in Subsection 485.04.a., except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars (\$20,000) or  $(\$2,500 \times 8)$ . ( )

05. Annual Rent. Annual rent is the sum of money or other consideration payable, directly or indirectly, by the taxpayer or for the taxpayer's benefit for the use of the property and includes: ( )

a. Any amount payable for the use of real or tangible personal property whether the amount is a fixed sum of money or a percentage of sales, profits, or otherwise. ( )

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges not separately stated, the amount of the rent shall be determined by considering the relative values of the rent and the other items. ( )

06. Examples of Annual Rent. ( )

a. Pursuant to the terms of a lease, a taxpayer pays a lessor one thousand dollars (\$1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars (\$400,000). The annual rent is sixteen thousand dollars (\$16,000) or  $(\$12,000 + (1\% \times \$400,000))$ . ( )

b. Pursuant to the terms of a lease, a taxpayer pays a lessor twelve thousand dollars (\$12,000) a year for rent, plus taxes of two thousand dollars (\$2,000) and mortgage interest of one thousand dollars (\$1,000). The annual rent is fifteen thousand dollars (\$15,000). ( )

c. A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is one thousand dollars (\$1,000), of which seven hundred dollars (\$700) is for storage space and three hundred dollars (\$300) is for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven

hundred dollars (\$700). ( )

07. Exclusions. Annual rent does not include any of the following: ( )

a. Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. ( )

b. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, whether designated as a royalty, advance royalty, rental, or otherwise. ( )

08. Leasehold Improvements. Leasehold improvements shall be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or they revert to the lessor when the lease expires. The original cost of leasehold improvements shall be included in the lessee's factor. ( )

09. Safe Harbor Lease. Property subject to a safe harbor lease shall be reported in the factor of the actual user of the property at original acquisition cost. ( )

**486. -- 489. (RESERVED).**

**490. PROPERTY FACTOR -- AVERAGING PROPERTY VALUES (Rule 490).**

Section 63-3027(m), Idaho Code. ( )

01. In General. The average value of property owned by a taxpayer shall be determined by averaging the values at the beginning and end of the taxable year. ( )

02. Monthly Averaging. The Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the taxable year. Averaging by monthly values generally applies if there are substantial fluctuations in the property values during the taxable year or if property is acquired or disposed of during the taxable year. ( )

03. Rented Property. Rented property is averaged automatically by determining the net annual rental rate of the property as set forth in Rule 485 of these rules. ( )

**491. -- 499. (RESERVED).**

**500. PAYROLL FACTOR -- IN GENERAL (Rule 500).**

Section 63-3027(n), Idaho Code. ( )

01. In General. The payroll factor of the apportionment formula for each trade or business of the taxpayer includes the total amount paid for compensation during the taxable year by the taxpayer in the regular course of its trade or business. ( )

02. Compensation. For purposes of the payroll factor, compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. ( )

a. Compensation includes the value of board, rent, housing, lodging, and other benefits or services the taxpayer furnished to employees in return for personal services if the amounts constitute income to the recipient pursuant to the Internal Revenue Code. ( )

b. If employees are not subject to the Internal Revenue Code, for example, those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees is made as if the employees were subject to the Internal Revenue Code. ( )

c. If wages paid to employees are capitalized into the cost of an asset that is used in the regular course of the taxpayer's trade or business, these wages are included in the payroll factor. ( )



03. Amount Paid. The total amount paid to employees is determined by the taxpayer's accounting method. If the taxpayer uses the accrual method of accounting, all compensation properly accrued is deemed to have been paid. At the election of the taxpayer, compensation paid to employees may be included in the payroll factor by using the cash method if the taxpayer is required to use that method to report compensation for unemployment insurance purposes. ( )

04. Employee. For purposes of the payroll factor, employee means any officer of a corporation, or any individual who, pursuant to the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person is considered an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act (FICA); except that, since certain individuals are included within the term employees in the FICA who would not be employees pursuant to the usual common-law rules, it may be established that a person who is included as an employee for purposes of the FICA is not an employee for purposes of this rule. ( )

05. Exclusions. The following are excluded from the payroll factor: ( )

a. Compensation paid to an employee for services connected with the production of nonbusiness income; ( )

b. Payments to an independent contractor or a person not properly classifiable as an employee. ( )

06. Year to Year Consistency. If a taxpayer departs from or modifies the method used for treating compensation paid in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. ( )

07. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in treating compensation paid, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. ( )

**501. -- 504. (RESERVED).**

**505. PAYROLL FACTOR -- DENOMINATOR (Rule 505).**

Section 63-3027(n), Idaho Code. ( )

01. In General. The denominator of the payroll factor is the total compensation paid everywhere during the taxable year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor. The denominator may not exceed the sum of all numerators. ( )

02. Example. A taxpayer has employees in States A, B, and C. However, in State C the taxpayer is immune from taxation by Public Law 86-272. The compensation paid to employees for services performed in State C is assigned to that state. This compensation is included in the denominator even though the taxpayer is not taxable in State C. ( )

**506. -- 509. (RESERVED).**

**510. PAYROLL FACTOR -- NUMERATOR (Rule 510).**

Section 63-3027(n), Idaho Code. The numerator of the payroll factor is the total amount the taxpayer paid for compensation in Idaho during the taxable year. The tests in Section 63-3027(o), Idaho Code, apply in determining whether compensation is paid in Idaho. It shall be presumed that the total wages reported by the taxpayer to Idaho for unemployment insurance purposes constitute compensation paid in Idaho except compensation excluded by Rules 500 through 524 of these rules. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Idaho for unemployment insurance purposes. ( )

**511. -- 514. (RESERVED).**

**515. PAYROLL FACTOR -- COMPENSATION PAID IN IDAHO (Rule 515).**

Section 63-3027(o), Idaho Code. ( )

01. In General. Compensation is paid in Idaho if one of the tests in Section 63-3027(o), Idaho Code, is met. ( )

02. Definitions. The following definitions shall be used for purposes of the payroll factor: ( )

a. Incidental means a service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction. ( )

b. Base of operations means the place of a more or less permanent nature where the employee starts his work and where he customarily returns to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to his trade or profession. ( )

c. Place from which the service is directed or controlled means the place where the power to direct or control is exercised by the taxpayer. ( )

**516. -- 524. (RESERVED).**

**525. SALES FACTOR -- IN GENERAL (Rule 525).**

Section 63-3027(p), Idaho Code. ( )

01. In General. Sales means all gross receipts of a taxpayer not allocated as nonbusiness income. The sales factor for each trade or business of the taxpayer includes all gross receipts derived by the taxpayer from transactions and activity in the regular course of that trade or business. ( )

02. Examples. ( )

a. If a taxpayer manufactures and sells or purchases and resells goods or products, sales includes all gross receipts from sales of the goods or products held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Sales also includes gross receipts from the sale of other property that would be properly included in the taxpayer's inventory if on hand at the close of the taxable year. Gross receipts means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales taxes, are included in gross receipts if these taxes are passed on to the buyer or included in the product's selling price. ( )

b. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost plus the fee. ( )

c. If a taxpayer provides services, such as operating an advertising agency, or performing equipment service contracts or research and development contracts, sales includes the gross receipts from performing the service, including fees, commissions, and similar items. ( )

d. If a taxpayer rents real or tangible property, sales includes the gross receipts from the renting, leasing, or licensing the use of the property. ( )

e. If a taxpayer sells, assigns, or licenses intangible personal property, such as patents and copyrights, sales includes the gross receipts from these transactions. ( )

f. If a taxpayer derives receipts from selling equipment used in its business, the receipts constitute sales. For example, a trucking company owns a fleet of trucks and sells its trucks according to a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor. ( )

g. If a taxpayer derives receipts from foreign source dividends that are apportionable business income, the receipts constitute sales. No other apportionment factor relief is permitted to include this dividend income. Section 78, Internal Revenue Code, foreign dividend gross-up is excluded from sales. ( )

03. Disregarding Gross Receipts. In some cases, certain gross receipts should be disregarded in determining the sales factor so that the apportionment formula operates fairly to apportion the income of the taxpayer's trade or business to Idaho. See Rule 570 of these rules. ( )

04. Year to Year Consistency. If a taxpayer departs from or modifies the basis used for excluding or including gross receipts in the sales factor in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. ( )

05. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in including or excluding gross receipts, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. ( )

**526. -- 529. (RESERVED).**

**530. SALES FACTOR -- DENOMINATOR (Rule 530).**

Section 63-3027(p), Idaho Code. The denominator of the sales factor includes the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded by Rules 525 through 559 and Rule 570 of these rules. The denominator may not exceed the sum of all the numerators. ( )

**531. -- 534. (RESERVED).**

**535. SALES FACTOR -- NUMERATOR (Rule 535).**

Section 63-3027(p), Idaho Code. The numerator of the sales factor includes gross receipts attributable to Idaho and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts are included regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness. ( )

**536. -- 539. (RESERVED).**

**540. SALES FACTOR -- SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (Rule 540).**

Section 63-3027(q), Idaho Code. ( )

01. Gross Receipts. Gross receipts from sales of tangible personal property, except sales to the United States Government as discussed in Rule 545 of these rules, are in Idaho if: ( )

a. The property is delivered or shipped to a purchaser in Idaho regardless of the f.o.b. point or other conditions of sale; or ( )

b. The property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho and the taxpayer is not taxable in the state of the purchaser. ( )

02. Destination Sales. ( )

a. Property is deemed to be delivered or shipped to a purchaser in Idaho if the recipient is in Idaho even though the property is ordered from outside Idaho. Example: A taxpayer, with inventory in State A, sold one hundred thousand dollars (\$100,000) of its products to a purchaser with branch stores in several states including Idaho. The order for the purchase was placed by the purchaser's central purchasing department in State B. Twenty-five thousand dollars (\$25,000) of the purchase order was shipped directly to purchaser's branch store in Idaho. The branch store in Idaho is the purchaser in Idaho with respect to twenty-five thousand dollars (\$25,000) of the

taxpayer's sales. ( )

b. Property is delivered or shipped to a purchaser in Idaho if the shipment terminates in Idaho, even if the property is subsequently transferred to another state by the purchaser. Example: A taxpayer makes a sale to a purchaser who maintains a central warehouse in Idaho where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Idaho constitute property delivered or shipped to a purchaser in Idaho. ( )

03. Purchaser. The term purchaser in Idaho includes the ultimate recipient of the property if at the request of the purchaser the taxpayer in Idaho delivers to or has the property shipped to the ultimate recipient in Idaho. Example: A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Idaho according to the purchaser's instructions. The sale by the taxpayer is in Idaho. ( )

04. Diverted Shipment. If a seller ships property from the state of origin to a consignee in another state, and the property is diverted while en route to a purchaser in Idaho, the sales are in Idaho. Example: The taxpayer, a produce grower in State A, begins shipping perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in Idaho where the taxpayer is subject to tax. The sale by the taxpayer is in Idaho. ( )

05. Throwback Sales. If a taxpayer is not taxable in the state of the purchaser, the sale is attributed to Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. Example: A taxpayer has its head office and factory in State A. It has a branch office and inventory in Idaho. The taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Idaho for approval and are filled by shipment from the inventory in Idaho. Since the taxpayer is immune from tax in State B by Public Law 86-272, all sales of merchandise to purchasers in State B are attributed to Idaho, the state from which the merchandise was shipped. ( )

06. Third-Party Throwback Sales. If a taxpayer's salesman operating from an office in Idaho makes a sale to a purchaser in another state where the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply: ( )

a. If the taxpayer is taxable in the state from which the third-party ships the property, the sale is in that state. ( )

b. If the taxpayer is not taxable in the state from which the property is shipped, the sale is in Idaho. ( )

c. Example. A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer is not taxable in State A. On direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Idaho. ( )

**541. -- 544. (RESERVED).**

**545. SALES FACTOR -- SALES OF TANGIBLE PERSONAL PROPERTY TO THE UNITED STATES GOVERNMENT IN IDAHO (Rule 545).**

Section 63-3027(q), Idaho Code. ( )

01. In General. Gross receipts from sales of tangible personal property to the United States Government are in Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. For purposes of this rule, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Generally, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, are not sales to the United States Government. ( )

02. Examples. ( )

a. A taxpayer contracts with the General Services Administration to deliver a truck that was paid for by the United States Government. The sale is a sale to the United States Government. ( )

b. A taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a rocket component for one million dollars (\$1,000,000). The sale by the subcontractor to the prime contractor is not a sale to the United States Government. ( )

**546. -- 549. (RESERVED).**

**550. SALES FACTOR -- SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (Rule 550).**

Section 63-3027(r), Idaho Code. ( )

01. In General. Section 63-3027(r), Idaho Code, provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government. Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. ( )

02. Income Producing Activity. The term income producing activity applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. The activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Income producing activity includes the following: ( )

a. The rendering of personal services by employees or the use of tangible and intangible property by the taxpayer in performing a service; ( )

b. The sale, rental, leasing, licensing or other use of real property; ( )

c. The rental, leasing, licensing or other use of tangible personal property; ( )

d. The sale, licensing or other use of intangible personal property; and ( )

e. The mere holding of intangible personal property is not, by itself, an income producing activity. ( )

03. Costs of Performance. Costs of performance are the direct costs determined according to generally accepted accounting principles and accepted conditions or practices of the taxpayer's trade or business. ( )

04. Application. In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: ( )

a. The income producing activity is performed wholly in Idaho; or ( )

b. The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. ( )

05. Special Rules. The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: ( )

a. Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. ( )

b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the

property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho shall be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. ( )

c. Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows:  $((10 \text{ bulldozers} \times 50 \text{ days}) / (10 \text{ bulldozers} \times 365 \text{ days})) \times \text{total receipts} = \text{receipts attributable to Idaho}$ . ( )

d. Gross receipts for the performance of personal services are attributable to Idaho to the extent the services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. ( )

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. ( )

f. Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars (\$9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars (\$3,000):  $(200 \text{ man hours} / 600 \text{ man hours}) \times \$9,000$ . ( )

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

**560. SPECIAL RULES (Rule 560).**

Section 63-3027(s), Idaho Code. ( )

01. In General. A departure from the allocation and apportionment provisions of Section 63-3027, Idaho Code, is permitted only in limited and specific cases. Section 63-3027(s), Idaho Code, may be invoked only when unusual fact situations that ordinarily are unique and nonrecurring produce incongruous results pursuant to the apportionment and allocation provisions contained in Section 63-3027, Idaho Code. ( )

02. Alternate Methods. If the allocation and apportionment provisions of Section 63-3027, Idaho Code, do not fairly represent the extent of all or any part of a taxpayer's business activity in Idaho, the taxpayer may petition for or the Tax Commission may require: ( )

- a. Separate accounting; ( )
- b. The exclusion of one or more of the factors; ( )
- c. The inclusion of one or more additional factors that fairly represent the taxpayer's business activity in Idaho; or ( )
- d. The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. ( )

03. Special Industry Methods. Rules 460 through 559 of these rules do not set forth appropriate procedures for determining the apportionment factors of certain industries. Nothing in Section 63-3027(s), Idaho Code, or in Rules 560 through 599 of these rules precludes the Tax Commission from establishing appropriate

procedures pursuant to Sections 63-3027(k) through 63-3027(r), Idaho Code, for determining the apportionment factors for each of these industries. These procedures shall be applied uniformly. See Rule 580 of these rules for the list of the special industries. ( )

**561. -- 564. (RESERVED).**

**565. SPECIAL RULES -- PROPERTY FACTOR (Rule 565).**

Section 63-3027(s), Idaho Code. ( )

01. Subrents. ( )

a. In General. If the subrents taken into account in determining the net annual rental rate pursuant to Rule 485 of these rules produce a negative or clearly inaccurate value for any item of property, another method that properly reflects the value of rented property may be required by the Tax Commission or requested by the taxpayer. The value may not be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. ( )

b. Example. A taxpayer rents a ten (10) story building at an annual rental rate of one million dollars (\$1,000,000). The taxpayer occupies two (2) stories and sublets eight (8) stories for one million dollars (\$1,000,000) a year. The taxpayer's net annual rental rate may not be less than two-tenths (0.2) of the taxpayer's annual rental rate for the entire year, or two hundred thousand dollars (\$200,000). ( )

02. Market Rental Rate. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property is determined based on a reasonable market rental rate for the property. ( )

**566. -- 569. (RESERVED).**

**570. SPECIAL RULES -- SALES FACTOR (Rule 570).**

Section 63-3027(s), Idaho Code. ( )

01. De Minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho. ( )

02. Gross Receipts from Intangibles. If the income producing activity in respect to business income from intangible personal property can be readily identified, the income is included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Rule 525 of these rules, and income from the sale, licensing or other use of intangible personal property, see Rule 550 of these rules. ( )

**571. -- 579. (RESERVED).**

**580. SPECIAL RULES -- SPECIAL INDUSTRIES (Rule 580).**

Section 63-3027(s), Idaho Code. ( )

01. Adoption of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States, May, 1996 Edition," published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. The following special industries shall apportion income in accordance with the applicable MTC regulation: ( )

a. Construction Contractors. The apportionment of income derived by a long-term construction contractor shall be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; ( )

b. Airlines. The apportionment of income derived by an airline shall be computed in accordance with

MTC Regulation IV.18.(e). as adopted July 14, 1983; ( )

c. Railroads. The apportionment of income derived by a railroad shall be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; ( )

d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others shall be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989; ( )

e. Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting shall be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. ( )

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material shall be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. ( )

02. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations. ( )

**581. SPECIAL RULES -- REFERENCES USED IN MTC SPECIAL INDUSTRY REGULATIONS (Rule 581).**

Section 63-3027(s), Idaho Code. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references in the MTC special industry regulations shall mean the following: ( )

01. Article IV. of the Multistate Tax Compact. ( )

a. Article IV. shall mean Section 63-3027, Idaho Code. ( )

b. Article IV.1 shall mean Section 63-3027(a), Idaho Code. ( )

c. Article IV.2 shall mean Section 63-3027(b), Idaho Code. ( )

d. Article IV.3 shall mean Section 63-3027(c), Idaho Code. ( )

e. Article IV.4 shall mean Section 63-3027(d), Idaho Code. ( )

f. Article IV.5 shall mean Section 63-3027(e), Idaho Code. ( )

g. Article IV.6 shall mean Section 63-3027(f), Idaho Code. ( )

h. Article IV.7 shall mean Section 63-3027(g), Idaho Code. ( )

i. Article IV.8 shall mean Section 63-3027(h), Idaho Code. ( )

j. Article IV.9 shall mean Section 63-3027(i), Idaho Code. ( )

k. Article IV.10 shall mean Section 63-3027(k), Idaho Code. ( )

l. Article IV.11 shall mean Section 63-3027(l), Idaho Code. ( )

m. Article IV.12 shall mean Section 63-3027(m), Idaho Code. ( )

n. Article IV.13 shall mean Section 63-3027(n), Idaho Code. ( )

o. Article IV.14 shall mean Section 63-3027(o), Idaho Code. ( )



- p. Article IV.15 shall mean Section 63-3027(p), Idaho Code. ( )
- q. Article IV.16 shall mean Section 63-3027(q), Idaho Code. ( )
- r. Article IV.17 shall mean Section 63-3027(r), Idaho Code. ( )
- s. Article IV.18 shall mean Section 63-3027(s), Idaho Code. ( )
02. MTC Regulations. ( )
- a. Regulation IV.1 shall mean Rules 330 through 354 of these rules. ( )
- b. Regulation IV.2 shall mean Rule 325 and Rules 355 through 384 of these rules. ( )
- c. Regulation IV.3 shall mean Rules 385 through 399 of these rules. ( )
- d. Regulation IV.9 shall mean Rules 450 through 459 of these rules. ( )
- e. Regulation IV.10 shall mean Rules 460 through 479 of these rules. ( )
- f. Regulation IV.11 shall mean Rules 480 through 489 of these rules. ( )
- g. Regulation IV.12 shall mean Rules 490 through 499 of these rules. ( )
- h. Regulation IV.13 shall mean Rules 500 through 514 of these rules. ( )
- i. Regulation IV.14 shall mean Rules 515 through 524 of these rules. ( )
- j. Regulation IV.15 shall mean Rules 525 through 539 of these rules. ( )
- k. Regulation IV.16 shall mean Rules 540 through 549 of these rules. ( )
- l. Regulation IV.17 shall mean Rules 550 through 559 of these rules. ( )
- m. Regulation IV.18.(a) shall mean Rules 560 through 564 of these rules. ( )
- n. Regulation IV.18.(b) shall mean Rules 565 through 569 of these rules. ( )
- o. Regulation IV.18.(c) shall mean Rules 570 through 574 of these rules. ( )
03. Tax Administrator. Tax Administrator shall mean Tax Commission. ( )
04. This State. This state shall mean Idaho. ( )
05. The Apportionment Percentage. ( )
- a. References in MTC Regulation IV.18.(d) to the computation of the apportionment percentage being the total of the property, payroll and sales percentages divided by three (3), shall be replaced with the total of property, payroll, and two (2) times the sales percentages divided by four (4) as required by Section 63-3027(i), Idaho Code. ( )
- b. Examples. Since the Idaho sales factor is double-weighted, examples using a single-weighted sales factor shall be adjusted accordingly. ( )

**582. -- 584. (RESERVED).**

**585. EXCEPTIONS TO APPORTIONMENT FORMULA -- SEPARATE ACCOUNTING (Rule 585).**

Section 63-3027(s), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission shall notify the taxpayer whether the request has been approved or denied. This determination shall be based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income. ( )

**586. -- 589. (RESERVED).**

**590. EXCEPTIONS TO APPORTIONMENT FORMULA -- EXCLUSION OF A FACTOR (Rule 590).**

Section 63-3027(s), Idaho Code. The apportionment of income provided in Section 63-3027, Idaho Code, requires the use of the three (3) factor apportionment formula described in Section 63-3027(i), Idaho Code. However, if one of the prescribed three (3) factors is inapplicable, the remaining two (2) factors shall be included as numerators of the fraction and the denominator of the fraction shall be two (2) or three (3) if necessary to maintain double weighting of the sales factor. ( )

**591. -- 594. (RESERVED).**

**595. EXCEPTIONS TO APPORTIONMENT FORMULA -- ADDITIONAL OR SUBSTITUTE FACTORS (Rule 595).**

Section 63-3027(s), Idaho Code. A factor other than the property, payroll, or sales factor may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission shall notify the taxpayer whether the request has been approved or denied. The taxpayer must establish that the use of the additional factor or substitute factor more accurately reflects the taxpayer's income. ( )

**596. -- 599. (RESERVED).**

**600. ENTITIES INCLUDED IN A COMBINED REPORT. (Rule 600).**

Section 63-3027(t), Idaho Code. ( )

01. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. ( )

02. Domestic International Sales Corporations. If a corporation subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. ( )

03. Foreign Sales Corporations. If a corporation subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. ( )

04. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. ( )

05. Insurance Companies. Pursuant to Section 41-405, Idaho Code, an insurance company subject to the premium tax may not be included in a combined group. ( )

**601. -- 604. (RESERVED).**

**605. ELEMENTS OF A WORLDWIDE COMBINED REPORT (Rule 605).**

Section 63-3027(t), Idaho Code. ( )

01. Income -- In General. Income for the worldwide combined group shall be computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. ( )

02. Income -- Foreign Corporations Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are included in a federal consolidated return shall include in the combined report the taxable income reported on the federal consolidated return. ( )

03. Income -- Foreign Corporations Not Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are not included in a federal consolidated return, shall include in the combined report either the amount in Subsection 605.03.a. or 03.b. as the equivalent of taxable income. The option chosen must be used for all unitary foreign corporations not included in a federal consolidated return. ( )

a. The taxpayer may use the financial net income before income taxes as reported to the United States Securities and Exchange Commission (SEC) if required to file with the SEC. If not required to file with the SEC, the taxpayer may use the financial net income before income taxes as reported to shareholders and subject to review by an independent auditor. ( )

b. The taxpayer may use the financial net income of each foreign corporation adjusted to conform to tax accounting standards as would be required by the Internal Revenue Code if the corporation were a domestic corporation required to file a federal income tax return. ( )

04. Consistent Application of Book to Tax Adjustments. If adjustments are made to conform financial net income to tax accounting standards, all book to tax adjustments as required by the Internal Revenue Code for domestic corporations shall be made for each unitary foreign corporation included in the combined report and shall be consistently applied in each year for which the worldwide method applies. These adjustments are subject to the record-keeping requirements of the Internal Revenue Code and Treasury Regulations for domestic corporations. ( )

05. Apportionment Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the worldwide combined group shall be determined pursuant to Section 63-3027, Idaho Code, and related rules. Only the apportionment factor attributes of those corporations included in the worldwide combined group may be used. ( )

**606. -- 614. (RESERVED).**

**615. COMBINED REPORTS INCLUDING FOREIGN COUNTRY OPERATIONS (Rule 615).**  
Section 63-3027(t), Idaho Code. ( )

01. Reporting Pursuant to the Internal Revenue Code. If a unitary business has foreign country operations that are required or allowed to report income pursuant to the Internal Revenue Code, the translation method for determining income for Idaho reporting purposes shall be the same as that used for federal reporting purposes. ( )

02. Not Reporting Pursuant to the Internal Revenue Code. If a unitary business has foreign country operations that are not subject to the reporting requirements of the Internal Revenue Code, the following translation methods may be used for determining income: ( )

a. The profit and loss method where there is no recognition of any unrealized gains or losses resulting from the restatement or revaluation of assets or liabilities to reflect changes or fluctuations in currency values; or ( )

b. Any other translation method that does not recognize unrealized exchange rate gain or loss resulting from the restatement of assets or liabilities and that reasonably reflects income from operations in the foreign country. ( )

03. Written Approval. A unitary business may not change its method of translation for determining

income from foreign country operations without first obtaining the written approval of the Tax Commission. ( )

**616. -- 619. (RESERVED).**

**620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (Rule 620).**

Section 63-3027, Idaho Code. ( )

01. In General. If a corporation required to file an Idaho income tax return is a member of an operating partnership, the corporation shall report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture. ( )

02. Transacting Business. A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement. ( )

03. Multistate Partnerships. If a partnership operates in more than one state, its income shall be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership. ( )

04. Partnership Income as Business Income of the Partner. ( )

a. Income. If the income or loss of a partnership is business income or loss to a corporate partner, its share of this net business income or loss shall be apportioned together with all other net business income or loss of the corporation. Business income or loss is defined by Section 63-3027(a)(1), Idaho Code, and Rules 330 through 334 of these rules. ( )

b. Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, shall be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Section 63-3027(p), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation. ( )

05. Partnership Income as Nonbusiness Income of Partner. ( )

a. Income. If the partnership income or loss is not business income to a corporate partner, the income is nonbusiness income as defined in Section 63-3027(a)(4), Idaho Code, and Rules 335 through 339 of these rules. The corporate partner shall allocate the nonbusiness income to the state in which it was earned. The corporate partner, on its Idaho corporation income tax return, shall specifically allocate to Idaho its share of the nonbusiness income attributable to Idaho. ( )

b. Factors. If the partnership income or loss is nonbusiness income to the corporate partner, none of the partnership property, payroll, or sales may be included in the computation of the factors of the corporation. ( )

**621. -- 639. (RESERVED).**

**640. WATER'S EDGE -- MAKING THE ELECTION (Rule 640).**

Section 63-3027B, Idaho Code. ( )

01. In General. Rules 640 through 649 of these rules apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules pursuant to this Act, Rules 640 through 649 of these rules control. ( )

02. The Election. The water's edge election is made for purposes of determining which corporations are included in a combined report for Idaho income tax purposes. The election must be made in accordance with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. ( )

a. The election can be made for a year beginning on or after January 1, 1993. See Rule 643 of these rules for Change of Election. ( )

b. All taxpayers required to file an Idaho return and included in the water's edge combined group must make the election. The election must be made on a form provided by the Tax Commission. If the group makes a joint election, a list of each corporation required to file must be provided. A joint election must be signed by an individual authorized to bind all companies to the election. ( )

c. Idaho taxpayers having a valid water's edge election shall compute Idaho taxable income in accordance with Sections 63-3027 and 63-3022, Idaho Code, except as modified by Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. ( )

03. Failure to Include Election. Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022, Idaho Code. ( )

**641. WATER'S EDGE -- ELEMENTS OF A COMBINED REPORT (Rule 641).**

Section 63-3027B, Idaho Code. ( )

01. Income. Income for the water's edge combined group is computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the water's edge combined group shall be eliminated. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included in the computation of the income of the water's edge combined group. ( )

02. Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group shall be determined pursuant to Section 63-3027, Idaho Code, and related rules. When computing the apportionment factors of the water's edge combined group, intercompany transactions between members of the group shall be eliminated. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, shall be included in the sales factor computation. ( )

**642. WATER'S EDGE -- LEGAL AND PROCEDURAL REQUIREMENTS (Rule 642).**

Section 63-3027B, Idaho Code. ( )

01. Required Form. Proper filing of the water's edge election and consent for production of records must be made on the form provided by the Tax Commission and included in the original income tax return for the first tax year to which the election applies. ( )

02. Required Information. The following information must be included with each year's tax return for which a water's edge election applies: ( )

a. A complete list of all affiliated corporations, foreign and domestic, of which more than twenty percent (20%) of the voting stock is, directly or indirectly, owned or controlled by a common owner; ( )

b. Identifying information for each member of the water's edge combined group, including: federal identification number, primary business activities, percent of ownership by members of the combined group, and dates of acquisition or disposition of interest; ( )

c. A copy of the federal consolidated return, if applicable; and ( )

d. A schedule of taxable income for each possession corporation excluded from the water's edge ( )

group pursuant to Section 63-3027B(a), Idaho Code. ( )

**643. WATER'S EDGE -- CHANGE OF ELECTION (Rule 643).**

Section 63-3027C, Idaho Code. ( )

01. In General. Except as provided in Section 63-3027C(a) (1), Idaho Code, the taxpayer must submit a written petition to the Tax Commission and be granted written permission to change its reporting method from water's edge for any subsequent tax year. ( )

a. A change in the reporting method includes conversion from the water's edge filing method to the worldwide filing method as well as the addition of companies previously omitted or the exclusion of companies previously included in the water's edge combined group, except in the case of companies acquired or disposed of during the taxable year. ( )

b. The Tax Commission may determine that one or more affiliated corporations should be included or excluded from the water's edge combined group. Income and apportionment factors shall be modified accordingly. ( )

02. Written Petition. A written petition must include the following: ( )

a. An explanation of the legal or factual basis for requesting the change of reporting method; and ( )

b. A computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. ( )

03. Due Date for Filing The Written Petition. The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. ( )

04. Failure to Provide Required Information. Failure to provide complete and accurate information necessary for the Tax Commission's review of the petition constitutes grounds for denial of the taxpayer's petition or disregard of the taxpayer's election. ( )

05. Approval Attached to Original Return. A copy of the Tax Commission's written approval of the change in reporting method must be attached to the original return for the year in which the change is first made. ( )

06. Appeal Rights. A taxpayer may appeal the Tax Commission's denial of a request to change the method of filing, by submitting a written letter of protest within sixty-three (63) days from date of the denial. If permission to change its filing method is denied, the taxpayer shall continue to file its income tax return with the method used in the previous year. If the appeal is resolved in the taxpayer's favor, the taxpayer may file an amended return for the year of change. ( )

**644. WATER'S EDGE -- DISREGARDING THE ELECTION (Rule 644).**

Sections 63-3027B and 63-3027C, Idaho Code. If a taxpayer fails to comply with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules, the Tax Commission may disregard the water's edge election or recompute the water's edge combined income and apportionment factors, and assert penalties pursuant to Section 63-3046, Idaho Code, and Rules 400 through 419 of the Administration and Enforcement Rules. ( )

**645. WATER'S EDGE -- TREATMENT OF DIVIDENDS (Rule 645).**

Section 63-3027C, Idaho Code. ( )

01. Dividends Received From Payors Incorporated Outside the United States. Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as business income. These dividends are treated as business income of the water's edge combined group even if paid from earnings included in the taxpayer's combined report in prior years. ( )

02. Dividends Received From Payors Incorporated in the United States. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be business income of the water's edge combined group. ( )

03. Deemed Dividends from Possession Corporations. The income of a possession corporation, excluded in Section 63-3027B(a), Idaho Code, shall be included in business income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income. Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. ( )

04. Interest Expense Offset. The interest expense offset provided in Section 63-3022(a), Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. ( )

**646. WATER'S EDGE -- DOMESTIC DISCLOSURE SPREADSHEET (Rule 646).**

Section 63-3027E, Idaho Code. ( )

01. Filing Requirements. The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed with each original return to satisfy Idaho's legal and procedural requirements, unless the taxpayer makes a declaration to forego the filing of the spreadsheet. The declaration is made on a year by year basis. ( )

02. Spreadsheet Information. The filing of the spreadsheet information must be accomplished using the forms contained in the Tax Commission's "Idaho Water's Edge Election Pamphlet," or on identically formatted forms that disclose the same information. ( )

**647. -- 703. (RESERVED).**

**704. CREDITS -- PASS-THROUGH ENTITIES (Rule 704).**

01. In General. A credit earned by a partnership, S corporation, estate, or trust generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. ( )

a. Partnerships. A credit passes through to a partner based on that partner's distributive share of partnership profits. ( )

b. S Corporations. A credit passes through to a shareholder based on that shareholder's pro rata share of income or loss. ( )

c. Estates and Trusts. A credit passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. ( )

02. Limitations. ( )

a. In General. Credits claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. ( )

b. Example. Partnership XYZ has three (3) individual partners who each are entitled to a one-third (1/3) share of the partnership profits. The partnership contributed three thousand dollars (\$3,000) to an educational institution. The contribution qualifies for the credit provided by Section 63-3029A, Idaho Code. One-third (1/3) of the contribution, one thousand dollars (\$1,000), passes through to Partner X who files a joint return. He is allowed a credit of fifty percent (50%) of the amount contributed, but is limited to the lesser of one hundred dollars (\$100) or twenty percent (20%) of his total income tax liability. ( )

c. Example. Assume the same facts as in Subsection 704.02.b., except Partner X also contributed two hundred dollars (\$200) to a qualifying educational institution. Subject to other limitations, the credit is six hundred dollars (\$600) computed as follows:  $(\$1,000 + \$200) \times .5$ . ( )

03. Carryovers. Carryovers of credit are allowed to the partner, shareholder, or beneficiary to the extent provided by statute or rule. ( )

04. Different Taxable Year Ends. If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the credit is available in the same taxable year that income or loss from that entity is reported. ( )

05. Information Provided by a Pass-Through Entity. The pass-through entity shall prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each credit earned and any recapture that is required. Copies of these schedules shall be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the credit is earned and to each return on which the credit is claimed. ( )

06. Pass-Through Entities That Pay Tax. A pass-through entity is entitled to credits that generally pass through to the nonresident partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. For example, Idaho investment tax credit earned that would have passed through to the owner or beneficiary could be claimed by the pass-through entity subject to the applicable limitations. Limitations based on the tax liability apply to each owner's or beneficiary's tax liability being paid by the pass-through entity. ( )

**705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS (Rule 705).**

Section 63-3029A, Idaho Code. ( )

01. Qualified Contributions. Contributions must be made in cash or in kind during the taxable year the credit is claimed. Unpaid pledges do not qualify as contributions. Tuition, room and board, student fees, and similar charges are not contributions. ( )

02. Limitations -- Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: ( )

a. Twenty percent (20%) of his total income tax liability; or ( )

b. Fifty dollars (\$50) if filing other than a joint return or one hundred dollars (\$100) if filing a joint return. ( )

03. Limitations -- Corporations. The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: ( )

a. Ten percent (10%) of the total income tax liability; or ( )

b. Five hundred dollars (\$500). ( )

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 704 of these rules. ( )

05. Other Limitations. This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 760 of these rules for the priority of credits. ( )

06. Effect on Itemized Deductions. The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. ( )

07. Nonprofit Public and Private Museums. To qualify as a museum pursuant to Section 63-3029A, Idaho Code, the public or private nonprofit institution must be organized for the purpose of collecting, preserving, and displaying objects of aesthetic, educational, or scientific value and must be open to the general public on a regular basis. ( )



**706. -- 709. (RESERVED).**

**710. IDAHO INVESTMENT TAX CREDIT -- IN GENERAL (Rule 710).**

Section 63-3029B, Idaho Code.

( )

01. Credit Allowed. The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules.

( )

02. Limitations. The investment tax credit allowable in any taxable year shall be limited by the following:

( )

a. The total amount of any investment tax credit claimed during a taxable year may not exceed forty-five percent (45%) of the tax, after credit for taxes paid another state, regardless of whether the investment tax credit results from a carryover earned in prior years, the current year, or both. For taxable years beginning prior to January 1, 1995, the credit claimed may not exceed fifty percent (50%) of the tax, after credit for taxes paid another state.

( )

b. If the investment tax credit and the Idaho new jobs credit are claimed or carried over, the investment tax credit is limited further by the provisions of Section 63-3029F, Idaho Code. See Rules 735 through 738 of these rules.

( )

c. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.

( )

d. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 760 of these rules.

( )

03. Carryovers.

( )

a. Carryovers of investment tax credit for property acquired prior to January 1, 1995, may not include property acquired as replacement for reasons other than technical obsolescence.

( )

b. Investment tax credit earned on investments made before January 1, 1990, but not claimed against tax in the year earned is eligible for a five (5) year carryover. Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover.

( )

04. Motor Vehicle. Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight.

( )

05. Expended Property. The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment.

( )

**711. IDAHO INVESTMENT TAX CREDIT -- TAXPAYERS ENTITLED TO THE CREDIT (Rule 711).**

Section 63-3029B, Idaho Code.

( )

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code, or Rule 736 of these rules, whichever is applicable. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward.

( )

02. Conversion of C Corporation to S Corporation.

( )

a. An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on built-in gains, net capital gains, and excess net passive income. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. ( )

b. The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation shall be liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. ( )

03. Agricultural Cooperatives. The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year shall be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. ( )

a. The distribution to members is made as provided in Rule 704 of these rules. ( )

b. The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. ( )

04. Leased Property. Generally the credit for qualified investments in leased property is claimed by the lessor. ( )

a. If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit shall be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. ( )

b. If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. ( )

**712. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON MOVABLE PROPERTY IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1992 (Rule 712).**  
Section 63-3029B, Idaho Code. ( )

01. In General. The qualified investment for movable property is computed by multiplying the investment in that property by the Idaho apportionment factor, provided it otherwise qualifies for the investment tax credit. For example, a taxpayer determines the qualified investment for a fleet of new trucks based on the investment in the new trucks multiplied by the Idaho apportionment factor. The apportionment factor must be used to compute the credit for movable property unless the taxpayer can prove, pursuant to Section 63-3027(s), Idaho Code, the apportionment factor distorts the measure of Idaho business activity. ( )

02. Unitary Taxpayers. A corporation that is a member of a combined group must use its measure of business activity in Idaho to compute the qualified investment in movable property. The measure of business activity in Idaho must be computed using the denominators of the combined group. ( )

03. Recomputation of Carryover. If investment tax credit earned in taxable years beginning prior to January 1, 1992, is available to be carried over to taxable years beginning on or after January 1, 1992, the carryover must be recomputed if the credit earned included credit on movable property. Only the credit earned on property used in Idaho qualifies for the carryover as provided in Section 63-3029B, Idaho Code, and Rule 713 of these rules. This recomputation is made only for purposes of determining the allowable carryover. ( )

**713. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1991, BUT BEFORE JANUARY 1, 1995 (Rule 713).**  
Section 63-3029B, Idaho Code. ( )

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. Carryovers of investment tax credit earned on property that first qualified for the credit in taxable years beginning prior to January 1, 1992, are subject to the provisions of this rule. ( )

02. Election of Methods. The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the Idaho property factor method. The credit for all property used both in and outside Idaho must be computed using the method elected. ( )

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. ( )

b. If the Idaho property factor method is elected, the total basis of all assets used in and outside Idaho that otherwise qualify for the credit is multiplied by the Idaho property factor of the taxpayer. ( )

03. Unitary Taxpayers. The property factor of a corporation that is a member of a combined group is computed using its Idaho property as the numerator and the combined group's everywhere property as the denominator. ( )

04. Examples. ( )

a. Idaho Percentage-of-Use Method. In January, 1992, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 1992. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450). ( )

b. Idaho Property Factor Method. Assume the same facts as in Subsection 713.04.a., except that in addition to the road grader the taxpayer also purchased an asphalt layer and a dump truck. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is twenty percent (20%). The road grader cost fifty thousand dollars (\$50,000), the dump truck cost seventy-five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 1992. ( )

**714. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (Rule 714).**  
Section 63-3029B, Idaho Code. ( )

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. ( )

02. Election of Methods. The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. ( )

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. See Subsection 713.04.a. of these rules for an example of the percentage-of-use method. ( )

b. If the property factor numerator option is elected, the qualified investment is the basis of the asset included in the numerator of the Idaho property factor for the year the credit is earned. For example, if a taxpayer is in

the freight transportation business and thirty percent (30%) of his trucks' fleet miles were logged in Idaho during the year, 30% of the cost of a truck acquired that year would be included in the Idaho property factor numerator. If one of the trucks acquired that year traveled in Idaho, and cost one hundred thousand dollars (\$100,000), the amount included in the Idaho property factor numerator would be thirty thousand dollars (\$30,000). The qualified investment in this truck would also be thirty thousand dollars (\$30,000) resulting in a credit of nine hundred dollars (\$900).

( )

**715. IDAHO INVESTMENT TAX CREDIT -- RECAPTURE (Rule 715).**

Section 63-3029B, Idaho Code.

( )

01. In General. If a taxpayer is claiming or has claimed the investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit shall be made.

( )

02. Recomputation of the Investment Tax Credit.

( )

a. The recomputation of the credit and any recapture of prior credits is made pursuant to the Internal Revenue Code and Treasury Regulations for the taxable year in which the property is disposed of or ceases to qualify.

( )

b. The recapture is computed by multiplying the credit by the applicable recapture percentage in Subsection 715.04.

( )

c. The recapture of credit previously claimed against tax in prior taxable years is an addition to tax in the taxable year in which the property is disposed of or ceases to qualify. The addition to tax does not affect the computation of limitations used to determine the amount of investment tax credit or any other Idaho credit that may be claimed in the year of the recapture.

( )

03. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify.

( )

04. Applicable Recapture Percentages. For qualified business property placed in service after December 31, 1990, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. The length of time the asset qualifies determines the recapture percentage as follows:

( )

a. If less than one (1) year, use one hundred percent (100%);

( )

b. If more than one (1) year but less than two (2) years, use eighty percent (80%);

( )

c. If more than two (2) years but less than three (3) years, use sixty percent (60%);

( )

d. If more than three (3) years but less than four (4) years, use forty percent (40%);

( )

e. If more than four (4) years but less than five (5) years, use twenty percent (20%).

( )

**716. IDAHO INVESTMENT TAX CREDIT -- RECORD-KEEPING REQUIREMENTS (Rule 716).**

Section 63-3029B, Idaho Code.

( )

01. Information Required. Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following:

( )

a. A description of the property;

( )

b. The asset number assigned to the item of property, if applicable;

( )

c. The acquisition date and date placed in service;

( )

- d. The basis of the property; ( )
- e. The class of the property for recovery property or the estimated useful life for nonrecovery property; ( )
- f. The designation as new or used property; ( )
- g. The location and utilization (the usage both in and outside Idaho) of the property; ( )
- h. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and ( )
- i. The reason for acquisition if acquired prior to January 1, 1995. ( )

02. Accounting Records Subject to Examination. Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: ( )

- a. Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. ( )
- b. Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents. ( )
- c. Records verifying ownership including purchase contracts and cancelled checks. ( )
- d. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. ( )
- e. Purchase orders, authorizations for expenditures or other records that identify the reason for acquisition for property acquired prior to January 1, 1995. ( )
- f. Log books measuring the use of property used both in and outside Idaho. These logs must be maintained for each item of property on which investment tax credit is claimed. These logs should measure use of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use in Idaho of trucks, trailers, locomotives, and railcars shall be calculated according to actual mileage in and outside Idaho. ( )
- g. A system that verifies that property on which the investment tax credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. ( )

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. ( )

04. Unitary Taxpayers. Corporations claiming investment tax credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. ( )

**717. IDAHO INVESTMENT TAX CREDIT -- REPLACEMENT PROPERTY (Rule 717).**  
Section 63-3029B, Idaho Code. ( )

01. In General. The replacement property provisions apply to property acquired prior to January 1, 1995. ( )

02. Replacement Property Defined. Replacement property means property that is newly acquired, constructed, reconstructed, erected or placed into service and that performs functions that are the same as or similar to

functions performed by other property used in a taxpayer's trade or business. ( )

03. Technical Obsolescence. Replacement property is presumed to have been acquired, constructed, reconstructed, erected or placed into service for reasons other than technical obsolescence. The taxpayer claiming the credit for replacement property shall have the burden of proving that the replacement property was acquired, constructed, reconstructed, erected, or placed into service only for reasons of technical obsolescence of existing property or property previously used in the taxpayer's trade or business. If any other reason for purchasing an asset exists, such as the need to replace worn out equipment, normal replacement cycles, relocations, etc., the property does not qualify. ( )

**718. -- 729. (RESERVED).**

**730. CREDIT FOR CONTRIBUTIONS TO REHABILITATION FACILITIES (Rule 730).**

Section 63-3029C, Idaho Code. ( )

01. Qualified Contributions. Contributions must be made in cash or in kind during the taxable year the credit is claimed. Unpaid pledges do not qualify as contributions. ( )

02. Limitations -- Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: ( )

a. Twenty percent (20%) of his total income tax liability; or ( )

b. One hundred dollars (\$100) if filing other than a joint return or two hundred dollars (\$200) if filing a joint return. ( )

03. Limitations -- Corporations. The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: ( )

a. Ten percent (10%) of its total income tax liability; or ( )

b. Five hundred dollars (\$500). ( )

04. Pass-through Entities. The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 704 of these rules. ( )

05. Other Limitations. This credit plus any other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 760 of these rules for the priority of credits. ( )

06. Effect on Itemized Deductions. The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. ( )

**731. -- 734. (RESERVED).**

**735. CREDIT FOR NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (Rule 735).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996. ( )

01. In General. Only the activities listed in Section 63-3022H(7), Idaho Code, qualify as a revenue-producing enterprise. A revenue-producing enterprise does not include retail sales, professional, managerial or repair services. ( )

02. Multistate Businesses. To compute the credit, a business operating both within and without Idaho includes only the employees employed in Idaho in the revenue-producing enterprise. ( )

03. Multiple Activities. If a business is engaged in both revenue-producing and nonrevenue-producing activities and at least fifty percent (50%) of the taxpayer's total Idaho employees are employed in the revenue-

producing activity, the business as a whole qualifies as a revenue-producing enterprise. If less than fifty percent (50%) of the taxpayer's total Idaho employees are employed in the revenue-producing activity, the business as a whole does not qualify as a revenue-producing enterprise. ( )

04. Seasonal or New Business. An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. ( )

**736. CREDIT FOR NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE JOBS CREDIT AND JOBS CREDIT CARRYOVER (Rule 736).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996. ( )

01. In General. The number of new employees is used to compute the credit earned in the taxable year. To compute the credit for new employees, the taxpayer shall first calculate the number of employees in the revenue-producing enterprise. ( )

02. Calculating Number of Employees. ( )

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. ( )

b. Idaho Department of Employment Reports. The taxpayer should begin with his Idaho Department of Employment reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ( )

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ( )

03. Calculating the Number of New Employees. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ( )

a. The number of employees for the prior taxable year; or ( )

b. The average of the number of employees for the three (3) prior taxable years. ( )

04. Computing the Credit Earned. The number of new employees shall be rounded to the nearest tenth (.1) and must equal or exceed one (1) or no credit is earned. The credit earned is the lesser of the following: ( )

a. The number of new employees multiplied by five hundred dollars (\$500); or ( )

b. The net income of the revenue-producing enterprise, as determined pursuant to Rule 737 of these rules, multiplied by three and one-quarter percent (3.25%). ( )

05. Limitations. This credit and all other nonrefundable credits may not exceed thirty-three percent (33%) of the income tax liability in the year earned or claimed. The credit for taxes paid to other states is not subject to this limitation. See Section 63-3029H, Idaho Code, and Rule 760 of these rules for the priority order of credits. ( )

06. Carryover. To claim the carryover, the taxpayer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the taxpayer is not required to recapture the credit claimed in previous taxable years. However, the taxpayer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. ( )

07. Pass-Through Entities. See Rule 704 of these rules for pass-through entities and the calculation of credits. ( )

08. Unitary Taxpayers. ( )

a. A corporation may not use the credit for new employees earned by another member of the unitary group. See Rule 365 of these rules. ( )

b. Each corporation in a unitary group that claims the new jobs credit is subject to Section 63-3029H, Idaho Code, and Rule 760 of these rules for the priority order of credits. ( )

**737. CREDIT FOR NEW EMPLOYEES -- NET INCOME OF A REVENUE-PRODUCING ENTERPRISE (Rule 737).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996. The net income of a revenue-producing enterprise is calculated as follows: ( )

01. Proprietorships or Farms. The amount of income from Idaho activities as determined by the Internal Revenue Code that is reported as net profit or net loss on Schedule C or Schedule F on the federal income tax return. ( )

02. Corporations and Combined Corporate Returns. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. Each corporation included in a unitary combined report shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. ( )

03. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by shareholders on their Idaho income tax returns and before addition of compensation or income attributable to nonresident shareholders who do not report this income on Idaho income tax returns. ( )

04. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified to restore the deduction of income reported by partners on their Idaho income tax returns and before addition of compensation or income attributable to nonresident partners who do not report this income on Idaho income tax returns. ( )

**738. CREDIT FOR NEW EMPLOYEES -- DOCUMENTATION (Rule 738).**

Section 63-3029E and Section 63-3029F, Idaho Code, as in effect prior to January 1, 1996. ( )

01. Adequate Records. The taxpayer must maintain adequate records to document the qualifications of new employees claimed, the computation of the number of new employees, the qualification as a revenue-producing enterprise, the computation of the credit, the continued maintenance of adequate employment levels into carryover years, and the computation of any carryovers. ( )

02. Record Retention. These records must be maintained for as long as the credit may be carried over or until further assessments or deficiency determinations are barred by a period of limitation, whichever is longer. ( )

**739. -- 759. (RESERVED).**

**760. PRIORITY ORDER OF CREDITS (Rule 760).**

Section 63-3029H, Idaho Code. ( )

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. ( )

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: ( )

a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; ( )



- b. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; ( )
- c. Investment tax credit as authorized by Section 63-3029B, Idaho Code; ( )
- d. Credit for contributions to Idaho youth and rehabilitation facilities as authorized by Section 63-3029C, Idaho Code; ( )
- e. New jobs tax credit as authorized by Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996; and ( )
- f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code. ( )

**761. -- 769. (RESERVED).**

**770. GROCERY CREDIT (Rule 770).**  
Section 63-3024A, Idaho Code. ( )

- 01. Residents Required to File. ( )
  - a. A resident may claim a credit of fifteen dollars (\$15) for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. ( )
  - b. A resident age sixty-five (65) or older may claim a credit of thirty dollars (\$30) for each personal exemption described in Subsection 770.01.a. that represents an individual age sixty-five (65) or over. ( )
  - c. A resident who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. ( )
- 02. Residents Not Required to File. A resident who is not required to file an Idaho income tax return may be eligible for the credit. If eligible, the individual shall file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 each year. No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions. The following resident individuals are eligible for the credit: ( )
  - a. Individuals age sixty-two (62) or older; ( )
  - b. Disabled veterans; and ( )
  - c. Blind individuals. ( )
- 03. Part-year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. ( )
- 04. Members of the Armed Forces. A member of the United States Armed Forces who is required to file an Idaho income tax return and who is: ( )
  - a. Domiciled in Idaho is entitled to this credit; ( )
  - b. Residing in Idaho but who is a nonresident pursuant to the Soldiers' and Sailors' Civil Relief Act is not entitled to this credit. ( )
- 05. Spouse or Dependents of Armed Forces Members. A spouse or dependent of a nonresident military person stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is

presumed to be that of the nonmilitary spouse. ( )

06. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. ( )

**771. -- 799. (RESERVED).**

**800. VALID INCOME TAX RETURNS (Rule 800).**  
Section 63-3030, Idaho Code. ( )

01. Requirements of a Valid Income Tax Return. In addition to the requirements set forth in Rule 150, Administration and Enforcement Rules, an income tax return shall meet the requirements set forth in this rule. Those that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income tax return is considered to have filed no return. ( )

02. Copy of Federal Return Required. A taxpayer shall include a copy of his federal income tax return with his Idaho return unless he files an Idaho Form 40EZ. ( )

03. Partnerships That Do Not Transact Business in Idaho. If a partnership does not transact business in Idaho but has one or more resident partners, the partnership must file an Idaho Form 65 along with the first four (4) pages from its federal partnership return, Form 1065, and a copy of each Schedule K-1 reflecting distributions allocated to each Idaho resident partner. Submitting the Form 1065, Schedules K-1, and supporting schedules on microfiche or three and one-half (3-1/2) inch diskette along with Idaho Form 65 is acceptable. Taxpayers wishing to submit these schedules on a diskette should contact the Tax Commission for information regarding the acceptable format. ( )

**801. -- 804. (RESERVED).**

**805. JOINT RETURNS (Rule 805).**  
Section 63-3031, Idaho Code. ( )

01. Effect of Filing Status Used on Federal Returns. A taxpayer shall use the same filing status with Idaho as used when filing returns with the Internal Revenue Service. ( )

02. In General. ( )

a. A married couple may file a joint return. Section 63-3024, Idaho Code, provides for joint return tax rates for individuals filing joint returns and for an individual qualifying as a surviving spouse or head of household. ( )

b. If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter. For example, a married couple files a joint return before April 15 in the year due and desires to change their federal and state election to file separately. They may do so only if they file the separate returns on or before April 15. ( )

03. Resident Aliens or United States Citizens Married to Nonresident Aliens. A United States citizen or resident married to a nonresident alien may elect to treat the spouse as a resident alien allowing them to file a joint return. In this case they are taxed on their worldwide income. The individuals must be able to provide all records and information necessary to determine their tax liability. A statement declaring the election shall be attached to the return for the first taxable year for which the election is to apply. In addition, the statement shall include the name, address, and taxpayer identification number of each spouse, and shall be signed by both individuals making the election. ( )

**806. -- 809. (RESERVED).**

**810. TIME FOR FILING INCOME TAX RETURNS (Rule 810).**

Section 63-3032, Idaho Code. ( )

01. Requirement to File. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year, as defined by the Internal Revenue Code. ( )

02. Timely Filing Defined. If the last day for filing a return falls on a Saturday, Sunday or legal holiday, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor. ( )

03. Mail. Section 63-2221, Idaho Code, specifies that an income tax return sent through the mail is filed timely if it is postmarked on or before the due date of the return. ( )

04. Fifty-Two Fifty-Three (52-53) Week Years. A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31. ( )

**811. -- 814. (RESERVED).**

**815. EXTENSIONS OF TIME (Rule 815).**

Section 63-3033, Idaho Code. ( )

01. Individuals. An individual requesting an extension must file Idaho Form 51 on or before the fifteenth day of the fourth month following the close of the taxable year. The extension request must show the same filing status and social security numbers that will be used on the tax return. ( )

02. Estates, Trusts and Partnerships. An estate, trust, or partnership requesting an extension must file Idaho Form 41E on or before the fifteenth day of the fourth month following the close of the taxable year. ( )

03. Corporations. A corporation requesting an extension must file Idaho Form 41E on or before the fifteenth day of the fourth month following the close of the taxable year. Extension requests must be filed using the name and federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. If an extension request is filed for a group return, a list of all corporations required to file in Idaho must be attached. ( )

04. Approval of Extension. An extension of time to file will be approved if it is filed on time, is complete and any tax estimated to be due is paid in full. If approved, the extension extends the time for filing, without delinquency penalty, up to six (6) months after the due date of the return. The completed return may be filed at any time prior to the expiration of the six (6) month period. Once the completed return is filed, the extension period expires. Any remaining tax is due when the completed return is filed. The taxpayer will be notified only if the extension request is denied. ( )

05. Taxpayers Abroad. In addition to the automatic two (2) month extension provided in Section 63-3033(a), Idaho Code, an additional four (4) month extension is granted if the individual files a valid Idaho Form 51 before the end of the automatic two (2) month extension period. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return. ( )

06. Individuals in Combat Zone. Section 7508, Internal Revenue Code, applies to individuals who are

serving in a combat zone or who are hospitalized as a result of serving in a combat zone. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. ( )

07. Interest. If an extension of time to file an income tax return is granted, it does not alter the due date of the return for computing interest. Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. However, if an extension of time was granted, the taxpayer will not receive interest on amounts withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. ( )

08. Penalties. The estimated tax paid with the request for extension, when combined with the tax previously withheld or paid, must be at least eighty percent (80%) of the total tax due pursuant to the provisions of this chapter, or must equal or exceed the total tax reported on the tax return for the preceding year. If the taxpayer did not file a return last year, he must pay at least eighty percent (80%) of the total tax due for this taxable year. Total tax due means a tax that is correctly determined on the tax return. Any deficiency may be subject to a five percent (5%) penalty in addition to interest. ( )

**816. -- 819. (RESERVED).**

**820. CORPORATE ESTIMATED PAYMENTS -- IN GENERAL (Rule 820).**

Section 63-3036A, Idaho Code. ( )

01. Estimated Tax. The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho investment tax credit, less the sum of any credits. Estimated payments are not included as a credit. ( )

02. Computation of Estimated Payments. ( )

a. Estimated tax is paid in four (4) payments. Each estimated payment shall be twenty-five percent (25%) of the lesser of the tax required to be reported on the taxpayer's return filed for the preceding taxable year or ninety percent (90%) of the tax required to be paid on the current year's return. ( )

b. The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars (\$20), plus the permanent building fund tax, plus the recapture of investment tax credit, less credits excluding estimated payments. ( )

c. An estimated payment is not required if an Idaho return was not required for the previous taxable year. ( )

03. Revised Income Estimate. If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it shall recompute its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. ( )

04. Net Operating Loss Carryover. The allowable net operating loss carryover shall be deducted from income for the period before the estimated tax is computed. ( )

**821. CORPORATE ESTIMATED PAYMENTS -- PAYMENTS (Rule 821).**

Section 63-3036A, Idaho Code. ( )

01. Underpayments. A payment of estimated tax shall be applied to previous estimated payments of estimated tax in the order in which the estimated payments were required to be paid. To the extent the payment exceeds previous underpayments, it shall be applied to the estimated payment then due. ( )

02. Overpayments. ( )

a. If the estimated payments exceed the actual tax due, the overpayment may be claimed as a credit

against the next payment only to the extent it exceeds all underpayments of prior estimated payments. ( )

b. The overpayment shall be applied to deficiencies of tax, penalties, and interest prior to refund or application to a subsequent year's estimated payment or tax liability. ( )

c. A refund or credit may not be made to a corporation that fails to file its Idaho income tax return within three (3) years from the due date of the return for which it made the estimated payments. ( )

03. **Obligation to File Returns.** The payment of estimated tax does not relieve a corporation of the obligation to file a return when due pursuant to the Idaho Income Tax Act. An extension of time is not allowed for payment of estimated taxes. Making estimated payments as required in Section 63-3036A, Idaho Code, does not relieve the taxpayer of the requirement to pay the appropriate amount of tax with an application for extension of time to file or with the original return. ( )

**822. CORPORATE ESTIMATED PAYMENTS -- ANNUALIZED INCOME INSTALLMENT METHOD (Rule 822).**

Section 63-3036A, Idaho Code. ( )

01. In General. ( )

a. If a corporation uses the annualized income installment method for federal purposes and is required to make estimated payments for Idaho purposes, the corporation may use that method to compute its Idaho estimated tax. If a corporation does not use the annualized income installment method for federal purposes, the corporation may not use that method for Idaho purposes. ( )

b. See Section 6655, Internal Revenue Code, for the determination of annualized income. ( )

02. **Required Installment.** The required annualized income installment is the applicable percentage of the tax computed on the annualized income less the aggregate amount of any prior required installments for the reporting period. The applicable percentages for Idaho are: ( )

a. Twenty-two and one-half percent (22.5%) for the first period; ( )

b. Forty-five percent (45%) for the second period; ( )

c. Sixty-seven and one-half percent (67.5%) for the third period; and ( )

d. Ninety percent (90%) for the fourth period. ( )

03. **Computation of Tax.** The tax computed on the annualized income includes the annualized income multiplied by the corporate income tax rate, plus the permanent building fund tax, plus recapture of investment tax credit, less any credits excluding estimated payments. ( )

**823. CORPORATE ESTIMATED PAYMENTS -- SHORT TAXABLE YEAR (Rule 823).**

Section 63-3036A, Idaho Code. ( )

01. In General. If a short taxable year ends before an estimated payment due date, remaining estimated payments shall be made on the fifteenth day of the last month of the short taxable year. No estimated payment is required if the short taxable year is less than four (4) months or if the corporation does not meet the requirements to make an estimated payment before the first day of the last month in the short taxable year. ( )

02. Examples. ( )

a. X, a corporation filing on a calendar year basis, changes to a fiscal year beginning September 1, 1993 and ending August 31, 1994. For the short taxable year, January 1, 1993, to August 31, 1993, X must make estimated payments of twenty-five percent (25%) of its minimum payment on April 15, 1993, and June 15, 1993. The remaining payment of fifty percent (50%) of the minimum payment, twenty-five percent (25%) for the third payment

plus twenty-five percent (25%) for the fourth payment, is due on August 15, 1993, the fifteenth day of the last month of the short taxable year. ( )

b. If, in the example in Subsection 823.02.a., X does not meet the requirement to make estimated payments until June 15, 1993, X is required to pay fifty percent (50%) of the estimated tax, twenty-five percent (25%) for the third payment and twenty-five percent (25%) for the fourth payment. No payment for the first and second reporting period is required on August 15, 1993, the fifteenth day of the last month of the short taxable year. ( )

**824. CORPORATE ESTIMATED PAYMENTS -- MISCELLANEOUS PROVISIONS (Rule 824).**

Section 63-3036A, Idaho Code. ( )

01. Unitary Groups Filing Group Returns. ( )

a. Each corporation included in a group return that is required to make estimated payments shall separately compute its estimated tax. ( )

b. Estimated payments shall be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. ( )

02. S Corporations. An S corporation is subject to Section 63-3036A, Idaho Code, limited to its taxes on built-in gains, capital gains, excessive passive investment income, and recapture of investment tax credit. ( )

03. Tax-exempt Organizations. A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. ( )

**825. -- 829. (RESERVED).**

**830. INFORMATION RETURNS (Rule 830).**

Section 63-3037, Idaho Code. ( )

01. In General. Information returns are not required to be filed with the Tax Commission except as follows: ( )

a. Form 1099-MISC, Miscellaneous Income, if it is issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. ( )

b. Form 1099-S, Proceeds From Real Estate Transactions, if it is issued for transactions related to property located in Idaho. ( )

c. Form MSA-1, Medical Savings Accounts. ( )

02. Submitting Returns. Information returns shall be submitted to the Tax Commission on federal Form 1099 or magnetic media. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. ( )

03. Due Date of Information Returns. Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. ( )

**831. -- 839. (RESERVED).**

**840. ELECTION CAMPAIGN FUND (Rule 840).**

Section 63-3088, Idaho Code. ( )

01. In General. The individual income tax return has a block where each taxpayer may designate a portion of his income tax to be paid into the election campaign fund of a specific party qualified with the Secretary of State as of July 1 of each calendar year or he may designate no specific party. ( )

02. Changing Election. An election to designate a portion of the income tax to the election campaign fund may not subsequently be changed or withdrawn once the return is filed. ( )

**841. -- 844. (RESERVED).**

**845. DESIGNATION OF SCHOOL DISTRICT (Rule 845).**

Section 63-3089, Idaho Code. For purposes of designating the school district, the taxpayer's permanent place of residence is determined as of the last day of the taxable year. ( )

**846. -- 854. (RESERVED).**

**855. PERMANENT BUILDING FUND TAX (Rule 855).**

Sections 63-3082 through 63-3087, Idaho Code. ( )

01. In General. The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. ( )

02. Pass-through Entities. The permanent building fund tax does not apply to partnerships, estates, trusts or S corporations if all the income of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. A pass-through entity reporting and paying taxes of a nonresident partner, shareholder, or beneficiary is subject to the permanent building fund tax for each nonresident who is required to file an Idaho income tax return. ( )

03. Corporations Included in a Group Return. The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return. ( )

04. Inactive or Nameholder Corporations. An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax shall pay the permanent building fund tax. ( )

**856. -- 859. (RESERVED).**

**860. DONATIONS TO TRUST ACCOUNTS (Rule 860).**

Sections 63-3067A and 63-3067B, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed. ( )

**861. -- 869. (RESERVED).**

**870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).**

Sections 63-3035 and 63-3036, Idaho Code. ( )

01. Idaho Withholding Account Number Required. An Idaho withholding account number is required of: ( )

a. Each employer who pays salaries, wages, or other compensation to an employee for services performed in Idaho, including agricultural, household, and domestic employers; and ( )

b. Each person who withholds Idaho income tax, whether required or voluntary. ( )

02. Idaho Withholding Account Numbers Are Not Transferable. If a business is sold, the new employer shall apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity shall apply for a new withholding account number. Neither entity should report wages paid by the other entity, nor use the other entity's withholding account number. ( )

**871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).**

Sections 63-3035 and 63-3036, Idaho Code. ( )

01. In General. An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: ( )

a. The employee is a resident of Idaho; or ( )

b. Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to a nonresident employee; or ( )

c. Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to an agricultural, household or domestic employee. ( )

02. Services Performed Within and Without Idaho. An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on hours, mileage, or commissions. ( )

03. Exceptions to Withholding Requirements. Withholding is not required if: ( )

a. The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. ( )

b. The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; ( )

c. The compensation is paid to an interstate transportation employee of a rail, motor or water carrier covered by Title 49, Section 11504, United States Code, who is a nonresident of Idaho; or ( )

d. The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 1512, United States Code, who is a nonresident of Idaho and earns less than fifty percent (50%) of his compensation in Idaho; or ( )

e. The compensation is exempt from federal withholding, except as described in Section 63-3036, Idaho Code, and Subsection 871.01.c. ( )

**872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).**

Sections 63-3035 and 63-3036, Idaho Code. ( )

01. Filing of Returns. Generally, an employer shall file returns monthly to report payroll and remit any state income tax withheld. ( )

a. Employers who owe less than five hundred dollars (\$500) per calendar quarter and have established a satisfactory record of timely filing and payment of the tax may be allowed to file returns and remit the tax withheld quarterly. ( )

b. Agricultural, household and domestic employers shall file returns annually to report payroll and remit any state income tax withheld. ( )

c. A return shall be filed for each reporting period. For reporting periods in which the employer had no payroll or withheld no tax, the return shall be completed and filed by the due date. ( )

02. Extension of Time to File Returns. The Tax Commission may allow a one (1) month extension of time to file the withholding return. ( )

a. The employer shall file a written request that identifies the reason for the extension and include the required minimum payment by the due date of the withholding return. The minimum payment shall be at least ninety



percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. ( )

b. The employer shall file a return reporting the actual tax withheld for the period within one (1) month of the due date. The tax paid with the extension request shall be shown on the adjustment line of the return. Interest from the due date applies to any additional tax due. ( )

03. Employer's Annual Reconciliation. On or before the last day of February, employers shall file a return reconciling the tax remitted throughout the preceding calendar year and the state income tax withholding reported on the W-2s. ( )

04. Employee's Wage and Tax Statements. Federal Form W-2 or a form of similar size and design may be used. Total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. ( )

a. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. ( )

b. On or before the last day of February, each employer shall file with the Tax Commission a W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. ( )

c. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. ( )

d. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e), Idaho Code, and treated as if no W-2s were filed. ( )

05. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. ( )

**873. EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATES (RULE 873).**  
Section 63-3035, Idaho Code. ( )

01. Form W-4. Federal Form W-4, Employee's Withholding Allowance Certificate, shall be used for Idaho income tax withholding purposes. ( )

a. Employees subject to Idaho income tax withholding shall report the same marital status and total number of withholding allowances for Idaho as for federal income tax withholding purposes. ( )

b. Employers who are required to report exempt withholding status or excess withholding allowances to the Internal Revenue Service pursuant to Treasury Regulation 31.3402(f)(2)-1(g) shall submit a copy of this information to the Tax Commission. ( )

02. Verification and Notice. ( )

a. The Tax Commission may request verification of the marital status or withholding allowances claimed by an employee on a W-4. If the employee fails to verify the claimed marital status or withholding allowances, a Notice of Deficiency as provided by Section 63-3045, Idaho Code, may be issued. If a Notice of

Deficiency is issued but is not protested or is upheld on appeal, the Tax Commission shall issue an order specifying the marital status and maximum number of withholding allowances the employee is allowed for Idaho withholding purposes. ( )

b. The Tax Commission shall notify the employer of the order. The order is effective immediately on receipt by the employer and shall remain in effect the rest of the calendar year, unless the employee files a W-4 claiming fewer allowances than ordered. The employer is liable to the Tax Commission for any deficiencies that result from withholding in excess of the maximum number of withholding allowances specified in the most recent Tax Commission order. ( )

c. An employee subject to a Tax Commission order may petition the Tax Commission for a change to the order. If the employee establishes that a material change of circumstances has occurred, the Tax Commission shall issue a new order and notify the employer. The determination of the Tax Commission on any change to the order is final. ( )

**874. -- 879. (RESERVED).**

**880. CREDITS AND REFUNDS (Rule 880).**

Section 63-3072, Idaho Code. ( )

01. Overpayment. The term overpayment includes: ( )

a. A voluntary and unrequested payment greater than an actual tax liability. ( )

b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. ( )

c. All amounts erroneously or illegally assessed or collected. ( )

d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. ( )

02. Timely Claim Required for Refund. ( )

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. ( )

b. The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. ( )

c. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. ( )

03. Amended Returns as Refund Claims. A properly signed amended tax return shall constitute a claim for refund. The taxpayer must clearly set forth the amount claimed and explain why and how the original return is amended. Individuals use Form 40X, Amended Idaho Individual Income Tax Return. Corporations, partnerships, and fiduciaries use Form 41X, Amended Business Income Tax Return. ( )

04. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. ( )

05. Limitations on Refunds of Withholding and Estimated Payments. The Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. See Section 63-3035(e), Idaho Code. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. ( )

06. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. ( )

07. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. ( )

08. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. ( )

**881. -- 884. (RESERVED).**

**885. INTEREST ON REFUNDS (Rule 885).**  
Section 63-3073, Idaho Code. ( )

01. In General. Taxpayers shall receive interest on refunds of all amounts illegally or erroneously assessed or collected. No interest is payable on refunds of amounts that are voluntary or unrequested payments exceeding the tax due. ( )

02. Computation. The Tax Commission shall compute interest on refunds as follows: ( )

a. Taxes Erroneously or Illegally Assessed or Collected. Interest shall be computed from the date the excess amount was received or the due date for filing the return to which the amount relates, whichever is later. ( )

b. Refunds of Income Tax Withheld. The Tax Commission may not pay interest on refunds of withholding unless the refund is made more than sixty (60) days after the due date of the income tax return or the date it was filed, whichever is later. If a taxpayer unduly delays the processing of his refund by failing to respond promptly to requests for information or in any other way, the Tax Commission may deduct time attributable to the delay from the total processing time to determine whether interest shall be paid and from what date. Unless reasonable cause is established, undue delay occurs if the taxpayer's delay is more than sixty (60) days. Pursuant to this subsection, interest is computed from the due date, or extended due date, of the return. ( )

c. Tentative Payments. The Tax Commission may not pay interest on a refund resulting from an estimated or tentative payment. ( )

d. Refunds from Net Operating Loss and Capital Loss Carrybacks. Refunds from net operating loss and capital loss carrybacks include refunds from credits carried to years other than the year to which the net operating loss or capital loss deduction applies. Interest on these refunds is computed from the last day of the loss year. ( )

**886. -- 889. (RESERVED).**

**890. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (Rule 890).**  
Section 63-3069, Idaho Code. ( )

01. Final Determination. The term final determination as used in Section 63-3069, Idaho Code means

final federal determination as defined in Section 63-3068(f), Idaho Code. ( )

02. Written Notice. ( )

a. Written notice shall include copies of all Revenue Agents' reports, and any other documents and schedules required to clarify the adjustments to taxable income. If the final determination results in a refund of state taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. ( )

b. Written notice included with an income tax return for a year or years other than the year subject to the federal adjustment shall not constitute the required notification. ( )

03. Immediate Notification. The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within sixty (60) days of the final determination. ( )

**891. -- 894. (RESERVED).**

**895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (Rule 895).**  
Section 63-3068, Idaho Code. ( )

01. Federal Determination. The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. ( )

02. Protest of a Notice of Deficiency. If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. ( )

03. Requests on Behalf of a Decedent for Prompt Action by the Tax Commission. After a return has been filed, the personal representative, executor, administrator, or other fiduciary representing the estate of a decedent may file a written request for prompt action pursuant to Section 63-3068(e), Idaho Code. The request: ( )

a. Must be filed separately from any other document; ( )

b. Must identify the period for which the prompt action is requested; ( )

c. Must clearly say that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code; ( )

d. Does not apply to any return filed after the date of the request; and ( )

e. Applies only to returns reflecting income earned during the lifetime of a decedent, as defined for federal income tax purposes. ( )

04. Waiver of the Period of Limitation. If a taxpayer executes a waiver to extend the period of limitation, the waiver shall state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver shall apply to each corporation included in the combined group. ( )

**896. -- 899. (RESERVED).**

**900. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (Rule 900).**  
Section 63-3078, Idaho Code. The Tax Commission or its delegate may issue a jeopardy assessment or take any other action necessary to assess and collect the amounts due from liable individuals. The action may include the filing of a lien on the property of the individual found liable, or seizure and sale of his property or any other means of collection. The liable individuals shall have the remedies provided in Sections 63-3045, 63-3049, 63-3065, and 63-3074, Idaho Code. ( )

**901. -- 999. (RESERVED).**

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.02.01 - RULES GOVERNING ADMINISTRATION AND ENFORCEMENT**

**DOCKET NO. 35-0201-9601**  
**NOTICE OF PROPOSED RULE**

**ACTION:** The action, under 35.0201.9601, concerns the proposed adoption of rules governing the State Tax Commission, IDAPA. 35, Title 02, Chapter 01, Rules Governing Administration and Enforcement of Idaho Taxes.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rule-making will be held as follows:

On August 21, 1996  
10:00 a.m.  
Room 1CR5  
Idaho State Tax Commission  
800 Park Blvd., IV  
Boise, Idaho

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements contact the undersigned at (208) 334-7530.

**DESCRIPTIVE SUMMARY:** The Tax Commission proposes to promulgate an entirely new title and chapter, IDAPA 35.02.01. The new chapter separates from the Income Tax Administrative Rules those rules that relate to the administration and enforcement of taxes including taxes other than income taxes. Changes include restating and clarifying existing policies relating to the administration and enforcement of taxes. They also include deleting restatements of the code and making necessary changes for 1995 and 1996 legislative changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Janice Boyd at (208) 334-7530.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before August 21, 1996.

Dated this 22nd day of May, 1996.

Janice Boyd,  
State Tax Commission  
800 Park, Plaza IV  
P.O. Box 36  
Boise, Id 83722  
(208) 334-7530

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**TEXT OF DOCKET NO. 35-0201-9601**

**000. LEGAL AUTHORITY (Rule 000).**  
Section 63-3039, Idaho Code.

( )

01. In General. In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Income Tax Act.

( )

02. Related Taxes. This chapter contains rules relating to provisions of the Idaho Income Tax Act, Title 63, Chapter 30, Idaho Code, that are incorporated by reference into statutes relating to other taxes. These include: ( )

- a. Sales and Use Taxes, Title 63, Chapter 36, Idaho Code; ( )
- b. Motor Fuels Taxes, Title 63, Chapter 24, Idaho Code; ( )
- c. Petroleum Transfer Fee, Title 41, Chapter 49, Idaho Code; ( )
- d. Estate Taxes, Title 14, Chapter 4, Idaho Code; ( )
- e. Cigarette and Tobacco Products Taxes, Title 63, Chapter 25, Idaho Code; ( )
- f. Beer Taxes, Title 23, Chapter 10, Idaho Code; ( )
- g. Wine Taxes, Title 23, Chapter 13, Idaho Code; ( )
- h. Illegal Drug Taxes, Title 63, Chapter 42, Idaho Code; ( )
- i. Mine License Taxes, Title 47, Chapter 12, Idaho Code; ( )
- j. Kilowatt Hour Taxes, Title 63, Chapter 27, Idaho Code; and ( )
- k. The Uniform Unclaimed Property Act, Title 14, Chapter 5, Idaho Code. ( )

**001. TITLE AND SCOPE (Rule 001).**

Section 63-3039, Idaho Code. ( )

01. In General. These rules shall be cited as IDAPA 35.02.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35, Title 02, Chapter 01, "Tax Commission Administration and Enforcement Rules." ( )

02. Effective Date. To the extent allowed by statute, rules in this chapter shall be applied on their effective date to all taxable years open for determining tax liability. ( )

03. Closed Years or Issues. Taxable years closed by the statute of limitations remain closed and are not reopened by the promulgation, repeal or amendment of any rule. Issues resolved by the expiration of appeal time, a notice of deficiency determination, or a final decision of the Tax Commission will not be reopened by the promulgation, repeal, or amendment of any rule. ( )

04. Transactions Before an Effective Date. A rule will not be applied to transactions occurring before its effective date in a case where, in the opinion of the Tax Commission, to do so would create an obvious injustice. ( )

**002. WRITTEN INTERPRETATIONS (Rule 002).**

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, and Rule 110 of these rules, the Tax Commission has written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. To the extent that these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code, they are available for public inspection and copying at the main office of the Tax Commission. ( )

**003. ADMINISTRATIVE APPEALS (Rule 003).**

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ( )

**004. PUBLIC RECORDS (Rule 004).**

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code, to the extent these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code. ( )

**005. PURPOSE OF RULES (Rule 005).**

Section 63-3039, Idaho Code. If statutes appear to be clear and unambiguous without need for interpretation, expansion or construction, no rules have been promulgated. An effort has been made to prevent the rules from being merely repetitive of statutory provisions. Consequently, the rules do not stand alone as a statement of Idaho tax laws. Instead, each rule shall be read with the statute to which it relates. The title that introduces each rule is provided for the convenience of the reader and is not part of the rule. ( )

**006. -- 009. (RESERVED).**

**010. DEFINITIONS (Rule 010).**

Section 63-3003, Idaho Code. ( )

01. Pay, Paid, Payable or Payment. When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. As used herein, lawful money of the United States means currency or coin of the United States at face value and negotiable checks that are payable in money of the United States. Acceptance by the Tax Commission of a check that is subsequently dishonored by the bank on which it is drawn does not constitute payment. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the bank on which it was drawn. ( )

02. Return or Tax Return. Return and tax return mean a form or other document that an individual, corporation or other legal entity reports information, including information necessary to calculate taxes due to the Tax Commission or another governmental agency that requires a return be filed. See Rule 150 of these rules for the requirements of a valid tax return. ( )

03. Tax Commission. Tax Commission means the Idaho State Tax Commission established by Article VII, Section 12 of the Idaho Constitution and referred to in Sections 63-101 and 63-3038, Idaho Code. ( )

04. These Rules. The term these rules refers to IDAPA 35.02.01, relating to the administration and enforcement of taxes. ( )

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

**100. PETITIONING FOR PROMULGATION, AMENDMENT OR REPEAL OF RULES (Rule 100).**

Sections 63-3039 and 67-5230, Idaho Code. ( )

01. Filing a Petition. Any person may petition the Tax Commission for promulgation, amendment or repeal of a rule pursuant to the Idaho Administrative Procedure Act. A petition for rule-making must be in writing and contain: ( )

- a. An express statement that it is intended to be a petition; ( )
- b. Suggested language for the proposed rule; ( )
- c. A statement of the reasons why the proposal should be adopted; and ( )
- d. An estimate of the anticipated economic impact to the state of Idaho. ( )

02. Tax Commission's Response to Petition. If the petition is denied, the Tax Commission shall notify the petitioner of the reasons for denial within twenty-eight (28) days of receiving the petition. If rule-making is initiated, the Tax Commission shall provide the petitioner with written notice of the time and place of any public hearings the Tax Commission holds regarding the proposed rule. ( )

**101. --109. (RESERVED).**

**110. DECLARATORY RULINGS (Rule 110).**

Sections 67-5232 and 67-5255, Idaho Code.

( )

01. Filing a Petition.

( )

a. Any person, group, or other association may file a written petition with the Tax Commission asking for an interpretation or determination as to the applicability of a statute, rule, or order issued by the Tax Commission to the party filing the petition. To obtain the determination the petitioner's tax liability must be directly affected by the determination or the petitioner must demonstrate a direct financial interest in the determination sought.

( )

b. A petition must be submitted to the Tax Commission in writing and contain an express statement that it is intended to be a petition for a declaratory ruling pursuant to this rule or the Administrative Procedure Act.

( )

02. Tax Commission's Response to Petition. After receiving a petition, the Tax Commission shall:

( )

a. Issue a written declaratory ruling;

( )

b. Require the petitioner to submit additional facts, evidence, or information as the Tax Commission deems necessary to make a declaratory ruling; or

( )

c. Decline to make a declaratory ruling. The Tax Commission shall decline to make a declaratory ruling in the following circumstances:

( )

i. The identity of the taxpayer is not disclosed;

( )

ii. The request fails to include sufficient facts, evidence, or other information on which a declaratory ruling may be based;

( )

iii. The issue on which a declaratory ruling is sought is the subject of pending litigation or administrative appeal;

( )

iv. The petitioner is not a person directly affected by a resolution of the issue presented; or

( )

v. It appears there are other good or compelling reasons why a declaratory ruling should not be made.

( )

03. Factual Circumstances. A declaratory ruling applies only to the factual circumstances as submitted by the petitioner and applies only to the petitioner seeking the declaratory ruling. The declaratory ruling may not be relied on by a person not named as a petitioner. The declaratory ruling is void if the facts changed significantly, all relevant facts were not disclosed at the time of the petition, or the facts were not accurately represented to the Tax Commission. If the statutory provisions or administrative rules affecting the declaratory ruling are amended by the legislature or the Tax Commission, the declaratory ruling is void as of the date of the amendment to the statute or rule.

( )

04. Withdrawal of Ruling. If after issuing a declaratory ruling the Tax Commission believes the declaratory ruling is erroneous, it may withdraw the declaratory ruling by giving written notice to the petitioner at his last known address. If the petitioner has relied on the declaratory ruling in good faith, the Tax Commission may not assess any tax liability accruing between the dates the declaratory ruling was issued and its withdrawal.

( )

05. Confidentiality. Declaratory rulings by the Tax Commission are information subject to the confidentiality requirements of Sections 63-3076 and 63-3077, Idaho Code and Rule 700 of these rules. Factual, financial, or other information relating to a taxpayer is not public record and may not be disclosed to any person except as provided by Sections 63-3076 and 63-3077, Idaho Code, or as authorized by the taxpayer.

( )

06. Appeals. Sections 67-5270 through 67-5279, Idaho Code, govern the judicial review of declaratory



rulings. ( )

**111. -- 129. (RESERVED).**

**130. ELECTRONIC TRANSFER OF FUNDS (Rule 130).**

All taxes due the state of Idaho shall be paid by electronic funds transfer when the amount is one hundred thousand dollars (\$100,000) or greater, in accordance with Sections 67-2026 and 67-2026A, Idaho Code. ( )

**131. -- 139. (RESERVED).**

**140. APPLICATION OF PARTIAL PAYMENT (Rule 140).**

If bad check charges, penalties, or interest accrue as a result of any deficiency in tax, partial payments shall apply in the following order: to bad check charges, penalty, interest, and tax. ( )

**141. -- 149. (RESERVED).**

**150. REQUIREMENTS OF A VALID TAX RETURN (Rule 150).**

01. In General. All tax returns filed with the Tax Commission shall be complete and copies of all pertinent schedules or computations shall be attached. The results of supporting computations shall be carried forward to applicable lines on the tax forms. A statement referencing an attached schedule is not acceptable if the taxpayer does not enter the necessary information from the attachments on the tax form. ( )

02. Identification Number Required. All Idaho tax returns or other documents filed by a taxpayer shall include the taxpayer's social security number, federal employer identification number, or Internal Revenue Service processing number. ( )

03. Information to Compute Tax. A return that does not provide sufficient financial information to compute a tax liability is not a valid tax return. ( )

04. Accuracy and Required Information. A return need not be totally accurate to be a valid return. However, for the return to be valid it must: ( )

a. Be identified as a return; ( )

b. Be filed using the proper form prescribed by the Tax Commission; ( )

c. Contain a computation of the tax liability and sufficient supporting information to show how the taxpayer reached that result; and ( )

d. Reflect the taxpayer's honest and genuine effort to satisfy the requirements of the law. For purposes of determining if these requirements are met, documents that contain the following are clearly insufficient: ( )

i. Broad unspecified constitutional claims; ( )

ii. Unsupported statements that claim no Idaho activity or income exists; and ( )

iii. Language that demonstrates a protest against the tax law or its administration. ( )

05. Signing of Returns. ( )

a. Paper Returns. The taxpayer or an authorized officer or representative shall manually sign the tax return. Both spouses shall sign a joint return. If a taxpayer is deceased or cannot sign his name, a duly authorized person, such as a surviving spouse, executor, administrator or person holding power of attorney may sign the return, indicating his status or relationship. If a taxpayer signs with an X, a witness shall attest his mark. The signature of the taxpayer constitutes a written declaration of the return's accuracy. ( )

b. Electronically Filed Returns. The name of the taxpayer, the name of the taxpayer's authorized agent, or the taxpayer's identification number, will constitute a signature when transmitted as part of the return information on returns filed by electronic means by the taxpayer or at the taxpayer's direction. The tax preparer shall keep a signed copy of the tax return on file for the applicable statute of limitations as required by Section 48-603B, Idaho Code. ( )

06. Reproduced and Substitute Forms. Any reproduced or substitute form or schedule must meet the requirements of the Tax Commission's original form. ( )

a. Specific instructions for substitute forms are available on request from the Tax Commission. The use of substitute forms requires prior approval of the Tax Commission. The Tax Commission may reject nonapproved forms. ( )

b. Reproduced forms and photocopies of official Tax Commission forms are acceptable if the weight and size of the paper are comparable to that used in the official forms. These forms and schedules must be sufficiently legible so they may be reproduced. ( )

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

**200. EXAMINATION OF BOOKS AND WITNESSES AND DISCOVERY (Rule 200).**

Sections 63-3042 and 63-3043, Idaho Code. ( )

01. Retention of Working Papers. Each taxpayer shall retain and make available on request all business records and working papers used in the preparation of, or relevant to the correctness of, any tax return subject to examination by the Tax Commission. ( )

02. Failure to Comply. In addition to other enforcement provisions provided by statute, failure to produce records supporting amounts or information shown on a return may result in appropriate adjustments by the Tax Commission, including either or both of the following: ( )

a. The disallowance of claimed deductions, credits, or exemptions to which the requested information relates; ( )

b. The presumption that the information not provided is prejudicial to the taxpayer's position in regard to the issue or issues to which the requested information relates. ( )

03. Discovery. The Tax Commission may engage in all forms of discovery permitted by the Idaho Rules of Civil Procedure by attaching the appropriate discovery request to a summons issued pursuant to Section 63-3042, Idaho Code. Discovery requests may include interrogatories, depositions, and requests for production or inspection. Failure to respond to a discovery request in the manner required by the Idaho Rules of Civil Procedure results in the reissuance of a summons to the taxpayer and the imposition of sanctions permitted by statute or these rules for failure to respond to the summons. ( )

04. Cost Reimbursement to a Third-Party. If the Tax Commission summonses a third-party to produce records, the Tax Commission may reimburse the third-party at a rate not to exceed seventy-five cents (\$0.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons. ( )

**201. -- 204. (RESERVED).**

**205. ACTION TO COLLECT UNPAID TAX OR DEFICIENCY (Rule 205).**

Section 63-3050, Idaho Code. ( )

01. In General. A debtor-creditor relationship exists between the taxpayer and the state of Idaho with regard to taxes imposed by the state of Idaho. The only exception is if a trust relationship is imposed. ( )

02. Authority for Collection. Sections 63-3050, 63-3063, and 63-3064, Idaho Code, authorize the Tax Commission to pursue any legal action for the payment of taxes owing. This authority is in addition to the specific

collection authority granted by Sections 63-3051 through 63-3061, Idaho Code. ( )

**206. -- 209. (RESERVED).**

**210. PROPERTY SUBJECT TO LIEN (Rule 210).**  
Section 63-3051, Idaho Code. ( )

01. Statutory Lien. A statutory lien is created when demand for payment of any assessed deficiency in tax, interest, penalties, or other charges is made and the taxpayer fails to pay the assessment. The lien extends to all real and personal property, or rights therein, owned or acquired by the taxpayer from the date the lien is created until the time it expires. The lien is deemed to be created on the date demand for payment is made. The lien is not effective as to third-parties until a notice of lien is filed. ( )

02. Duration of Lien. A notice of lien remains in effect for five (5) years from the date the lien notice is first filed in the county recorder's office where the taxpayer may have property. The lien may be extended by filing another notice of tax lien with the proper county within that period. The lien, as extended, is valid and applies against only the real property of the taxpayer. ( )

**211. -- 214. (RESERVED).**

**215. RELEASE OR SUBORDINATION OF TAX LIEN (Rule 215).**  
Section 63-3055, Idaho Code. ( )

01. Request for Release of Lien. A request for a release of all or a portion of the property subject to a state tax lien, must be in writing and addressed to the Tax Commission. The request must include: ( )

- a. The lien number and date; ( )
- b. The reasons for the request; and ( )
- c. Supporting documentation. ( )

02. Erroneous Lien. If a lien is filed in error, the lien shall be released as soon as possible. The statement "This release is based on a finding that the lien herein released was filed in error" shall be shown on the release filed. ( )

**216. -- 219. (RESERVED).**

**220. LEVY OR DISTRAINT WARRANT (Rule 220).**  
Section 63-3059, Idaho Code. ( )

01. In General. Levy and distraint is the summary method of collecting taxes when the assessment and lien remain unsatisfied. The Idaho Income Tax Act provides that if the taxpayer fails to pay assessed taxes or deficiencies, the tax may be collected by levy on all property or property rights belonging to the taxpayer. ( )

02. Serving of Levy. A levy or notice of levy may be served on a person in possession of or obligated with respect to property rights of the taxpayer. Property identified as belonging to the taxpayer may be levied on. The authority to execute a levy or warrant is vested in a member of the Tax Commission, a deputy commissioner, a sheriff, constable, or a deputy of the Tax Commission. ( )

03. Surrender of Property. A person in possession of property or property rights on which a levy has been made shall surrender the property to the process server on demand. If the holder fails to surrender the property, he may be personally liable to the Tax Commission for the amount or value of the property so held and retained. ( )

**221. -- 224. (RESERVED).**

**225. PROCEEDINGS ON LEVY OR DISTRAINT (Rule 225).**

Section 63-3060, Idaho Code. ( )

01. In General. The proceedings on levy or distraint have the same force and effect as a writ of execution issued by a court on final judgment except that the right to claim exemption from execution is limited by Section 63-3058, Idaho Code. The sale or liquidation of property seized shall proceed in the manner provided by the general statutes of the state of Idaho relating to execution on judgment. See Title 11, Idaho Code. ( )

02. Sale of Property. All costs of execution and sale are the responsibility of the taxpayer and shall be collected as part of the obligation owing the state. Any moneys obtained on the sale of the taxpayer's property shall be applied in the following order: to costs incurred, penalty, interest, and principal or tax owing. Any moneys received in excess of the total obligation shall be paid to the taxpayer unless, prior to disbursement, other creditors file a claim on the state. See Section 11-202, Idaho Code. ( )

**226. -- 229. (RESERVED).**

**230. JEOPARDY ASSESSMENTS (Rule 230).**

Section 63-3065, Idaho Code. ( )

01. Termination of Tax Periods. The Tax Commission may terminate the tax period of a taxpayer at any time when payment of a tax is in jeopardy. This termination causes the tax for the terminated period, and any unpaid tax for the preceding tax period, to be immediately due and payable. ( )

a. No particular form of notice of the jeopardy assessment is required. Notice may be served on the taxpayer or his authorized agent, or mailed to his last known address. ( )

b. Notwithstanding any action by the Tax Commission pursuant to Section 63-3065, Idaho Code, and this rule, a taxpayer shall file a tax return at the end of his regular accounting period. Any tax collected as a result of termination pursuant to this statute is applied against the tax due at the end of the current tax period. ( )

02. Appeals Procedure. If the taxpayer does not agree with the jeopardy assessment, the taxpayer may file a petition for redetermination. The petition must be in writing and filed within sixty-three (63) days after notice of the jeopardy assessment. The taxpayer must either pay the assessment in full or file with the Tax Commission a bond in the manner set forth in Rule 600 of these rules. The bond must be conditioned on the payment of any tax, penalty, and interest that may be found due. ( )

03. Property Under Distraint. Property under distraint that has not been sold or otherwise disposed of may be returned to the taxpayer on payment of the assessment in full, plus the costs of the distraint. Property may also be returned if the taxpayer files with the Tax Commission a bond in the amount of the assessment, executed by a surety licensed and authorized to do business in Idaho and conditioned on payment of the full amount of the assessment plus the interest and costs. Either action shall begin within the time prescribed by Section 63-3065(b), Idaho Code, or an extension ordered by the Tax Commission. ( )

04. Request for Return of Seized Property. A taxpayer may file a written petition for the return of property seized to satisfy a jeopardy assessment. The petition must be filed prior to the Tax Commission or a sheriff posting or publishing a notice of sale or other disposition of property, or within fifteen (15) days from the date of seizure, whichever time is greater. The Tax Commission may grant the petition based on facts disclosed or found that indicate the taxpayer will pay the assessment within a reasonable time. ( )

**231. -- 299. (RESERVED).**

**300. ASSESSMENT OF TAX (Rule 300).**

Sections 63-3044, 63-3045, and 63-3045A, Idaho Code. ( )

01. In General. Tax is assessed on the date a tax return showing tax owing is filed, even if the return is corrected by the Tax Commission for mathematical errors. If the taxpayer does not compute a tax on an otherwise properly filed return, any tax calculated by the Tax Commission to be owed is assessed the date payment was due.

( )

02. Deficiency of Tax. If the Tax Commission determines a deficiency of tax, the additional tax is assessed when the deficiency determination becomes final. A deficiency determination becomes final when the taxpayer fails to timely petition for redetermination of the deficiency or to timely appeal the decision of the Tax Commission. If the taxpayer timely appeals the decision of the Tax Commission, the deficiency determination becomes final when the decision of the Board of Tax Appeals, or the judgment of the court, becomes final and can no longer be appealed. ( )

03. The Record of Assessment. The record of assessment shall be the Notice and Demand for payment of taxes that also functions as the required notice for the distraint and sale of a taxpayer's personal property pursuant to Section 63-3057, Idaho Code. For a jeopardy assessment as provided for in Sections 63-3065, 63-3630, and 63-4208, Idaho Code, the Notice of Jeopardy Assessment is the record of assessment. In cases where the tax is self-assessed and no Notice and Demand is issued, the record of assessment shall be the Tax Commission's processing record of the filing of the self-assessed return. ( )

04. Admission to Understatement of Tax. A taxpayer may admit to an understatement of tax at any time. An admission is not considered a compromise of tax, and does not affect the statutory period of limitations for an audit or additional assessment or for a claim for refund filed by the taxpayer. ( )

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

**310. INTEREST ON AMOUNTS OF TAX ACCRUING OR UNPAID (Rule 310).**

Section 63-3045, Idaho Code. ( )

01. July 1, 1981, Through December 31, 1993. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of the period from July 1, 1981, through December 31, 1993, subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is twelve percent (12%) simple interest. ( )

02. Calendar Year 1994. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1994 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is seven percent (7%) simple interest. See Revenue Ruling 93-64. ( )

03. Calendar Year 1995. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1995 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is nine percent (9%) simple interest. See Revenue Ruling 94-61. ( )

04. Calendar Year 1996. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1996 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is eight percent (8%) simple interest. See Revenue Ruling 95-67. ( )

**311. -- 319. (RESERVED).**

**320. NOTICE OF DEFICIENCY -- FILING A PROTEST (Rule 320).**

Section 63-3045, Idaho Code. ( )

01. In General. If a taxpayer does not agree with a deficiency determination, the taxpayer may file a protest with the Tax Commission to request a redetermination of the deficiency. The protest must be in writing and filed within sixty-three (63) days from the date the Notice of Deficiency is mailed. The protest must contain the following information to be perfected: ( )

a. Name, address and pertinent identification number; ( )

b. The period to which the deficiency relates; ( )

c. The specific item or items in the Notice of Deficiency to which the taxpayer objects; and ( )

- d. The factual or legal basis for the objections made. ( )
02. Receipt of Protest. Once a protest is received by the Tax Commission, the sixty-three (63) day period ends. ( )
03. Unperfected Protest. ( )
- a. If the Tax Commission determines the protest does not include all the items required by this rule, the Tax Commission shall notify the taxpayer of the items needed to perfect the protest. The taxpayer has twenty-eight (28) days from the date the notice is mailed to provide the information. ( )
- b. Example. A Notice of Deficiency is mailed to a taxpayer on August 31. He has sixty-three (63) days from August 31 to protest his deficiency determination. The Tax Commission receives his protest on September 10. The sixty-three (63) day period stops on September 10. The Tax Commission determines the protest is not perfected and mails notification to the taxpayer on September 15. The taxpayer has twenty-eight (28) days or through October 13 to perfect the protest. After October 13, he may no longer perfect his protest or submit a new protest even though the original sixty-three (63) day period would have run through November 2. ( )
04. Failure to Timely Perfect a Protest. Failure to perfect a protest within twenty-eight (28) days is treated the same as if no protest had been filed, pursuant to Section 63-3045(5), Idaho Code. ( )

**321. -- 324. (RESERVED).**

**325. NOTICE OF DEFICIENCY -- PROTEST PROCEDURES (Rule 325).**  
Section 63-3045, Idaho Code. ( )

01. In General. Once a perfected protest has been filed with the Tax Commission, the taxpayer may: ( )
- a. Request a hearing; ( )
- b. Submit additional documents; or ( )
- c. Request a final decision from the Tax Commission. ( )
02. Hearings. A Commissioner or other person designated by the Tax Commission shall conduct a hearing in the form of an informal conference. If the taxpayer chooses to be represented by another person, a valid power of attorney form must be provided to the Tax Commission. The taxpayer has the right to be accompanied by another person, however, the Tax Commission may limit the number of people accompanying the taxpayer. If a protestant fails to comply with a summons or subpoena or fails to appear for the informal conference, the Tax Commission may issue a decision without further hearing. ( )
03. Submission of Additional Documents. A taxpayer may submit additional statements, documents, or other materials he desires to have the Tax Commission consider before deciding the protest. If the one hundred eighty (180) day period for issuing a final decision has begun, the Tax Commission may require that a taxpayer execute a waiver of the one hundred eighty (180) day period before the additional information or documentation will be considered. The one hundred eighty (180) day period is provided by Section 63-3045B, Idaho Code. ( )
04. Request for a Final Decision. A request for a final decision must be in a letter addressed to the employee or agent of the Tax Commission from whom the acknowledgment of the protest was received or to the individual subsequently assigned to resolve the protest. The request must be the sole subject of the letter and must clearly identify the taxpayer and the Notice of Deficiency. ( )
05. Simultaneous Request For a Final Decision and a Hearing. If the taxpayer makes a simultaneous request for both a final decision and a hearing, the Tax Commission shall treat this as a request for a hearing. The one hundred eighty (180) day period begins when the hearing concludes. ( )

06. Issues. Redetermination of any tax or refund due is not limited to the specific issue or issues protested for the taxable year, unless limited by Section 63-3068(f), Idaho Code. ( )

07. Amended Return After Audit. An amended return will not be accepted for a taxable year for which a protest is pending unless the taxpayer demonstrates that the changes on the amended return are unrelated to issues examined in the audit or that the changes are the result of federal audit adjustments. Amended returns or other information affecting the taxpayer's liability for the period subject to protest may be submitted as part of the procedure for resolving the protest. ( )

**326. -- 399. (RESERVED).**

**400. PENALTIES -- GENERAL RULES (Rule 400).**

Section 63-3046, Idaho Code. ( )

01. Penalty Presumed Appropriate. If a taxpayer becomes liable to pay the Internal Revenue Service a penalty similar to one provided in Section 63-3046, Idaho Code, it shall be presumed the penalty is appropriate as part of the related state tax deficiency. ( )

02. Credits to be Considered. The penalties referred to in this rule apply to the net amount of the tax due after applicable credits. ( )

03. Minimum Penalty. A ten dollar (\$10) minimum penalty applies to each penalty imposed by Sections 63-3046(a) through 63-3046(e), Idaho Code. For example, if a taxpayer fails to file only one (1) withholding tax statement which generally results in a penalty of two dollars (\$2) pursuant to Section 63-3046(e), Idaho Code, a penalty of ten dollars (\$10) will be applied. ( )

04. Dishonored Checks. The charge provided by Section 63-3046(g), Idaho Code, is ten dollars (\$10) for each dishonored check or instrument. This charge may be added even if sufficient funds are in the taxpayer's account after the date of dishonor. ( )

**401. -- 409. (RESERVED).**

**410. NEGLIGENCE PENALTIES (Rule 410).**

Section 63-3046(a), Idaho Code. ( )

01. Negligence Defined. Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. ( )

02. Imposition of Penalty. A five percent (5%) negligence penalty may be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations. Examples of situations that justify the penalty include the following: ( )

a. Taxpayer continues to make errors in reporting income, sales or assets, or claims erroneous deductions, exemptions, or credits even though these mistakes have been called to his attention in previous audit reports. ( )

b. Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. ( )

c. Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. ( )

d. Taxpayer fails to offer any explanation for understating taxes. ( )

e. Unreported taxable income is a material amount as compared with the reported income. ( )

f. Taxpayer exhibits a careless disregard of his tax obligations. ( )

- g. For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. ( )
- h. Failure to make the required estimated payment when requesting an extension of time for filing a return. ( )
- i. Unintentional failure to pay the tax with the return. ( )
- j. Taxpayer fails to provide the Tax Commission with a copy of a final federal determination within sixty (60) days of the date of the determination. See Rule 890 of the Income Tax Administrative Rules. ( )
- k. Taxpayer fails to file an Idaho amended return within sixty (60) days after filing a federal amended return. ( )
- l. Taxpayer fails to respond to requests to produce records substantiating items shown on the return. ( )

03. Negligence Penalty for Sales and Use Tax Deficiencies. For sales tax purposes, pertinent computations relating to substantial errors in Subsection 410.01.a. or material amount in Subsection 410.01.e., might include the following: ( )

- a. The ratio of untaxed sales that should have been taxed to total taxable sales; ( )
- b. The ratio of untaxed sales that should have been taxed to total sales; ( )
- c. The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; or ( )
- d. Other computations bearing on negligence. ( )

04. Waiver of Negligence Penalty. ( )

a. The Tax Commission may waive the penalty if the taxpayer can show reasonable cause for the failure that resulted in the deficiency. ( )

b. The Tax Commission shall consider all factors when determining whether to waive a negligence penalty. One factor is the taxpayer's record for filing and paying state taxes. A good record for filing and paying tax on returns filed annually is not by itself a sufficient reason to waive the penalty. ( )

05. Circumstances Precluding Waiver of Penalty. The following circumstances do not constitute sufficient cause to waive the penalty: ( )

- a. An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; ( )
- b. An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or ( )
- c. Inability to pay the tax. ( )

**411. -- 419. (RESERVED).**

**420. FRAUD PENALTIES (Rule 420).**  
Section 63-3046(b), Idaho Code. ( )

01. In General. In determining fraud penalties, the Tax Commission shall review all facts and



circumstances surrounding preparation of a taxpayer's return including all of the following: ( )

- a. Public and private statements regarding income or sales of the taxpayer; ( )
- b. Business and financial practices of the taxpayer; ( )
- c. Taxpayer's knowledge of principles of finance, accounting, law, or taxation; ( )
- d. Objective and subjective evidence showing or tending to show intent to evade payment of taxes. ( )

02. Interaction Between Fraud and Negligence Penalties. Assessment of the fraud penalty precludes assessment of the negligence penalty on the deficiency. ( )

**421. -- 429. (RESERVED).**

**430. PENALTY FOR FAILURE TO FILE, FAILURE TO PAY, OR DELINQUENT FILING (Rule 430).**  
Section 63-3046(c), Idaho Code. ( )

01. In General. A penalty of five percent (5%) per month, not to exceed twenty-five percent (25%) of the deficiency amount including subsequent adjustments, may be imposed against a taxpayer who files a delinquent return, who files timely but pays late, or who fails to file a return. ( )

02. Other Penalties. Imposing this penalty does not preclude the imposition of another penalty pursuant to Section 63-3046, Idaho Code. ( )

03. Insufficient Postage. The proper amount of prepaid postage is required on returns mailed to the Tax Commission. If a tax return is returned to the sender due to insufficient postage, it may result in the return becoming delinquent and subject to the delinquency penalty specified by Section 63-3046(c), Idaho Code. ( )

04. Month Defined. If the due date falls on the last day of a calendar month, each succeeding calendar month, or fraction of it, during which the failure to file continues constitutes a month. If the due date is not the last day of the calendar month, the period that ends with the same date of the next month constitutes a month. If the succeeding month has no corresponding date, the last day of the month is substituted. Any fraction of a month from the date ending the preceding monthly period to the date of payment constitutes a full month. ( )

**431. -- 499. (RESERVED).**

**500. ADJUSTED OR COMPROMISED CASES -- CLOSING AGREEMENTS (Rule 500).**  
Sections 63-3047 and 63-3048, Idaho Code. ( )

01. Grounds for Compromise. The Tax Commission may compromise the tax liability, penalties, or both, of a case if one or more of the following circumstances exist: ( )

- a. Doubt as to liability; ( )
- b. Doubt as to collectibility; or ( )
- c. Extreme hardship of the taxpayer. ( )

02. Final Judgments. The Tax Commission may not compromise the tax liability if the liability has been established by a final judgment of a court, and no doubt exists as to the taxpayer's ability to pay or the state's ability to collect the amounts owing. ( )

03. Agreement Final. A compromise agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer shall be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or

misrepresentation of a material fact. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. ( )

04. Form of Compromise. The taxpayer must submit an offer of compromise in writing and include a remittance in the amount of the offer. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission shall promptly notify the taxpayer. ( )

05. Withdrawal of Offer. A taxpayer may withdraw his offer in compromise at any time prior to its acceptance by the Tax Commission. ( )

**501. -- 599. (RESERVED).**

**600. JUDICIAL REVIEW -- REQUIRED SECURITY (Rule 600).**

Section 63-3049(b), Idaho Code. ( )

01. Acceptable Security. For purposes of obtaining judicial review, the taxpayer must submit one of the following securities: ( )

a. Cash in the form of a cashier's check, money order, or other certified funds that are payable to the Tax Commission. ( )

b. A bond executed by a surety company licensed and authorized to do business in Idaho, conditioned on the payment of any tax, penalty, and interest that may be found due by the court. ( )

c. Bearer bonds or other similar obligations of the United States having a market value not less than twenty percent (20%) of the total deficiency. ( )

d. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation. They must be made in the name of the depositor, payable to the Tax Commission, and contain a provision that interest earned shall be payable to the depositor. ( )

e. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in Idaho and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the Tax Commission, along with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Tax Commission. ( )

f. Irrevocable letters of credit not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Tax Commission. The terms of the letter of credit must permit the Tax Commission to make demand directly against the issuer of the letter of credit for not less than twenty percent (20%) of all taxes, penalties, and interest due and unpaid, on which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. ( )

02. Other Security. Other security may be accepted by the Tax Commission to secure a taxpayer's right of appeal if the Tax Commission has previously agreed in writing to accept the other security in lieu of a cash payment. ( )

**601. -- 699. (RESERVED).**

**700. DISCLOSURE OF INFORMATION -- SCOPE (Rule 700).**

Sections 63-3076 and 63-3077, Idaho Code. ( )

01. In General. Rules 700 through 709 of these rules provide guidelines for disclosure of information gained by the Tax Commission in administering and enforcing tax laws when the information is confidential pursuant

to Sections 63-3076 and 63-3077, Idaho Code. ( )

02. Application of Rule. Tax Commissioners and Tax Commission employees and agents may not disclose returns or return information, as defined in this rule, unless authorized by the taxpayer, statute, or rule. ( )

03. Definition of Return. For purposes of Rules 700 through 709 of these rules, the term return means the following whether required, provided for, or permitted by any statute administered by the Tax Commission that is filed with the Tax Commission by, for, or with respect to any person: ( )

a. Any tax or information return; ( )

b. Declaration of estimated tax; ( )

c. Claim for refund; and ( )

d. Any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return. ( )

04. Definition of Return Information. For purposes of Rules 700 through 709 of these rules, the term return information means: ( )

a. A taxpayer's identity; ( )

b. The nature, source, or amount of a taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments; ( )

c. The status of the processing or investigation of the taxpayer's return; ( )

d. Any other data, received by, recorded by, prepared by, furnished to, or collected by the Tax Commission with respect to a return or with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of any person pursuant to the laws administered by the Tax Commission for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense; ( )

e. Any part of a written determination, or documents relating to a written determination, that is not open to public inspection; and ( )

f. Information filed with, or furnished to, the Tax Commission by or for the taxpayer to whom the information relates. ( )

05. Information That is Not Return Information. The following are examples of information not considered return information for purposes of Rules 700 through 709 of these rules: ( )

a. Decisions published pursuant to Section 63-3045B, Idaho Code; ( )

b. Data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. ( )

06. Auditing Standards. Standards used when selecting returns for examination and data used when determining these standards may not be disclosed. ( )

**701. DISCLOSURE OF INFORMATION -- INFORMATION PROVIDED TO LAW ENFORCEMENT OR PROSECUTOR (Rule 701).**

Section 63-3076, Idaho Code. ( )

01. Criminal Violation of Tax Law. If the Tax Commission believes that a criminal violation of a tax law administered by the Tax Commission may have occurred, the Tax Commission may provide to the appropriate county prosecutor information necessary or useful in the criminal investigation or prosecution. In addition, the Tax

Commission may provide assistance in the criminal investigation or prosecution through the use of its employees or agents. ( )

02. Crimes Against the Tax Commission. The Tax Commission may provide information in its possession to a law enforcement agency or prosecutor if the information is necessary or useful in the investigation or prosecution of a crime or threatened crime against the Tax Commission, the Tax Commissioners, or Tax Commission employees or agents. ( )

**702. DISCLOSURE OF INFORMATION -- THIRD PARTIES (Rule 702).**  
Sections 63-3076 and 63-3077, Idaho Code. ( )

01. In General. The Tax Commission may not disclose returns or return information about a taxpayer to any person other than that taxpayer or an authorized representative of the taxpayer except as provided by statute or rule. ( )

02. Written Authorization to Disclose Information. ( )

a. The Tax Commission may disclose a taxpayer's returns or return information to a person designated in writing by that taxpayer. ( )

b. The written authorization must contain: ( )

i. The taxpayer's name, address and social security number or employer identification number;( )

ii. The name and address of the person to whom disclosure is authorized; ( )

iii. Language indicating the taxpayer's consent to disclosure of information; ( )

iv. The tax period or periods for which disclosure may be made; and ( )

v. The signature of the taxpayer, or if the taxpayer is a corporation or other business organization or an entity other than an individual, the signature of an authorized employee or officer of the taxpayer. ( )

c. A written complaint or inquiry by a taxpayer to an elected official of the executive or legislative branches of state or federal government relating to the Tax Commission's actions or positions relating to that taxpayer is an authorization for the Tax Commission to disclose information relevant to the complaint or inquiry to the official, or the official's delegate. ( )

03. Audits or Investigations. Tax Commission employees and authorized agents may make inquiries of any person or any employee of a person to collect or ascertain any tax liability, to determine the correctness of a return or return information, or for any other purpose relating to the Tax Commission's duties of administering or enforcing Idaho tax laws. Disclosures necessary to these inquiries are authorized. ( )

04. Testimony in Judicial or Administrative Proceedings. If a Tax Commissioner, Tax Commission employee or agent is required to appear in court in an action where the Commission, employee or agent is not a party or where taxation is not in issue, by subpoena or otherwise, he may appear but shall refuse to testify without written authorization from the taxpayer, and may object to his appearance on the basis of this rule and Section 63-3076, Idaho Code. Information requested in a subpoena issued by a United States Grand Jury shall be provided. ( )

**703. DISCLOSURE OF INFORMATION -- GENERAL PUBLIC (Rule 703).**  
Sections 63-3076 and 63-3077, Idaho Code. ( )

01. Public Information. The Tax Commission may disclose information about a taxpayer that is public information. This includes information introduced as evidence in any court, before the Board of Tax Appeals, through the filing of liens, or through publication other than by the Tax Commission. ( )

02. Correction of Information. The Tax Commission, after notifying the taxpayer, may disclose

information necessary to correct misleading statements or misrepresentations publicized by the taxpayer or his agents or employees regarding his liability to the state of Idaho, his conduct in relation to the Tax Commission, or proceedings, audits or investigations of the taxpayer by the Tax Commission. ( )

03. Written Decisions of the Tax Commission. Written decisions of the Tax Commission shall be available to the public as required by Section 63-3045B, Idaho Code. Before publishing a decision, the taxpayer shall first have the opportunity to review the decision and request in writing that specific information be deleted. If the Tax Commission does not receive a written request from the taxpayer for deletions within ninety-one (91) days following the date of the final decision, it will be presumed that the taxpayer does not object to publication of any information in the decision. ( )

**704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS (Rule 704).**  
Sections 63-3077, 63-3077A, and 63-3077B, Idaho Code. ( )

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature. ( )

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. ( )

03. Exchange of Information. Information may be exchanged between the state of Idaho and: ( )

a. The Internal Revenue Service, Section 63-3077(a), Idaho Code; ( )

b. Other states, if reciprocal provisions for information exchanges are granted the state of Idaho, Section 63-3077(a), Idaho Code; ( )

c. County assessors, limited to information relating to the taxpayer's residence or domicile, Section 63-3077(d), Idaho Code; ( )

d. Department of Employment, Section 63-3077A, Idaho Code; ( )

e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; and ( )

f. Multistate Tax Commission, Section 63-3077(a), Idaho Code. ( )

**705. -- 799. (RESERVED).**

**800. DEFINITIONS FOR PURPOSES OF THE TAXPAYERS' BILL OF RIGHTS (Rule 800).**  
Title 63, Chapter 40, Idaho Code. ( )

01. Collection and Enforcement. For purposes of the taxpayers' bill of rights, the terms collection and enforcement include only post-assessment processes. ( )

02. Publication. For purposes of the taxpayers' bill of rights, publication means communicating to the general public. Publication does not include internal communication or communication with other governmental agencies as provided for by statute. ( )

03. Written Notification of Representation. A taxpayer's written notification that he will be represented by another person must include the information required for a valid power of attorney. If the notification is not valid, the revenue officer shall communicate with the taxpayer. The revenue officer should exercise reasonable care in determining whether a power of attorney exists. ( )

**801. -- 809. (RESERVED).**

**810. ACQUISITION OF LOCATION INFORMATION (Rule 810).**

Section 63-4002, Idaho Code. A revenue officer may contact a person again if it is reasonable to believe that the person may have acquired new location information since the prior contact. ( )

**811. -- 819. (RESERVED).**

**820. COMMUNICATION IN CONNECTION WITH TAX COLLECTION (Rule 820).**

Section 63-4003, Idaho Code. A revenue officer may contact a taxpayer before 8 a.m. or after 9 p.m. if it is reasonable to believe that these times are more convenient for the taxpayer. ( )

**821. -- 999. (RESERVED).**

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.02.71 - RULES GOVERNING DRIVERS LICENSE VIOLATION POINT COUNT SYSTEM**  
**DOCKET NO. 39-0271-9601**  
**NOTICE OF TEMPORARY RULES**

**ACTION:** The action, under Docket No. 39-0271-9601 concerns the temporary and proposed amendment of rules governing the pre-posted speed limits, IDAPA 39, Title 02, Chapter 71, Rules Governing Drivers License Violation Point Count System.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule and has proposed rule-making. The action is authorized pursuant to Section(s) 49-201, Idaho Code. Temporary rule will be effective May 10, 1996.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this proposed rule-making will be held as follows:

Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the Bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later."

The hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five (5) days notice. For arrangements contact the undersigned at (208) 334-8804.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the intended temporary and proposed rule:

This rule is being promulgated in order to comply with 1996 Senate Bill 1432, regarding increased interstate highway speed limits.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this temporary and proposed rule, contact Jane Caviness, at (208) 334-8700.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 24, 1996.

DATED this 22 day of May, 1996.

Mary F. Detmar  
P.O. Box 7129  
Boise, Idaho 83707  
Phone/Fax Numbers: (208)334-8804/(208)334-8195

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**TEXT OF DOCKET NO. 39-0271-9601**

**100. VIOLATION POINT COUNT SYSTEM.**

01. Points for Moving Traffic Violations. The Idaho Code authorizes the Department to establish a violation point count system for drivers convicted of various moving traffic violations occurring either within the State of Idaho, or outside the State of Idaho. Therefore, a schedule of violation points for moving traffic violations has been established. Moving traffic violations are violations that occur while operating a motor vehicle. (7-20-89)

02. Violation Point Count List. The following violation point count list includes all moving violations

in the Idaho Code, and the appropriate sections. Convictions of moving violations not herein listed which are violations of a state law or municipal ordinance will receive three (3) violation points, except those for which mandatory suspension/revocation is required by statute. (7-20-89)

03. Points Assessed. Each moving traffic conviction shall be assessed from one (1) point for less serious violations to a maximum of four (4) points for more serious violations. The degree of seriousness of moving traffic violations has been determined by considering the possibility of bodily injury or property damage resulting from such violation. (7-20-89)

04. Dual Violation. In cases where the driver is convicted of more than one (1) violation arising from one (1) occasion of arrest or citation, only one (1) conviction will be counted and assessed points against the driver's record. The conviction counted will be counted with the greater amount of points. (7-20-89)

05. Speeding Violation. Drivers convicted of traveling sixteen (16) miles per hour or more over the posted maximum speed limit will receive four (4) points. Driving convictions of IDAPA 39.02.71 other speeding violations will receive three (3) points. ~~except the following speeding violations shall have no points assessed:~~ (7-20-89)(5-10-96)T

a. ~~Rural Interstate. Traveling between sixty-five (65) miles per hour and seventy (70) miles per hour on sections of the interstate highway system, as defined by Section 40-110(7), Idaho Code, which are posted at sixty-five (65) miles per hour.~~ (7-20-89)

b. ~~Urban Interstate. Traveling between fifty-five (55) miles per hour and not exceeding seventy (70) miles per hour on sections of the interstate highway system, as defined by Section 40-110(7), Idaho Code, which are posted at fifty-five (55) miles per hour.~~ (7-20-89)

e. ~~State Highways. Traveling between fifty-five (55) miles per hour and not exceeding the prior posted speed limit on any state highway as defined by Section 40-120(4), Idaho Code, which is posted at fifty-five (55) miles per hour. Prior posted speed limit shall mean the posted speed limit in effect at the nearest milepost on the state highway prior to January 2, 1974.~~ (7-20-89)



**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.02.71 - RULES GOVERNING DRIVERS LICENSE VIOLATION POINT COUNT SYSTEM**  
**DOCKET NO. 39-0271-9602**  
**NOTICE OF PROPOSED RULES**

**ACTION:** The action, under Docket No. 39-0271-9602 concerns the proposed amendment of rules governing the drivers license violation point count system, IDAPA 39, Title 02, Chapter 71, Rules Governing Drivers License Violation Point Count System.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section 49-326, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be held as follows:

Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the Bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later.

The hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and braille or taped information for persons with visual impairments can be provided upon five (5) days notice. For arrangements contact the undersigned at (208) 334-8804.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the intended rule:

This amended rule is being promulgated in order to (1) comply with 1996 Senate Bill 1432, regarding increased interstate highway speed limits and (2) to allow the assessment of four (4) violation points for speeding in a Construction Danger Zone and allow the removal of violation points for completing an approved defensive driving class (common practice in Idaho since 1973), in compliance with 1996 House Bill 670.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Jane Caviness, at (208) 334-8700.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 24, 1996.

DATED this 22 day of May , 1996.

Mary F. Detmar  
P.O. Box 7129  
Boise, Idaho 83707  
Phone/Fax Numbers: (208)334-8804/(208)334-8195

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**TEXT OF DOCKET NO. 39-0271-9602**

**001. TITLE AND SCOPE.**

It is the purpose of this rule to establish minimum standards in determining the violation point count system for various moving traffic violations and infractions, and also give the department authority to suspend or revoke drivers licenses based on violation points. (7-20-89)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. VIOLATION POINT COUNT SYSTEM.**

01. Points for Moving Traffic Violations. The Idaho Code authorizes the Department to establish a violation point count system for drivers convicted of various moving traffic violations and infractions occurring either within the State of Idaho, or outside the State of Idaho. Therefore, a schedule of violation points for moving traffic violations and infractions has been established. Moving traffic violations and infractions are violations that occur while operating a motor vehicle. (7-20-89)(\_\_\_\_)

02. Violation Point Count List. The following violation point count list includes all moving violations and infractions in the Idaho Code, and the appropriate sections. Convictions of moving violations and infractions not herein listed which are violations of a state law or municipal ordinance will receive three (3) violation points, except those for which mandatory suspension/revocation is required by statute. (7-20-89)(\_\_\_\_)

03. Points Assessed. Each moving traffic conviction and infractions shall be assessed from one (1) point for less serious violations to a maximum of four (4) points for more serious violations. The degree of seriousness of moving traffic violations and infractions has been determined by considering the possibility of bodily injury or property damage resulting from such violation. (7-20-89)(\_\_\_\_)

04. Dual Violation. In cases where the driver is convicted of more than one (1) violation arising from one (1) occasion of arrest or citation, only one (1) conviction will be counted and assessed points against the driver's record. The conviction counted will be counted with the greater amount of points. (7-20-89)

05. Speeding Violation. Drivers convicted of traveling sixteen (16) miles per hour or more over the posted maximum speed limit or exceeding the speed limit in a construction danger zone will receive four (4) points. Driving convictions of IDAPA 39.02.71 other speeding violations will receive three (3) points. ~~except the following speeding violations shall have no points assessed:~~ (7-20-89)(\_\_\_\_)

a. ~~Rural Interstate. Traveling between sixty-five (65) miles per hour and seventy (70) miles per hour on sections of the interstate highway system, as defined by Section 40-110(7), Idaho Code, which are posted at sixty-five (65) miles per hour.~~ (7-20-89)

b. ~~Urban Interstate. Traveling between fifty-five (55) miles per hour and not exceeding seventy (70) miles per hour on sections of the interstate highway system, as defined by Section 40-110(7), Idaho Code, which are posted at fifty-five (55) miles per hour.~~ (7-20-89)

e. ~~State Highways. Traveling between fifty-five (55) miles per hour and not exceeding the prior posted speed limit on any state highway as defined by Section 40-120(4), Idaho Code, which is posted at fifty-five (55) miles per hour. Prior posted speed limit shall mean the posted speed limit in effect at the nearest milepost on the state highway prior to January 2, 1974.~~ (7-20-89)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. LIST OF MOVING TRAFFIC CONVICTIONS AND/OR VIOLATIONS POINT COUNT.**

<b>Idaho Code</b>	<b>Convictions Reported By Court</b>	<b>Point Count</b>
49-801	OBEEDIENCE TO AND REQUIRED TRAFFIC CONTROL DEVICES	three (3)
49-802	TRAFFIC CONTROL SIGNAL LEGEND	three (3)
49-804	FLASHING SIGNALS	three (3)
49-630	DRIVE ON RIGHT SIDE OF ROADWAY - EXCEPTIONS	three (3)

<b>Idaho Code</b>	<b>Convictions Reported By Court</b>	<b>Point Count</b>
49-631	PASSING VEHICLES PROCEEDING IN OPPOSITE DIRECTIONS	two (2)
49-632	OVERTAKING A VEHICLE ON THE LEFT	three (3)
49-633	WHEN PASSING ON THE RIGHT IS PERMITTED	two (2)
49-634	LIMITATIONS ON OVERTAKING ON THE LEFT	three (3)
49-635	FURTHER LIMITATIONS ON DRIVING ON LEFT OF CENTER OF HIGHWAY	three (3)
49-202(22)	NO PASSING ZONES	four (4)
49-636	ONE WAY HIGHWAYS	one (1)
49-637	DRIVING ON HIGHWAYS LANED FOR TRAFFIC	one (1)
49-638	FOLLOWING TOO CLOSELY	three (3)
49-640	VEHICLE APPROACHING OR ENTERING INTERSECTION	three (3)
49-641	VEHICLE TURNING LEFT	three (3)
49-807	STOP SIGNS AND YIELD SIGNS	three (3)
49-642	VEHICLE ENTERING HIGHWAY	three (3)
49-625	OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY OR POLICE VEHICLES	three (3)
49-644	REQUIRED POSITION AND METHOD OF TURNING	three (3)
49-645	LIMITATIONS ON TURNING AROUND	three (3)
49-603	STARTING PARKED VEHICLE	two (2)
49-808	TURNING MOVEMENTS AND REQUIRED SIGNALS	three (3)
49-648	OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN	four (4)
49-649	COMPLIANCE WITH STOPPING REQUIREMENT AT ALL RAILROAD GRADE CROSSING	four (4)
49-651	EMERGING FROM ALLEY, DRIVEWAY OR BUILDING	three (3)
49-654	BASIC RULE AND MAXIMUM SPEED LIMITS	three (3) four (4)
49-655	MINIMUM SPEED REGULATION	three (3)
49-656	SPECIAL SPEED LIMITATIONS	three (3) four (4)
49-604	LIMITATIONS ON BACKING	one (1)
49-702	PEDESTRIANS' RIGHT OF WAY IN CROSSWALKS	three (3)
49-615	DRIVERS TO EXERCISE DUE CARE	three (3)
49-616	DRIVING THROUGH SAFETY ZONE PROHIBITED	two (2)
49-1302	DUTY TO GIVE INFORMATION IN ACCIDENT INVOLVING DAMAGE TO A VEHICLE	four (4)

<b>Idaho Code</b>	<b>Convictions Reported By Court</b>	<b>Point Count</b>
49-1303	DUTY UPON STRIKING UNATTENDED VEHICLE	four (4)
49-1304	DUTY UPON STRIKING FIXTURES UPON OR ADJACENT TO A HIGHWAY	four (4)
49-1401(3)	INATTENTIVE DRIVING	three (3)
49-1419	OBEDIENCE TO TRAFFIC DIRECTION	two (2)
49-1421(1)	DRIVING ON DIVIDED HIGHWAYS	one (1)
49-1421(2)	RESTRICTED ACCESS	one (1)
49-1422	OVERTAKING AND PASSING SCHOOL BUS	four (4)
49-1424	RACING ON PUBLIC HIGHWAYS	four (4)
49-1424	EXHIBITION OF SPEED	four (4)
49-1424	EXCESSIVE ACCELERATION	four (4)

<b>Idaho Code</b>	<b>Convictions Reported By Court</b>	<b>Point Count</b>
49-603	STARTING PARKED VEHICLE	two (2)
49-604	LIMITATIONS ON BACKING	one (1)
49-615	DRIVERS TO EXERCISE DUE CARE	three (3)
49-616	DRIVING THROUGH SAFETY ZONE PROHIBITED	two (2)
49-634	LIMITATIONS ON OVERTAKING ON THE LEFT	three (3)
49-635	FURTHER LIMITATIONS ON DRIVING ON LEFT OF CENTER OF HIGHWAY	three (3)
49-636	ONE-WAY HIGHWAYS	one (1)
49-637	DRIVING ON HIGHWAYS LANED FOR TRAFFIC	one (1)
49-638	FOLLOWING TOO CLOSELY	three (3)
49-640	VEHICLES APPROACHING OR ENTERING UNMARKED OR UNCONTROLLED INTERSECTION	three (3)
49-641	VEHICLE TURNING LEFT	three (3)
49-642	VEHICLE ENTERING HIGHWAY	three (3)
49-644	REQUIRED POSITION AND METHOD OF TURNING	three (3)
49-645	LIMITATIONS ON TURNING AROUND	three (3)
49-648	OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN	four (4)
49-649	COMPLIANCE WITH STOPPING REQUIREMENT AT ALL RAILROAD GRADE CROSSING	four (4)
49-651	EMERGING FROM ALLEY, DRIVEWAY OR BUILDING	three (3)

<u>Idaho Code</u>	<u>Convictions Reported By Court</u>	<u>Point Count</u>
<u>49-654</u>	<u>BASIC RULE AND MAXIMUM SPEED LIMITS</u>	<u>three (3)</u> <u>four (4)</u>
<u>49-655</u>	<u>MINIMUM SPEED REGULATION</u>	<u>three (3)</u>
<u>49-656</u>	<u>SPECIAL SPEED LIMITATIONS</u>	<u>three (3)</u> <u>four (4)</u>
<u>49-657</u>	<u>CONSTRUCTION DANGER ZONE SPEED LIMITS</u>	<u>four (4)</u>
<u>49-1303</u>	<u>DUTY UPON STRIKING UNATTENDED VEHICLE</u>	<u>four (4)</u>
<u>49-1304</u>	<u>DUTY UPON STRIKING FIXTURES UPON OR ADJACENT TO A HIGHWAY</u>	<u>four (4)</u>
<u>49-1401(3)</u>	<u>INATTENTIVE DRIVING</u>	<u>three (3)</u>
<u>49-1419</u>	<u>OBEDIENCE TO TRAFFIC DIRECTION</u>	<u>two (2)</u>
<u>49-1421(1)</u>	<u>DRIVING ON DIVIDED HIGHWAYS</u>	<u>one (1)</u>
<u>49-1421(2)</u>	<u>RESTRICTED ACCESS</u>	<u>one (1)</u>
<u>49-1422</u>	<u>OVERTAKING AND PASSING SCHOOL BUS</u>	<u>four (4)</u>
<u>49-1424</u>	<u>RACING ON PUBLIC HIGHWAYS</u>	<u>four (4)</u>
<u>14-1424</u>	<u>EXHIBITION OF SPEED</u>	<u>four (4)</u>
<u>49-1424</u>	<u>EXCESSIVE ACCELERATIONS</u>	<u>four (4)</u>

***(BREAK IN CONTINUITY OF SECTIONS)***

**301. --~~999~~399. (RESERVED).**

**400. COMPLETION OF A DEFENSIVE DRIVING CLASS.**

01. Removal of Three (3) Points Upon Completion of Defensive Driving Class. Three (3) points may be removed from an Idaho driving record upon the driver's completion of an approved defensive driving class. These points may only be removed from a driver's record once every three (3) years. This time restriction begins on the completion date of a driver's first defensive driving class. ( )

02. Driving Conviction Cannot Be Removed. A driver may not remove a driving conviction from his record by attending a defensive driving class. ( )

03. Suspension for Excessive Points. Once the department has suspended a driver for excessive points, that driver may not waive the suspension action by attending a defensive driving class. ( )

04. Driver May Not Reserve Three (3) Point Reduction. When a driver completes a defensive driving class but has no violation points on his driver record, he may not reserve a three (3) point reduction for use on a future point-assessing violation. ( )

**401. -- 999. (RESERVED).**

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.44 - RULES GOVERNING HIGHWAY RELOCATION**  
**ASSISTANCE FOR PERSONS DISPLACED BY PUBLIC PROGRAMS**

**DOCKET NO. 39-0344-9601**

**NOTICE OF PROPOSED RULES**

**ACTION:** The action, under Docket No. 39-0344-9601, concerns the proposed repeal of rules governing highway relocation assistance programs, IDAPA 39, Title 03, Chapter 44, Rules Governing Highway Relocation Assistance For Persons Displaced by Public Programs.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Chapters 1 and 20, Title 40 and Chapter 11, Title 58, Idaho Code, and any amendments thereto.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be held as follows:

Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the Bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later."

The hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five (5) days notice. For arrangements contact the undersigned at (208) 334-8804.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the intended rule:

These rules are being repealed in their entirety and being replaced by new rules under docket no. 39-0344-9602.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact J.C. Walton, at (208) 334-8509.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 24, 1996.

DATED this 21 day of May, 1996.

Mary F. Detmar  
P.O. Box 7129  
Boise, Idaho 83707  
Phone/Fax Numbers: (208)334-8804/(208)334-8195

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**IDAPA 39**  
**TITLE 03**  
**Chapter 44**

**RULES GOVERNING HIGHWAY RELOCATION ASSISTANCE**  
**FOR PERSONS DISPLACED BY PUBLIC PROGRAMS**

**THIS RULE IS REPEALED IN ITS ENTIRETY.**  
**IT IS REPLACED BY A NEW RULE THAT IS PUBLISHED IN THIS BULLETIN**  
**UNDER DOCKET 39-0344-9602**  
**IMMEDIATELY FOLLOWING THIS NOTICE.**

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.44 - RULES GOVERNING HIGHWAY RELOCATION**  
**ASSISTANCE FOR PERSONS DISPLACED BY PUBLIC PROGRAMS**

**DOCKET NO. 39-0344-9602**

**NOTICE OF PROPOSED RULES**

**ACTION:** The action, under Docket No. 39-0344-9602, concerns the proposed adoption of rules governing highway relocation assistance programs, IDAPA 39, Title 03, Chapter 44, Rules Governing Highway Relocation Assistance For Persons Displaced by Public Programs.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized by Chapters 1 and 20, Title 40, and Chapter 11, Title 58, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be held as follows:

"Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the Bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later."

The hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five (5) days notice. For arrangements contact the undersigned below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the intended rule:

To ensure that all persons displaced as a result of all state, federal or federally assisted projects are treated fairly, consistently and equitably, so that persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole and further that displaced persons are dealt with in a manner that is efficient and cost effective.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact J.C. Walton, at (208) 334-8509.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 24, 1996.

DATED this 21 day of May, 1996.

Mary F. Detmar  
P.O. Box 7129  
Boise, Idaho 83707  
Phone/Fax Numbers: (208)334-8804/(208)334-8195

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**TEXT OF DOCKET NO. 39-0344-9602**

**000. LEGAL AUTHORITY.**

The Idaho Transportation Board adopts this rule under the authority of Chapters 1 and 20, Title 40, and Chapter 11, Title 58, Idaho Code, and any amendments thereto. ( )

**001. TITLE AND SCOPE.**

The purpose of this rule is to ensure that persons displaced as a result of all state, federal or federally assisted projects are treated fairly, consistently and equitably, so that such persons will not suffer disproportionate injuries as a result of

projects designed for the benefit of the public as a whole and further that displaced persons are dealt with in a manner that is efficient and cost effective. ( )

**002. WRITTEN INTERPRETATIONS.**

Any amendments needed to add clarity or to comply with state or federal law will be kept in the Right of Way Manual of the Idaho Transportation Department. ( )

**003. -- 099. (RESERVED).**

**100. INCORPORATION BY REFERENCE.**

01. Regulations Incorporated. 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition Regulations dated March 2, 1989 and amendments thereto. ( )

02. Availability of Records. Copies of the 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition Regulations can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. ( )

**101. -- 999. (RESERVED).**



**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.04.07 - RULES GOVERNING AERIAL SEARCH AND RESCUE**  
**DOCKET NO. 39-0407-9601**  
**NOTICE OF PROPOSED RULES**

**ACTION:** The action, under Docket No. 39-0407-9601, concerns the proposed adoption of rules governing statewide search and rescue of lost aircraft and airmen, IDAPA 39, Title 04, Chapter 07, Rules Governing Aerial Search and Rescue.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 21-114 and 21-142(16), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be held as follows:

"Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the Bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later."

The hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five (5) days notice. For arrangements contact the undersigned at (208) 334-8804.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the intended rule:

The rule is being promulgated to eliminate confusion between the eight search districts and the six highway districts by changing the eight statewide search and rescue districts to six.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Mark Young, at (208) 334-8893.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 24, 1996.

DATED this 21 day of May, 1996.

Mary F. Detmar  
P.O. Box 7129  
Boise, Idaho 83707  
Phone/Fax Numbers: (208)334-8804/(208)334-8195

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**TEXT OF DOCKET NO. 39-0407-9601**

**010. DEFINITIONS.**

01. Aerial Search and Rescue Funding. A dedicated source defined in Section 21-114, Idaho Code, derived from airman registration fees. (11-28-90)

02. Aerial Search and Rescue Volunteer. One who volunteers services for humanitarian relief. When accepted in support of SAR missions, SAR volunteer shall become quasi-state employee and be protected by state workman's compensation insurance. (11-28-90)

03. Aerial Search and Rescue Volunteer Aircraft. A civil aircraft voluntarily made available to be used

- in aerial search and rescue operations. (11-28-90)
04. Aerial Search and Rescue Volunteer Pilot/Observer. A pilot/observer qualified in accordance with the Idaho Transportation Department Aerial Search and Rescue Manual. (11-28-90)
05. AFRCC. Air Force Rescue Coordination Center, the single agency through which federal SAR missions will be prosecuted and federal assistance requested for SAR in the inland region. It is a coordinating agency only. (11-28-90)
06. Airman/Airmen. Any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while underway. For the purpose of this regulation, search shall be conducted for airmen and passenger(s) of lost aircraft. (11-28-90)
07. ARRS. Aerospace Rescue and Recovery Service. (11-28-90)
08. Board. Idaho Transportation Board. (11-28-90)
09. Civil Aircraft. Aircraft other than public aircraft. (11-28-90)
10. Department. Idaho Transportation Department. (11-28-90)
11. Director. Director of the Idaho Transportation Department. (11-28-90)
12. District Aerial Search and Rescue Coordinator. A designated representative of the State Search and Rescue Coordinator. (11-28-90)
13. National Search and Rescue Manual. That manual for guidance of U.S. Federal Forces, military or civil, participating in search ~~in~~ and rescue (SAR) operations. (~~11-28-90~~)(    )
14. National Search and Rescue (SAR) Plan. Aerospace Rescue and recovery Service Operations Plan Number 9506, entitled, "Inland Search and Rescue." It coordinates the SAR efforts among the states and federal agencies. (11-28-90)
15. SAR. A commonly used abbreviation for search and rescue. (11-28-90)
16. Search and Rescue. (SAR) (11-28-90)
- a. Search - An investigative act to ~~ascertain~~determine the location of lost aircraft or airman. (~~11-28-90~~)(    )
- b. Rescue - Deliver from danger, to save. (11-28-90)
17. Search and Rescue Agreements. SAR agreements involving federal, state, local, and private agencies, and/or individual(s). (11-28-90)
18. Search Base(s). Those ~~airports~~locations designated by the state aerial search and rescue coordinator as primary operating location(s) from which a search effort will be conducted. (~~11-28-90~~)(    )
19. Search Districts. Those ~~eight (8)~~six (6) areas throughout the State which are designated as aerial search and rescue districts by the Idaho aerial search and rescue plan. These areas are the same as the states six (6) highway districts. (~~11-28-90~~)(    )
20. State. State of Idaho. (11-28-90)
21. State Aerial Search and Rescue Coordinator. Director, Idaho Transportation Department, or his duly appointed representative, responsible for directing, coordinating and supervising all phases of aerial search and rescue operations. (11-28-90)

22. State Aerial Search and Rescue Plan. Those plans, policies, and procedures set forth in the Department Aerial Search and Rescue Manual. (11-28-90)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. ORGANIZATION.**

01. Staff. The Division of Aeronautics shall maintain a qualified staff capable of implementing the state aerial search and rescue plan. (1-2-93)

02. Designated Search Districts. The Idaho Transportation Department Aerial Search and Rescue Manual (Plan) designates ~~eight (8)~~ six (6) search districts. Within each district one (1) or more qualified District Aerial Search and Rescue Coordinator(s) shall be designated based on knowledge, experience, and training. They, along with other SAR volunteers, will function under the direction of the State Aerial SAR Coordinator. (~~11-28-90~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. PROCEDURE.**

01. Search and Rescue Guideline. The Idaho Transportation Department Aerial Search and Rescue Manual (Plan) shall provide guidelines for effectively conducting aerial search and rescue operations. It shall establish requirements for crew qualification, adequacy of volunteer search aircraft performance, and District Aerial SAR Coordinator qualifications. ~~Also, in~~ order to effectively implement the State SAR Plan, the State Aerial SAR Coordinator may make SAR agreements as necessary with other agencies/organization(s)/individual(s). They may be either informal verbal agreements or they may be formal written documents. Agreements shall provide for the maximum practicable cooperation of such agencies/organization(s)/individual(s) and the use and coordination of facilities committed to SAR missions. Written agreements will normally involve officials of comparable levels in their respective agencies. Written agreements should be as brief as possible, covering only those specific items for which the agreement is deemed necessary. They should not be repetitious or contradictory of matters contained in the National SAR Plan. (~~11-28-90~~)(    )

02. District Aerial SAR Coordinators. The State Aerial SAR Coordinator shall assign District Aerial SAR Coordinators who act under the direction of the State Aerial SAR Coordinator, organizing the volunteer personnel and resources of his assigned search district area for maximum efficiency, safety, and economy. Said District Coordinator may be either a volunteer, ~~or~~ state employee or other individual as assigned by the State Aerial SAR Coordinator. (~~1-2-93~~)(    )

03. Designations by State Aerial SAR Coordinators. The State Aerial SAR Coordinator will designate airports of primary operational support as necessary in the aerial search effort. The State Aerial SAR Coordinator may designate Temporary Flight Restrictions (TFR) under Federal Aviation Regulation (FAR) 91.137 as required for safety of search aircraft. Normally the State Aerial SAR Coordinator will function in the Division of Aeronautics facilities but the option to dispatch state coordinator to the airport(s) of primary support, State EOC, or other location as necessary, may be exercised. State Division of Aeronautics aircraft may be used as necessary with state crews or with state pilot in command and volunteer pilot/observer(s). Volunteer aircraft and crews shall be screened by the District Aerial SAR Coordinator for availability, qualification, and willingness to participate in the search. Flight logs and mission records shall be maintained and all pertinent information shall be screened and recorded and forwarded to the State Aerial SAR Coordinator at the close of the mission or as requested. (1-2-93)

04. Interstate Coordination. On some occasions the aerial search and rescue effort may need to extend into bordering states or Canada. Interstate coordination with other states/Canada shall be achieved as necessary by the Department for SAR mission needs. ~~Also, e~~Coordination with other search and rescue organization(s)/individual(s) may be developed as needed or necessary. Such considerations as weather, time, no flight plan, no emergency locator

transmitter signals, nonavailability, or limited search resources near the objective search area(s) may dictate extending Idaho resources into bordering states/Canada. In a like manner, it may sometime become necessary for bordering states/Canada to extend their resources into Idaho. (1-2-93)(\_\_\_\_)

05. Funds. Aerial search and rescue funds shall be used solely in support of aerial SAR efforts. Financial support of aerial SAR volunteers shall include but not be limited to SAR training, education, equipment, coordinating efforts, communications, and aircraft fuel and oil expenses. (11-28-90)

06. Official Mission Report. A report shall be made to the State Aerial SAR Coordinator by the District Aerial SAR Coordinator at the termination of daily search activity. The State Aerial Coordinator SAR shall consolidate all necessary report information and relay it to AFRCC. All mission working papers which are accumulated during the course of the search mission will be analyzed for meaningful content upon which to base operational decisions and the final official mission report. (11-28-90)

07. Time Period of Searches. Aerial searches shall be continued until either successful or until all reasonable leads are exhausted and/or passage of time has drastically reduced the possibility of survival. If search is unsuccessful and all leads have been exhausted, the search may be suspended by the Director until either new leads are received or conditions have changed which increases the probability of detection. (11-28-90)(\_\_\_\_)

08. Completion of Search. Searches will be closed when the search and rescue objective has been located, the respective county sheriff notified, it is certain that authorized ground personnel gain access to the search objective for positive identification of missing or downed aircraft and assistance to possible survivors, and post mission procedures are completed. (11-28-90)

09. Required Reports. Upon completion of the mission, all cooperating/participating agencies shall be advised as promptly as possible. News releases shall be made as deemed appropriate by the State Aerial SAR Coordinator. It shall be ascertained that all search aircraft are accounted for. A report of mission activity shall be made to AFRCC. A synopsis of the entire mission shall be developed by the State Aerial SAR Coordinator. The following forms shall be attached to the synopsis: (11-28-90)

- a. Search and Rescue Information Sheet (APT-2600) (11-28-90)
- b. Search Aircraft Operations Log (APT-2603) (11-28-90)
- c. Air Search and Rescue Fuel and Oil Record (APT-2602) (11-28-90)
- d. Mission Authorization, Personnel Register (APT-2604) (11-28-90)
- e. Search and Rescue (SAR) Mission Report (APT-2606) (11-28-90)

10. Final Report. The synopsis and attachments shall constitute the final official search and rescue mission report.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.04.08 - RULES GOVERNING OPERATIONS AT STATE AIRPORTS**  
**DOCKET NO. 39-0408-9601**  
**NOTICE OF PROPOSED RULES**

**ACTION:** The action, under Docket No. 39-0408-9601, concerns the proposed adoption of rules governing public safety on state airports, IDAPA 39, Title 04, Chapter 08, Rules Governing Operations at State Airports.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section 21-111, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be held as follows:

"Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the Bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later."

The hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five (5) days notice. For arrangements contact the undersigned at (208) 334-8804.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the intended rule:

The purpose of promulgating this rule is to provide for the control of at-large animals on state airports and in adjacent campgrounds.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Mark Young, at (208) 334-8893.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 24, 1996.

DATED this 21 day of May, 1996.

Mary F. Detmar  
P.O. Box 7129  
Boise, Idaho 83707  
Phone/Fax Numbers: (208)334-8804/(208)334-8195

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**TEXT OF DOCKET NO. 39-0408-9601**

**001. TITLE AND SCOPE.**

This rule of operation is established to provide for public safety and convenience and welfare on state airports. When questions arise concerning interpretation or applicability of a rule, aviation safety shall be the paramount concern. Protecting and serving the public, and the protection of property shall likewise govern the interpretation and application of this rule. (~~7-20-89~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

01. Aircraft Parking Area. A designated site constructed on an airport with or without aircraft tiedown chains or ropes for the purpose of parking unattended aircraft. (7-20-89)

02. Airport. Any area of land which is owned, leased, or otherwise under the control of, and operated by the Division of Aeronautics, Idaho Transportation Department, designed and set aside for the landing and taking-off of aircraft. The boundaries are generally defined by fences or a recorded legal property description. (1-2-93)

03. Commercial Operations. Those operations for business profit which are based on a State airport. (1-2-93)

04. Division. The Division of Aeronautics of the Idaho Transportation Department, including its officers and employees. (1-2-93)

05. Fueling. Any procedure which involves the addition or removal of fuel from aircraft fuel tanks or the transfer of fuel from or into tanks, barrels, or bladders. (1-2-93)

06. Hazardous Material. Any material or substance as defined by Sections 49-109(3), 39-4403(7) and (14), 39-4407, or 39-6203(9), Idaho Code. (7-20-89)

07. Loading Area. A site designated on an airport for the purpose of loading or unloading passengers and cargo and facilitating the access of designated vehicles. (7-20-89)

08. Runway. An airport surface designed specifically for the takeoff and landing of aircraft. (7-20-89)

09. Vehicle. Any motorized vehicle excluding aircraft and including, but not limited to, highway automobile, truck, bus, van, trailer, motorcycle, ATV, recreational vehicle, or snowmobile. (1-2-93)

10. Camping Area. Any site designated for camping and identified by the placement of picnic tables, fire pits, barbeque stoves or appropriate signing. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. VEHICLES, ANIMALS, BAGGAGE, AND OBJECTS.**

01. Parking. No person shall operate or park any vehicle on an airport without prior approval of the Division. Vehicles authorized on an airport will not be operated on the runway or parked so as to occupy or block designated tiedowns or loading areas, except that temporary parking necessary for actual loading or unloading of baggage or objects is allowed if no hazard is thus created. Vehicles shall be parked only in designated parking areas. (1-2-93)

02. Animals. No person shall allow any animal on an airport, taxiway or adjacent camping area without its being on a leash beyond the minimum time necessary for the loading or unloading of such animal into or from an aircraft without prior approval of the Division. (~~1-2-93~~)( )

03. Livestock. No person shall allow livestock to graze on airport property without permission from the Division. (1-2-93)

04. Animal Droppings. No person shall allow animal droppings to be left on an airport, a loading area or in an adjacent camping area. (~~7-20-89~~)( )

05. Unattended Objects or Baggage. No person shall place any unattended objects or baggage in a

tiedown area when such placement creates a hazard, or restricts aircraft parking in such a way that displaced aircraft create a hazard. (7-20-89)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. CAMPING, TRASH, AND REFUSE.**

01. Camping. No person shall camp on an airport except in designated camping areas without prior approval of ~~the~~ Division employees. (1-2-93)( )

02. Camping Limits. No person is permitted to use a camping area adjacent to an airport for more than fourteen (14) consecutive days, however this time limit may be extended by Division employees when existing camp area vacancies exist. ( )

023. Fires. No campfires or open flame camp stoves are allowed within fifty (50) feet of aircraft. (7-20-89)

034. Trash and Refuse. All persons on an airport shall place their trash, garbage, and refuse in designated containers or shall otherwise remove it from the airport. (7-20-89)

045. Trash Disposal. No person shall deposit their trash on an area adjacent to an airport. (7-20-89)

**IDAPA 44 - OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR**  
**44.01.01 - RULES OF THE OFFICE OF ADMINISTRATIVE RULES COORDINATOR**

**DOCKET NO. 44-0101-9601**

**NOTICE OF TEMPORARY AND PROPOSED RULES**

**EFFECTIVE DATE:** This temporary rule is effective on July 1, 1996.

**AUTHORITY:** In compliance with Section(s) 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has proposed temporary and regular rule-making. The action is authorized pursuant to Section 67-5206(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be held as follows: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 9, 1996. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the proposed rule: The rule provides numerous housekeeping amendments intended to update the rules of the Coordinator with legislative changes. Some of the more substantive changes include: 1) Allowance of images, graphics, charts, etc., and reference materials within the rule; 2) Changes in the fee structures in accordance with SB 1297 with regard to annual fees to relevant agencies for the Administrative Code pages (not to exceed fifty-six dollars) and with regard to monthly fees to relevant agencies for the Administrative Bulletin pages (not to exceed sixty-one dollars); 3) Amendments to reflect changes mandated by SB1295 with regard to the transfer of the Office of Rules Coordinator from the Office of the State Controller to the Department of Administration; 4) Amendments to reflect changes mandated by SB1293 with regard to miscellaneous changes to the Administrative Procedure Act; and 5) Changes to eliminate the fee for certified rules.

The following is the required finding and a concise statement of the supporting reasons for temporary rule-making: The temporary rule is reasonably necessary to comply with amendments to the Administrative Procedure Act mandated in SB 1293, SB1295 and SB1297.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact D. Korey Lowder, Administrative Rules Coordinator at (208) 334-3577, or e-mail to [klowder@adm.state.id.us](mailto:klowder@adm.state.id.us).

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before August 9, 1996.

DATED this 1st day of July, 1996.

D. Korey Lowder, Administrative Rules Coordinator  
Office of the Administrative Rules Coordinator  
P.O. Box 83720  
Boise, ID 83720-0011  
(208) 334-3577/FAX (208) 334-2395  
e-mail: [klowder@adm.state.id.us](mailto:klowder@adm.state.id.us)



**TEXT OF DOCKET NO. 44-0101-9601**

**IDAPA 44**  
**TITLE 01**  
**Chapter 01**

**RULES OF THE ADMINISTRATIVE RULES COORDINATOR**

**000. LEGAL AUTHORITY.**

In accordance with Section 67-5206(1), Idaho Code, the Administrative Rules Coordinator shall promulgate rules implementing the provisions of Sections 67-5203, 67-5204, and 67-5205, Idaho Code. (7-1-93)

**001. TITLE AND SCOPE.**

These rules shall be cited as IDAPA 44.01.01, Rules of the Administrative Rules Coordinator, ~~Office of the State Auditor~~, IDAPA 44, Title 01, Chapter 01. These rules constitute the minimum style, format and numbering requirements for administrative rules in Idaho. (~~6-7-94~~)(7-1-96)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Office of the Administrative Rules Coordinator~~State Auditor~~, 700 West State Street -- 4th Floor, P.O. Box 83720, Boise, Idaho, 83720-0011. (~~6-7-94~~)(7-1-96)T

**003. ADMINISTRATIVE APPEALS.**

This chapter does not provide for appeal of the administrative requirements for agencies. (7-1-93)

**004. (RESERVED).**

**005. INCLUSIVE GENDER.**

For all sections and subsections of all administrative rules in Idaho, the terms and references used in the masculine include the feminine and vice versa, as appropriate. (7-1-93)

**006. SEVERABILITY.**

The sections and subsections of all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (7-1-93)

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

01. APA. The Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-93)
02. Agency. Each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction. (7-1-93)
03. Agency Action. In these rules means the whole or part of a rule, or the failure to issue a rule. (7-1-93)
04. Agency Head. An individual or body of individuals in whom the ultimate legal authority of the

- agency is vested by any provision of law. (7-1-93)
05. Bulletin. The Idaho Administrative Bulletin established in Section 67-5203, Idaho Code. (7-1-93)
06. Catchline. A short description of the section or subsection used to introduce a block of text at the major section level and first sublevel. (7-1-93)
07. Certified Rules. Rules certified in effect during a specified period in time after July 1, 1993. Only the coordinator shall certify rules as the officially promulgated rules of Idaho. (7-1-93)
08. Code. The Idaho Administrative Code established in Title 67, Chapter 52, Idaho Code. (7-1-93)
09. Coordinator. The Office of the Administrative Rules Coordinator, ~~Division of Statewide Administrative Rules, Office of the State Auditor~~, as created in Section 67-5202, Idaho Code. ~~(7-1-93)~~(7-1-96)T
10. Document. Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
11. Form or Format. The internal organization, structure and presentation of the rules in Idaho as set forth in this chapter. (7-1-93)
12. IDAPA. A numbering designation for all administrative rules in Idaho which denotes rules promulgated in accordance with the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. The numbering scheme denotes a distinct agency code, a title code, a chapter code, and section and subsection numbering as appropriate. ~~(7-1-93)~~(7-1-96)T
13. Legal Citation. The specific reference to a document or passage of a document using the generally accepted method of notation. For all rules, the designation incorporates a form of the IDAPA numbering scheme. (7-1-93)
14. Legislative Format. A form of displaying modifications to text by underscoring new language text, and overstriking ~~omitted language~~ deleted text. ~~(7-1-93)~~(7-1-96)T
15. Numbering. The alpha-numeric display schematic for the rules in Idaho, also known as the IDAPA system, as set forth in this chapter. (7-1-93)
- ~~16. OASIS. On-line Access State Information System. The on-line system developed to distribute electronically all state documents as mandated by Section 67-5203(6), Idaho Code. (7-1-93)~~
17. Official Text. Text of a document promulgated by an agency in accordance with Title 67, Chapter 52, Idaho Code, and is the only legally enforceable text of such document. (7-1-93)
- ~~18. Page. One (1) page is one (1) impression side of an eight and one half inch (8 1/2") by eleven inch (11") sized paper, comprising sixty (60) lines of formatted, styled, and numbered text existing on OASIS. the official text published in the Code or Bulletin. (6-7-94)~~(7-1-96)T
19. Publish. To bring before the public by publication in the Bulletin or Administrative Code, or as otherwise specifically provided by law. (7-1-93)
- ~~20. Regulation. A federal rule promulgated in accordance with the federal Administrative Procedures Act, Public Law 404, 60 Stat. 237 (1946), as amended. (7-1-93)~~
21. Rule. The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)
22. Rule-Drafter. A person who creates, modifies, or proposes change to the administrative rules of the state of Idaho. (7-1-93)

232. Rule-Making. The process for formulation and promulgation, in order to adopt, amend, or repeal a rule. (7-1-93)

243. Style. A method of writing rules denoting standard elements of consistency, simplicity, and clarity as set forth in this chapter. (7-1-93)

**011. -- 049. (RESERVED).**

**050. ADMINISTRATIVE CODE ACCOUNT.**

All moneys received by the ~~Auditor~~ coordinator from APA-related products or services shall be deposited in the Administrative Code account as provided in Section 67-5205(4), Idaho Code. (7-1-93)(7-1-96)T

**051. AGENCY PAYMENT FOR RULE-MAKING.**

The coordinator is authorized to allocate costs of publication and distribution to each participating agency on a per page basis. (7-1-93)

01. Less Than a Full Page. The cost per page ~~shall~~ may be imposed even though less than a full page of publication is required. (7-1-93)(7-1-96)T

02. Cost to Agencies for Code Publication. The fee for rules of each agency contained in the Code billed to the respective agency shall not exceed fifty-six dollars (\$56) for each page of the Code. The fee shall be calculated based on actual pages published by the coordinator for each agency within the official copy of the Code. The cost allocations to each participating agency shall coincide with the annual publication of the Code and each agency shall promptly pay into the Administrative Code account such costs. (7-1-96)T

~~0203. Cost To Agencies for Rule-Making Bulletin Publication. The cost fee for rules of each agency contained in the Bulletin production billed to the respective agencies shall not exceed one hundred and forty-eight sixty-one dollars (\$148.61) for each page per publication event. This fee shall be calculated based on actual pages published by the coordinator for each agency within the official copy of the Bulletin. The cost allocations to each participating agency shall be made monthly by the coordinator, and each participating agency shall promptly pay into the Administrative Code account such costs.~~ (9-7-94)(7-1-96)T

**052. COSTS OF DOCUMENTS.**

The coordinator is authorized to charge for copies of all APA-related documents. (7-1-93)

01. Cost of Individual Rule Pamphlets Chapters. The prices to be charged for chapters of rules ~~in pamphlet form or~~ portions thereof shall not exceed the larger of five dollars (\$5), or ten cents (\$.10) per page. (9-7-94)(7-1-96)T

02. Cost of Certified Rules. ~~The prices to be charged for copies of certified rules shall not exceed twenty dollars (\$20) per page.~~ Certified rules shall be provided without charge and shall include an affidavit of certification, notarized by the coordinator, and a copy of specific rules in effect ~~at on~~ a specific date after July 1, 1993. (7-1-93)(7-1-96)T

03. Cost of the 1996 Bulletin. The prices to be charged for twelve (12) individually bound copies/volumes of the Bulletin in the form of an annual subscription shall not exceed three hundred dollars (\$300) per year. The price for monthly issues shall not exceed the larger of thirty dollars (\$30) per volume or ten cents (\$.10) per page. (9-7-94)(7-1-96)T

04. Cost of the 1996 Administrative Code. The ~~subscription~~ prices to be charged for nine (9) individually bound volumes of the Administrative Code in the form of an annual subscription shall not exceed ~~ten~~ three hundred and fifty dollars (\$350) per year. (9-7-94)(7-1-96)T

05. ~~Public Cost for OASIS. The cost of public access to OASIS shall include an annual subscription fee of up to one hundred and fifty dollars (\$150) per assigned user identification number. Also, public subscribers shall be charged a usage fee not to exceed of one dollar (\$1) per minute.~~ (9-7-94)

~~06.~~ Agency Cost for OASIS. Agencies will be charged an annual subscription fee of up to one hundred and fifty dollars (\$150). (9-7-94)

~~a.~~ Agencies shall be billed for any mainframe costs pursuant to rates published by the State Auditor's Computer Services Center. (9-7-94)

~~b.~~ Agencies shall be billed for any costs of the OASIS application in accordance with rates published by the State Auditor's Computer Services Center. (9-7-94)

~~075.~~ Free Distribution of Hard-Copy Documents. In accordance with Section 67-5205(2), Idaho Code, the coordinator shall ~~be distribute~~ copies free of charge as follows: (7-1-93)(7-1-96)T

a. One (1) to each county clerk for the use of the county law library. (7-1-93)

b. One (1) each to the senate and the house of representatives. (7-1-93)

c. One (1) to the attorney general. (7-1-93)

d. One (1) to the legislative council. (7-1-93)

e. One (1) each to the state universities and colleges, and one (1) to each community college. (7-1-93)

f. One (1) to the state law library. (7-1-93)

g. One (1) to the state library. (7-1-93)

h. One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, Albertson College Library, Ricks College Library, Northwest Nazarene College Library and Twin Falls Public Library. (9-7-94)

~~096.~~ Other Free Documents. The coordinator may distribute free copies for official use and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. (7-1-93)

**053. -- 099. (RESERVED).**

**100. REVIEW AND SUBMISSION OF AGENCY RULES.**

The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all Idaho agencies. The coordinator shall review all submitted rules for style, format, and numbering, and may return a rule that is not in the proper style, form, or number. (7-1-93)

01. Submission of Rules. All agencies shall submit a copy of their respective rules for publication in the Bulletin, certified by the agency director or designee, in the following formats: (6-7-94)

a. All submitted rules shall be printed, one-sided only, on eight and one-half inch (8 1/2") wide by eleven inch (11") long paper denoting all changes ~~in red ink and~~ in legislative format; and (6-7-94)(7-1-96)T

b. All submitted rules shall be ~~stored electronically in DOS or Windows-based WordPerfect version 5.0 or later software on a three and one-half inch (3 1/2") diskette~~ provided electronically denoting legislative format. Electronic filing may include, but is not limited to, electronic mail, FTP, diskette, or other electronic transfer methodology. (6-7-94)(7-1-96)T

c. All ~~submitted electronically stored~~ rules submitted to the coordinator shall be obtained from the most current document ~~on OASIS~~ available from the coordinator. (9-7-94)(7-1-96)T

02. ~~Renumbering Deadline~~ Submitted Rules. All submitted rules shall be numbered, styled and formatted in accordance with these rules. (6-7-94)(7-1-96)T

**101. UNIFORM STYLE AND FORMAT OF RULES.**

In accordance with Section 67-5206(1)(b), Idaho Code, the coordinator shall establish a uniform style and format applicable to rules adopted by all agencies. (7-1-93)

01. Standard Requirements of Style. ~~Language~~Text used within a rule shall include three (3) distinct elements: ~~(7-1-93)~~(7-1-96)T

a. Consistency denotes standardized arrangement of specific organizational division of text as well as language structures. Rule text shall appear with consistent application of terms, sentences, structures, formats, numbering, and other structures to avoid confusion to the reader. (7-1-93)

b. Simplicity denotes presentation of complex ideas into easily understood concepts within the text of the rule. (7-1-93)

c. Clarity in rule-drafting avoids unclear, ambiguous and obscure terms. Rules shall be simple, concrete combinations of text that conveys the meaning while avoiding vagueness and the need for varying interpretations. (7-1-93)

02. Uniform Format Requirements. Uniform format shall be required for all rules adopted ~~after July 1, 1993~~ in accordance with the APA. All rules shall incorporate consistent organizational structure and content which will allow the coordinator to consistently index and reference all rules. Rules not formatted as described in this chapter shall not be inserted in the Administrative Code and shall not be considered valid for the purposes of Section 67-5231(1), Idaho Code. Specific requirements are as follows: ~~(7-1-93)~~(7-1-96)T

a. All major sections ~~will~~shall include the numbering scheme provided in this chapter followed by the catchline capitalized. ~~Each block of text is followed by a parentheses surrounding a numerical notation of the rule's effective date, flush right.~~ ~~(7-1-93)~~(7-1-96)T

b. The first required section of each rule chapter, the "000" section, shall be entitled "LEGAL AUTHORITY." This section shall include all statutory authorities granted or implied which allow rule-making authority to the agency as set forth Section 67-5231(1), Idaho Code. (7-1-93)

c. The second required section of each rule chapter, the "001" section, shall be entitled "TITLE AND SCOPE." This section shall include a precise description of the legal citation of the chapter. Also, this section shall include a brief descriptive summary of the scope of the rule. (7-1-93)

d. The third required section of each rule chapter, the "002" section, shall be entitled "WRITTEN INTERPRETATIONS." This section shall indicate if the agency has or relies on any written interpretive statements of the rule chapter in accordance with Section 67-5201(16)(b)(iv), Idaho Code. (7-1-93)

e. The fourth required section of each rule chapter, the "003" section, shall be entitled "ADMINISTRATIVE APPEALS." This section is used to describe any appeal or hearing rights for affected individuals relating to the programs or services described in the rule chapter. (7-1-93)

f. The fifth required section of each rule chapter, either "004" through "010" sections, shall be entitled "DEFINITIONS." This section lists alphabetically all terms distinct to the rule chapter. Definitions are used to describe specific terms of art and other words or phrases to aid the user in describing the intent of the rule. (7-1-93)

g. Reserved major sections may be used as appropriate to allow for expansion, segregation, and flexibility within the chapter. ~~Sublevel~~sections shall not be designated as reserved. ~~(6-7-94)~~(7-1-96)T

h. The remaining sections within the body of the rule chapter, the "011" through "999" sections, may be used as the agency deems necessary for describing the programs, services, requirements, focus and intent of the rule. (7-1-93)

i. A paragraph of descriptive references may be used at the end of the major section after all sublevel

sections. This descriptive paragraph may include: effective dates set by the legislature, cross references, compiler's notes, references or extractions of written interpretations, or other reference tools approved by the coordinator. The descriptive paragraph shall include a format and style distinct from the text of the rules as approved by the coordinator. (7-1-96)T

03. Maps, Charts, Graphs, Diagrams, and Other Visual Aids. Rules may contain maps, charts, graphs, diagrams, illustrations, forms, or similar descriptive ~~material~~ text within the body of the rule. (7-1-93)(7-1-96)T

a. Agencies are encouraged to include ~~descriptive materials~~ as written interpretations of the rule where the requirement to list the material in the rule is in question. (7-1-93)(7-1-96)T

b. Agencies are encouraged to include ~~such descriptive materials~~ written interpretations by incorporating such documents by reference ~~of such materials~~, in accordance with Section 67-5229, Idaho Code. (7-1-93)(7-1-96)T

04. Legislative Format. All modified rule text shall underscore ~~language~~ text to be added and overstrike ~~language~~ text to be deleted. (7-1-93)(7-1-96)T

a. In the case of amendment to a current rule, the desired amendments to text are made using legislative format. The effective date shall be overstruck followed by parentheses surrounding eight (8) underscored spaces, flushed right. (7-1-93)

b. When an agency proposes to enact a new section within an existing rule, the entire proposed text shall be underscored. All effective dates are noted as parentheses surrounding eight (8) underscored spaces, flushed right. (7-1-93)

c. When an agency proposes to repeal a complete chapter, overstriking is not required. The Bulletin will note that the chapter has been "REPEALED IN ITS ENTIRETY." (7-1-93)

d. When an agency proposes to adopt a complete chapter of rules, underscoring is not required. The effective date shall be noted as parentheses surrounding eight (8) spaces, flushed right after each block of text. (7-1-93)

e. Modifications to text appearing in the paragraph of descriptive references shall not appear in legislative format. (7-1-96)T

## **102. UNIFORM NUMBERING OF RULES.**

In accordance with Section 67-5206(1)(a), Idaho Code, the coordinator shall establish a uniform numbering system applicable to rules adopted by all agencies. (7-1-93)

01. IDAPA Numbering. The uniform numbering system is known as the "IDAPA" system. For complete citation, rule numbering is preceded with the term "IDAPA," followed by a two (2) numerical digit agency code followed by a period; ~~and~~. (7-1-93)

~~a.~~ A two (2) numerical digit division or title code followed by a period; and. (7-1-93)

~~b.~~ A two (2) numerical digit program or chapter code followed by a period; and. (7-1-93)

~~e.~~ A three (3) digit major section code and a period. For example, this chapter is numbered as follows: IDAPA 44.01.01. (7-1-93)(7-1-96)T

02. Internal Numbering. All chapters of agency rules consist of major sections identified by three numerical digits beginning with "000" and ending with "999". (7-1-93)

03. Sublevels. Two (2) sublevels shall be allowed following the major section code. (7-1-93)

a. The first sublevel shall be a two (2) digit numeric code, beginning with "01" and ending with "99".

(7-1-93)

b. The second sublevel shall be a single digit alphabetic code beginning with "a." and ending with "z." On a case-by-case basis, the coordinator may allow additional characters for expansion of this sublevel, using a double digit alphabetic code beginning with "aa." and ending with "zz."  
(7-1-93)

c. On a case-by-case basis, the coordinator may allow an additional sublevel consisting of lower case roman numbers.  
(7-1-93)

04. Crossreferencing. In order to clarify intent or avoid repetition, references to other rules are allowed. Such references are divided as follows:  
(7-1-93)

a. Internal Reference/Citation. References to a section or sections within a chapter shall provide a thorough notation of the identity of the text referenced. A citation to this section is "Subsection 102.04.a." Internal references may also utilize the complete legal citation using the complete IDAPA numbering system. A citation to this section is "IDAPA 44.01.01.102.04.a."  
~~(7-1-93)~~(7-1-96)T

b. External Reference/Citation. References outside the chapter shall identify the complete legal citation using the IDAPA numbering system and shall include the complete legal citation of the chapter being referenced.  
(7-1-93)

c. External referencing of documents other than Idaho administrative rules shall follow the provisions of Section 67-5229, Idaho Code, regarding incorporation by reference.  
(7-1-93)

**103. -- 599. (RESERVED).**

**600. IDAHO ADMINISTRATIVE BULLETIN.**

The coordinator shall receive all documents required in the APA to be published in the Bulletin.  
(7-1-93)

01. Information. The Bulletin shall contain specific information concerning the use of the Bulletin, the rule-making process in general, specific information concerning the documents being promulgated, and other information deemed necessary by the coordinator to describe the documents being published.  
(7-1-93)

02. Table of Contents. Each issue of the Bulletin shall contain a table of contents.  
(7-1-93)

03. Cumulative Index. A cumulative index shall be published at least every three (3) months.  
(7-1-93)

04. Documents to be Published. Such documents are identified in Section 67-5203(4), Idaho Code.  
(7-1-93)

05. Other Documents. Each issue of the Bulletin may include other reference-related documents as determined by the coordinator.  
(7-1-96)T

**601. IDAHO ADMINISTRATIVE BULLETIN PUBLICATION SCHEDULE.**

Agencies shall file documents designated for publication in the Bulletin with the coordinator.  
(6-7-94)

01. Time. The documents must be submitted by no later than 5:00 p.m. on the filing date provided in Subsection 601.02.  
~~(6-7-94)~~(7-1-96)T

02. Date of Submission. Documents shall be submitted as follows:

~~Rules Due For Publication~~  
~~From Agency the Bulletin by:~~

~~January 7, 1994 February 2, 1994~~  
~~February 7, 1994 March 2, 1994~~  
~~February 23, 1994 April 6, 1994~~

March 23, 1994 May 4, 1994  
 April 20, 1994 June 1, 1994  
 May 25, 1994 July 6, 1994  
 June 22, 1994 August 3, 1994  
 July 27, 1994 September 7, 1994  
 August 24, 1994 October 5, 1994  
 September 21, 1994 November 2, 1994  
 October 26, 1994 December 7, 1994  
 November 23, 1994 January 4, 1995

December 21, 1994 February 1, 1995  
 January 18, 1995 March 1, 1995  
 February 22, 1995 April 5, 1995  
 March 22, 1995 May 3, 1995  
 April 26, 1995 June 7, 1995  
 May 24, 1995 July 5, 1995  
 June 21, 1995 August 2, 1995  
 July 26, 1995 September 6, 1995  
 August 23, 1995 October 4, 1995  
 September 20, 1995 November 1, 1995  
 October 25, 1995 December 6, 1995  
 November 22, 1995 January 3, 1996

December 27, 1995 February 7, 1996  
 January 24, 1996 March 6, 1996  
 February 21, 1996 April 3, 1996  
 March 20, 1996 May 1, 1996  
 April 24, 1996 June 5, 1996  
 May 22, 1996 July 3, 1996  
 June 26, 1996 August 7, 1996  
 July 24, 1996 September 4, 1996  
 August 21, 1996 October 2, 1996  
 September 25, 1996 November 6, 1996  
 October 23, 1996 December 4, 1996  
 November 20, 1996 January 1, 1997

(6-7-94)

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<b>Bulletin Publication Schedule</b>	
<b><u>Rules Due From Agency:</u></b>	<b><u>Publication in Bulletin By:</u></b>
<u>December 27, 1995</u>	<u>February 7, 1996</u>
<u>January 24, 1996</u>	<u>March 6, 1996</u>
<u>February 21, 1996</u>	<u>April 3, 1996</u>
<u>March 20, 1996</u>	<u>May 1, 1996</u>
<u>April 24, 1996</u>	<u>June 5, 1996</u>
<u>May 22, 1996</u>	<u>July 3, 1996</u>
<u>June 26, 1996</u>	<u>August 7, 1996</u>
<u>July 24, 1996</u>	<u>September 4, 1996</u>
<u>August 21, 1996</u>	<u>October 2, 1996</u>



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<u>December 24, 1996</u>	<u>February 5, 1997</u>
<u>January 22, 1997</u>	<u>March 5, 1997</u>
<u>February 19, 1997</u>	<u>April 2, 1997</u>
<u>March 26, 1997</u>	<u>May 7, 1997</u>
<u>April 23, 1997</u>	<u>June 4, 1997</u>
<u>May 21, 1997</u>	<u>July 2, 1997</u>
<u>June 25, 1997</u>	<u>August 6, 1997</u>
<u>July 23, 1997</u>	<u>September 3, 1997</u>
<u>August 20, 1997</u>	<u>October 1, 1997</u>
<u>September 24, 1997</u>	<u>November 5, 1997</u>
<u>October 22, 1997</u>	<u>December 3, 1997</u>
<u>November 26, 1997</u>	<u>January 7, 1998</u>

(7-1-96)T

**602. -- 699. (RESERVED).**

**700. IDAHO ADMINISTRATIVE CODE.**

The coordinator shall publish a compilation of all final agency rules in the code. No negotiated, ~~or~~ proposed, ~~or~~ temporary rules shall be included in the code. At the discretion of the Coordinator, temporary rules may be included in the Administrative Code. (6-7-94)(7-1-96)T

**701. IDAHO ADMINISTRATIVE CODE PUBLICATION SCHEDULE.**

All documents filed as final rules under Section 67-5224(5), Idaho Code, prior to ~~June~~ July 1 of each year, shall be published in the Administrative Code. Other documents required for publication in the Administrative Code shall be received by the coordinator no later than June 1 of each year. Temporary rules may also be included in the Administrative Code for purposes of viewing all relevant and effective rules. (7-1-93)(7-1-96)T

**702. -- 799. (RESERVED).**

**800. UNIFORM INDEXING SYSTEM FOR AGENCY ORDERS.**

The coordinator shall establish a uniform indexing system for agency orders. All agencies shall code each order using the following: (7-1-93)

01. Numbering. A two (2) digit numeric code representing the agency followed by a sequential number assigned by the agency shall be placed on the agency order. (7-1-93)

02. Filing. Each such order shall be filed with the main and regional offices of the agency including an index. (7-1-93)

03. Index. Each agency shall maintain a complete index of their orders in column format, which

includes: (7-1-93)

- a. The agency name, address, phone number, and contact person as a heading to the document; (7-1-93)
- b. The date of the order; (7-1-93)
- c. The order number as set forth in Section 800.01; and (7-1-93)
- d. A short description of the order. (7-1-93)
- 04. Updating the Index. The listing shall be updated by the agency no later than January 1 of each year. (7-1-93)

**801. -- 999. (RESERVED).**

**IDAPA 59 - PERSI**  
**59.01.06 - RETIREMENT RULES OF PERSI**  
**DOCKET NO. 59-0106-9604**  
**NOTICE OF PROPOSED RULES**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency is proposing regular rule-making. The action is authorized pursuant to Sections 59-1301, 59-1305, 59-1351, 59-1392, 67-5220, and 67-5221, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be held as follows:

Public hearings concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 17, 1996.

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance of the proposed rules:

IDAPA 59.01.06.162 - To subtract .01 from the factor for each year the contingent annuitant is more than 15 years younger than the member for Option 1 retirement and subtract .006 from the factor for Option 2 retirement. (Proposed Rule.)

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Bernadette C. Buentgen, Deputy Attorney General, PERSI, (208) 334-2451, ext. 271.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before July 24, 1996.

DATED this 21st day of May, 1996.

Bernadette C. Buentgen  
Deputy Attorney General for PERSI  
607 North Eighth Street  
Boise, Idaho 83702-5567  
208-334-2451, ext. 271

---

**TEXT OF DOCKET NO. 59-0106-9604**

**162. ACTUARIAL ASSUMPTION TABLES (Rule 162).**

The actuarial tables used for determining optional and early retirement benefits are as follows: (1-1-94)

TABLE A - Page 1

**PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**  
**EARLY RETIREMENT FACTORS**

If the date of last contribution is prior to 10/1/92

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.770	.690	.610	.530	.450
1	.998	.968	.938	.908	.878	.843	.763	.683	.603	.523	
2	.995	.965	.935	.905	.875	.837	.757	.677	.597	.517	
3	.993	.963	.933	.903	.873	.830	.750	.670	.590	.510	
4	.990	.960	.930	.900	.870	.823	.743	.663	.583	.503	
5	.988	.958	.928	.898	.868	.817	.737	.657	.577	.497	
6	.985	.955	.925	.895	.865	.810	.730	.650	.570	.490	
7	.983	.953	.923	.893	.863	.803	.723	.643	.563	.483	
8	.980	.950	.920	.890	.860	.797	.717	.637	.557	.477	
9	.978	.948	.918	.888	.858	.790	.710	.630	.550	.470	
10	.975	.945	.915	.885	.855	.783	.703	.623	.543	.463	
11	.973	.943	.913	.883	.853	.777	.697	.617	.537	.457	

First sixty months reduction: .2500% Next sixty months reduction: 0.6667%

(1-1-94)

TABLE A - Page 2

**PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**  
**EARLY RETIREMENT FACTORS**

If the date of last contribution is on or after 10/1/92 but prior to 10/1/93

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.777	.705	.632	.560	.487
1	.998	.968	.938	.908	.878	.844	.771	.699	.626	.554	
2	.995	.965	.935	.905	.875	.838	.765	.693	.620	.548	
3	.993	.963	.933	.903	.873	.832	.759	.687	.614	.542	
4	.990	.960	.930	.900	.870	.826	.753	.681	.608	.536	
5	.988	.958	.928	.898	.868	.820	.747	.675	.602	.530	
6	.985	.955	.925	.895	.865	.814	.741	.669	.596	.524	
7	.983	.953	.923	.893	.863	.808	.735	.663	.590	.518	
8	.980	.950	.920	.890	.860	.802	.729	.657	.584	.512	
9	.978	.948	.918	.888	.858	.796	.723	.651	.578	.506	
10	.975	.945	.915	.885	.855	.790	.717	.645	.572	.500	
11	.973	.943	.913	.883	.853	.784	.711	.639	.566	.494	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.6042%

(7-1-95)T

TABLE A - Page 3

PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

EARLY RETIREMENT FACTORS

If the date of last contribution is on or after 10/1/93 but prior to 10/1/94

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.785	.720	.655	.590	.525
1	.998	.968	.938	.908	.878	.845	.780	.715	.650	.585	
2	.995	.965	.935	.905	.875	.839	.774	.709	.644	.579	
3	.993	.963	.933	.903	.873	.834	.769	.704	.639	.574	
4	.990	.960	.930	.900	.870	.828	.763	.698	.633	.568	
5	.988	.958	.928	.898	.868	.823	.758	.693	.628	.563	
6	.985	.955	.925	.895	.865	.817	.752	.687	.622	.557	
7	.983	.953	.923	.893	.863	.812	.747	.682	.617	.552	
8	.980	.950	.920	.890	.860	.807	.742	.677	.612	.547	
9	.978	.948	.918	.888	.858	.801	.736	.671	.606	.541	
10	.975	.945	.915	.885	.855	.796	.731	.666	.601	.536	
11	.973	.943	.913	.883	.853	.790	.725	.660	.595	.530	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.5417%

(7-1-95)T

TABLE A - Page 4

## PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## EARLY RETIREMENT FACTORS

Date of last contribution is on or after 10/1/94 or later

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.0	.970	.940	.910	.880	.850	.792	.735	.677	.620	.562
1	.998	.968	.938	.908	.878	.845	.788	.730	.673	.615	
2	.995	.965	.935	.905	.875	.840	.783	.725	.668	.610	
3	.993	.963	.933	.903	.873	.836	.778	.721	.663	.606	
4	.990	.960	.930	.900	.870	.831	.773	.716	.658	.601	
5	.988	.958	.928	.898	.868	.826	.769	.711	.654	.596	
6	.985	.955	.925	.895	.865	.821	.764	.706	.649	.591	
7	.983	.953	.923	.893	.863	.816	.759	.701	.644	.586	
8	.980	.950	.920	.890	.860	.812	.754	.697	.639	.582	
9	.978	.948	.918	.888	.858	.807	.749	.692	.634	.577	
10	.975	.945	.915	.885	.855	.802	.745	.687	.630	.572	
11	.973	.943	.913	.883	.853	.797	.740	.682	.625	.567	

(7-1-95)T

TABLE B  
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO  
RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS

Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age

Death Benefits: Additional Years and Months Until Member Would Qualify  
For an Unreduced Service Retirement Allowance

AFTER Applying Table A factors

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.923	.853	.787	.727	.671	.620	.572	.528	.488	.451
1	.993	.917	.847	.782	.722	.667	.616	.568	.525	.485	
2	.987	.911	.841	.777	.717	.662	.612	.565	.521	.481	
3	.980	.905	.836	.772	.713	.658	.608	.561	.518	.478	
4	.974	.899	.830	.767	.708	.654	.604	.557	.515	.475	
5	.967	.893	.825	.762	.703	.649	.600	.554	.511	.472	
6	.961	.887	.819	.756	.699	.645	.596	.550	.508	.469	
7	.955	.881	.814	.751	.694	.641	.592	.546	.504	.466	
8	.948	.876	.808	.746	.689	.636	.588	.543	.501	.463	
9	.942	.870	.803	.742	.685	.632	.584	.539	.498	.460	
10	.936	.864	.798	.737	.680	.628	.580	.535	.494	.457	
11	.930	.858	.793	.732	.676	.624	.576	.532	.491	.454	

(1-1-94)



TABLE B - Page 2

PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO  
 RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN  
 DEATH BENEFITS

Options 3 and 4: Years and Months Until Member Would Be  
 Social Security Retirement Age

Death Benefits: Additional Years and Months Until Member  
 Would Qualify For an Unreduced Service Retirement Allowance  
 AFTER Applying Table A factors

Months	Years										
	10	11	12	13	14	15	16	17	18	19	20
0	.451	.416	.384	.355	.327	.302	.279	.258	.238	.220	.203
1	.448	.413	.382	.352	.325	.300	.277	.256	.236	.218	
2	.445	.411	.379	.350	.323	.298	.276	.254	.235	.217	
3	.442	.408	.377	.348	.321	.296	.274	.253	.233	.215	
4	.439	.405	.374	.345	.319	.294	.272	.251	.232	.214	
5	.436	.402	.372	.343	.317	.293	.270	.249	.230	.213	
6	.433	.400	.369	.341	.315	.291	.268	.248	.229	.211	
7	.430	.397	.367	.339	.313	.289	.267	.246	.227	.210	
8	.427	.394	.364	.336	.311	.287	.265	.244	.226	.208	
9	.424	.392	.362	.334	.308	.285	.263	.243	.224	.207	
10	.422	.389	.359	.332	.306	.283	.261	.241	.223	.206	
11	.419	.387	.357	.330	.304	.281	.260	.240	.221	.204	

(1-1-94)

TABLE B - Page 3

PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO  
RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN  
DEATH BENEFITS

Options 3 and 4: Years and Months Until Member Would Be  
Social Security Retirement Age

Death Benefits: Additional Years and Months Until Member  
Would Qualify For an Unreduced Service Retirement Allowance  
AFTER Applying Table A factors

Months	Years					
	20	21	22	23	24	25
0	.203	.187	.173	.160	.148	.136
1	.202	.186	.172	.159	.147	.135
2	.200	.185	.171	.158	.146	.134
3	.199	.184	.170	.157	.145	.134
4	.198	.183	.169	.156	.144	.133
5	.196	.181	.167	.155	.143	.132
6	.195	.180	.166	.154	.142	.131
7	.194	.179	.165	.153	.141	.130
8	.192	.178	.164	.152	.140	.129
9	.191	.177	.163	.151	.139	.128
10	.190	.175	.162	.150	.138	.127
11	.189	.174	.161	.149	.137	.127

(1-1-94)

TABLE C  
 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO  
JOINT AND SURVIVOR CONTINGENT ANNUITANT FACTORS

		Age Difference in Years	Factors	
			Option 1	Option 2
		15 or more*	0.690	0.810
		14	0.700	0.816
		13	0.710	0.822
		12	0.720	0.828
		11	0.730	0.834
Member		10	0.735	0.840
Older		9	0.740	0.846
Than		8	0.745	0.852
Beneficiary		7	0.750	0.858
<u>Contingent Annuitant</u>		6	0.755	0.864
		5	0.760	0.870
		4	0.765	0.876
		3	0.770	0.882
		2	0.785	0.888
		1	0.800	0.894
		<b>0</b>	<b>0.815</b>	<b>0.900</b>
		1	0.835	0.915
		2	0.855	0.925
		3	0.875	0.935
		4	0.890	0.945
		5	0.900	0.950
Member		6	0.910	0.955
Younger		7	0.920	0.960
Than		8	0.930	0.965
Beneficiary		9	0.940	0.967
<u>Contingent Annuitant</u>		10	0.944	0.969
		11	0.946	0.971

Age Difference in Years	Factors	
	Option 1	Option 2
12	0.948	0.973
13	0.950	0.975
14	0.952	0.977
15 or more	0.954	0.979

\*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. (Amended 96) (7-1-95)F( )

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