

IDAHO ADMINISTRATIVE BULLETIN

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November 6, 1996

Volume 96-11

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IDAPA 04 - OFFICE OF THE ATTORNEY GENERAL
04.11.01 - MODEL RULES OF ADMINISTRATIVE PROCEDURE
DOCKET NO. 04-1101-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These rules are effective October 1, 1996

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the Attorney General has (1) adopted temporary rules amending the Idaho Rules of Administrative Procedure and (2) proposed the rules adopted as temporary rules under notice-and-comment rule making. The Attorney General's adoption of the Idaho Rules of Administrative Procedure is authorized by Idaho Code Section 57-5206, Idaho Code, in particular subsections (2), (3), and (4) of that section.

PUBLIC HEARING SCHEDULE: The Attorney General does not propose to hold public hearing in this rule-making. The Attorney General proposes to process this rule-making under notice-and-comment procedures provided by section 67-2221, Idaho Code. Idaho statute does not provide for public hearings or oral presentations for the promulgation of rules of procedure, but the Attorney General would consider whether to hold public hearings if requested in writing by twenty-five (25) persons, a political subdivision, or an agency no later than November 20, 1996. If public hearings are held, the hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days before the hearing, to the agency address listed below.

DESCRIPTIVE SUMMARY: The following is a statement in non-technical language of the substance of the temporary and proposed rules: These rules bring the Idaho Rules of Administrative Procedure, which are promulgated by the Attorney General to serve as model rules for agencies, into conformity with 1995 and 1996 statutory changes to the Administrative Procedure Act. In particular, the temporary and proposed rules bring the Attorney General's rules into conformity with the new procedures prescribed by statute for adoption of temporary rules, pending rules, and final rules found in the 1995 and 1996 amendments to section 67-5201, 67-5221, 67-5223, 67-5224, 67-5226, 67-5227, and 67-5228, Idaho Code. In addition, the rules also bring the Attorney General's rules into conformity with the 1995 amendments to section 67-5272, Idaho Code, the venue statute for judicial review of agency action, and to section 67-5230, concerning petitions to an agency to initiate rulemaking.

The following is the required finding and a concise statement of the supporting reasons for temporary rule-making: The Idaho Rules of Administrative Procedure originally adopted by the Attorney General conformed to the statutory requirements of the Administrative Procedure Act as originally passed, but have become out of compliance because of intervening amendments to the Administrative Procedure Act. Those amendments to the Administrative Procedure Act are now in effect, and the Attorney General's current rules, before the adoption of these temporary rules, do not comply with governing statute. These temporary rules are adopted to bring the Attorney General's rules of Administrative Procedure into compliance with governing statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact Michael S. Gilmore, Deputy Attorney General at (208) 334-4130.

Any person may submit written comments regarding the proposed amendments. All written comments and data concerning the proposed amendments should be sent to Michael S. Gilmore, Deputy Attorney General, Office of the Attorney General, Statehouse, P.O. Box 83720, Boise, ID 83720-0010, and must be postmarked or delivered on or before November 27, 1996.

DATED this 11th day of September, 1996.

Michael S. Gilmore, Deputy Attorney General
Office of the Attorney General
Statehouse
P.O. Box 83720
Boise, Idaho 83720-0010
(208)334-2400 / FAX (208) 334-2830

TEXT OF DOCKET NO. 04-1101-9601

005. DEFINITIONS (Rule 5).

As used in this chapter: (7-1-93)

01. Administrative Code. The Idaho administrative code established in chapter 52, title 67, 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. Agency action means: (7-1-93)
 - a. The whole or part of a rule or order; (7-1-93)
 - b. The failure to issue a rule or order; or (7-1-93)
 - c. An agency's performance of, or failure to perform, any duty placed on it by law. (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 chapter 52, title 67, Idaho Code. (7-1-93)
06. Contested Case. A proceeding which results in the issuance of an order. (7-1-93)
07. Coordinator. The administrative rules coordinator prescribed in section 67-5202, Idaho Code. (7-1-93)
08. Document. Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
09. Final Rule. A rule that has been adopted by an agency under the regular rulemaking process and that is in effect. (10-1-96)T
- ~~09~~10. License. The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. (7-1-93)
- ~~10~~1. Official Text. The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. (7-1-93)
- ~~11~~2. Order. An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)
- ~~12~~3. Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (7-1-93)
14. Pending Rule. A rule that has been adopted by an agency under the regular rulemaking process (i.e., proposal of rule in Bulletin, opportunity for written comment or oral presentation, and adoption of rule in Bulletin) and remains subject to legislative review. (10-1-96)T
- ~~13~~5. Person. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (7-1-93)

146. Provision of Law. The whole or a part of the state or federal constitution, or of any state or federal: (7-1-93)
- a. Statute; or (7-1-93)
 - b. Rule or decision of the court. (7-1-93)
17. Proposed Rule. A rule published in the bulletin as provided in section 67-5221, Idaho Code. (10-1-96)T
158. Publish. To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (7-1-93)
169. Rule. The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of chapter 52, title 67, Idaho Code, and that implements, interprets, or prescribes: (7-1-93)
- a. Law or policy, or (7-1-93)
 - b. The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (7-1-93)
 - i. Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)
 - ii. Declaratory rulings issued pursuant to section 67-5232, Idaho Code; (7-1-93)
 - iii. Intra-agency memoranda; or (7-1-93)
 - iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)
1720. Rule-making. The process for formulation, adoption, amendment or repeal of a rule. (7-1-93)
21. Submitted for Review. A rule that has been provided to the legislature for review at a regular or special legislative session as provided in section 67-5291, Idaho Code. (10-1-96)T
22. Temporary Rule. A rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in section 67-5226, Idaho Code. (10-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (Rule 402).

01. Final Agency Action. The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. (7-1-93)
02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)
- a. This is a final agency action issuing a declaratory ruling. (7-1-93)

- b. Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: (7-1-93)
- i. A hearing was held; (7-1-93)
- ii. The declaratory ruling was issued; (7-1-93)
- iii. The party appealing resides, or operates its principal place of business in Idaho; or
(7-1-93)(10-1-96)T
- iv. The real property or personal property that was the subject of the declaratory ruling is located. (7-1-93)
- c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See section 67-5273, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

730. PRELIMINARY ORDERS (Rule 730).

01. Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to section 67-5245, Idaho Code. (7-1-93)

02. Content. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code. (7-1-93)

b. Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (7-1-93)

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (7-1-93)

d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (7-1-93)

e. Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

i. A hearing was held, (7-1-93)

ii. The final agency action was taken, (7-1-93)

iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
(7-1-93)(10-1-96)T

iv. The real property or personal property that was the subject of the agency action is located. (7-1-93)

f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

740. FINAL ORDERS (Rule 740).

01. Definition. Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code. Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the agency will not issue further orders or conduct further proceedings in the matter. (7-1-93)

02. Content. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code. (7-1-93)

b. Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

i. A hearing was held, (7-1-93)

ii. The final agency action was taken, (7-1-93)

iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
(7-1-93)(10-1-96)T

iv. The real property or personal property that was the subject of the agency action is located. (7-1-93)

c. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

791. NOTICE OF APPEAL (Rule 791).

The notice of appeal must be filed with the agency and with the district court and served on all parties. (7-1-93)

01. Filing. Pursuant to section 67-5272, Idaho Code, appeals may be filed in the District Court of the county in which: (7-1-93)

- a. The hearing was held, (7-1-93)
- b. The final agency action was taken, (7-1-93)
- c. The party seeking review of the agency action resides, or operates its principal place of business in Idaho, or ~~(7-1-93)~~(10-1-96)T
- d. The real property or personal property that was the subject of the agency is located. (7-1-93)

02. Time. Pursuant to section 67-5273, Idaho Code, a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: (7-1-93)

- a. Of the service date of the final order, (7-1-93)
- b. Of the denial of the petition for reconsideration, or (7-1-93)
- c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

821. AGENCY RESPONSE TO PETITION (Rule 821).

01. Action of Agency. Within twenty-eight (28) days after the agency has received a petition to initiate rule-making, the agency shall initiate rule-making proceedings in accordance with sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial, unless the rulemaking authority is in a multi-member agency board or commission whose members are not full-time officers or employees of the state, in which case the multi-member board or commission shall have until the first regularly scheduled meeting of the multi-member board or commission that takes place seven (7) or more days after submission of the petition to initiate rule-making proceedings in accordance with sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial. ~~(7-1-93)~~(10-1-96)T

02. Denial. If the petition is denied, the written denial shall state: (7-1-93)

a. The agency has denied your petition to initiate rule-making. This denial is a final agency action within the meaning of section 67-5230, Idaho Code. (7-1-93)

b. Pursuant to section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rule-making by filing a petition in the District Court of the county in which: (7-1-93)

- i. The hearing was held, (7-1-93)
- ii. This final agency action was taken, (7-1-93)
- iii. The party seeking review resides, or operates its principal place of business in Idaho, or ~~(7-1-93)~~(10-1-96)T

iv. The real property or personal property that was the subject of the denial of the petition for rule-making is located. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rule-making. See section 67-5273, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

Rules 830 through 839--
Procedure on Rule-Making for ~~Final~~Pending Rules

830. REQUIREMENTS FOR NOTICE OF PROPOSED RULE-MAKING (Rule 830).

01. Content. Every notice of proposed rule-making shall include: (7-1-93)
- a. A statement of the subject matter of the proposed rules; (7-1-93)
- b. A statement of the ~~legal~~ specific statutory authority for the proposed rules, including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking; ~~(7-1-93)~~(10-1-96)T
- c. A statement in nontechnical terms of the ~~purpose~~ substance of the proposed rules, and, if the agency intends to take oral testimony on the proposed rule, the location, date and time of the oral presentations; ~~(7-1-93)~~(10-1-96)T
- d. A statement whether the agency intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation; (7-1-93)
- e. The address to which written submissions concerning the proposed rules must be mailed; (7-1-93)
- f. The name and telephone number of an agency contact to whom questions about the proposed rules may be referred; (7-1-93)
- g. The deadline for written comment on the proposed rules and for asking for an opportunity for an oral presentation concerning the proposed rules; ~~(7-1-93)~~(10-1-96)T
- h. A statement whether negotiated rule-making has been conducted, and if not, why not; and (7-1-93)
- i. A summary of the proposed rules. (7-1-93)
02. Availability of Information. This information will be published in the Idaho Administrative Bulletin and be available directly from the agency. The notice of proposed rule-making must be accompanied by a document showing the text of the proposed rule in legislative format. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

835. ADOPTION AND PUBLICATION OF FINAL-PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION (Rule 835).

01. Adoption. After the expiration of the written comment period for rule-making and following any

oral presentation on the rule-making, but no sooner than seven (7) days after the expiration of the comment period, the agency shall consider fully all issues presented by the written and oral submissions regarding respecting the proposed rules before adopting a final pending rule. (7-1-93)(10-1-96)T

042. Requirements Publication. Upon tThe agency's adoption of a final pending rule, the agency shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the agency need not publish the full text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and must note all changes that have been made. In addition, the agency must publish in the bulletin a concise explanatory statement containing: (7-1-93)(10-1-96)T

a. Shall contain a concise explanation of tThe reasons for adopting the pending rule and generally review the issues raised by oral or written submissions to the proposed rule, explaining why the rule was or was not modified in response to the comments; (7-1-93)(10-1-96)T

b. If the final rule differs from the proposed rule, shall explain why the final rule differs from the proposed rule A statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes; and (7-1-93)(10-1-96)T

c. Provide an effective-The date for on which the final pending rule will become final and effective pursuant to section 67-5224(5), Idaho Code; (7-1-93)(10-1-96)T

d. A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature; (10-1-96)T

e. An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and (10-1-96)T

f. A statement how to obtain a copy of the agency's written review of and written responses to the written and oral submissions respecting the proposed rule. (10-1-96)T

023. Additional Documents for Bulletin Publication. The agency's responses to the comments received in rule-making, changes made in the rules in response to comments, and effective dates of the final rule will be published in the Idaho Administrative Bulletin. Rule Imposing or Increasing Fees. When any pending rule imposes a new fee or charge or increases an existing fee or charge, the agency shall provide the coordinator with a description of that portion of the rule imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. (7-1-93)(10-1-96)T

836. FINAL RULES (Rule 836).

Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in section 67-5224, Idaho Code. (10-1-96)T

8367. -- 839. (RESERVED).

840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES (Rule 840).

The agency may adopt temporary rules upon its finding that they are reasonably necessary to protect the public health, safety, or welfare, to comply with deadlines in amendments to governing law or federal programs, or to confer a benefit. Temporary rules take effect according to the effective date specified in the rules. Temporary rules shall expire no more than eighteen (18) weeks after the time of their adoption, unless the agency has initiated but not completed final rule-making addressing the same subject matter as the temporary rules, in which case the temporary rules may be extended for an additional nine (9) weeks. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (7-1-93)

01. Gubernatorial Finding. The agency may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the

Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge. (10-1-96)T

02. Effective Date. Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective. (10-1-96)T

03. Expiration. In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule that has become effective pursuant to section 67-5224(5), Idaho Code. (10-1-96)T

04. Notice and Publication. Agencies shall give such notice as is practicable in connection with adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (10-1-96)T

05. Associated Proposed Rule. Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, an agency must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final. (10-1-96)T

850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES (Rule 850).

The agency may amend ~~final~~ pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will become effective incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. (~~7-1-93~~)(10-1-96)T

860. PERSONS WHO MAY SEEK JUDICIAL REVIEW (Rule 860).

Pursuant to section 67-5270, Idaho Code, any person aggrieved by an agency rule (either temporary or final) may seek judicial review in district court. (7-1-93)

01. Filing. The petition for judicial review must be filed with the agency and with the district court and served on all parties. Pursuant to section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: (7-1-93)

a. The hearing was held; (7-1-93)

b. The final agency action was taken; (7-1-93)

c. The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (~~7-1-93~~)(10-1-96)T

d. The real property or personal property that was the subject of the agency is located. (7-1-93)

02. Time. Pursuant to section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (7-1-93)

IDAPA 04 - OFFICE OF THE ATTORNEY GENERAL
04.11.01 - MODEL RULES OF ADMINISTRATIVE PROCEDURE
DOCKET NO. 04-1101-9602
NOTICE OF PROPOSED RULES

EFFECTIVE DATE: These rules will become final and effective on July 1, 1997, or at such other time as may be prescribed by concurrent resolution of the regular or special legislative session to which the rules are submitted for review. The proposed rule may be rejected, amended, or modified by concurrent resolution of the legislature.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Attorney General has proposed rules to be adopted as pending rules under notice-and-comment rule-making. These rules, if adopted following notice-and-comment rulemaking, will then reviewed by the legislature before becoming final rules.

PUBLIC HEARING SCHEDULE: The Attorney General does not currently propose to hold public hearing in this rule-making. The Attorney General proposes to process this rule-making under notice-and-comment procedure provided by section 67-2221, Idaho Code. Idaho statute does not provide for public hearings or oral presentations for the promulgation of rules of procedure, but the Attorney General would consider whether to hold public hearings if requested in writing by twenty-five (25) persons, a politic subdivision, or an agency, no later than November 20, 1996. If public hearings are held, the hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days before the hearing, to the agency address listed below.

DESCRIPTIVE SUMMARY: The following is a statement in non-technical language of the substance of the proposed rules: There are four purposes to this proposed rule-making. The first is to delete Rule 9 of the Idaho Rules of Administrative Procedure, which is an obsolete provision concerning the effective date of the rules. The second is to amend Rules 510, 520, 521, and 522 to clarify that an agency may compel discovery in contested case proceedings before the agency only when there is a basis for discovery before the agency independent of the Administrative Procedure Act and the Idaho Rules of Administrative Procedure. The third is to amend Rules 651 and 834 to clarify that records of contested case hearings or oral presentations for rulemaking before an agency may be preserved by recording the proceedings or using a court reporter to take the proceedings. The fourth is to clarify in the Rule 834 governing proposed rule-making that an agency contact person must be listed in the notice of proposed rule-making.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact Michael S. Gilmore, Deputy Attorney General at (208) 334-4130.

Any person may submit written comments regarding the proposed amendments. All written comments and data concerning the proposed amendments should be sent to Michael S. Gilmore, Deputy Attorney General, Office of the Attorney General, Statehouse, P.O. Box 83720, Boise, ID 83720-0010, and must be postmarked or delivered on or before November 27, 1996.

DATED this 11th day of September, 1996.

Michael S. Gilmore, Deputy Attorney General
Office of the Attorney General
Statehouse
P.O. Box 83720
Boise, Idaho 83720-0010
(208)334-2400 / FAX (208) 334-2830

TEXT OF DOCKET NO. 04-1102-9602

009. EFFECTIVE DATE (Rule 9).

Unless otherwise indicated, the effective date of every rule in this chapter is March 24, 1993. (7-1-93)

0409. -- 049. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

510. PURPOSES OF PREHEARING CONFERENCES (Rule 510).

The presiding officer may by order or notice issued to all parties and to all interested persons as defined in Rule 158 convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is authorized before the agency allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

520. KINDS AND SCOPE OF DISCOVERY LISTED (Rule 520).

01. Kinds of Discovery. The kinds of discovery recognized ~~and authorized~~ by these rules in contested cases are: (7-1-93)(____)

- a. Depositions; (7-1-93)
- b. Production requests or written interrogatories; (7-1-93)
- c. Requests for admission; (7-1-93)
- d. Subpoenas; and (7-1-93)
- e. Statutory inspection, examination (including physical or mental examination), investigation, etc. (7-1-93)

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, when discovery is authorized before the agency, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (7-1-93)(____)

521. WHEN DISCOVERY AUTHORIZED (Rule 521).

Parties may agree between or among themselves to provide for discovery without reference to an agency's statutes, rules of procedure, or orders. Otherwise no party before the agency is entitled to engage in discovery unless discovery is authorized before the agency, the party moves to compel discovery, and the agency issues an order directing that the discovery be answered. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to compel discovery. (7-1-93)(____)

522. RIGHTS TO DISCOVERY RECIPROCAL (Rule 522).

All parties to a proceeding have a right of discovery of all other parties to a proceeding ~~according to~~ as allowed by Rule 521 and to the agency's authorizing statutes and rules. Rules 523 through 525, 527 and 528 set forth the scope of various forms of discovery when those forms of discovery are authorized before the agency, but do not create an

independent right of discovery. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

651. RECORDING OR REPORTING OF HEARINGS (Rule 651).

All hearings shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

830. REQUIREMENTS FOR NOTICE OF PROPOSED RULE-MAKING (Rule 830).

- 01. Content. Every notice of proposed rule-making shall include: (7-1-93)
 - a. A statement of the subject matter of the proposed rules; (7-1-93)
 - b. A statement of the ~~legal~~ specific statutory authority for the proposed rules, including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking; (7-1-93)(____)
 - c. A statement in nontechnical terms of the ~~purpose~~ substance of the proposed rules, and, if the agency intends to take oral testimony on the proposed rule, the location, date and time of the oral presentations; (7-1-93)(____)
 - d. A statement whether the agency intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation; (7-1-93)
 - e. The address to which written submissions concerning the proposed rules must be mailed, (7-1-93)
 - f. The name and telephone number of an agency contact to whom questions about the proposed rules may be referred; (7-1-93)
 - g. The deadline for written comment on the proposed rules and for asking for an oral presentation concerning the proposed rules; (7-1-93)
 - h. A statement whether negotiated rule-making has been conducted, and if not, why not; ~~and~~ (7-1-93)(____)
 - i. A summary of the proposed rules; ~~and-~~ (7-1-93)(____)
 - j. The name, mailing address and telephone number of an agency contact person for the rulemaking. (____)
- 02. Availability of Information. This information will be published in the Idaho Administrative Bulletin and be available directly from the agency. The notice of proposed rule-making must be accompanied by a document showing the text of the proposed rule in legislative format. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

834. THE RULE-MAKING RECORD (Rule 834).

The agency shall maintain a record of each rule-making proceeding. (7-1-93)

01. Contents. The record for a rule-making proceeding shall include: (7-1-93)

a. Copies of all publications in the Idaho Administrative Bulletin relating to that rule-making proceeding; (7-1-93)

b. All written petitions, submissions, and comments received by the agency, and the agency's responses to those petitions, submissions and comments; (7-1-93)

c. All written materials considered by the agency in connection with formulating the proposal or adoption of the rule; (7-1-93)

d. A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and (7-1-93)

e. Any other materials or documents prepared in conjunction with the rule-making, including any summaries prepared for the agency in considering the rule-making. (7-1-93)

02. Recording or Reporting. All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at their own expense. (7-1-93)()

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.03 - RULES GOVERNING ELECTRICAL LICENSING AND
REGISTRATION - GENERAL

DOCKET NO. 07-0103-9601

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is 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 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 54-1006, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 1996 Idaho Administrative Bulletin, Volume 96-9, pages 66 through 68.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gary L. Malmen, Bureau Chief, Electrical Bureau, Division of Building Safety, 277 N. 6th Street, Suite 101, P.O. Box 83720, Boise, Idaho 83720-0028, (208) 334-2183.

DATED this 25th day of September, 1996.

Renee Bryant
Division of Building Safety
277 N. 6th Street, Suite 100
P.O. Box 83720
Boise, ID 83720-4801
(208) 334-3950/fax (208) 334-2683

IDAPA 07
TITLE 01
Chapter 03

RULES GOVERNING ELECTRICAL LICENSING AND REGISTRATION -- GENERAL

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-9, September 4, 1996 Pages 66 through 68.**

**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 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

DOCKET NO. 07-0104-9601

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is 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 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 54-1006, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Idaho Administrative Bulletin, Volume 96-8, pages 42 through 45.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gary L. Malmen, Bureau Chief, Electrical Bureau, Division of Building Safety, 277 N. 6th Street, Suite 101, P.O. Box 83720, Boise, Idaho 83720-0028, (208) 334-2183.

DATED this 25th day of September, 1996.

Renee Bryant
Division of Building Safety
277 N. 6th Street, Suite 100
P.O. Box 83720
Boise, ID 83720-4801
Phone: (208) 334-3950
Fax: (208) 334-2683

IDAPA 07
TITLE 01
Chapter 04

RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-8, August 7, 1996 Pages 42 through 45.**

**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 07 - DIVISION OF BUILDING SAFETY
07.02.06 - RULES GOVERNING UNIFORM PLUMBING CODE

DOCKET NO. 07-0206-9601

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is 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 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 54-2605, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 1996 Idaho Administrative Bulletin, Volume 96-9, pages 69 and 70.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joe Meyer, Bureau Chief, Plumbing Bureau, Division of Building Safety, 277 N. 6th Street, Suite 100, P.O. Box 83720, Boise, Idaho 83720-0068, (208) 334-3442.

DATED this 26th day of September, 1996.

Renee Bryant
Division of Building Safety
277 N. 6th Street, Suite 100
P.O. Box 83720
Boise, ID 83720-4801
(208) 334-3950/fax (208) 334-2683

IDAPA 07
TITLE 02
Chapter 06

RULES GOVERNING UNIFORM PLUMBING CODE

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-9, September 4, 1996,
Pages 69 through 70.**

**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 09 - IDAHO DEPARTMENT OF LABOR
09.01.30 - RULES OF UNEMPLOYMENT INSURANCE BENEFIT CLAIMS

DOCKET NO. 09-0130-9601

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 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 72-1333(b), Idaho Code.

DESCRIPTIVE SUMMARY: No comments were received on the proposed rules, and there are no substantive amendments from the proposed rule text published September 4, 1996, in the Idaho Administrative Bulletin, Vol. 96-9, pages 71 through 73.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jean Hull, Chief of Benefits Bureau, Idaho Department of Labor, at (208) 334-6317.

Dated this 26th day of September, 1996.

Roger B. Madsen, Director
Idaho Department of Labor
317 Main Street
Boise, ID 83735
Fax # (208) 334-6430

IDAPA 09
TITLE 01
Chapter 30

RULES OF UNEMPLOYMENT INSURANCE BENEFIT CLAIMS

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-9, September 4, 1996,
Pages 71 through 73.**

**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 09 - IDAHO DEPARTMENT OF LABOR
09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU
DOCKET NO. 09-0135-9601
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 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 72-1333(b), Idaho Code.

DESCRIPTIVE SUMMARY: No comments were received on the proposed rules, and there are no substantive amendments from the proposed rule text published September 4, 1996, in the Idaho Administrative Bulletin, Vol. 96-9, pages 74 through 85.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mark Whitworth, Chief, Employer Accounts Bureau, Idaho Department of Labor, at (208) 334-6385.

Dated this 26th day of September, 1996.

Roger B. Madsen, Director
Idaho Department of Labor
317 Main Street
Boise, ID 83735
Fax # (208) 334-6430

IDAPA 09
TITLE 01
Chapter 35

RULES OF THE EMPLOYER ACCOUNTS BUREAU

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-9, September 4, 1996,
Pages 74 through 85.**

**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 11 - DEPARTMENT OF LAW ENFORCEMENT
11.02.01 - RULES OF THE IDAHO STATE BRAND BOARD
DOCKET NO. 11-0201-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

AUTHORITY: In compliance with Section 25-1102, Idaho Code, notice is hereby given that this agency has adopted temporary rules and has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking 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, no later than November 20, 1996.

The hearing site 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 at the address below.

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

Changes fee for renewal of recorded brand from twenty dollars (\$20) every two (2) years to fifty dollars (\$50) every five (5) years.

Increases fee collected by the Brand Inspector for Animal Health from eighteen cents (\$.18) to twenty-two cents (\$.22) per head.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Larry Hayhurst, at (208) 884-7071.

Any person 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 November 27, 1996.

DATED this 24th day of September, 1996.

R.A.Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-0201-9601

034. SCHEDULE OF FEES FOR THE IDAHO STATE BRAND BOARD.

01. Fees. Fees authorized by the State Brand Board and to be collected by the State Brand Inspector are

as follows:

Recording of a brand	\$50.00	
Transfer of a recorded brand	\$50.00	
Renewal of a recorded brand (Every two five years)	\$250.00	
Duplicate brand registration certificate	\$1.50	
Ownership and transportation certificate	\$25.00	
Duplicate ownership and transportation certificate	\$5.00	
Annual inspection (Expires 12/31) Equine or bovine	\$5.00	
	CATTLE	HORSES
Brand inspection (per head)	\$.75	\$1.50
Idaho livestock to pasture (per head)	\$.38	\$.75
Minimum auction fee	\$50.00	\$50.00
Minimum field brand inspection fee	\$3.00	\$3.00
Courtesy brand inspection	\$.75	\$1.50

Fees to be collected by the State Brand Inspector for other state agencies:	
Idaho Beef Council (per head)	\$1.00
Idaho Horse Board (per head)	\$1.00
Idaho Department of Agriculture:	
Animal health (per head)	\$.48 22
Predator control (per head)	\$.03

(~~7-1-93~~)(1-1-97)T

02. Due And Payable. Pursuant to Section 25-1152(5), Idaho Code, all brand inspection fees, and all other fees required to be collected by the Brand Inspector are due and payable at the time of inspection, except that livestock owners may make arrangements with a deputy brand inspector to pay for all accumulated brand inspection fees within each seven day period. Failure to comply with this rule will cancel the previously approved schedule and shall make all fees immediately due and payable. (7-1-93)

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.04.01 - RULES OF THE IDAHO STATE RACING COMMISSION GOVERNING HORSE RACING
DOCKET NO. 11-0401-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking 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, no later than November 20, 1996.

The hearing site 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 at the address below.

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

Idaho State Racing Commission would like to indicate horses which are on a non-steroidal anti-inflammatory drug on the daily racing programs and other publications in addition to posting such horses on a list in the racing area.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Eugene Baker, at (208) 884-7080.

Any person may submit written comments regarding this rule. All written comment, and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before November 27, 1996.

DATED this 24th day of September, 1996.

R.A. Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-0401-9601

070. ILLEGAL PRACTICES AND PERMITTED MEDICATION.

01. Offer of Bribes. No person shall give, offer or promise, directly or indirectly, to anyone any bribe, gift or gratuity in any form for the purpose of improperly influencing the result of a race. (7-1-93)

02. Acceptance of Bribes. No person licensed by the Commission, nor any other person, shall accept or offer to accept, on his own behalf or on behalf of another, any bribe, gift or gratuity in any form to influence the result of a race. (7-1-93)
03. Ineligible. No person shall enter or start a horse which is known or believed to be ineligible or disqualified. (7-1-93)
04. Ringer. No person shall enter or start a horse which is a ringer. (7-1-93)
05. Declaring an Entry. No person shall offer or receive money or any other benefit for declaring an entry from a race. (7-1-93)
06. Conspire. No person shall conspire with any other person for the commission of any corrupt or fraudulent practice in relation to racing, nor shall he commit such an act on his own account. (7-1-93)
07. Bets. No person except the owner or Trainer of the horse the Jockey is riding shall make a bet for the account of any Jockey and then only on the horse being ridden by said Jockey. (7-1-93)
08. Shodding. A horse starting in a race shall not be shod with ordinary shoes, training shoes or bar plates except by permission of the Stewards. (7-1-93)
09. Devices. No electrical or mechanical device or other appliance designed to increase or decrease the speed of a horse, other than ordinary whip, shall be possessed by anyone or applied by anyone to a horse at any time on the grounds of an Association during a meeting whether in a race or otherwise. (7-1-93)
10. Tampering. No person shall improperly tamper or attempt to tamper with any horse in such a way as to affect his speed in a race, nor shall he counsel or in any way aid or abet any such tampering. (7-1-93)
11. Illness. The owner and/or Trainer or their representative shall report any illness or an unusual condition of his horse to the Board of Stewards or Commission Veterinarian. (7-1-93)
12. Wagers. No employee of the Commission and no person acting in the capacity of a Racing Official or an Assistant Racing Official or Mutuel employee shall wager money or anything of value on races at the track at which they are employed or acting. (7-1-93)
13. Medication Facilities. The Commission may require the Association to provide such facilities for medication, drug or other tests of a horse as may be required by the Commission. (7-1-93)
14. Winner. The winner of every race and such other horses as the Stewards or Commission Veterinarian may designate shall be escorted by the Veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the Commission Veterinarian or his assistant. (7-1-93)
15. Trainer Present. The Trainer, or his authorized representative, must be present in the Testing Enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the Trainer or his representative, as witness to the taking of the specimen. Willful failure to be present at or a refusal to allow the taking of such specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension by the Stewards and the matter shall referred to the Commission for such further penalty as may be determined. (7-1-93)
16. Specimens. All specimens taken by or under direction of the Commission Veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from which the specimen was taken or the identity of its owner, Trainer, Jockey or stable shall not be revealed to the laboratory. The container of each specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission. (7-1-93)

17. Medication. The Commission Veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission. (7-1-93)

a. Non-Steroidal Anti-Inflammatory Drugs, when authorized, are permitted only with written approval of the Commission Veterinarian. (7-1-93)

b. No horses may be entered into a race utilizing a Non-Steroidal Anti-Inflammatory Drug, except DMSO, unless the Trainer and Veterinarian of the horse submit to the Commission Veterinarian the Non-Steroidal Anti-Inflammatory Drug Request Form and have obtained written approval from the Commission Veterinarian. The Commission Veterinarian shall establish and publish reasonable procedures pertaining to use of the Non-Steroidal Anti-Inflammatory Drug Request Form. A copy of the established procedures shall be posted in the office of the Racing Secretary. The Non-Steroidal Anti-Inflammatory Drug Request Form submitted to the Commission Veterinarian shall state: (7-1-93)

i. The name, age, sex and breed of the horse; (7-1-93)

ii. The name of the licensed Trainer and Veterinarian; (7-1-93)

iii. The nature of the horse's injury or disease as determined by an examination by a qualified and duly licensed Veterinarian; (7-1-93)

iv. The name of the Non-Steroidal Anti-Inflammatory drug requested and the proposed time and method of administration; (7-1-93)

v. A request by the Trainer to discontinue medication; and (7-1-93)

vi. Signature of Trainer and Veterinarian attending the horse and the Commission Veterinarian. (7-1-93)

c. The Commission Veterinarian shall approve the Non-Steroidal Anti-Inflammatory Drug request only if, in the exercise of his/her professional judgment, a need for the use of the Non-Steroidal Anti-Inflammatory Drug for the particular horse's injury or disease has been satisfactorily demonstrated. In arriving at the decision, the Commission Veterinarian may take into account or rely upon the written professional diagnosis made by a qualified and duly licensed Veterinarian. (7-1-93)

d. Approved medication may be discontinued with permission of the Commission Veterinarian on the Drug Request Form after a minimum of thirty (30) days. Otherwise, approval will expire on December 31st of the year in which it is approved. (7-1-93)

e. A Non-Steroidal Anti-Inflammatory Drug shall be administered to the horse no later than twenty-four (24) hours prior to the time the horse is scheduled to race. (7-1-93)

f. Violations: (7-1-93)

i. Only one (1) Non-Steroidal Anti-Inflammatory Drug may be in a horse's system on race day. (7-1-93)

ii. No urine sample taken from a horse authorized to use phenylbutazone shall exceed one hundred sixty-five (165) micrograms total of phenylbutazone or its metabolites per milliliter of urine. (7-1-93)

iii. No blood sample taken from a horse authorized to use: Phenylbutazone shall not exceed five (5) micrograms per milliliter of phenylbutazone or oxyphenbutazone; or Naproxen (Equiproxen) shall not exceed 5 (five) micrograms per milliliter; or Flunixin (Banamine) or Mechlosenamic Acid (Arquel) shall not exceed one (1)

microgram per milliliter. (12-1-94)

iv. The first violation of the foregoing standard shall result in a fine to the horse's Trainer and such other penalty deemed appropriate. (12-1-94)

v. The second violation of the foregoing standard by the same Trainer during the same race meet or a continuous race meet shall result in a suspension, a fine and such other penalty deemed appropriate. (12-1-94)

vi. If a Non-Steroidal Anti-inflammatory Drug other than DMSO is not detected in the urine or in any other specimen taken from a horse authorized to use the Non-Steroidal Anti-Inflammatory Drug, a fine up to five hundred dollars (\$500) may be imposed upon the horse's Trainer without loss of purse. (12-1-94)

vii. If a Non-Steroidal Anti-Inflammatory Drug is detected in the urine or in any other specimen taken from a horse not authorized to use the Non-Steroidal Anti-Inflammatory Drug, the violation shall result in loss of purse and the horse's Trainer is subject to such penalties deemed appropriate. (12-1-94)

g. Horses which are on a Non-Steroidal Anti-Inflammatory Drug shall ~~not~~ be indicated on the daily racing programs or any other publications ~~except that~~ and a list of horses on a Non-Steroidal Anti-Inflammatory Drug will be posted at a location designated by the Commission. ~~(7-1-93)~~(1-1-97)T

h. The only Non-Steroidal Anti-Inflammatory Drugs permitted by this rule are Phenylbutazone (Butazoladin), Mechlosenamic Acid (Arquel), Flunixin (Banamine), Naproxen (Equiproxen), and Furosemide (Lasix). (7-1-93)

i. Epistaxis treatment for bleeders is permitted as a race day medication provided that written approval of the Commission Veterinarian is obtained prior to race day treatment on the Medication Request Form. Bleeders that have been running under Epistaxis treatment must obtain written approval of the Commission Veterinarian prior to entry in any race before running without similar treatment. Premarin is a permissible Epistaxis treatment and may be used up to two (2) hours before post time. (7-1-93)

18. Lasix Treatment. (7-1-93)

a. Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the Bleeder List and for treatment on race days with the approved medication to prevent or limit bleeding during racing. (7-1-93)

b. Lasix treatment will be permitted at race meets whose average gross daily mutuel wagering exceeds one hundred thousand dollars (\$100,000) during the preceding year. If a race meet with the average daily gross mutuel handle during the preceding year of less than one hundred thousand dollars (\$100,000) desires that Lasix treatments be permitted at their race meet they may petition the Commission to approve the use of Lasix treatments. The commission may grant the use of Lasix treatments at such race meet, if in the opinion of the commission the race meet can provide the necessary qualified staffing, security and any other controls necessary to administer the program. (7-1-93)

c. To be placed on the Bleeders List, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. The State Veterinarian, following his/or her personal examination of a horse, or after, consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. (7-1-93)

d. In any and all cases, private veterinarians must be licensed with the Idaho State Racing Commission as a veterinarian in order to administer Lasix. (7-1-93)

e. A bleeder horse shipped into Idaho from another racing jurisdiction must comply with Idaho rules. Any horse on a bleeder list in another racing jurisdiction may be placed on the Idaho bleeder list provided a current certificate from the jurisdiction where it was confirmed on the bleeder list, or a letter from the horses private veterinarian, who is currently licensed by the racing jurisdiction, is presented to the State Veterinarian or the Commission Office, and it is approved by the State Veterinarian. (7-1-93)

f. The State Veterinarian may remove a horse on the Bleeder List, provided the proper paperwork is complete and it is the recommendation of the veterinarian of the horse, or after an examination by the State Veterinarian, it is determined that the horse is not a bleeder and is no longer eligible for the Bleeder List. (7-1-93)

g. A horse on the bleeder List shall be assigned to a pre-race security stall, designated as a detention stall, no later than four (4) hours prior to the scheduled post time of the race in which the horse is entered. The detention stall shall be assigned by the State Veterinarian with assistance from the Racing Office and may be the stall regularly assigned for that horse for its regular stabling. Once placed in a detention stall, the horse must remain there until it is taken to the paddock. If a horse on the Bleeder List is assigned its regular stall as its detention stall, that stall must be posted as such, with a detention stall sign, furnished by the association and obtained from the Racing Office or State Veterinarian, and must remain under the direct observation of a licensed individual designated by the trainer or trainer's representative from the time the horse is administered the bleeder medication to such time that the horse leaves for the paddock in preparation for a race. Direct observation means that the licensed person must be in a position to observe and to prevent any unauthorized person from approaching the horse. If a horse is found to be unattended during the designated time, the trainer will be deemed negligent in the performing of required duties and will be subject to disciplinary action by the Stewards. Any approach to a stall posted detention by any unauthorized person shall be reported immediately to the State Veterinarian and/or the Stewards. (7-1-93)

h. Horses on the Bleeder List must be treated at least four (4) hours prior to post time with the bleeder medication furosemide. (ie. Lasix) No other medication is permitted for bleeder treatment unless or except as approved by the Commission. Bleeder medication must be administered in the manner and at a dose level approved by the State Veterinarian, such dosage not to exceed two hundred fifty (250) mg. The bleeder medication is administered by the trainer's private veterinarian, and may be witnessed by the State Veterinarian or his designee upon their request. Administration of the bleeder medication must be reported in writing, on the form designated by the Commission, to the State Veterinarian no later than three hours prior to the scheduled post time of the last live race of the program. (7-1-93)

i. Any horse whose post and/or pre race blood tests contains a level in excess of eighty (80) nanograms of furosemide per milliliter of plasma will be said to be positive for Lasix overage and in violation of Idaho Racing Rules. Any horse whose post-race urine creatinine is less than forty (40) milligrams creatinine per one hundred (100) milliliters urine, and the ratio of urine furosemide to urine creatinine does not exceed 0.15, with urine furosemide being measured in micrograms per milliliter of urine will be said to be positive for Lasix overage and in violation of Idaho Racing Rules. (7-1-93)

i. A finding by a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facie evidence that the medication was administered to the horse and carried in the body of the horse while participating in a race. (7-1-93)

ii. In these cases, the following fines and/or suspensions will be levied to such horses trainer under the trainer responsibility rule: (7-1-93)

- 1) First Offense: Two hundred fifty dollar (\$250) fine; (7-1-93)
- 2) Second Offense: Five hundred dollars (\$500) fine and seven (7) days suspension; (7-1-93)
- 3) Third Offense: Suspension and referral to the Idaho State Racing Commission for further action. (7-1-93)

j. Any horse on the Idaho Bleeder List which is not stabled on the actual grounds of the racing facility where it is to race must be brought on to the grounds of the racing facility where it is scheduled to race at least five (5) hours prior to the post time for the race for which it is entered. Such a horse arriving at the racing facility will be placed in a detention stall assigned by the State Veterinarian with assistance of the Racing Office and will obtain a detention sign, furnished by the association, from the State Veterinarian or the racing Office upon arrival at the racing facility. (7-1-93)

k. The horses' trainer or designated agent is responsible to enter horses correctly indicating the

prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily racing program with a Lasix or "L". If the race is the first race the horse is to run in on Lasix, it shall be designated in the daily racing program with a "L-1". Errors in the listing of Lasix Treatments in the program, shall be announced to the public and shall not result in the horse being scratched. (7-1-93)

19. Protection. The Trainer, groom and any other person having charge, custody or care of a horse are obligated to properly protect the horse and guard it against actual or attempted administration of drugs. If the Stewards shall find that any person has failed to properly protect and guard a horse, they shall impose such penalty and take such other action as they deem proper. (7-1-93)

20. Illegal Practices. A horse owner or trainer found to have committed illegal practices under this chapter and/or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and the same shall be distributed or redistributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected. (7-1-93)

21. Hypdermics. Except by specific written permission of the Presiding State Steward, no person within the grounds of a Racing Association where horses are lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into a horse of any medication prohibited by this rule. Every Racing Association is required to use all reasonable efforts to prevent the violation of this rule. (7-1-93)

22. Enter, Search and Inspect. Every Racing Association, the Commission, the Stewards or trained and qualified agents of the Department of Law Enforcement, shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the Association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith. (7-1-93)

23. Form. All practicing Veterinarians must submit daily to the Commission Veterinarian a Medication Report Form furnished by the Commission. (7-1-93)

a. The report shall contain the following: (7-1-93)

i. The name, age, sex and breed of the horse; (7-1-93)

ii. The permitted drug used (Bute, Banamine, Equiproxen or Arquel); (7-1-93)

iii. The time administered; and (7-1-93)

iv. The route of the administration. (7-1-93)

b. The report must be dated and signed by the Veterinarian so administering the medication. Any such report is confidential and its content shall not be disclosed except in a proceeding before the Stewards or the Commission or in the exercise of the Commission's jurisdiction. (7-1-93)

24. Needle and Syringe. Within thirty (30) days of opening until the close of the meeting, no Veterinarian, assistant Veterinarian or employee of same shall leave or dispense to another a needle or syringe anywhere within the enclosure, except upon written authorization from the Presiding Steward. (7-1-93)

25. Bleeder. Any horse that bleeds a second time in Idaho shall not be able to race for a period of thirty (30) days from the date of the second bleeding offense. Any horse that bleeds a third time in Idaho shall be suspended from racing for a period of one (1) year from the date of the third bleeding offense. Any horse that bleeds for the fourth time in Idaho will be given a lifetime suspension from racing. (8-1-95)

26. Restrictions. An owner and/or Trainer shall not enter, start or request stalls for a horse that: (7-1-93)
- a. Is not in sound competitive racing condition. (7-1-93)
 - b. Has been nerved. (7-1-93)
 - i. Horses that have had posterior digital neurectomy (heel nerved) may be permitted to race subject to the pre-race Veterinary examination and subject to posting with the Racing Secretary and being recorded on its foal certificate. (7-1-93)
 - ii. Horses that have been nerved, blocked with alcohol or any other medical drug that desensitizes the nerves, other than posterior digital nerves, will not be permitted to race. (7-1-93)
 - c. Has impaired vision in both eyes. (7-1-93)
27. Non-Approved Medication. If the Stewards find that any non-approved medication which, for the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race test or post-race test sample, such presence shall constitute prima facie evidence that the horse has been illegally medicated. (7-1-93)
28. Penalty. The penalty for violation of any part of this Section, unless otherwise provided, shall be a fine of not to exceed five hundred dollars (\$500), suspension for a fixed or indeterminate time, or both. (7-1-93)

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.04.01 - RULES OF THE IDAHO STATE RACING COMMISSION GOVERNING HORSE RACING
DOCKET NO. 11-0401-9602
NOTICE OF PROPOSED AND TEMPORARY RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, 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 November 20, 1996.

The hearing site 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 at the address below.

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

The person filing an appeal may be required to pay an additional \$200 to cover the costs, which may be forfeited should the appeal be denied.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Eugene Baker, at (208) 884-7080.

Any person may submit written comments regarding this rule. All written comment, and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before November 27, 1996.

DATED this 24th day of September, 1996.

R.A. Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-0401-9602

091. -- ~~109099~~. (RESERVED).

100. REVIEW AND APPEAL.

01. Hearing. A person penalized or disciplined by the Stewards may request a hearing before the

Commission. (1-1-97)T

02. Appeal. The appeal shall be made in writing at the office of the Commission within five (5) days of date of penalty or imposition of discipline. The person filing the appeal may be required to furnish a bond in the amount equal to an assessed fine and an additional two hundred dollars (\$200) to cover the costs, which may be forfeited should the appeal be denied. (1-1-97)T

03. Signed. The appeal shall be signed by the person appealing and must set forth grounds alleging why the penalty or discipline was wrongfully imposed. (1-1-97)T

04. Heard Appeal. The appeal can be heard before the Commission, a hearing officer or in writing. (1-1-97)T

a. When directed by the Commission, a hearing officer may be assigned by the commission to sit as referee for the taking of evidence in any matter pending before the Commission; any such referee shall report to the Commission outlining all findings and the Commission shall determine the matter as if such evidence had been presented to the full Commission. (1-1-97)T

b. When asked to by the Commission, an appeal may, with the consent of the appellant, be submitted in writing. The Commission shall determine the matter as if such evidence had been submitted to the Commission in a hearing. (1-1-97)T

05. Papers. All papers filed with the Commission shall be the property of the Commission. (1-1-97)T

06. Appeal. An appeal to the Commission shall not suspend or affect the decision until the appeal has been acted upon by the Commission, unless stayed by the Commission or a Court of Competent Jurisdiction. (1-1-97)T

101. -- 109. (RESERVED).

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.04.01 - RULES OF THE IDAHO STATE RACING COMMISSION GOVERNING HORSE RACING
DOCKET NO. 11-0401-9603
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking 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, no later than November 20, 1996.

The hearing site 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 at the address below.

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

Trifecta pools with hard entries may not be established for any race with fewer than eight racing interests scheduled to start. For those licensees who hold race meets only during their county fair meets, a trifecta pool can be established for any race with a hard entry in which there are no fewer than six racing interests scheduled to start. In all cases, entrees coupled as a single wagering interest will be permitted, provided such a single wagering interest constitutes an individual wagering selection and a scratch of any horse which is a part of an entry or the field shall not constitute a scratch of the single wagering interest.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Eugene Baker, at (208) 884-7080.

Any person may submit written comments regarding this rule. All written comment, and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before November 27, 1996.

DATED this 24th day of September, 1996.

R.A. Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-0401-9603

913. TRIFECTA POOLS.

01. Trifecta Pools. The Trifecta requires selection of the first three (3) finishers, in their exact order, for a single contest. (11-7-94)

02. Distribution. The net Trifecta Pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish: (11-7-94)

a. As a single price pool to those whose combination finished in correct sequence as the first three (3) betting interests; but if there are no such wagers, then (11-7-94)

b. As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests; but if there are no such wagers, then (11-7-94)

c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then (11-7-94)

d. The entire pool shall be refunded on Trifecta wagers for that contest. (11-7-94)

03. Less Than Three (3) Interests Finish. If less than three (3) betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored. (11-7-94)

a. Where only two (2) horses finish in a race on which "Trifecta" is operated, the pool shall be divided by the value of tickets sold in the pool on horses selected to finish first and second in the exact order of the official result coupled with any other horse that started in the race. (11-7-94)

b. Where only one (1) horse finishes in a race on which Trifecta is operated, the pool shall be divided by the value of tickets sold in the Trifecta pool selecting that horse to finish first, coupled with any two (2) other horses started in the race. (11-7-94)

04. Dead Heat for First. If there is a dead heat for first involving: (11-7-94)

a. Contestants representing three (3) or more betting interests, all of the wagering combinations selecting three (3) betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split. (11-7-94)

b. Contestants representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place betting interest shall share in a profit split. (11-7-94)

05. Dead Heat - Second Place. If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share a profit split. (11-7-94)

06. Dead Heat - Third Place. If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split. (11-7-94)

07. Coupled Entries and Mutuel Fields. ~~Coupled entries and mutuel fields shall be prohibited in Trifecta contests.~~ Trifecta pools with hard entries may not be established for any race with fewer than eight (8) racing interests scheduled to start. For those licensees who hold race meets only during their county fair meets, a trifecta pool can be established for any race with a hard entry in which there are no fewer than six (6) racing interests scheduled to start. In all cases, entrees coupled as a single wagering interest will be permitted provided, such single wagering interest constitutes an individual wagering selection and a scratch of any horse which is a part of any entry or the field shall not constitute a scratch of the single wagering interest. (11-7-94)(1-1-97)T

08. Elimination from Participation. In the event a horse is scratched in the Trifecta no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation in the Trifecta pool and will be refunded. (11-7-94)

09. Payoff Price. The payoff price for a Trifecta pool shall be calculated in the following manner: (11-7-94)

a. The legal percentages shall be deducted from the total amount bet in any such pool to determine a net pool; (11-7-94)

b. The net pool shall be divided by the value of the tickets bet on the winning combination. (11-7-94)

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL
DOCKET NO. 11-1101-9602
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, 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 November 20, 1996.

The hearing site 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 at the address below.

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

The rule, as currently written, makes the stated requirement and possible waiver of the absolute criteria for hearing ability. It leaves open the question of what if the applicant has a hearing specialist's certification; even with this certification, the applicant's condition would still impair the applicant's ability to perform the applicant's future duties as a sworn peace officer.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Mike Becar, at (208) 884-7250. 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 by November 27, 1996.

DATED this 24th day of September, 1996.

R.A. Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-1101-9602

057. PHYSICAL - MEDICAL.

01. Requirements.

(7-1-93)

a. Height and Weight. Weight should be in proportion to height. Underweight and overweight candidates may be put on notice to correct this defect to retain candidacy. A chart approved by the Council indicating acceptable height and weight ranges will be furnished to the applicant and his department, to be completed by a licensed physician as part of the application process. If the applicant's weight is excessive, a skin fold measurement test will be required to determine body fat percentage. Male applicants whose body fat exceeds twenty-four (24) percent and female applicants whose body fat exceeds thirty (30) must correct this problem before entering the Academy. (7-1-93)

b. Hearing. Applicants must have unaided or aided binaural hearing with a Speech Reception Threshold (hearing loss for speech) that does not exceed twenty-five (25) db, in each ear, at the three (3) middle speaking frequencies of five-hundred (500) Hz, one thousand (1000) Hz and two thousand (2000) Hz (or an average in both ears of no greater than twenty-five (25) db for the same frequencies: five hundred (500), one thousand (1000), and two thousand (2000)). Waiver to the above may be considered by the Council if accompanied by a hearing specialist's certification, that the applicant's hearing is corrected to zero to twenty-five (0-25) condition would not jeopardize or impair the applicant's ability to perform the duties of a sworn peace officer. ~~(12-1-95)F(1-1-97)T~~ (7-1-93)

c. Vision. (7-1-93)

i. Applicant must possess normal binocular coordination; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There must be no pathology of the eye; applicant must possess a minimum seventy (70) degrees proficiency of the Dvorine or equivalent color discrimination test. Exceptions may be made by the Council. (7-1-93)

ii. Applicants must have uncorrected vision in each eye of 20-200 with the strong eye corrected to 20-20 and the weaker eye corrected to 20-60. Applicants who wear contact lenses are exempt from the uncorrected vision of 20-200, but must have the strong eye corrected to 20-20 and the weaker eye to 20-60. Exceptions may be made by the Council. (7-1-93)

d. Medical. The applicant must be free from any impediments of the senses; physically sound, well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or mental instabilities which may tend to impair efficient performance of duty which might endanger the lives of others or the life of the officer if lacking these qualities. (7-1-93)

e. Physical Agility and Fitness Test. (7-1-93)

i. A physical agility and/or fitness test to determine the applicant's physical capability may be administered by the employing department to each applicant. (7-1-93)

ii. POST Council shall provide suggested fitness and agility tests to the departments upon request. (7-1-93)

02. Procedures. (7-1-93)

a. A medical history form will be supplied by each applicant to the examining physician. The medical history will include information on past and present diseases, injuries and operations. (7-1-93)

b. A medical examination must be administered by a licensed physician or surgeon to determine if the applicant is free from any physical, emotional or mental condition which might adversely affect the performance of duty as a peace officer. The physician shall record his findings on the appropriate form or letter and shall note thereon, for evaluation by the hiring authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. (7-1-93)

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL
DOCKET NO. 11-1101-9603
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, 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 November 20, 1996.

The hearing site 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 at the address below.

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

1. The rule creates a part-time basic certificate, provides criteria for pay back provisions, and establishes a minimum number of hours that a part time peace officer must work per year to keep certified, changes the time under which a certificate lapses for lack of full time employment.
2. Amends the address of the Peace Officer Standards and Training Council.
3. Creates a separate definition for "temporary employment".
4. Corrects the traffic record investigation section by deleting an old section.
5. Re-inserts a previous section dealing with minimum standards for employment left out in previous rule publishing.
6. Eliminates "part-time" language from the level 1 reserve certification.
7. Opens up the career-level certifications for detention officers and dispatchers.
8. Removes the training and experience conversion rates which prohibited detention officers and dispatchers from receiving full hour-to-hour training credit and year-for-year work experience credit.
9. Brings equality and comparable certification to all street officers, detention officers and dispatchers.
10. Changes the recognized academy for certification.
11. Eliminates the requirement that a prosecutor instruct the level 1 reserve training in the area of motor vehicle laws and liquor laws.
12. Specifically disqualifies and applicant who has received either the punitive discharges of "dishonorable" OR "bad conduct" for acceptance into POST training and certification.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Mike Becar, at (208) 884-7250.

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 by November 27, 1996.

DATED this 24th day of September, 1996.

R.A. Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050 / (208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-1101-9603

004. DEFINITIONS.

01. POST. The Idaho Peace Officer Standards and Training Program. (7-1-93)
02. Department Head. A chief of police, sheriff, or chief administrator of any law enforcement agency of the state or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of this state or any political subdivision. (7-1-93)
03. Trainee. A peace officer participating in any POST approved training program for which reimbursement may or may not be granted. (7-1-93)
04. Department. A law enforcement agency which is a part of, or administered by, the state or any political subdivision thereof, and which is responsible for the prevention and detection of crime or the enforcement of penal, traffic and highway laws of the State. (7-1-93)
05. School Director or Coordinator. An individual charged with the responsibility of conducting a training school under the provisions of the ACT. (7-1-93)
06. School. Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)
07. High School. A school accredited as a high school by the Department of Education of the state in which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located. (7-1-93)
08. The "Act". Title 19, Chapter 51, of the Idaho Code. (7-1-93)
09. Reimbursement. The money allocated to departments meeting the requirements of the Act. (7-1-93)
10. Specification. A description of a requirement supplementing a section of the Rules. (7-1-93)
11. Lateral Entry. Employment of an officer at any rank by a department, based upon special qualifications without following the usual selection process established by the jurisdiction for lowest officer position.

(7-1-93)

12. Certificate. A document issued to peace officer training schools and individuals qualifying under the rules set by the Council. (7-1-93)

13. Basic Recruit School or Academy or Basic Training Course. The minimum basic peace officer training academy program of the Idaho Peace Officer Standards and Training Council. (7-1-93)

14. Qualified Instructor. Any person certified by the Idaho POST Council as being competent to teach in a Council approved school. (7-1-93)

15. In-Service Training. Training designed to refresh or add to an individual's capabilities to do the task to which he is assigned. (7-1-93)

16. Field Training. Training in which an individual recruit receives formal instruction on the job for special and defined purposes. (7-1-93)

17. The "Manual". This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (7-1-93)

18. Full Time. Employment of eighty (80) hours or more per month for ninety (90) consecutive calendar days. (7-1-93)

19. ~~Temporary or Part Time.~~ Employment of less than eighty (80) hours per month for ninety (90) consecutive calendar days. ~~(7-1-93)~~ (1-1-97)T

20. Temporary. Employment of less than ninety (90) consecutive calendar days. (1-1-97)T

201. Normal Hearing. Hearing which varies from zero to twenty-five (0-25) decibels. Waivers to this may be considered by the POST Council. (7-1-93)

222. College Credit. A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges, or other equivalent accrediting agency. (7-1-93)

223. Peace Officer. Per Section 19-5101(d), Idaho Code, any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of this state or any political subdivision. (7-1-93)

234. Law Enforcement Profession. As used in agreements entered into pursuant to Section 19-5112, Idaho Code, means a peace officer whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of this state or any political subdivision. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

030. GENERAL AND INCIDENTAL POWERS AND DUTIES.

Besides those enumerated previously (those in the Title 19, Chapter 51, Idaho Code), the duties of the Council shall be to do and perform all other acts and things required by law or which may be necessary to the full discharge of the duties of said Council, and shall include, but not be limited to the following: (7-1-93)

01. Certification. To issue certification to law enforcement officers when they meet the requirements as established by the POST Council in the Policies and Procedures Manual. (7-1-93)

02. File. To receive and file for record copies of merit rules of local ordinances passed by local governmental agencies who thereby elect to participate in the training program and recruitment procedure. (7-1-93)
03. Maintain. To maintain files and transcripts on all certified peace officers, instructors and schools, and furnish information from files upon request of the officer or employing law enforcement agencies. (7-1-93)
04. Receive and Maintain. To receive and maintain as trustees for the state of Idaho all physical properties and records which shall come into the possession of the Council by virtue of its existence. (7-1-93)
05. Establish. To establish such committees, both permanent and temporary, as may be necessary to more fully carry out the administrative duties of the Council. (7-1-93)
06. To Elect. To elect its officer consisting of a Vice-Chairman annually from among its membership. (7-1-93)
07. Rules. To adopt and amend rules consistent with law for its internal management and procedure (7-1-93)
08. Assist. Upon request, to assist departments and directors of training in administration and training problems encountered in complying with the various aspects of the Act as well as the ultimate objective of the Act, i.e., raising the level of competence of peace officers in Idaho. (7-1-93)
09. Study. To make a continuous study of peace officer training methods and consult with and accept the cooperation of any recognized local, state or federal law enforcement agency or educational institution. (7-1-93)
10. Consult and Cooperate. To consult and cooperate with other departments and agencies of the state concerned with peace officer training. (7-1-93)
11. Jurisdiction. To make recommendations concerning any matter within its jurisdiction concerning the Act. (7-1-93)
12. Rules. To adopt permanent rules and procedures for operation of a full-time and part time peace officer training program. ~~(7-1-93)~~ (1-1-97)T
13. Director. There shall be established in the Department of Law Enforcement a classified position of Executive Director of the Idaho Peace Officers Standards and Training Council. ~~(7-1-93)~~ (1-1-97)T
- a. An Executive Director will be employed by the Department of Law Enforcement to serve under the direction of the POST Council in carrying out the duties and responsibilities of the Council. (7-1-93)
- b. The Executive Director shall have supervision over as many classified employees as the Council shall deem necessary in carrying out its function. (7-1-93)
- c. For administrative purposes, the Executive Director and his/her staff will be governed by the Policies and Rules of the State of Idaho, and the Department of Law Enforcement, concerning but not limited to fiscal, purchasing and personnel matters. (7-1-93)
- d. The Executive Director shall be selected by the POST Council from among the top five (5) applicants (or the approved certification) on the register established by the Idaho Personnel Commission after competitive testing. (7-1-93)
14. Chairman. The Chairman of the POST Council will recommend one Chief or Sheriff who is a member of the POST Council to serve on the examining board set up by the Idaho Personnel Commission. (7-1-93)
15. Council. Except for the Executive Director of the POST Council, the members of the Council receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the

- performance of their functions, as prescribed by law. (7-1-93)
16. Resignations and Replacements. (7-1-93)
- a. Any Council member who ceases to qualify as such, shall at once notify the Governor and Chairman in writing. (7-1-93)
- b. Any Council member who desires to terminate their services shall notify the Governor and Chairman in writing of their intentions. (7-1-93)
17. Rules of Procedure in Contested Cases. (7-1-93)
- a. Rules of Procedure in contested cases shall be governed by the Administrative Procedures Act. (Title 67, Chapter 52 of the Idaho Code). (7-1-93)
18. Reasons for Granting Additional Time to Complete POST Training. (7-1-93)
- a. Sickness or physical disability of officer or immediate family member. (7-1-93)
- b. Cancellation of Basic Academy due to small number of applicants. (7-1-93)
- c. Natural disaster. (7-1-93)
- d. Reapplication to the Academy after failing or being unable to complete a previous Basic Academy Session. (7-1-93)
- e. For cause and in writing pursuant to Section 19-5109(c), Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

041. THE RECORDS SYSTEM.

01. Record. The Idaho Peace Officer Standards and Training Council will maintain a training record file on all Idaho Peace Officers. Officer certifications granted, and certified training schools attended by officers will be recorded in these records. A transcript of these training records may be used by the officer for any certification or employment needed. (7-1-93)
02. Notification. It will be the responsibility of the law enforcement agency department head to notify the Council of all presently employed officers. The names of all officers hired after submission of the original list shall be submitted to the Council within thirty (30) days of employment. The termination or resignation of an officer shall also be relayed to the Council on an appropriate form designated by the Council. (7-1-93)
03. Transcript. A transcript listing all certified courses an officer has completed, the hours credited and other pertinent data will be kept along with the officer's records. A copy of this transcript will be available upon the officer's request and will be furnished to law enforcement units when applicants apply for appointment as a peace officer in any part of this or another state. (7-1-93)
04. Records. All records of officer certification - basic, part-time basic, intermediate, supervisory, advanced, master, management, or executive - will also be kept in this file and on the transcript. ~~(7-1-93)~~ (1-1-97)T
05. File. A file on non-peace officer personnel will be maintained. This file will contain records for non-sworn persons who successfully complete certain certified courses. (7-1-93)
06. Names. Names of instructors certified or to be certified will be kept in the files. They will be filed

in the master files, a cross reference file and in a file by course topic. (7-1-93)

07. List. A list of approved instructors and schools will be maintained by the Executive Director. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

043. FORMS FOR RECORD USE.

01. Forms. All forms used or referred to in this manual are available upon request from: Idaho Peace Officer Standards & Training Council, ~~6115 Clinton Street, Boise, Idaho 83704~~ P.O. Box 700, Meridian, Idaho 83680-0700. (7-1-93) (1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

050. MINIMUM STANDARDS FOR EMPLOYMENT.

01. Requirements. Every peace officer employed by a department shall meet the following requirements: (1-1-97)T

a. Citizenship. Must be a citizen of the United States. (1-1-97)T

b. Education. Requirements: (1-1-97)T

i. Graduation from high school or equivalent. Equivalent defined as having passed the General Educational Development Test indication of high school graduation. The military or veterans equivalent of high school graduation is also acceptable. (1-1-97)T

ii. Documentary evidence of satisfaction of requirement (050.01.a. of this Subsection) must be obtained and retained in the files of the employing department. (1-1-97)T

c. Procedure: Documentary evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. In unusual circumstances, the Council may be required to accept other documentation and in such cases the decision of the Council shall be final. (1-1-97)T

d. Experience. Requirements. (1-1-97)T

i. Not less than two (2) years of responsible work experience following high school graduation (or when the applicant would have graduated). (1-1-97)T

ii. This work experience requirement can be complied with by two (2) years of military service, two (2) years of any combination of work, education or any other productive activity. The two (2) year requirement for responsible work and/or education is to be used to measure the conduct of the applicant after they leave the shelter of their home; to measure the financial conduct, moral conduct, the character and/or reputation of emotional activities; to test the mannerisms, maturity, integrity, loyalty and other traits; all of which are expected to be above reproach in police officers. (1-1-97)T

e. Criminal record/military record. Requirements: (1-1-97)T

i. The applicant must be fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record. (1-1-97)T

ii. A conviction or withheld judgment of any state, local, or federal crime may be grounds for rejection of the applicant. (1-1-97)T

iii. An applicant must be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this requirement, the term "conviction" shall mean a final conviction in a federal, state, county, or municipal court; a forfeiture of bail that has not been vacated, or collateral deposited to secure a defendant's appearance in court; the payment of a fine; a plea of guilty, nolo contendere, or a finding of guilt regardless of whether the imposition of sentence is deferred, withheld, or the penalty suspended. (1-1-97)T

iv. A "dismissal" from the military service as well as the other two (2) punitive discharges, specifically a "bad conduct discharge" (BCD) and a "dishonorable discharge" (DD) from military service will disqualify the applicant. An administrative discharge of other than honorable (OTH) will disqualify the applicant. The administrative discharge of "general under honorable conditions" (GEN) may be grounds for rejection. (1-1-97)T

f. Procedures. (1-1-97)T

i. Each candidate for employment is finger printed on two (2) copies of the standard FBI applicant fingerprint form. (1-1-97)T

ii. One card is forwarded to the Federal Bureau of Investigation, Washington, D.C. (1-1-97)T

iii. One card is used in a search of local files. Following this record check, this card is forwarded to the Bureau of Criminal Identification in Meridian. (1-1-97)T

g. The original copies of the results of all record checks will be retained by the employing department. (1-1-97)T

i. Applicants with felony criminal records will be subject to terms of Subsection 050.01.e. (1-1-97)T

ii. Applicants with lesser criminal records will be reviewed and a final decision reached by the department concerned with approval of the Council. (1-1-97)T

h. The retention of fingerprint record checks is mandatory regardless of the nature of the results of such inquiry. (1-1-97)T

051. -- 054. (RESERVED).

050-5. TRAFFIC RECORD INVESTIGATION.

01. Requirements. (7-1-93)

a. The applicant must possess a valid driving license from his/her state of residence. (2-8-95)

b. Where the applicant's traffic record discloses a record of suspension, DWS or DUI conviction or withheld judgment during the five (5) years immediately preceding application, the POST Council shall review the application and shall determine whether the individual shall be certifiable as a peace officer of the state of Idaho. (2-8-95)

c. Where the applicant's traffic record discloses the commission of five (5) or more moving traffic offenses during the three (3) years immediately preceding application, the POST Council shall review the application and shall determine whether the individual shall be certifiable as a peace officer of the state of Idaho. (2-8-95)

02. Procedures. A check of driving records must be made of the Motor Vehicle Division, Highway Department, state of Idaho, and a check must be made of the files of the motor vehicle department in states of the, applicant's previous residences. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

078. AGREEMENT TO SERVE.

01. Agreement. Pursuant to Section 19-5112, Idaho Code, any peace officer attending such schools or programs or directly or indirectly receiving the aid authorized by Section 19-5109, Idaho Code, shall execute an agreement whereby said officer promises to remain within the law enforcement profession, as defined in Subsection 004.23 on a full time basis, in the state of Idaho in a position approved by the Council for two (2) years following graduation from the POST Academy. (7-1-93)

02. Pay Back. Except as provided below, any peace officer who fails to remain within the law enforcement profession, as defined in Subsection 004.23 on a full time basis, in the state of Idaho in a position approved by the Council for two (2) years following graduation from the POST Academy, shall be required to pay back to the Council, the full amount of money set forth in the agreement. For the purposes of this rule, an officer who has not worked four thousand one hundred sixty (4,160) or more hours during the two (2) years following graduation from the POST Academy will be deemed to have failed to remain within the law enforcement profession, on a full time basis, for two (2) years following graduation from the POST Academy. (7-1-93)

a. If the officer remains within the law enforcement profession in excess of twelve (12) months but less than twenty-four (24) months and the officer's work within the law enforcement profession during that period averaged at least one hundred sixty (160) hours per month, the amount owed to the Council under Subsection 078.02 shall be prorated monthly and shall be reduced proportionately for each month from the date of graduation in which the officer was employed within the law enforcement profession for at least one hundred sixty (160) hours per month. (7-1-93)

b. If the officer was terminated for cause by the employing agency, he/she shall not owe the Council the amount set forth in the agreement. The agency must provide the Council a letter stating that the officer was terminated for cause. (7-1-93)

c. If the officer resigns from his/her agency in substitution of being dismissed from said agency for cause, he/she shall not owe the Council the amount set forth in the agreement. The agency must provide the Council a letter stating that if the officer would not have resigned, he/she would have been terminated for cause. (7-1-93)

03. Pay Back, Part-Time Basic Certificate. Any peace officer who is awarded a part-time basic certificate who fails to remain employed within the law enforcement profession in a position approved by the Council for the same amount of hours required in Subsection 078.02, shall be required to pay back to the Council, the full amount of money set forth in the agreement. (1-1-97)T

034. Position. The Council shall approve or disapprove positions on a case by case basis, after affording officers the opportunity to present information as to the duties, nature and scope of the position. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

091. INTRODUCTION.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. (7-1-93) (1-1-97)T

02. Property. Certificates and awards remain the property of the Council and are only valid as long

as the officer is commissioned as an Idaho peace officer. The Council shall have the power to cancel, recall, or revoke any certificate or award upon reasonable cause as determined by the Council. (7-1-93)

a. The Council may revoke the certification of any peace officer after written notice and hearing, based upon a finding that the officer falsified any information required to obtain certification or has been, or should have been, discharged for reasonable cause from employment as a peace officer. (7-1-93)

b. The certification of any peace officer shall be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that those persons once POST certified who remain in ~~full-time~~, active law enforcement shall retain their POST certification for purposes of compliance with this rule. This shall include administrative, jail, or civil division duty assignments in law enforcement agencies as defined in Section 19-5101(d), Idaho Code. ~~(7-1-93)~~ (1-1-97)T

c. An officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: attend an approved course of study in Idaho law and pass the POST Idaho law exam, pass the POST certification examination, qualify on the POST firearms course, pass the POST fitness test, and satisfy the probationary period requirement of Section 062. ~~(7-1-93)~~(1-1-97)T

d. An officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Academy to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the preceding five (5) years, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. Upon receiving a waiver, the officer must meet the following POST requirements: attend an approved course of study in Idaho law and pass the POST Idaho law exam, pass the POST certification examination, qualify on the POST firearms course, pass the POST fitness test, and satisfy the probationary period requirement of Section 062. ~~(7-1-93)~~(1-1-97)T

e. The provisions of 091.01.c. and d. shall not apply to officers holding a part-time basic certificate who are employed at least one hundred twenty (120) hours per year within the law enforcement profession. (1-1-97)T

~~e.f.~~ An officer who has been out of full-time enforcement status for over eight (8) years must attend the POST Basic Academy to be recertified. No waiver of this requirement shall be granted by the Council ~~(7-1-93)~~ (1-1-97)T

03. Forms. Basic, Part-Time Basic, Intermediate, Supervisory, Advanced, Master, Management, and Executive Certificates are established for the purpose of fostering professionalism, education, and experience necessary to perform adequately the duties of law enforcement. ~~(7-1-93)~~ (1-1-97)T

092. GENERAL PROVISIONS.

01. Certification. From and after January 1, 1974, any peace officer, as defined in Section 19-5101(d), Idaho Code, except those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinances, shall be certified by the Peace Officer Standards and Training Council within one (1) year after first being employed. (7-1-93)

02. Employed. To be eligible for the award of a certificate, each applicant must be a full-time commissioned Idaho peace officer, sworn detention officer, or dispatcher employed by a duly constituted law enforcement agency or a professional member of the POST Council staff except for the part-time Basic certificate of Reserve Level I certificate for which an eligible applicant must be a part-time commissioned Idaho peace officer employed by a duly constituted law enforcement agency. ~~(7-1-93)~~ (1-1-97)T

03. Applications. All applications for award of the Basic, Part-Time Basic, Intermediate, Supervisory, Advanced, Master, Management, or Executive Certificates shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. ~~(7-1-93)~~ (1-1-97)T

04. Minimum Standards. Each applicant must meet the minimum standards for employment and training as provided in these rules. (7-1-93)

05. Other. The superintendent of State Police or any elected official, although specifically excluded by law from meeting the requirements set by the Council, may be certified if they so desire, providing they meet the minimum requirements for certification as prescribed in these rules. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

095. THE BASIC AND PART-TIME BASIC CERTIFICATE.

In addition to the requirements set forth in Section 092 of these Rules the following requirements are necessary for award of the basic certificate and the part-time basic certificate. (~~7-1-93~~) (1-1-97)T

01. Probation. The applicant must have completed at least six (6) months satisfactory probationary period (may include basic training academy time). Probationary period may be extended by the agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the department the officer is employed with when applying for certification. Probationary period may not extend over one (1) year for certification purposes. (7-1-93)(1-1-97)T

02. Basic Training. The applicant shall have completed the Basic Training Course as recommended by the Council in Section 071 or be a graduate of a law enforcement vo-tech program, the curriculum of which has been approved by the Council as being equivalent to the POST Basic Training Course, and shall have passed the POST certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts, he/she must successfully complete the POST Basic Training Academy Course to be certified. (~~7-1-93~~)(1-1-97)T

03. Employed. Any peace officer presently employed by a duly constituted Idaho law enforcement agency who has within the last five (5) years, been certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to Idaho Post Basic Training within the last three (3) years shall be eligible for certification in the state of Idaho without attending the Basic Academy, provided they comply with ~~section~~ Subsection 095.03.a. through 095.03.e. (~~7-1-93~~) (1-1-97)T

a. Provided the officer submits a POST Certification Challenge Packet, passes the POST certification examination approved by the Council, qualifies with his/her firearms on the POST Short Course, and passes the POST fitness test. These qualifications must be administered by a POST Training Specialist. (7-1-93)

b. Completes a six (6) month probationary period with one (1) Idaho law enforcement agency and meets other requirements set forth by the Council. In addition to the above requirements, the said officer shall attend and pass an approved course of study in Idaho Law. (7-1-93)

c. An officer is allowed two (2) attempts to pass the POST certification examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts, he/she must successfully complete the POST Basic Training Academy Course to be certified. (~~7-1-93~~)(1-1-97)T

d. Education and training must be supported by copies of transcripts, certificates, diplomas, or other verifying documents attached to the application. (7-1-93)

e. The officer must have completed the required probationary period required by their department when making application for higher certification. (7-1-93)

04. Eligibility. An officer duly employed in a full time capacity by a law enforcement agency shall be eligible for the basic certificate. Officers duly employed in a part time capacity shall be eligible for the part-time basic

certificate.

(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

106. CAREER-LEVEL CERTIFICATION.

01. Executive Certificate. For purposes herein, the term "executive position" means the head of an agency and most commonly is the Chief of Police, Sheriff, or Director. A candidate for the Executive Certificate shall. (2-8-95)

a. Possess the Advanced or Management Certificates, Level III Detention Officer Classification, or Level III Communications Specialist Classification from Idaho or another state which has such certification meeting or exceeding Idaho standards. (7-1-93)(1-1-97)T

b. Have satisfactorily completed one hundred (100) hours of Council approved executive-level training, of which fifty (50) hours must have been completed within three (3) years prior to application for Executive Certificate. (7-1-93)

c. Be presently employed full time as an agency head, and shall have served as an agency head a minimum of three (3) years with one (1) law enforcement agency in Idaho. (2-8-95)

d. Submit a resume of education and experience and have his/her resume and credentials reviewed by the POST Council. If the POST Council determine that the qualifications are inadequate, then the applicant shall be provided with an opportunity to appeal the ruling. (2-8-95)

e. Mid-managers who are not commonly known as agency heads may apply for an executive certificate provided they have graduated from the Intermountain Command College or an equivalent college and meet all other requirements. (2-8-95)

107. RESERVE LEVEL I CERTIFICATION REQUIREMENTS.

01. Selection Standards. Same as full-time officer regarding citizenship, education, two (2) years work experience, no criminal record, hearing, vision, traffic, and character check. Height, weight, fitness, and physical disability will be left to the discretion of the employing agency. (7-1-93)

02. Minimum Training Requirements. All reserve ~~and part-time~~ officers desiring POST certification must complete and pass the POST Council approved Reserve Academy core curriculum consisting of one hundred sixty (160) hours within the first year of employment; as a reserve ~~or part-time~~ officer. Part of the one hundred sixty (160) hours core curriculum may be taught by uncertified instructors provided the high liability classes as identified by POST are taught by POST-certified instructors and the trainees pass a final examination approved and administered by POST, and they must be under supervision of a full-time peace officer. (7-1-93) (1-1-97)T

a. The term supervision is intended to limit the activities of a reserve ~~or part-time~~ officer. Each agency should draft its individual department policy in reference to the supervision of its certified reserve ~~or part-time~~ officers, and that policy should be kept on file within each department. (7-1-93) (1-1-97)T

b. At the completion of the one hundred sixty (160) hour core curriculum, the reserve officer will be given two (2) opportunities to pass the final exam with a seventy- five (75) percent or better to become certified. The second test can be taken not less than thirty (30) days nor more than six (6) months after the first exam. If the reserve officer fails the second attempt also, he/she must complete the Reserve Academy again. (7-1-93)

c. Documented reserve training will be accepted for credit upon the department head's certification that the reserve officer has met the minimum one hundred sixty (160) hour core curriculum. The reserve ~~or part-time~~ officer must pass an exam administered by POST. The applicant shall be allowed two (2) attempts to pass

the exam. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. A passing score is seventy- five (75) percent. ~~(7-1-93)~~ (1-1-97)T

d. A reserve officer's certification is effective only during those periods when he/she is formally assigned by the employing agency to perform the duties of a peace officer. Each ~~part-time or~~ reserve officer must work one hundred twenty (120) hours annually in a law enforcement capacity to retain their certification. Said documentation must be retained by said department. ~~(7-1-93)~~ (1-1-97)T

e. Reserve status notwithstanding, all reserve ~~and part-time~~ officers must comply with all POST Rules to be certified as full-time peace officers. ~~(7-1-93)~~ (1-1-97)T

f. A certified peace officer who has been out of full-time law enforcement status for three (3) years may apply for Level I Reserve Certification without testing provided he/she makes application prior to the three (3) year expiration date since employed full-time, and is endorsed by a department head. A certified officer who has been out over three (3) years and wants to be a Level I Reserve must pass the Reserve Certification Exam and meet the other requirements set forth in these rules. An officer certified in another state who desires to be a Level I Reserve must provide proof of certification, pass a basic course in Idaho Law authorized by the POST Academy, fill out all necessary paperwork, and pass the Reserve Certification Exam. (7-1-93)

03. Curriculum for Reserve Level I Certification. (7-1-93)
 * -- Must be taught by a Prosecutor.
 ** -- Must be taught by a Judge.
 *** -- Must be taught by a POST-certified Instructor.

Law	Hours
* 1. Probable Cause and Laws of Arrest	4
* 2. Constitutional Laws and Interviewing	2
* 3. Search and Seizure Laws	6
* 4. Warrantless Arrest	1
* 5. Laws of Evidence	1
* 6. Criminal Law Procedure	2
* 7. Civil Laws and Laws of Arrest	2
* 8. Motor Vehicle Laws	4
* 9. Liquor Laws	1
	23
Professional Orientation	
1. Ethics, Public Relations and the Role in the Community	2
2. Officer-Violator Relations	2
	4
Police Procedures	
1. Radio Procedures	2
2. Jail Procedures, Booking, and Fingerprinting	2
3. Reporting Writing and Note Taking	8
** 4. Court Room Testimony	2

Law	Hours
*** 5. Searching Suspects and Handling of Prisoners	3
6. Building Search	5
*** 7. Emergency Vehicle Operation	8
	30
Patrol Procedures	
1. Introduction to Modern Law Enforcement	1
2. Family Disturbances	2
3. Crimes Against Persons	2
4. Crimes Against Property	2
*** 5. Traffic Stops, Routine and Felony, Classroom	4
	11
Practical Problems	
1. Mock Crime Scenes	2
*** 2. Traffic Stops, Routine and Felony, Field	8
	10
Investigations	
*** 1. DUI	6
2. Auto Theft, R.V. Theft	1
3. Accident Investigation	8
4. Preservation of Evidence	2
5. Narcotics.	4
6. Juvenile Procedures	2
7. Death, Burglary, and Robbery Investigation	2
	25
Enforcement Skills	
*** 1. Hazardous Materials	4
*** 2. Weapon Retention	6
*** 3. Defensive Tactics	8
	18
Firearms Proficiency	
*** 1. Firearms Training, Classroom	6
*** 2. Firearms Training, Range	18
*** 3. Firearms Qualification.	8
*** 4. Use of Deadly Force, Legal Aspects	2

Law	Hours
	34
Administrative Matters	
1. Registration - Explanation of Schedule	1
2. Written Exam, Course Evaluations	4
	5
Total Number of POST-Certified Instructor Class Hours	97
Total Number of Training Hours	160
Optional Classes	
*** 1. PR-24 Training & Certification	12
*** 2. Intoximeter 3000	8
3. Boating Laws.	1
4. Boat Theft.	1
5. Crime Scene Sketching.	1.5
6. Use of Informants.	2
7. Crime Prevention.	2
Total Number of Optional Training Hours	27.5

(BREAK IN CONTINUITY OF SECTIONS)

110. DETENTION OFFICER CLASSIFICATION.

01. Applicants. Applicants for Detention Officer Classification must meet the same selection standards as are set up for full-time peace officers regarding citizenship, education, two (2) years work experience, no criminal record, hearing, vision, traffic, and character check. Height, weight, fitness, and physical disability will be left to the discretion of the employing agency. Detention Officer Classification is not statutorily mandated, but is voluntary. The recognized Detention Academy is ~~the Idaho Department of Corrections Academy~~ POST Basic Detention Academy. ~~(7-1-93)~~(1-1-97)T

a. ~~Peace officer experience shall count toward experience as a detention officer at the rate of one (1) year equals three (3) months.~~ ~~(7-1-93)~~

b. ~~Non-detention-related training hours shall count toward detention officer classification at half credit.~~ ~~(7-1-93)~~

02. Basic Classification. The applicant must have at least thirty (30) days experience as a detention officer or one (1) year of experience as a full-time peace officer. They shall have completed forty (40) hours OJT as approved or equivalent and forty (40) hours with ~~an FTO~~ a JTO at the current facility to be documented by the facility director. ~~(7-1-93)~~(1-1-97)T

03. Level I Classification. The applicant must have at least one (1) year of experience as a detention officer and shall have completed a minimum of three hundred fifty (350) hours of POST- approved training which must include the Detention Academy. ~~(7-1-93)~~

04. Eligible. Any detention officer presently employed by a duly constituted Idaho law enforcement agency who has previously served as a detention officer in another state shall be eligible for detention officer classification in the state of Idaho without attending the Detention Academy, provided the officer is a graduate of an accredited detention officer academy in the state in which he/she is from. The applicant must pass the Idaho Detention Academy comprehensive examination within one (1) year of being employed in the state of Idaho. He/she will be allowed two (2) attempts to pass the exam. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts, he/she must successfully complete the Detention Academy Course to be classified. (7-1-93)

05. Employed. Any detention officer presently employed by a duly constituted Idaho law enforcement agency who has previously been certified as a peace officer in another state, and who has a minimum of one (1) year of experience as a detention officer in that state, shall be eligible for detention officer classification in the state of Idaho without attending the Detention Academy, provided the officer ~~has completed a minimum of three hundred fifty (350) hours of detention-related training or the equivalency at the converted rate. However, at least one-half (?) of the three hundred fifty (350) training hours must be in approved detention-related subjects~~ is a graduate of a recognized Detention Academy in the state in which he/she is from. The training must meet the Idaho POST standards. The applicant must pass the Idaho Detention Academy comprehensive examination. Two (2) attempts will be allowed in the same manner as described in Subsection ~~440.03-110.04~~ 110.04 above. (7-1-93)(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

112. COMMUNICATIONS SPECIALIST CLASSIFICATION.

01. Applicants. Applicants for Communications Specialist Classification must be employed full-time in a communications position, have a high school diploma or equivalent on file at the POST Academy, and have two (2) sets of fingerprints on file at the Idaho Bureau of Criminal Identification. Communications Specialist Classification is not statutorily mandated, but is voluntary. Non-communications-related training shall count toward communications specialist classification at one-quarter (1/4) of its face value. (7-1-93)

02. Level I Classification. The applicant must have at least one (1) year of full-time experience as a communications specialist and shall have completed a minimum of forty (40) hours of POST Council approved communications-related training, which must include the ILETS Classification Level I certificate. (7-1-93)

03. Level II Classification. The applicant must have at least three (3) years of full-time experience as a communications specialist and shall have completed a minimum of eighty (80) hours of training, forty (40) of which must meet Level I requirements. (7-1-93)

04. Level III Classification. The applicant must have at least six (6) years of full-time experience as a communications specialist and shall have completed a minimum of one hundred twenty (120) hours of training, forty (40) of which must meet Level I requirements. (7-1-93)

05. Advanced Classification. For purposes herein, the term "advanced communications" position means that the incumbent possesses a Level III Communications Specialist Classification and has consciously decided to focus career efforts on public safety communications. A candidate for this classification shall. (7-1-93)

- a. Possess a Level III Communications Specialist Classification. (7-1-93)
- b. Have a minimum of ten (10) years full-time experience in public safety communications. (7-1-93)
- c. Have accumulated and successfully completed five hundred (500) hours of POST Council-approved communications-related training. (7-1-93)
- d. Have successfully completed both the Basic and Advanced Communications Academies. (7-1-93)

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL
DOCKET NO. 11-1101-9604
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, 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 November 20, 1996.

The hearing site 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 at the address below.

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

The Self-Sponsored Student Program is new. There are currently no rules laying out the requirement and procedures for the program. The proposed rule will stipulate the requirement and procedures, and will also give the POST Council the authority to run background checks on applicants for the program, thereby insuring they meet the same entrance requirements as the police officers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Mike Becar, at (208) 884-7250. 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 by November 27, 1996.

DATED this 24th day of September, 1996.

R.A. Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-1101-9604

171. SELF-SPONSORED STUDENT PROGRAM SELECTION STANDARDS.

01. Requirement. Every Self-Sponsored Student shall meet the minimum standards for employment (Sections 050 through 063) of this manual. (1-1-97)T

02. Procedures. (1-1-97)T

a. The applicant shall be required to complete and submit to the POST Council a comprehensive application and personal history packet, along with two sets of fingerprints on FBI applicant fingerprint cards. A non-refundable application fee is required and must accompany the application. (1-1-97)T

b. In order to determine the applicant's suitability as a Self-Sponsored Student, the POST Council shall conduct a thorough criminal and personal history background investigation. The fingerprint cards shall be submitted to the Bureau of Criminal Identification, which shall use one set to conduct a statewide search, and shall forward the other set to the FBI for a national criminal history record check. All results of the background investigation will be considered confidential and processed accordingly. (1-1-97)T

c. The applicant must also successfully complete a polygraph, psychological evaluation, physical agility test, and a Police Officer Selection written examination approved by POST Council. (1-1-97)T

1742. -- 999. (RESERVED).

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL
DOCKET NO. 11-1101-9605
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1997, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, 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 November 20, 1996.

The hearing site 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 at the address below.

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

There are currently no rules in place. These rules reflect the standards and procedures for the new Canine Team Certification.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Mike Becar, at (208) 884-7250.

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 by November 27, 1996.

DATED this 24th day of September, 1996.

R.A. Coulter
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

TEXT OF DOCKET NO. 11-1101-9605

113. CANINE TEAM CERTIFICATION.

01. Legal Authority. The Idaho Legislature has given the Idaho Peace Officer Standards and Training Council the authority to promulgate these rules in Section 19-5107, Idaho Code. (1-1-97)T

02. Title and Scope. These rules are intended to set minimum standards of performance in Idaho for the Certification of Police Canine Teams. (1-1-97)T

03. Definitions. (1-1-97)T

a. Canine team. A specific person and a specific canine controlled by that person in the capacity of handler, working together in the performance of law enforcement duties. This definition includes canines utilized for tracking, controlled substances detection and explosives detection. (1-1-97)T

b. Evaluator. A police officer who has been recommended to the Council by the Idaho Police Canine Association and subsequently approved for the purpose of testing and certifying canine teams. (1-1-97)T

04. Certification. The Council shall certify a canine team which meets the following requirements. (1-1-97)T

a. Successful demonstration of proficiency, under the scrutiny of a certified canine evaluator, in one or more of the following areas. (1-1-97)T

i. The handler's ability to control and obtain the obedience of the canine. (1-1-97)T

ii. The effectiveness of the team in criminal suspect apprehension. (1-1-97)T

iii. The effectiveness of the team in conducting building searches. (1-1-97)T

iv. The effectiveness of the team in conducting open area searches. (1-1-97)T

v. The effectiveness of the team in the detection of controlled substances. (1-1-97)T

vi. The effectiveness of the team in the detection of explosive devices. (1-1-97)T

b. In evaluating the proficiency of the canine teams, the Evaluators shall use the Standards promulgated by the Idaho Police Canine Association and approved by the POST Council for that particular skill category. (1-1-97)T

c. To be eligible for certification under these rules, the canine officer must be POST-certified or classified within Idaho. (1-1-97)T

05. Expiration of Certification. Each certification issued pursuant to these rules shall expire on the anniversary date of the certification. Certification may be renewed upon completion of the requirements of Subsection 113.04.b. A canine team certification shall lapse if the specific handler and canine, as originally paired at the time of certification, cease to perform canine team functions together. (1-1-97)T

114. PATROL DOGS.

01. Requirements. The following requirements should be construed as standards for Police Service Dogs to perform their duties. The certification test will be mandatory to those agencies having canine units. A POST Training Specialist or his/her designee must be present for all canine certification testing. (1-1-97)T

02. POST Certification for Patrol Dogs Will Consist of Basic Level Only. Intermediate and Advanced levels can be obtained through the Idaho Canine Association. Each stage will have two levels the Patrol Dog can be certified in. Level I consists of testing in scent work, obedience and apprehension. A level II rating consists of testing in obedience and apprehension. A level III rating consists of tracking only. (1-1-97)T

03. Certifications for Canine Teams Shall Remain Valid For One (1) Year. Each canine team must be evaluated annually to maintain their certification. If the canine team fails any portion of an evaluation, they must be re-evaluated for the failed area. (1-1-97)T

04. Basic Patrol Dog Certification Test. (1-1-97)T

a. The skills favorable for successful deployment of a Basic Patrol Dog are recognized within three (3) categories: (A) Scent Work, (B) Obedience-Agility, and (C) Apprehension. The Dog and Handler can be successfully trained to an appropriate skill level by a qualified Patrol Dog Instructor. The competency can then be evaluated and declared by a qualified Patrol Dog Evaluator. (1-1-97)T

b. The Basic Patrol Dog evaluation shall be concluded within twenty-four (24) hours after it is begun. This is to establish that the dog's mental and physical endurance are sufficient to withstand the rigors of active service. (1-1-97)T

05. Performance Objectives. (1-1-97)T

a. Scent work. (1-1-97)T

i. Tracking. The Dog shall follow the steps of a person along a track that is four hundred (400) to six hundred (600) paces in length, having two (2) ninety (90) degree turns and aged a minimum of thirty (30) minutes. Two (2) items which have been permeated with the track layers scent will be placed along the route. One (1) item will be on the second leg and the other will be at the end of the track. The Dog should indicate the location of these items as it encounters them. A cross-track will be placed at some point along the third leg as a diversion. The Dog should not be diverted from the original track. (1-1-97)T

ii. Evidence search. The Dog shall be deployed to search for two (2) well-scented, small items which the evaluator has hidden within an eight hundred (800) square yard area. The Dog will be out of sight when the items are placed. The Handler will remain along the centerline of the search area and direct the Dog to search systematically. The Dog should indicate the location of these items as it encounters them. (1-1-97)T

b. Obedience-Agility.

i. Heeling, behavior in public, and gun-sureness. The Dog shall heel off-leash beside its Handler through a series of normal, slow, and fast paces. During each pace the Handler shall make right, left, and about-turns. Next, the Handler shall walk in a straight line and at intervals of at least ten (10) paces he shall command the Dog to sit, stand, and down. As he gives each command he shall halt. Next, the Dog shall heel beside its Handler as he walks in serpentine fashion through a group of at least three (3) persons. The group shall be walking slowly and parallel to each other. At some point, the Handler will halt beside one (1) of the persons such that the Dog is immediately next to an individual. When the Handler halts, the group shall halt also. The Dog should show no unusual attention to the person beside whom it is sitting. The Dog will then heel beside its Handler as he exits the group and walks away. At a distance of about fifty (50) feet the Handler shall turn around and begin walking toward the group. At this point two (2) simulated gunshots shall be discharged by a group member. This shall be done discreetly, with the blast aimed at the ground. The Dog shall remain under control as this occurs. (1-1-97)T

ii. Stand in motion and down. The Dog shall heel beside its Handler in a straight line. After a few steps the Handler shall command the Dog to stand. The Handler will continue forward, without breaking stride, for at least twenty (20) paces. He will then stop, turn and face the Dog. After a few moments, the Dog will be commanded to assume a down position. After a few moments, the Handler will return to the Dog. It should remain in the down position until commanded to sit, at a heel position. (1-1-97)T

iii. Retrieving an object. The Handler should obtain an object and hold it in his hand as he and his Dog, assume a heel position. The Dog shall remain in position as the Handler tosses the object a moderate distance in front of the Dog. After a short pause, the Dog will be commanded to retrieve the object. The Dog should respond and present the object in a front position. When commanded, the Dog should release it, and go to a heel position. (1-1-97)T

iv. Jumping an obstacle. The Handler and Dog will assume a heel position at an appropriate distance from an obstacle that is at least thirty-six (36) inches high. The Dog will be commanded to jump over the obstacle and then stand in place. After a pause, the Handler will walk to his Dog and command it to Heel, without breaking his

stride. The Handler will then walk away from the obstacle and halt. (1-1-97)T

v. Climbing and retrieving. The Handler should obtain an object and hold it as he and his Dog assume a position in front of a wall. The wall should be inclined and at least five (5) feet high. The Dog should remain in position as the Handler tosses the object over the wall. When commanded, the Dog should climb the wall. As the Dog descends, it will be commanded to retrieve the object. It should climb back over the wall with the object, and then present it in front of the Handler. On command, the Dog should relinquish the object. After a pause, it will then be commanded to assume a heel position. (1-1-97)T

vi. Long down with distraction. The Handler will place his Dog in a down position. He will then leave the Dog and walk a distance of about fifty (50) paces, remaining in the Dog's field of vision. The Handler will stand with his back to the Dog while another Dog goes through exercises listed in Subsection 114.05.a.i. through 114.05.a.iv. above. The Dog should remain calmly in position. (1-1-97)T

c. Apprehension. (1-1-97)T

i. Suspect search. The Handler shall position his Dog on the boundary of a pre-determined search area. The Dog shall be directed to search systematically. The Handler shall move through the search area in a tactical manner. While in the search area, the Dog shall encounter a person who happens to be there totally by accident. The Dog should respond to the person's submissive behavior by detaining him without physical contact. The person shall be absolutely submissive during this encounter. When the Handler arrives, the Dog shall be commanded to assume a backup position as the Handler conducts a frisk of the person, searches the location, and dismisses him. (1-1-97)T

ii. Surveillance and apprehension (choice of exercise). The Handler and Dog shall assume a surveillance position. The Dog should remain calm and alert. A person representing a criminal suspect shall appear about eighty (80) to one hundred (100) yards away. The Dog should remain quiet as the Handler issues a Departmental warning. The person shall flee and the Handler shall send the Dog to apprehend. The suspect shall stop and face the Dog submissively when it is about thirty (30) yards away. It shall be evident the person is surrendering when the Dog arrives. It should detain the suspect without physical contact. When the Handler arrives he shall command the Dog to assume a backup position. It should now remain quiet and alert, ready to engage the suspect if necessary, while the Handler frisks the suspect and places him in custody. The Dog should heel beside its Handler as he escorts the suspect to the evaluator for remanding; OR (1-1-97)T

iii. Handler defense and apprehension. The Handler and Dog shall heel along a predetermined route. A person shall emerge from a hiding place and attempt to assault the Handler. The Dog should defend its Handler without hesitation by engaging in strong combat. The perpetrator shall be armed with a simulated weapon such as a stick. At some point during the combat he shall strike the Dog twice sharply on the less sensitive parts of its body. The Dog should continue in combat until the perpetrator gives up and the Handler commands it to stop. At this point the Dog should remain alert and quiet while the Handler conducts a frisk and places the individual in custody. The Dog should heel beside its Handler as he escorts the individual to the evaluator for remanding. (1-1-97)T

iv. The same behavior as above is to be exhibited, up to the point where the suspect stops. The Handler, upon becoming reasonably sure that the suspect shall indeed surrender and not flee further, shall recall his Dog. The team shall heel to the suspect and the Dog shall be placed in a backup position. It should remain quiet and alert, ready to engage the suspect if necessary, while the Handler frisks the suspect and places him in custody. The Dog should heel beside its Handler as he escorts the suspect to the evaluator for remanding. (1-1-97)T

06. Appeal. Any Handler who thinks there have been improper procedures applied in implementing the standards may report the facts to the Idaho Peace Officer Standards and Training Academy in writing. This report must be filed within thirty (30) days of the testing date. (1-1-97)T

07. Evaluators. (1-1-97)T

a. Qualifications. (1-1-97)T

i. An evaluator must be an Idaho POST-certified officer with three (3) years of street handler experience, and three hundred ninety (390) hours of accredited canine classroom training. He/she must also meet the

requirements as stipulated by the Idaho Police Canine Association, and be an Idaho POST-certified instructor for canine subjects. (1-1-97)T

ii. A Corrections Officer may be recognized as an Evaluator, provided they have passed a four (4) week Detention or Corrections Academy and met all other requirements with the exception of being a "commissioned law enforcement officer." (1-1-97)T

115. DETECTION DOGS.

01. Requirements. The following requirements should be construed as standards for Police Service Dogs to perform their duties. The certification test will be mandatory to those agencies having canine units. A POST Training Specialist must be present for all canine certification testing. (1-1-97)T

02. Certifications for Canine Teams Shall Remain Valid For One (1) Year. Each canine team must be evaluated annually to maintain their certification. If the canine team fails any portion of an evaluation, they must be re-evaluated for the failed area. (1-1-97)T

03. Detection Dog Teams. Detection Dog teams should be able to show proficiency in detecting substances in the following environments. (1-1-97)T

a. Buildings (residential and commercial). (1-1-97)T

b. Vehicles (private and commercial). (1-1-97)T

c. Luggage and packages. (1-1-97)T

d. Exterior open areas. (1-1-97)T

04. Substance Tests. Tests will, therefore, incorporate each of the above areas with the substance(s) being detected as well as demonstrated control of the canine. Performance of these tests will be on a pass/fail basis. It is recommended that the Dog teams have experience in searching for substances outside of the normal day-to-day routines. (1-1-97)T

05. Tests. (1-1-97)T

a. Buildings. The building search will consist of an area designated by the evaluator that may vary in size, location or environment, but will consist of at least three (3) rooms. Substances shall be hidden high and low, known to the evaluator and unknown to the Handler. The canine will start the search at a point determined by the Handler. All substances will be hidden by the evaluator unknown to the Handler. (1-1-97)T

b. Vehicles. The vehicle search will consist of at least three (3) vehicles, which may vary in size, location or environment. The search will include the interior and exterior of the vehicles. Substances shall be hidden inside or on the outside, known to the evaluator and unknown to the Handler. The canine will start the search at a point determined by the Handler. (1-1-97)T

c. Luggage and packages. This search will consist of at least six (6) pieces of luggage and/or packages of different sizes and/or shapes. These pieces may vary in location or environment. The canine will start the search at a point determined by the Handler. (1-1-97)T

d. Exterior areas. The exterior search will consist of an area in open air that may vary in size, location or environment, and may include buried substance. The canine will start the search at a point determined by the Handler. (1-1-97)T

e. Obedience. Each Handler will demonstrate obedience and control of their canine. This will include "sit, stay, heel, and come" commands. (1-1-97)T

06. Test Criteria. The Handler will be evaluated in the following areas. (1-1-97)T

- a. Control of the dog. (1-1-97)T
- b. Recognition of the behavioral changes in the dog; (1-1-97)T
- c. Search patterns, to include: (1-1-97)T
 - i. Presentation of the areas to be searched. (1-1-97)T
 - ii. Manipulation of the environments. (1-1-97)T
 - iii. Body language which includes negative behavior in the dog (false response, failure to work to the course, etc.) and timeliness of positive and/or negative reinforcement. (1-1-97)T
- 07. Substances. (1-1-97)T
 - a. The types and amounts of substance in each search will be at the discretion of the evaluator. Substances will be set in place at least thirty (30) minutes prior to each test. (1-1-97)T
 - b. Articles containing human scent may be placed in each test area. (1-1-97)T
 - c. The handler will be notified if a dangerous substance being detected by the dog can be accessed by the dog. (1-1-97)T
 - d. No substance other than marijuana will be hidden in a location readily accessible to the canine. (1-1-97)T
 - e. Controlled substance shall consist of, but not be limited to, four (4) main areas: (1-1-97)T
 - i. Marijuana and Hashish (Two (2) grams or greater). (1-1-97)T
 - ii. Cocaine (hydrochloride) (Two (2) grams or greater). (1-1-97)T
 - iii. Heroin and opiate derivatives (Two (2) grams or greater). (1-1-97)T
 - iv. Methamphetamines (Two (2) grams or greater). (1-1-97)T
 - f. It is not required that a narcotic detection dog be trained in all (4) four common fields of controlled substances. However, if the dog is not trained in all (4) four substances it should be noted in the dog's training records what substances the dog is proficient in detecting. (1-1-97)T
- 08. Testing Procedure. (1-1-97)T
 - a. Prior to the start of the testing, the handler will give the evaluator the following information. (1-1-97)T
 - i. The type of alert (passive or aggressive). (1-1-97)T
 - ii. The type of reward (ball, food, towel, praise, etc.). (1-1-97)T
 - iii. The type of substance(s) the dog is trained to detect (dogs will be evaluated only on the substances with which it has been trained). (1-1-97)T
 - iv. Whether the dog is cross-trained (patrol/drugs/bombs/etc.) (1-1-97)T
 - b. The evaluator will signal the start and finish of each test and allow reasonable time for the team to cover the area and indicate the location of the substance. (1-1-97)T

i. It will be at the evaluators discretion to discontinue the search if excessive time has been spent on the search without results. Prior to terminating the search the evaluator may give the team the opportunity to note any changes in behavior and research that specific area. (1-1-97)T

c. The Handler must verbally indicate to the evaluator that he has a positive alert from his dog and believes that the substance has been found. The handler will indicate the location of the substance to the evaluator. (1-1-97)T

09. Appeal. Any handler who thinks there have be procedures applied in implementing the standards may report the facts to the Idaho Peace Officer Standards and Training Academy in writing. This report must be filed within thirty (30) days of the testing date. (1-1-97)T

10. Evaluators. (1-1-97)T

a. Qualifications. (1-1-97)T

i. An evaluator must be an Idaho POST-certified officer with three (3) years of street handler experience, and three hundred ninety (390) hours of accredited canine classroom training. He/she must also meet the requirements as stipulated by the Idaho Police Canine Association, and be an Idaho POST-certified instructor for canine subjects. (1-1-97)T

ii. A Corrections Officer may be recognized as an evaluator, provided they have passed a four-week Detention or Corrections Academy and met all other requirements with the exception of being a "commissioned law enforcement officer." (1-1-97)T

116. -- 129. (RESERVED).

IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME
13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS (SANDHILL CRANES)
DOCKET NO. 13-0109-9604
NOTICE OF PUBLIC HEARING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Section 36 104(b) Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rule-making will be held as follows:

Wednesday, December 4, 1996, 7:30 p.m.
Trophy Room, Idaho Department of Fish and Game Headquarters Office
600 South Walnut Street, Boise, Idaho

The hearing site 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 contact at the address below.

DESCRIPTIVE SUMMARY: The summary of this action is found in Bulletin Volume 96-10, October 2, 1996, pages 48 to 52.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Gary Will at (208)334-2920.

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 November 29, 1996.

DATED this 1st day of October, 1996.

W. Dallas Burkhalter,
Deputy Attorney General
Idaho Dept. of Fish and Game
P O Box 25, 600 South Walnut
Boise ID 83707
Phone (208)334-3771
FAX (208)334-4885

IDAPA 15 - OFFICE OF THE GOVERNOR
15.10.01 - RULES OF THE IDAHO STATE LIQUOR DISPENSARY
DOCKET NO. 15-1001-9601
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 rules become final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 23-206(b), Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume No. 96-2, page 16.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dyke Nally, Superintendent, (208) 327-7300.

Dated this 20th day of September, 1996.

Michelle Keller
Office Coordinator
Idaho State Liquor Dispensary
P. O. Box 59, Boise, Idaho 83707-0059
(208) 327-7300
(208) 327-7313 FAX

IDAPA 15
TITLE 10
Chapter 01

RULES OF THE IDAHO STATE LIQUOR DISPENSARY

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-2, February 7, 1996, Page 16.**

**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 15 - OFFICE OF THE GOVERNOR
15.10.01 - RULES OF THE IDAHO STATE LIQUOR DISPENSARY
DOCKET NO. 15-1001-9602
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 rules become final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 23-206(b), Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, Volume No. 96-2, pages 17-30.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dyke Nally, Superintendent, (208) 327-7300.

Dated this 20th day of September, 1996.

Michelle Keller
Office Coordinator
Idaho State Liquor Dispensary
P. O. Box 59, Boise, Idaho 83707-0059
(208) 327-7300
(208) 327-7313 FAX

IDAPA 15
TITLE 10
Chapter 01

RULES OF THE IDAHO STATE LIQUOR DISPENSARY

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-2, February 7, 1996 Pages 16 through 30.**

**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 15 - IDAHO EMERGENCY RESPONSE COMMISSION
15.13.01 - RULES GOVERNING THE IDAHO EMERGENCY RESPONSE COMMISSION

DOCKET NO. 15-1301-9601
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 39-7101 Hazardous Substance Emergency Response Act, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 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:

To change new mailing address, update language to reflect all Regional Response Teams, and to change definitions of the levels of incidents.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lezlie Aller, (208) 334-3263.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 1996.

Dated this 24th day of September, 1996.

Lezlie Aller, Director of HAZMAT Operations
4040 Guard St.
P.O. Box 83720
Boise, ID 83720-3401

TEXT OF DOCKET NO. 15-1301-9601

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

The office of the Idaho Emergency Response Commission is located at ~~1109 Main Street~~ P.O. Box 83720, 4040 Guard St., Boise, Idaho 83720-~~7000~~3401. Office hours are weekdays, 8 a.m. to 5 p.m., excluding holidays. The Commission's telephone number is (208) 334-3263. The 24-hour emergency notification number is 800-632-8000. The number for the Commission's facsimile machine is (208) 334-3267. (12-24-93)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (Rule 10).

01. Emergency. An abrupt release which, in the reasonable judgment of the local emergency response

authority, threatens immediate and irreparable harm to the environment or the health and safety of any individual and which requires immediate action for the containment or control of a hazardous substance. (12-24-93)

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

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

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

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

06. Idaho Regional ~~Hazardous Substance Emergency~~ Response Teams. Teams authorized by the Commission which are fully trained and equipped to respond to hazardous incidents. These special teams are based in local fire departments and respond outside local jurisdictional boundaries as employees of the state. The Idaho Regional Hazardous Substance Response Teams are responsible to the Incident Commander. ~~(12-24-93)(____)~~

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

a. ~~A "major incident" is a natural or man-made situation that presents a very high or immediate risk to either people, property and/or the environment. Definitely will need immediate state level response in support of local response and may require the Governor to declare an emergency. Level I. An incident involving hazardous materials that can be contained, extinguished, and/or abated utilizing equipment, supplies and resources immediately available to the first responders having jurisdiction. A Level I incident presents little immediate risk to the environment and/or public health with containment and clean-up.~~ ~~(12-24-93)(____)~~

b. ~~A "significant incident" is any incident involving amounts or types of materials which are capable of environmental damage or are (or have the potential to be) an immediate hazard to public health and/or the environment. May need state level response in support of local response Level II. An incident involving hazardous materials that is beyond the capabilities of the first responders on the scene and may be beyond the capabilities of the first response agency having jurisdiction. Level II incidents may require the services of the Regional Response Team. This level incident may pose immediate and/or long term risk to the environment and/or public health even with expedient containment and clean-up.~~ ~~(12-24-93)(____)~~

c. ~~A "minor incident" is any incident involving hazardous materials which presents little risk to either people, property and/or the environment. Unlikely to need state level response. Level III. An incident involving hazardous materials that is beyond the controlling capabilities of a single Regional Response Team unit and may require additional assistance from other qualified individuals. These incidents may require resources from state and federal agencies and/or private industry. Level III incidents generally pose extreme, immediate and/or long term risk to the environment and/or public health.~~ ~~(12-24-93)(____)~~

d. ~~An "insignificant incident" is any incident involving hazardous materials that presents virtually no~~

~~risk to either people, property or the environment. Unlikely to need any state level response.~~ Regulatory Notification: A release of the Reportable Quantity of certain hazardous materials that does not require any emergency response on the part of state or local responders. Notice will be provided to those agencies on the Regulatory Notification call down list by FAX or e-mail the following business day. (12-24-93)(____)

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

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

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

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

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

13. Regional Response Team. See Idaho Regional ~~Hazardous Substance Emergency~~ Response Teams. (12-24-93)(____)

14. Reimbursable Costs. The total emergency response expense, including team response costs, arising from a hazardous materials incident. Such costs generally include, but are not limited to, all state and local government expenses that result ~~from~~ from the assessment and emergency phases of the response activity. Emergency response costs do not include clean-up or disposal costs of hazardous materials, except as may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous material or in stabilizing the emergency response incident. (12-24-93)(____)

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

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

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

02. Location of Regional Response Teams. The Southeast Idaho Regional Response Team shall be headquartered at the Pocatello Fire Department in Pocatello, Idaho. ~~The Southwest Idaho Regional Response Team shall be headquartered at the Boise Fire Department in Boise, Idaho and at the Nampa Fire Department in Nampa, Idaho; the North Idaho Regional Response Team shall be headquartered at the Lewiston Fire Department in Lewiston, Idaho and at the Kootenai County Fire Protective District 1 in Coeur d' Alene, Idaho.~~ (12-24-93)(____)

03. Primary Jurisdiction of Regional Response Teams. ~~The Southeast Idaho Regional Response Team shall be headquartered at the Pocatello Fire Department in Pocatello, Idaho.~~ Boundaries of Regional Response Team Jurisdictions are shown in Appendix A, at the end of this chapter. (12-24-93)(____)

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

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

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

~~e. The Southeast Idaho Regional Response Team may also be activated by calling Pocatello Dispatch at (208) 234-6100.~~ (12-24-93)

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

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

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

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

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

b. Compensation of employees for the time and efforts devoted specifically to the response that are

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

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

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

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

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

g. Decontamination of equipment contaminated during the response; (12-24-93)

h. Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts/specialists not otherwise provided for by the local government); (12-24-93)

i. Medical monitoring or treatment of response personnel; (12-24-93)

j. Laboratory costs for purposes of analyzing samples taken during the response; and (12-24-93)

k. Disposal costs. Such costs may be reimbursed as provided in Chapter 71, Title 39, Idaho Code. (12-24-93)

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

a. Liability for team costs for spills of non-hazardous substances shall be the responsibility of the spiller or transporter of such material when the spiller or transporter failed to comply with laws or regulations of the state or federal government which would have facilitated identification of the product as a non-hazardous substance. (12-24-93)

b. Liability for team costs for spills of non-hazardous substances shall be the responsibility of the person or entity requesting activation of the regional response team in all other instances. (12-24-93)

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

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

DOCKET NO. 16-0101-9603
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, 54,993 (1995) and 61 Fed. Reg. 30,570-75 (1995).

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

Tuesday, December 10, 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:

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

The Idaho Department of Health and Welfare (Department) annually updates the Rules for the Control of Air Pollution in Idaho, IDAPA 16.01.01, to maintain conformance with the U.S. Environmental Protection Agency's (EPA) regulations as well as fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. This proposed rule incorporates by reference federal regulations revised as of July 1, 1996. The proposed rule also incorporates by reference the Maximum Achievable Control Technology (MACT) Standards promulgated as National Emissions Standards for Hazardous Air Pollutants (NESHAPS). Because some of the MACT standards were promulgated as NESHAPS after the June 28, 1996 date for codification in the Code of Federal Regulations, the federal register citations are provided in the proposed rule. The Department also intends to incorporate by reference updated guidelines on air quality models adopted after the June 28, 1996 codification cutoff date. The federal register citation is provided in the proposed rule.

Negotiated rulemaking was not conducted because time is 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.

The Department intends to take the necessary steps to effect temporary and final adoption of the rule prepared by the Department after consideration of public comments.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Tim Teater 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 December 13, 1996.

DATED this 6th day of November, 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 NO. 16-0101-9603

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

a. All federal publications: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at (202) 783-3238; and (5-1-94)

b. All documents herein incorporated by reference: (7-1-96)T

i. Central Office, Division of Environmental Quality, Department of Health and Welfare, 1410 N. Hilton, Boise, Idaho 83706 at (208) 373-0502. (7-1-96)T

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-96)T

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget, 1987. (5-1-94)

b. Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Appendix W to Part 51--Guideline on Air Quality Models. 61 Fed. Reg. 41,838 - 41,894 (August 12, 1996) (to be codified at 40 CFR Parts 51 and 52). Guidelines on Air Quality Models, Revised 2-93 including Supplements A 7-87 and B 2-93 (EPA 450/2-78-027R July 1986). (5-1-94)(____)

c. Interim Procedures for Evaluating Air Quality Models, EPA, September 1984. (5-1-94)

d. Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. Section 792 (1988). (5-1-94)

e. Federal Power Act, 16 U.S.C.A. Sections 791a et seq. (West 1985 & Supp. 1993). (5-1-94)

f. Idaho Forestry Act, Idaho Code Sections 38-101 et seq. (1977 & Supp. 1993). (5-1-94)

g. Idaho Environmental Protection and Health Act, Idaho Code Sections 39-101 through 130 (1995). (7-1-96)T

h. Idaho Administrative Procedure Act, Idaho Code Sections 67-5201 through 5292 (Supp. 1995). (7-1-96)T

i. Fire Hazard Reduction Law, Idaho Code Sections 38-401 through 414 (1977 & Supp. 1993). (5-1-94)

- j. IDAPA 20.04.01, Rules of the Department of Lands, "Rules Pertaining to Forest Fire Protection," (1993). (5-1-94)
- k. IDAPA 16.05.03, Rules of the Department of Health and Welfare, Title 05, Chapter 03, "Rules Governing Contested Cases and Declaratory Rulings," (1994). (7-1-96)T
- l. IDAPA 16.01.06, Rules of the Department of Health and Welfare, Title 01, Chapter 06, "Solid Waste Management Rules and Standards," (1993). (5-1-94)
- m. Implementation Plan for the Control of Air Pollution in the State of Idaho (SIP), Division of Environmental Quality, Department of Health and Welfare, March 1994. (5-1-94)
- n. Atomic Energy Act of 1954, 42 U.S.C.A. Sections 2014 (e), (z) and (aa) (West 1973 & Supp. 1993). (5-1-94)
- o. Procedures Manual for Air Pollution Control, Idaho Air Quality Bureau, Division of Environment, Department of Health and Welfare, September 1986. (5-1-94)
- p. "Ringelmann Smoke Chart", Manual Evaluation of Visible Emissions, Idaho Department of Health and Welfare, Division of Environment, Air Quality Bureau, Sections 6.1-6.10, September 1977. (5-1-94)
- q. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- r. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, Identification of Integral Vistas, Subsection a, 40 CFR Part 51.304(a), revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- s. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- t. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- u. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- v. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- w. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- x. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- y. Permits, 40 CFR Part 72, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- z. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- aa. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 1995~~6~~. (~~7-1-96~~)F(____)
- bb. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1995~~6~~). See Appendix A, shown at the end of this chapter. (~~7-1-96~~)F(____)
- cc. Emergency Episode Air Pollution Criteria, Division of Environmental Quality, Idaho Department of Health and Welfare, April 1972. See Appendix A, shown at the end of this chapter. (5-1-94)(____)

~~dd. National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations. 61 Fed. Reg. 34,140 - 34,200 (July 1, 1996) (to be codified at 40 CFR Part 63). ()~~

~~ee. National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins. 61 Fed. Reg. 46,906-85 (September 5, 1996) (to be codified at 40 CFR Part 63). ()~~

~~dd. National Emission Standards for Hazardous Air Pollutants for Source Categories; Petroleum Refineries. 60 Fed. Reg. 43,244-297 (August 18, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~ee. National Emission Standards for Hazardous Air Pollutants for Source Categories; Petroleum Refineries, Amended. 60 Fed. Reg. 49,976 (September 27, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~ff. National Emission Standards for Aerospace Manufacturing and Rework Facilities. 60 Fed. Reg. 45,948-80 (September 1, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~gg. National Emission Standards for Marine Tank Vessel Loading Operations and National Emissions Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations. 60 Fed. Reg. 48,388-417 (September 19, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~hh. National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. 60 Fed. Reg. 4948-93 (January 25, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~ii. National Emission Standards for Ethylene Oxide Commercial Sterilization and Fumigation Operations. 59 Fed. Reg. 62,585-601 (December 6, 1994) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~jj. National Emission Standards for Industrial Process Cooling Towers. 59 Fed. Reg. 46,339-53 (September 8, 1994) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~kk. National Emission Standards for Gasoline Distribution (Stage I) Facilities. 59 Fed. Reg. 64,303-26 (December 14, 1994) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~ll. National Emission Standards for Gasoline Distribution (Stage I) Facilities, Corrections. 60 Fed. Reg. 7627 (February 8, 1995) (to be codified at 40 CFR Part 63) and 60 Fed. Reg. 32,912-13 (June 26, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~mm. National Emission Standards for Halogenated Solvent Cleaning Operations. 59 Fed. Reg. 61,801-20 (December 2, 1994) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~nn. National Emission Standards for Halogenated Solvent Cleaning Operations, Corrections. 60 Fed. Reg. 29,484-85 (June 5, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~oo. National Emission Standards for Emissions from Epoxy Resins Production and Non-Nylon Polyamides Production. 60 Fed. Reg. 12,670-85 (March 8, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~pp. National Emission Standards for Magnetic Tape Manufacturing Operations. 59 Fed. Reg. 64,580-612 (December 15, 1994) (to be codified at 40 CFR Part 63). (7-1-96)T~~

~~qq. National Emission Standards for National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks, as amended. 60 Fed. Reg. 18020-30 (April 10, 1995) (to be codified at 40 CFR Part 63). (7-1-96)T~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 16-0102-9601

**NOTICE OF REPEAL OF PREVIOUS TEMPORARY RULE AND
NOTICE OF ADOPTION OF PENDING AND TEMPORARY RULE**

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 1997 Idaho State Legislature for final approval. The repeal of the February 1996 temporary rule is effective September 11, 1996. The September 1996 temporary rule is effective September 11, 1996. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature unless prior to that date the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has repealed a previous temporary rule and adopted a pending/temporary rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for repealing the February 1996 temporary rule and adopting the September 1996 pending/temporary rule along with a statement of any change between the text of the proposed rule and the text of the pending/temporary rule with an explanation of the reasons for the change.

In February 1996, the Board of Health and Welfare (Board) adopted a temporary rule revising Idaho's metals criteria conversion factors consistent with EPA's latest National Toxics Rule. The temporary rule was published in the Idaho Administrative Bulletin, Volume 96-4, April 3, 1996, pages 30 through 53, under Docket No. 16-0102-9601 (February 1996 temporary rule). Until adoption of the February 1996 temporary rule, Idaho was in a position of being more stringent than the federal government.

In May 1996, the Department of Health and Welfare, Division of Environmental Quality proposed final adoption of the revised metals criteria conversion factors, including hardness equations for cadmium and lead, which were inadvertently left out of the February 1996 temporary rule (Docket No. 16-0102-9601).

Because the February 1996 temporary rule does not include the hardness equation factors for cadmium and lead included in the proposed rule, the Board repealed the February 1996 temporary rule before adopting the proposed rule as a pending/temporary rule in September 1996. The pending/temporary rule was adopted by the Board because the rule responds to the needs of the regulated community while protecting the public health and environment.

The rule has been adopted as initially proposed in the Idaho Administrative Bulletin, Volume 96-5, May 1, 1996, pages 42 through 65.

The Idaho Department of Health and Welfare, Division of Environmental Quality's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public, is included in the rulemaking record maintained by the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit to dischargers of metal pollutants into waters of the state including, but not limited to, publicly-owned treatment works, industrial facilities, and mining operations because adoption of this rule makes the Idaho rules no more stringent than the federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Mark Shumar at (208)373-0502.

DATED this 6th day of November, 1996.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418

IDAPA 16
TITLE 01
Chapter 02

WATER QUALITY STANDARDS AND WASTE WATER TREATMENT REQUIREMENTS

There are no substantive changes from the proposed rule text.

**The original temporary rule is being repealed
and the proposed text is being adopted as a new temporary rule.**

**The original proposed text was published in the Idaho
Administrative Bulletin, Volume 96-5, May 1, 1996
Pages 42 through 65.**

**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

16.01.18 - IDAHO LAND REMEDIATION RULES

DOCKET NO. 16-0118-9601

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code.

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

Thursday, November 21, 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 rulemaking creates 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 proposed rules is to implement the provisions of the Idaho Land Remediation Act, 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 remediation workplans, and protection from state liability will be provided to lenders consistent with federal policy. The Idaho Land Remediation Act provides for the payment of the actual reasonable costs of the Department in providing oversight of voluntary remediation program activities.

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

A nonrefundable application fee of \$250 will be charged to cover the cost of reviewing an application submitted to the Department to determine a person's eligibility to participate in the voluntary remediation program. Section 39-7210(5), Idaho Code, authorizes imposition of this fee.

Negotiated rulemaking has been conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 96-7, July 3, 1996, p. 40. The negotiated rulemaking process included the assistance of an advisory committee.

The Department intends to take the necessary steps to effect temporary as well as final adoption of the rule prepared by the Department after consideration of public comments. Section 020.02.e., which imposes the nonrefundable application fee, will be part of the final rule presented to the Idaho Board of Health and Welfare but will not be part of the rule presented for temporary adoption.

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 these proposed rules. All written comments must be received by the undersigned on or before November 27, 1996.

Dated this 6th day of November, 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
TITLE 01
Chapter 18

IDAHO LAND REMEDIATION RULES

000. LEGAL AUTHORITY.

Pursuant to the provisions of Sections 39-105, 39-107, 39-4405, 39-7210, Idaho Code, the Department of Health and Welfare has the authority to promulgate and adopt rules to carry out the purposes of the Idaho Land Remediation Act, Sections 39-7201 to 39-7210, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title and Scope. These rules shall be cited as IDAPA 16.01.18, Rules of the Idaho Department of Health and Welfare, Title 01, Chapter 18, Idaho Land Remediation Rules, and shall be applicable to eligible persons who wish to enter into a voluntary remediation agreement with the state to minimize risk of harm to public health and the environment and to restore the economic viability of contaminated real property. ()

02. Intent. The Idaho Land Remediation rules have been adopted with the purpose 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 release of hazardous substances or petroleum exists. It is also the intent of these rules to establish a 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. It is intended that this program will provide for an expedited remediation process by eliminating the need for many adversarial enforcement actions and delays in response action plan approvals. ()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(16)(b)(iv), Idaho Code, the Department of Health and Welfare may have written statements which pertain to the interpretation of the rules of this chapter. If available, such written statements can be inspected and copied at cost at the Division of Environmental Quality, Department of Health and Welfare, 1410 N. Hilton, Boise, Idaho 83706. ()

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal final agency actions authorized under these rules pursuant to IDAPA 16.05.03, Rules of the Department of Health and Welfare, Title 05, Chapter 03, Rules Governing Contested Case Proceedings and Declaratory Rulings. ()

004. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

For the purpose of the rules contained in Title 01, Chapter 18, the following definitions and abbreviations apply.

- 01. Act. Idaho Land Remediation Act, Title 39, Chapter 72, Idaho Code. ()
- 02. Applicant. A person who submits an application to participate in the voluntary remediation program under the Idaho Land Remediation Act, Title 39, Chapter 72, Idaho Code. ()
- 03. Board. The Idaho Board of Health and Welfare. ()
- 04. Department. The Idaho Department of Health and Welfare. ()
- 05. Director. The Director of Idaho Department of Health and Welfare or his authorized agent ()
- 06. Hazardous Substance. Has the meaning set forth in Section 101(14) of the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 (14), as amended. ()
- 07. Natural Background Level. The level of any constituent in the affected media within a specified area as determined by representative measurements of the quality of that media unaffected by human activities. ()
- 08. Person. Any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties. ()
- 09. Petroleum. Includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). ()
- 10. Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum. ()
- 11. Remediation. Remediation means any of the following: ()
 - a. Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment, which may otherwise result from a release or threat of a release; or ()
 - b. Actions consistent with a permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment; or ()
 - c. The cleanup or removal of released hazardous substances or petroleum from the environment. ()
- 12. Site. A parcel of real estate for which an application has been submitted under Section 39-7204, Idaho Code. ()

011. -- 019. (RESERVED).

020. APPLICATION TO PARTICIPATE.

- 01. Application Required. In order to participate in the voluntary remediation program as established by the Idaho Land Remediation Act and these rules, a person shall submit an application to the Department. ()

02. Contents of Application. The application shall be on a form provided by the Department. The application shall include, or be accompanied by, the following: ()

a. Identification of the applicant and the applicant's relationship to the site; ()

b. Identification of the owner or operator of the site, if different than Subsection 020.02.a. of these rules; ()

c. General information pertaining to the site, including the assessors's parcel number(s), site name, and location; ()

d. An environmental assessment that conforms to ASTM Standard Practice E 1527, Environmental Site Assessments: Phase I Environmental Site Assessment Process, as amended, or equivalent; ()

e. An application fee in the amount of two hundred and fifty dollars (\$250); and ()

f. Other background information as requested on the application form provided by the Department as necessary to determine eligibility to participate in the voluntary remediation program. ()

03. Application Processing Procedure. ()

a. Not more than thirty (30) days after receiving an application the Department shall determine if the applicant is eligible to participate in the voluntary remediation program and notify the applicant of the Department's decision. If the Department fails to comply with this subsection, the applicant shall be considered eligible for the purposes of these rules. ()

b. As specifically set forth in the Department's application form, an application may be rejected for the reasons set forth in Section 39-7204(4), Idaho Code. ()

c. Rejection of an application for any of the reasons set forth in Section 39-7204(4)(a), Idaho Code, or Section 39-7204(4)(b), Idaho Code, is a final agency action. ()

021. VOLUNTARY REMEDIATION AGREEMENTS.

01. Negotiation of Voluntary Remediation Agreement. If the Department accepts an application pursuant to Section 39-7204, Idaho Code, the applicant may enter into a voluntary remediation agreement with the Department. The Department shall not evaluate a voluntary remediation work plan until the voluntary remediation agreement is signed by the applicant and the Director. ()

02. Contents of Agreement. The voluntary remediation agreement shall include the following: ()

a. A provision for the Department's oversight including access to site and pertinent site records; ()

b. A timetable for the Department to do the following: ()

i. Reasonably review and evaluate the adequacy of the work plan; ()

ii. Make a determination concerning the approval or rejection of the work plan; ()

iii. Identify, to the extent possible, permits or approvals required to initiate and complete a voluntary remediation work plan. ()

c. A provision to modify the voluntary remediation agreement and voluntary remediation work plan based upon unanticipated site conditions; ()

d. An estimation of costs the Department may incur associated with performing all of the tasks, duties and services related to the relevant application or voluntary remediation program activities, as specified in Subsection 021.04 of these rules; ()

e. A mechanism and schedule for the payment of all actual reasonable costs incurred by the Department in the review and oversight of the work plan; ()

f. A requirement that the applicant shall comply with any applicable zoning authorities or other local, state, or federal law, in implementing the voluntary remediation work plan; ()

g. Any other conditions considered necessary by the Department or the applicant concerning the effective and efficient implementation of these rules. ()

03. Reimbursement of Costs Included in Agreement. ()

a. The voluntary remediation agreement shall include a provision for the payment and accounting of reasonable oversight costs incurred by the Department in connection with the person's application and participation in the voluntary remediation program. ()

b. Costs incurred by the Department for oversight of voluntary remediation actions will be reimbursed in the following manner, which shall be specified in the voluntary remediation agreement. ()

i. The applicant shall deposit two thousand five hundred dollars (\$2,500) with the Department. ()

ii. The unused portion of the deposit will be returned to the applicant within sixty (60) days of Department issuance of a certificate of completion. ()

iii. Should funding be required for costs incurred in excess of the initial two thousand five hundred dollars (\$2,500) deposit, the Department will, in advance, notify the applicant of required successive deposits in the amount of two thousand five hundred dollars (\$2,500). ()

04. Oversight Costs. Oversight costs shall include the following: ()

a. The review, processing and negotiation of the voluntary remediation agreement; ()

b. The review, processing and negotiation of the voluntary remediation work plan; ()

c. Conducting public hearing and dissemination of public notices; ()

d. Oversight of work performed in accordance with the voluntary remediation work plan; ()

e. Issuance of the certificate of completion; ()

f. Issuance of a covenant not to sue; ()

g. Administrative expenses associated with cost recovery activities; ()

05. Enforceability of Agreement. Upon signing of the voluntary remediation agreement by the Department and the applicant, the voluntary remediation agreement shall constitute a contract between the Department and the applicant enforceable in accordance with its terms, subject to: ()

a. The Department's right to rescind the voluntary remediation agreement as provided in Section 39-7208, Idaho Code; and ()

b. The applicant's right to terminate the voluntary remediation agreement under Subsection 021.06 of these rules. ()

06. Reasons for Which a Person May Terminate a Voluntary Remediation Agreement. An applicant may terminate the voluntary remediation agreement for any of the following reasons: ()

a. The applicant decides to terminate the voluntary remediation agreement rather than submit additional or corrected information to the Department as provided in Section 39-7206(2)(b), Idaho Code; or ()

b. The voluntary remediation work plan is modified or rejected as provided in Section 39-7206(5), Idaho Code. ()

07. Effect of Termination of Agreement. The termination of a voluntary remediation agreement as provided in Section 39-7206, Idaho Code, shall not relieve the applicant from the obligation to comply with any applicable authorities regarding the contamination at the site, and the Department may initiate administrative or judicial action under applicable authorities. ()

022. VOLUNTARY REMEDIATION WORK PLAN.

01. Submittal of Proposed Voluntary Remediation Work Plan. An applicant whose application has been accepted by the Department may submit a proposed voluntary remediation work plan to the Department. The Department will evaluate the work plan according to the terms and conditions of a voluntary remediation agreement signed by the Department and the applicant. ()

02. Contents of Voluntary Remediation Work Plan. The voluntary remediation work plan shall include the following: ()

a. The current and reasonably anticipated future use of on-site ground and surface water; ()

b. The current and reasonably anticipated future uses of the site and immediately adjacent properties; ()

c. If a risk-based concentration is proposed as a remediation standard, the voluntary remediation work plan shall include an estimate of the human and environmental risk from releases or threatened releases of hazardous substances or petroleum at the site based upon the current use of the site and adjacent properties and reasonably anticipated future uses of the site. ()

d. Proposed remediation standards developed in accordance with Section 023 of these rules. ()

e. A proposed statement of work; ()

f. A schedule to accomplish the proposed statement of work; ()

03. Information Supporting the Voluntary Remediation Work Plan. Sufficient information to support the voluntary remediation work plan shall be submitted and may include the following: ()

a. Site assessment information including: ()

i. A legal description of the site and a map identifying the location and size of facilities and relevant features, such as property boundaries, surface topography, surface and subsurface structures, and utility lines; ()

ii. The physical characteristics of site facilities and contiguous areas, including the location of any surface water bodies and ground water aquifers; ()

iii. The location of any wells located on the site or on areas within one-half mile radius of the site and a description of the use of those wells; ()

iv. The operational history of the facility, including ownership, and the current use of the facility; ()

v. Information on the methods and results of investigations concerning the nature and extent of any releases or threatened releases of hazardous substances or petroleum that have occurred at the site and a map showing general areas of concentrations of these hazardous substances or petroleum; ()

vi. A site investigation sampling and analysis plan, and quality assurance project plan; ()

vii. Any sampling results or other data that characterizes the soil, air, ground water, surface water, or sediments on the site; and ()

viii. Available information on the environmental regulatory and compliance history of the site, including all applicable environmental permits. ()

b. Risk evaluation information including: ()

i. An evaluation of the data collected during the site investigation including identification of chemicals of potential concern; ()

ii. An exposure assessment of all potential pathways of exposure; ()

iii. A toxicity assessment estimating the toxicity of both carcinogens and non-carcinogens; ()

iv. Identify site conditions which may affect or limit migration of the contamination; and ()

v. A risk characterization that evaluates the uncertainties associated with the site investigation, the likelihood of exposures, and the toxicity of the contaminants. ()

04. Review and Evaluation of Work Plan. The Department shall review and evaluate the voluntary remediation work plan, provide public notice, accept public comments and may make the determination whether to hold public hearings in accordance with Section 39-7206, Idaho Code, and the voluntary remediation agreement. ()

a. For purposes of determining whether to hold a public hearing in accordance with Section 39-7206, Idaho Code, the Department will consider the following a significant number of requests for a public hearing: ()

i. Twenty-five (25) written requests from potentially affected persons; or ()

ii. One or more written requests from an organization representing twenty-five (25) or more potentially affected members. ()

b. The Department shall provide for a public comment period of at least thirty (30) days following publication of a public notice under Section 39-7206(3)(d), Idaho Code. ()

c. Pursuant to Section 39-7206, Idaho Code, the Department may approve, modify and approve, or reject a voluntary remediation work plan. ()

d. The Department may reject or approve with modification any voluntary remediation work plan that does not achieve the remediation standards developed and approved by the Department pursuant to Section 023 of these rules. ()

e. If the Department rejects a voluntary remediation work plan, the Department shall: ()

i. Notify the applicant and specify the reasons for rejection; ()

ii. Provide the applicant an opportunity according to the schedule in the voluntary remediation agreement to amend the work plan; and ()

iii. The applicant may appeal the Department's decision to reject the work plan as provided in Section

39-7206, Idaho Code. ()

f. If an applicant determines not to amend a rejected work plan to the satisfaction of the Department, the voluntary remediation agreement shall be terminated as provided in Subsection 021.06 of these rules. ()

05. Modification to an Approved Voluntary Remediation Workplan That Requires Additional Public Notice and Comment. After the close of the public comment period and the Department's approval of the voluntary remediation work plan, situations may arise that result in modification of an approved voluntary remediation work plan. Depending upon the significance of the modification, another opportunity for public notice and comment may be appropriate. ()

a. The Department need not provide for an additional public notice and comment period if the proposed modifications to the voluntary remediation work plan are limited to minor changes. A minor change to the voluntary remediation work plan is a change that does not fundamentally alter the overall remedial approach. ()

b. The Department shall provide for an additional public notice and comment period if the proposed modifications to the voluntary remediation work plan are fundamental. A fundamental change is a change that requires reconsideration of the remediation proposed in the approved voluntary remediation work plan. ()

023. REMEDIATION STANDARDS.

01. Voluntary Remediation Work Plan Must Achieve Health-Based and Environmental Remediation Standards. All hazardous substance or petroleum concentrations in media which exceed the health-based and environmental remediation standards shall be addressed through appropriate remediation and in accordance with the appropriate technical standards based upon the following: ()

a. Site characteristics; ()

b. Hazardous substances or petroleum; and ()

c. Technical guidance approved by the Department. ()

02. Establishment of Remediation Standards. The remediation standards utilized in these rules shall be no more stringent than applicable or relevant and appropriate federal and state standards and are consistent with 42 U.S.C. 9621, taking into consideration site specific conditions. An applicant who submits a voluntary remediation work plan for approval by the Department shall select and attain compliance with one or more of the following remediation standards when implementing a voluntary remediation work plan: ()

a. Attainment of a natural background level demonstrated by the collection and analysis of representative samples from environmental media of concern where contamination occurs. Evaluation of representative samples shall be conducted through the application of statistical tests specified in a voluntary remediation work plan. ()

b. An established state or federal generic numerical health standard which achieves an appropriate health-based level so that any substantial present or probable future risk to human health or the environment is eliminated or reduced to protective levels based upon present and reasonably anticipated future uses of the site. ()

c. Risk-based concentrations calculated for the hazardous substance or petroleum using site-specific risk assessment procedures. ()

d. An applicant may use a combination of standards from Subsections 023.02.a. through 023.02.c. to implement a voluntary remediation work plan. ()

024. IMPLEMENTATION OF VOLUNTARY REMEDIATION WORK PLAN.

01. Implementation. An approved voluntary remediation work plan shall be fully implemented by the applicant according to the terms and conditions of the voluntary remediation agreement, these rules and the Idaho Land Remediation Act. ()

02. Permits or Approvals Necessary for Implementation. The Department shall assist in the timely issuance of Department permits or approvals required to initiate and complete a voluntary remediation work plan. ()

03. Progress Reports. An applicant implementing a voluntary remediation work plan shall submit periodic progress reports to the Department according to the terms and conditions of the voluntary remediation agreement. ()

04. Voluntary Remediation Work Plan Completion Report. When the applicant believes the objectives of the voluntary remediation work plan have been achieved and successfully implemented, the applicant shall submit to the Department a voluntary remediation work plan completion report together with a request that the Department issue a certificate of completion. ()

a. The voluntary remediation work plan completion report shall contain information sufficient for the Department to determine whether the voluntary remediation work plan objectives were achieved and the voluntary remediation work plan was successfully implemented. ()

b. The Department shall, within thirty (30) days of the receipt of a voluntary remediation work plan completion report and a request for a certificate of completion, notify the applicant whether the voluntary remediation work plan has been successfully implemented. ()

c. If the Department notifies the applicant that the voluntary remediation work plan has not been successfully implemented, the applicant shall do the following: ()

i. Implement the voluntary remediation work plan to the satisfaction of the Department; and ()

ii. Resubmit the voluntary remediation work plan completion report. ()

d. If a voluntary remediation work plan completion report demonstrates that the voluntary remediation work plan has been successfully implemented, the Department shall certify such facts by issuing the applicant a certificate of completion. The applicant shall record the certificate of completion with the deed for the site on which the remediation took place. ()

e. The Department may provide a certificate of completion conditioned upon continued monitoring, recordation or maintenance of institutional or engineering controls, or other continuing actions by the applicant. ()

f. Decisions by the Department involving the voluntary remediation work plan completion reports required under this section are considered final agency actions. ()

025. COVENANT NOT TO SUE.

01. Negotiation and Provision of Covenant. Within thirty (30) days of receipt of the Department's certificate of completion, the applicant may request the Department negotiate and provide a covenant not to sue as provided in Section 39-7207, Idaho Code. Any such covenant not to sue may be conditioned upon continuing monitoring, recordation or maintenance of institutional or engineering controls, or other continuing actions required of the applicant pursuant to an approved voluntary remediation work plan. ()

02. Rescission of Covenant. The Department may rescind a covenant not to sue in accordance with Section 39-7208, Idaho Code. If the Department rescinds a covenant not to sue, it may initiate administrative or judicial action as provided in Sections 39-7207 and 39-7208, Idaho Code. The Department shall also notify the county in which the site exists of rescission of the covenant not to sue for purposes of determining ad valorem exemptions provided under Section 63-105II, Idaho Code. ()

03. Continuing Compliance. During the implementation of an approved voluntary remediation work plan, the Department shall not bring an action, including an administrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the voluntary remediation work plan, against a person who entered into a voluntary remediation agreement and who is implementing the voluntary remediation work plan in accordance with such agreement implementing the voluntary remediation work plan. ()

026. LENDER LIABILITY.

01. General Statement. Pursuant to Section 39-7209, Idaho Code, a person who maintains indicia of ownership primarily to protect a security interest in a site, as defined in Subsection 010.12 of these rules, and who does not participate in the management of the site, shall not be considered an owner or operator of that site, nor liable under any pollution control or other environmental protection law, rule or regulation, or otherwise responsible for any environmental contamination or response activity costs consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended. This Section 026 sets out the rules of the Board regarding lender liability pursuant to Sections 39-7209 and 39-7210(6), Idaho Code. ()

02. Definitions and Operative Provisions. ()

a. "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure or its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guaranties of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure, and their equivalents. Evidence of such interests also includes assignments, pledges or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership. ()

i. A "holder" is a person who maintains indicia of ownership primarily to protect a security interest in a site. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder. ()

ii. A "borrower," "debtor" or "obligor" is a person who owns, leases, occupies or operates a site encumbered by a security interest. ()

b. "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. ()

i. "Security interest" means an interest in a site, created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens, security interests under Article 9 of the Uniform Commercial Code, and title pursuant to lease financing transactions. ()

ii. "Primarily to protect a security interest" does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest. ()

c. Participation in Management Defined. The term "participating in the management of a site" means that the holder is engaging in acts of site management, as defined herein. ()

i. Actions That Are Participation in Management. Participating in the management of a site means actual participation by the holder in the management or operational affairs of the site by the holder, and does not include the mere capacity or ability to influence, or the unexercised right to control, site operations. A holder is

participating in management, while the borrower is still in possession of the site encumbered by the security interest, only if the holder either: ()

(1) Exercises decision making control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's hazardous substance or petroleum handling or disposal practices; or ()

(2) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to (1) environmental compliance or (2) all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise other than environmental compliance. ()

ii. Actions That Are Not Participation in Management. ()

(1) Actions at the Inception of the Loan or Other Transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management. A prospective holder who undertakes or requires an environmental inspection of the site or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the site's management. Neither Section 39-7209, Idaho Code, or these rules require a holder to conduct or require an inspection to qualify for the exemption, and the liability of a holder cannot be based on or affected by the holder not conducting or not requiring an inspection. ()

(2) Loan Policing and Workout. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and workout activities cover and include all activities up to foreclosure and its equivalents. ()

(a) Policing the security interest or loan. A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not by such actions participate in the management of the site. Such actions include, but are not limited to, requiring the borrower to clean up the site during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state and local environmental and other laws, rules and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the site (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations or promises from the borrower). ()

(b) Policing activities also include any activities taken by the holder to require a borrower to comply with a voluntary remediation work plan, or by agreement with the Department, to complete a voluntary remediation work plan, provided that the holder does not otherwise participate in the management of the site. ()

(c) Loan Workout. A holder who engages in workout activities prior to foreclosure and its equivalents will remain within the exemption provided that the holder does not by such action participate in the management of the site. For purposes of this rule, "workout" refers to those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure or mitigate a default by the borrower or obligor, or to preserve, or prevent the diminution of, the value of the security. ()

d. Foreclosure on a Site and Post-Foreclosure Activities. ()

i. Foreclosure. Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure and its equivalents. "Foreclosure and its equivalents" includes purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease or other repossession; acquisition to a right to title or possession; an agreement in satisfaction of the obligation; or any other formal or informal manner (whether pursuant to law or under warranties,

covenants, conditions, representations or promises from the borrower) by which the holder acquires title to or possession of the secured property. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest, provided that the holder undertakes to sell, re-lease or otherwise divest itself of the site, in a reasonably expeditious manner, using whatever commercially-reasonable means are relevant or appropriate with respect to the site, taking all facts and circumstances into consideration, and provided that the holder did not participate in management prior to foreclosure. ()

ii. Holding foreclosed property for disposition and liquidation. A holder, who did not participate in management prior to foreclosure and its equivalents, may sell, re-lease, liquidate, maintain business activities, wind up operations, undertake any response action under federal, state or local environmental laws, rules or regulations, undertake completion of an approved voluntary remediation work plan by agreement with the Department, and take measures to preserve, protect or prepare the secured asset prior to sale or other disposition, without voiding the exemption provided by Section 39-7209, Idaho Code, and these rules. ()

027. INSTITUTIONAL CONTROLS.

01. Purpose. ()

a. Institutional controls may be proposed by the applicant or the Department as an element of the voluntary remediation work plan. Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances or petroleum at a site. Such measures may be used to assure both the continued protection of human health and the environment and the integrity of a cleanup action in at least the following circumstances: ()

b. Where a cleanup action results in residual concentrations of hazardous substances or petroleum which exceed risk-based health standards; or ()

c. When the Department determines such controls are required to assure the continued protection of human health and the environment or the integrity of the cleanup action. ()

02. Prohibition of Use. Institutional controls should not be used as a substitute for cleanup actions that would otherwise be technically possible. ()

03. Institutional Controls. For the purposes of this section, institutional controls may include: ()

a. Physical measures, such as fences and signs, to limit activities that may interfere with the cleanup action or result in exposure to hazardous substances at the site; and ()

b. Legal and administrative controls, such as zoning restrictions, restrictive covenants, or equitable servitudes used to ensure such measures are maintained. ()

04. Legal Use Restrictions. Institutional controls may be described in an equitable servitude, restrictive covenant, or similar legal mechanism executed by the property owner and recorded in the county in which the site is located. The use of such legal use restrictions may be addressed in the voluntary remediation agreement, the certificate of completion, or the covenant not to sue. ()

05. Legal Use Restriction Requirements. Where appropriate, the legal use restriction requirement should: ()

a. Prohibit activities on the site that may interfere with a cleanup action, operation and maintenance, monitoring, or other measures necessary to assure the integrity of the cleanup action and continued protection of human health and the environment; ()

b. Prohibit activities that may result in the release of a hazardous substance or petroleum which was contained as a part of the remediation; ()

c. Require notice to the Department of the owner's intent to convey any interest in the site.

Conveyance of title, easement, lease, or other interest in the property may be conditioned upon easement, lease, or other interest in the property for the continued operation, maintenance and monitoring of the cleanup action, and for continued compliance with this subsection; ()

d. Require notice and approval by the Department of any proposal to use the site in a manner which is inconsistent with the legal use restriction. ()

e. Grant the Department and its designated representatives the right to enter the property at reasonable times for the purpose of evaluating compliance with the voluntary remediation work plan and other required plans, including the right to take samples, inspect any remedial actions taken at the site, and to inspect records. ()

f. Contain other restrictions appropriate under the circumstances. ()

06. Compliance with Other Laws. It shall be the applicant's responsibility to comply with any applicable zoning authorities or other local, state, or federal law, in implementing the voluntary remediation work plan. ()

07. Financial Assurances. The Department may require the applicant to provide financial assurances, through a trust fund or other appropriate financial mechanism approved by the Department sufficient to cover all costs for ensuring the effectiveness of institutional controls or of operation and maintenance, including compliance monitoring and undertaking appropriate measures to ensure the integrity of institutional controls. ()

08. Removal of Restrictions. If the residual hazardous substances or petroleum remaining at the site are subsequently reduced in concentration such that risk-based health standards are met, then the owner may request the restrictive covenant or other restrictions be voided. The restrictive covenant or other restrictions may be removed, if the Department, after public notice and opportunity for comment, concurs. ()

028. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.02.22 - RULES GOVERNING SERVICES TO ADULT VICTIMS OF CYSTIC FIBROSIS

DOCKET NO. 16-0222-9601

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 67-5224 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(s) 39-105 and 39-147, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996, Administrative Bulletin, Volume 96-8, page 128.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Brett Harrell at (208) 334-5962.

DATED this 6th day of November, 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

IDAPA 16
TITLE 02
Chapter 22

RULES GOVERNING SERVICES TO ADULT VICTIMS OF CYSTIC FIBROSIS

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996,
Page 128.**

**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
16.02.26 - RULES GOVERNING THE IDAHO CHILDREN'S SPECIAL
HEALTH PROGRAM

DOCKET NO. 16-0226-9601

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 67-5224 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(s) 39-105 and 39-147, Idaho Code.

DESCRIPTIVE SUMMARY: A portion of the proposed text was not published in Section 151. The correct text of Section 151 is being republished following this notice. The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996, Administrative Bulletin, Volume 96-8, pages 129 through 137.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Brett Harrell at (208) 334-5962.

DATED this 6th day of November, 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

**Section 151 is being republished to correct a
mistake that was made in the publication of the proposed text.**

**The complete original text was published in the
Idaho Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 129 through 137.**

**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. 16-0226-9601

151. AGE.

Applications may be accepted on persons up to age eighteen (18), or any age for persons with cystic fibrosis or phenylketonuria (PKU). With the exception of Cystic Fibrosis, CSHP will pay for no services after the patient's 18th birthday unless the person is receiving active inpatient treatment at the time of the birthday. In that case CSHP will pay for services until discharge if they fall within the guidelines described in Section 054 of these rules. (7-1-96)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-9603
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective October 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 rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 39-1061, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rulemaking 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 and comply with deadlines in amendments to governing law of federal programs.

The following amendments are included in this docket:

- Increases the vehicle fair market value exclusion from \$4600 to \$4650.
- Increases the gross income limits for households applying for Food Stamps.
- Increases the net income limits for households applying for Food Stamps.
- Increases the maximum allotment amounts for households receiving Food Stamp benefits.
- Increases the standard utility allowance from \$163 to \$165.
- Changes the date an application is considered filed when received in the wrong field office.
- Adds subsection for intentional program violation penalty.

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 November 27, 1996.

DATED this 6th day of November, 1996.

STACI WELSH
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
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(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0304-9603

108. WRONG FIELD OFFICE CONTACTED.

If a household contacts the wrong Field Office, the Department will give the household the address and phone number of the correct Field Office. The Department will offer to forward the AFA to the correct Field Office. The AFA must contain the applicant's name, address, signature and date of application. The AFA must be date stamped and mailed to the correct Field Office the same day. ~~Inform the household its application is not filed until received by the correct Field Office.~~ (10-1-95)F(10-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

315. JOINTLY-OWNED RESOURCES EXCLUDED.

A jointly-owned resource is excluded, if the household shows it cannot sell or divide the resource without consent of the other owner, and the other owner will not sell or divide the resource. A jointly-owned resource is excluded, if owned by a resident in a shelter for battered women and children and access to the resource requires agreement of a joint owner living in the former household. A vehicle, jointly owned by a household member and a person not living in the household, may be excluded. The household member must not have possession of the vehicle. The household member must not be able to sell the vehicle. (6-1-94)(10-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

336. VEHICLES COUNTED AS A RESOURCE.

Determine if a vehicle is excluded from resources. Determine if a vehicle is licensed or unlicensed. (6-1-94)

01. Resource Value of Licensed Vehicles. Count the resource value of licensed vehicles, not excluded, as shown below: (6-1-94)

a. Licensed vehicle used for general household use. One licensed vehicle per household regardless of use. Vehicle's fair market value over four thousand six hundred and fifty dollars (\$46050) counted as a resource, regardless of debt. (10-1-95)F(10-1-96)T

b. Licensed vehicle used to commute to work or training. Vehicle used to commute to work, training for work, or to seek work. This is in addition to general use vehicle. This includes use by household member, ineligible alien, or disqualified person. Vehicle's fair market value over four thousand six hundred and fifty dollars (\$46050) counted as a resource, regardless of debt. (10-1-95)F(10-1-96)T

c. Licensed vehicle used for job search. Vehicle used to seek work or comply with job search requirements. This is in addition to the general use vehicle. Vehicle's fair market value over four thousand six hundred and fifty dollars (\$46050) counted as a resource, regardless of debt. (10-1-95)F(10-1-96)T

d. Other licensed vehicles. All other licensed vehicles. Greater of client's equity or the vehicle's fair market value over four thousand six hundred and fifty dollars (\$46050) counted as a resource. (10-1-95)F(10-1-96)T

02. Resource Value of Unlicensed Vehicles. The resource value of unlicensed vehicles is counted as shown below: (6-1-94)

a. All unlicensed vehicles. All unlicensed vehicles, working or not working. Client's equity is counted as a resource. (6-1-94)

b. Unlicensed vehicles on Indian reservation. Unlicensed vehicles, driven by tribal members on Indian reservations not requiring licensure. Treated as licensed vehicles. Resource value is determined by use. (6-1-94)

337. COMPUTING VEHICLE FAIR MARKET VALUE.

The Department will use an official used car valuations book, such as the NADA Official Used Car Guide, to compute the vehicle's fair market value. Do not add the value of low mileage or optional equipment. Do not add the value of special equipment for a handicapped person. If the household does not agree with the book value, it must provide proof of the vehicle's value from a reliable source such as a car dealer or a bank. (6-1-94)

01. Older Vehicles. If the vehicle is no longer listed in the NADA Official Used Car Guide, the Department will accept the household's estimate of the vehicle's value. If the Department has reason to question the estimate and if the value of the vehicle will affect eligibility, the household must get an appraisal from a car dealer or produce other evidence of its value. Accept a newspaper advertisement showing the selling price of similar vehicles. (6-1-94)

02. New Vehicles. If a new vehicle is not listed, get the fair market value by other means. The client may contact a dealer selling that type of vehicle. The dealer's wholesale value is the fair market value. For licensed antique, custom made, or classic vehicles, the household must provide proof of the value from a reliable source. (6-1-94)

03. Multiple Vehicles. If the household owns more than one (1) vehicle, assess each vehicle individually. Do not add the fair market value of two (2) or more vehicles to reach a total fair market value over four thousand six hundred and fifty dollars (\$46050). (~~10-1-95~~)T(10-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

532. GROSS INCOME LIMIT.

Households exceeding the gross income limit for the household size are not eligible, unless they are categorically eligible or have an elderly or disabled member. Categorically eligible households are exempt from gross and net income limits. All members of categorically eligible households must be approved for AFDC, ~~AFDC~~ABD, or SSI. Households with elderly or disabled household members are exempt from the gross income limit. Gross income limits are listed in Table 532. (9-1-94)

TABLE 532 - GROSS INCOME LIMIT	
HOUSEHOLD SIZE	GROSS INCOME LIMIT
1	\$8 <u>10</u> 39
2	\$1, <u>087</u> 123
3	\$1, <u>364</u> 407
4	\$1,6 <u>42</u> 90
5	\$1,9 <u>19</u> 74
6	\$2, <u>196</u> 258
7	\$2,4 <u>74</u> 542
8	\$2,7 <u>51</u> 826
Each Added Person Add \$2 <u>78</u> 84	

(~~10-1-95~~)T(10-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

543. STANDARD UTILITY ALLOWANCE (SUA).

The shelter deduction is computed using the SUA or actual utility costs. The SUA is described below: (6-1-94)

01. Standard Utility Allowance (SUA). The Standard Utility Allowance (SUA) can be used instead of actual costs of heating, cooling, cooking fuel, electricity, the basic service fee for one telephone, water, sewer and garbage collection. The SUA is one hundred sixty ~~three~~^{five} dollars (\$~~163~~⁵). The household must be told if actual utility costs exceed the SUA, the actual costs can be used if the household proves these costs. (~~10-1-95~~)(10-1-96)T

02. SUA Qualifications. To qualify for the SUA, households must: (6-1-94)

a. Receive energy assistance payments made under the Low Income Home Energy Assistance Act of 1981; or (6-1-94)

b. The household must have a primary heating or cooling system. The household must have out-of-pocket heating or cooling costs billed on a regular or irregular basis. The heating or cooling costs must be separate from rent or mortgage payments. If not billed regularly for heating or cooling costs, the household must be otherwise Food Stamp eligible between billing periods. (6-1-94)

c. If the household claims cooling costs, the household must have either an air conditioning system or a room air conditioner to qualify for the SUA. (6-1-94)

d. If the household claims heating costs, the household must have expenses for a primary source of heat. Households buying wood for their primary source of heat may get the SUA. Cutting their own wood for the primary source of heat does not qualify a household for the SUA. Supplemental heat sources like, space heaters, electric blankets, cook stoves and a secondary heat source like a fireplace do not qualify households for the SUA. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

549. NET INCOME LIMIT TEST.

Categorically eligible households do not have a net income limit. Households with an elderly or disabled household member must meet the net income limit. For all other households, compare the net income to the net income eligibility limit for that size household. This comparison must be completed for initial eligibility and when income changes. When the household income changes to a different income eligibility limit, apply the different limit. If the net income of the household exceeds the net income limit the household is not eligible for Food Stamps, unless categorically eligible. Net income limits are listed in Table 549. (6-1-94)

TABLE 549 - NET INCOME LIMITS

HOUSEHOLD SIZE	NET INCOME LIMIT
1	\$ 623 ⁴⁵
2	\$ 836 ⁶⁴
3	\$ 1050 ⁸²
4	\$ 1,263 ³⁰⁰
5	\$ 1,476 ⁵¹⁹
6	\$ 1,690 ⁷³⁷

HOUSEHOLD SIZE	NET INCOME LIMIT
7	\$1,903 55
8	\$2,116 74
Each Added Person Add \$214 9	

(10-1-95)F(10-1-96)T

550. STEPS TO COMPUTE FOOD STAMP PAYMENT.

Use the steps in Subsections 550.01 through 550.38 to compute the Food Stamp issuance. Do not round figures or calculations of income and deductions in determining gross or net income. (10-1-95)T

01. Step 1. List projected wages and salaries for the household for the month. Do not count excluded income. (6-1-94)
02. Step 2. Compute and list net self-employment income. If a farmer, list any self-employment profit or loss. (6-1-94)
03. Step 3. Add results of step 1 and step 2. THIS IS GROSS EARNED INCOME. (6-1-94)
04. Step 4. Compute and list prorated monthly non-excluded educational income. (6-1-94)
05. Step 5. Compute and list prorated monthly tuition, mandatory fees, and allowed expenses. (6-1-94)
06. Step 6. Subtract amount in step 5 from the amount in step 4. (6-1-94)
07. Step 7. List other unearned income for household. (6-1-94)
08. Step 8. Add results of step 6 and step 7. THIS IS TOTAL UNEARNED INCOME. (6-1-94)
09. Step 9. Add results of step 3 and step 8. (6-1-94)
10. Step 10. Subtract any loss not used up in step 2 from step 9. THIS IS GROSS MONTHLY INCOME. Record the gross monthly income. Check to see if gross income exceeds the limit for family size. Categorically eligible households are exempt from the gross income test. Households with an elderly or disabled household member are exempt from the gross income test. (6-1-94)
11. Step 11. Multiply amount in step 3 times 0.2 (20%). (6-1-94)
12. Step 12. Subtract amount in step 11 from amount in step 3. (6-1-94)
13. Step 13. Add amount in step 12 to amount in step 8. (6-1-94)
14. Step 14. List the standard deduction of one hundred thirty-four dollars (\$134). (12-1-95)T
15. Step 15. Subtract amount in step 14 from amount in step 13. (6-1-94)
16. Step 16. List converted medical costs over thirty-five dollars (\$35) for household with elderly or disabled member. (6-1-94)
17. Step 17. Subtract amount in step 16 from amount in step 15. (6-1-94)
18. Step 18. List converted dependent care costs (not to exceed two hundred dollars (\$200) per dependent under age two (2) and one hundred seventy five dollars (\$175) for any other dependent). (10-1-94)

19. Step 19. Subtract amount in step 18 from amount in step 17. (10-1-95)T
20. Step 20. List child support paid or expected to be paid by the household. (10-1-95)T
21. Step 21. Subtract amount in step 20 from amount in step 19. THIS IS INCOME, AFTER DEDUCTIONS, EXCEPT SHELTER DEDUCTION. (10-1-95)T
22. Step 22. Divide amount in step 21 by 2 (this is used to weigh shelter costs). THIS IS HALF THE ADJUSTED INCOME. (10-1-95)T
23. Step 23. List rent or mortgage payment. (10-1-95)T
24. Step 24. List property taxes (averaged over 12 months). (10-1-95)T
25. Step 25. List homeowners insurance on structure (averaged over 12 months). (10-1-95)T
26. Step 26. Add amount in step 23 and amount in step 24 and amount in step 25. (10-1-95)T
27. Step 27. If client chooses the standard utility allowance (SUA), add one hundred sixty ~~three~~ five dollars (\$1635) to the amount in step 246. (~~10-1-95~~)T(10-1-96)T
28. Step 28. If client has chosen to use actual utility expenses, list and add the following expenses. (10-1-95)T
- a. Basic rate for telephone. (6-1-94)
- b. Electric bill. (6-1-94)
- c. Gas bill. (6-1-94)
- d. Heating oil. (6-1-94)
- e. Wood costs (only if purchased for heat). (6-1-94)
- f. Water and sewer bill. (6-1-94)
- g. Garbage and trash collection. (6-1-94)
- h. Installation costs for utilities. (6-1-94)
- i. Other allowed utility costs. (6-1-94)
29. Step 29. If client has chosen to use actual utility expenses, add amount in step 26 and amount in step 28. (10-1-95)T
30. Step 30. Use amount from step 27 (using standard utility allowance) or amount from step 29 (using actual utility costs) as total shelter cost. (10-1-95)T
31. Step 31. Subtract half adjusted income (step 22) from amount in step 30. THIS IS THE EXCESS SHELTER DEDUCTION. The maximum excess shelter deduction for household with no elderly or disabled member is two hundred forty-seven dollars (\$247). If any member of the household is age sixty (60) or disabled, the maximum is the full excess shelter allowance. (10-1-95)T
32. Step 32. Subtract amount in step 31 from amount in step 21. THIS IS THE NET INCOME. (10-1-95)T

33. Step 33. List maximum net income limit based on household size. (10-1-95)T
34. Step 34. If amount in step 32 is less than or equal to amount in step 33, or if all household members are categorically eligible, compute the Food Stamp amount. If the amount in step 32 is greater than the amount in step 33, net income exceeds allowed limits. (10-1-95)T
35. Step 35. List maximum Food Stamp amount for number of eligible household members. (10-1-95)T
36. Step 36. Multiply amount in step 32 times 0.3 (30%). (10-1-95)T
37. Step 37. Subtract amount in step 36 from the amount in step 35. (10-1-95)T
38. Step 38. Round the amount in step 37 to the next lower dollar. **THIS IS THE FOOD STAMP ISSUANCE AMOUNT.** (10-1-95)T

(BREAK IN CONTINUITY OF SECTIONS)

581. MAXIMUM FOOD STAMPS BY HOUSEHOLD SIZE.

The maximum Food Stamp amount by household size is listed in Table 581.

(10-1-95)T

HOUSEHOLD SIZE	MAXIMUM FOOD STAMPS
1	\$149 <u>20</u>
2	\$248 <u>20</u>
3	\$313 <u>5</u>
4	\$3974 <u>00</u>
5	\$472 <u>5</u>
6	\$566 <u>70</u>
7	\$626 <u>30</u>
8	\$746 <u>20</u>
Each Added Person Add \$90	

(10-1-95)T(10-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

617. INCREASES IN FOOD STAMPS.

If a change results in an increase in Food Stamps, the Department must allow the household ten (10) days to provide proof. The increase must be handled as follows: (6-1-94)

01. Proof Provided Within Ten (10) Days. If the household provides proof within ten (10) days of reporting the change, act on the change the month after the change was reported, not from the date proof was provided. ~~Provide supplemental Food Stamps, if necessary.~~ Make the change effective the next regular Food Stamp issuance. For changes reported after the 20th of the month, issue a supplement for the next month. Issue the supplement no later than the 10th of the next month. If the change is reported and verified after EPICS cut off date, the change must be made by the second monthly Food Stamp issuance after the change is reported.

~~(6-1-94)~~(10-1-96)T

02. No Proof of Eligibility Change. If the household fails to provide proof of a change affecting eligibility, Food Stamps must be closed. Changes in income or household composition are changes affecting eligibility. Changes in assets causing resources to exceed the limits are changes affecting eligibility. (6-1-94)

03. No Proof of Benefit Level Change. If the household fails to provide proof of a change increasing the benefit level, the change is not allowed. The deduction remains at the amount already verified. Changes in shelter costs, dependent care costs, or medical costs affect benefit level. (6-1-94)

04. Proof Provided After Ten (10) Days. If the household fails to show proof within ten (10) days of reporting the change, but shows the proof later, increase benefits the month after the month proof is provided.

(6-1-94)

618. FOOD STAMP INCREASE DUE TO ADDITION OF HOUSEHOLD MEMBER.

If a change results in a Food Stamp increase due to an added household member, the increase must be made the month following the month the change is reported, if proof is provided within ten (10) days of the Department's request. ~~If necessary, a supplemental issuance must be provided.~~ Make the change effective the next regular Food Stamp issuance. For changes reported after the 20th of the month, issue a supplement for the next month. Issue the supplement no later than the 10th of the next month.

~~(6-1-94)~~(10-1-96)T

619. FOOD STAMP INCREASE DUE TO DECREASED INCOME.

If a change results in a Food Stamp increase, due to a fifty dollar (\$50) or more decrease in the household's gross income, the increase must be made the month following the month the change is reported, if proof is provided within ten (10) days of the Department's request. ~~If necessary, a supplemental issuance must be provided.~~ Make the change effective the next regular Food Stamp issuance. For changes reported after the 20th of the month, issue a supplement for the next month. Issue the supplement no later than the 10th of the next month.

~~(6-1-94)~~(10-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

632. TEN (10) DAY ADVANCE NOTICE NOT REQUIRED.

Ten (10) day advance notice is not required, when the conditions listed below are met. Adequate notice must be given. (6-1-94)

01. Statement of Household. The Department gets a clear, written, signed statement from the household. Food Stamps can be ended or reduced from the facts given in the household statement. (6-1-94)

02. Food Stamps Reduced After Closure Notice. The household is sent a notice of closure because it did not provide requested proof. The household provides the proof before the first day of the month of closure. If the proof results in reduced Food Stamps, the reduced benefits are issued. Ten (10) day advance notice of the reduction is not required. (6-1-94)

03. Food Stamps Closed or Reduced Because of Intentional Program Violation (IPV) Penalty. The Department must impose the IPV penalty the first of the month after the month it gives written notice to the client. Ten (10) day advance notice is not required. (10-1-96)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9608
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 67-5224 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(s) 56-202, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996, Administrative Bulletin, Volume 96-8, pages 151 through 153.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Roberta Charlton at (208) 334-5795.

DATED this 6th day of November, 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

IDAPA 16
TITLE 03
Chapter 09

RULES GOVERNING MEDICAL ASSISTANCE

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 151 through 153.**

**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

17.02.04 - BENEFITS

DOCKET NO. 17-0204-9601

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 72-508 and 72-433, 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 November 20, 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 Patricia S. Ramey at (208)334-6000.

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

This new rule ensures that in workers' compensation cases mileage reimbursement for travel in connection with physical or vocational rehabilitation provided under Section 72-433(3), Idaho Code, is requested and calculated in the same manner as mileage reimbursement for travel in connection with medical treatment under Section 72-432(1), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Maureen Bock, Benefits Administration, Industrial Commission, 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 November 27, 1996.

DATED this 24th day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-5145

TEXT OF DOCKET NO. 17-0204-9601

302. -- ~~320~~19. (RESERVED).

320. RULE GOVERNING REIMBURSEMENT FOR TRAVEL EXPENSES FOR PHYSICAL OR VOCATIONAL REHABILITATION.

Reimbursement for travel expenses for physical or vocational rehabilitation as provided under Section 72- 433(3), Idaho Code. shall be requested and calculated pursuant to the provisions of IDAPA 17.02.04.321. ()

233. RULES GOVERNING THE COLLECTION OF PREMIUM TAX ON WORKERS' COMPENSATION INSURANCE POLICIES.

01. Purpose. The Industrial Commission of the State of Idaho seeks to promulgate a rule, including a form, for reporting premiums on workers' compensation insurance policies from which premium tax can be collected. ()

02. Authority and Definitions. Pursuant to Sections 72-102, 72-523, 72-524, 72-526, 72-306A, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the collection of premium tax on workers' compensation insurance policies. This procedure applies to all workers' compensation policies. The following definitions shall be used for this rule. ()

a. "Gross Direct Premiums Written" means the gross sum of premiums on policies written, without any deduction for refunds or repayments resulting from cancellations. It does not include premiums on contracts between insurers or reinsurers. For all policies written, gross direct premiums written may reflect experience modifications, deviations, and retrospective rating. Gross direct premium for policies allowing employer deductible shall be calculated as provided by statute. ()

b. "Net Premiums Written" means the amount of gross direct premiums on policies written less returned premiums and premiums on policies not taken. Paid dividends shall not be deducted for the purposes of calculating net premiums written. ()

c. For purposes of this rule, "surety" shall include reciprocals, exchanges, self-insurers, and the State Insurance Fund. ()

03. Procedure for Submitting Premium Tax Forms. The following form, denoted an IC 4008R, shall be used to report numbers of policies and the total gross premiums written. The original shall be sent to the Commission; a copy shall also be attached to the reporting entity's annual premium tax statement that is filed with the Idaho Department of Insurance. This form is due to the Commission by July 31 for the reporting period of January 1 through June 30; it is due by March 3 for the reporting period of July 1 through December 31. ()

STATE OF IDAHO
INDUSTRIAL COMMISSION
PO BOX 83720
BOISE, ID 83720-0041

SEMI-ANNUAL REPORT
WORKERS' COMPENSATION PREMIUM TAX
FOR THE PERIOD:
JANUARY - JUNE
JULY - DECEMBER

INSURANCE COMPANY: _____ FEIN: _____
Contact Person: _____ Title: _____
Address: _____
City: _____ State: _____ Postal Code: _____
Phone: _____ Fax: _____

Gross Premiums Written	\$	_____
Less: Returned Premiums and Premiums on Policies not Taken	(-)	\$ _____
Net Premiums Written	(=)	\$ _____
Tax Rate	(X)	0.025
Tax Due (Net Premiums X Tax Rate)	\$	_____*

*** Minimum tax due is \$75.00**

_____, being first duly sworn, deposes and states that s/he is a corporate officer with the title of _____, that this report is made under the provisions of Section 72-524, Idaho Code, and under penalty of perjury, that the foregoing statement contains a full, true and accurate report of all

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.06 - EMPLOYERS' REPORTS

DOCKET NO. 17-0206-9601

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 Section 72-508 and Sections 72-702, 703, and 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 November 20, 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:

This is a new Section which promulgates a form for reporting payments made on workers' compensation claims that involve payment of medical benefits only. The rule provides a specific time for filing the report and allows for electronic filing.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Maureen Bock, Administrator, Benefits Administration, Industrial Commission, 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 November 27, 1996.

DATED this 27th day of August 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-5145

TEXT OF DOCKET NO. 17-0206-9601

022. SUBMISSION TO THE INDUSTRIAL COMMISSION OF INFORMATION ON CLAIMS INVOLVING MEDICAL PAYMENTS ONLY.

01 Purpose. The Industrial Commission of the state of Idaho seeks to promulgate a form for reporting information on claims involving only medical payments. 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. Authority and Definitions. Pursuant to Sections 72-602, 72-701, 72-702, 72-703 and 72-704, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of information regarding claims that involve the payment of medical expenses only. This procedure applies to all medical-only workers' compensation claims. The following definitions shall be applicable to this rule: ()

a. Claim means Industrial Commission (IC) Form 1A-1 entitled "Workers Compensation First Report of Injury or Illness." ()

b. Employer is defined in Idaho Code §72-102(11) and, for the purposes of this rule, includes sureties and adjusters. ()

c. Claimant means a worker who is seeking to recover benefits under the Workers' Compensation Law. ()

03 Procedure for Submitting Information. In order to comply with Idaho Code §72-602(4), Form IC-2 shall be submitted to the Commission in substantially the same form as set forth below. This form shall be submitted to the Commission semi-annually, within forty-five (45) days after the last day of the six(6)-month reporting period. ()

04. Report Form and Content. The form, denoted IC-2, required by this rule shall be submitted on 8 1/2" X 11" paper in a format substantially similar to that which follows: ()

FORM IC-2

NAME OF SELF-INSURED EMPLOYER OR INSURANCE COMPANY

SIGNATURE OF PERSON COMPLETING FORM: _____

TITLE OF PERSON COMPLETING FORM: _____

REPORTING PERIOD: January 1 - June 30
July 1 - December 31

TOTAL DOLLAR AMOUNT PAID ON MEDICAL ONLY CLAIMS: \$ _____

NUMBER OF MEDICAL ONLY CLAIMS PAID FOR THE SAME PERIOD: _____

Failure to file this report is a misdemeanor under Idaho Code Section 72-602(5). ()

05. Electronic Reporting. 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. ()

0223. -- 999. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION
17.04.01 - GENERAL SAFETY AND HEALTH STANDARDS CODE 1

DOCKET NO. 17-0401-9601

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 Sections 67- 5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, page 260.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
Title 04
Chapter 01

GENERAL SAFETY AND HEALTH STANDARDS CODE 1

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Page 260.**

**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
17.05.01 - RULES UNDER THE CRIME VICTIMS COMPENSATION ACT
DOCKET NO. 17-0501-9601
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 Section 72-1004(a).

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 November 20, 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 Patricia S. Ramey at (208)334-6000.

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

This is a new rule to clarify Section 72-1003(8), which was added to the Crime Victims Compensation Act by the 1996 Legislature. This rule specifies that Section 72-1003(8), Idaho Code, applies to claims arising from criminally injurious conduct which occurred on or after July 1, 1996.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Gary W. Stivers, Executive Director, Industrial Commission, 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 November 27, 1996.

DATED this 11th day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-5145

TEXT OF DOCKET NO. 17-0501-9601

010. DEFINITIONS.

01. Commission. Where appropriate, references to the Commission in these rules includes the Commission and its employees. (11-17-86)
02. Gender. Reference within these rules to the masculine shall also include the feminine. (11-17-86)
03. Wages and Employer. The terms "wages" and "employer" shall mean the wages and employer at the

time of the criminally injurious conduct on which the Application for Compensation is based. (11-17-86)

04. Wages. In addition to cash remuneration, the term "wages" shall include non-cash remuneration such as lodging and meals provided by the employer and gratuities such as tips, which are not paid by the employer, but which are received by the victim in the normal course of his employment. (11-17-86)

05. Vacation. Vacation pay shall not be considered a collateral source. (11-17-86)

06. Compensation. For the purposes of Idaho Code. 72-1023(1), the term "compensation paid under this chapter" shall include attorney's fees awarded pursuant to Idaho Code, Section 72-1006. (11-17-86)

07. Welfare Benefits. Pursuant to Section 72-1003(8), funds payable to or on behalf of an indigent person under Idaho Code Chapter 35, Title 31, shall be considered welfare only in those cases involving criminally injurious conduct that occurred on or after July 1, 1996. ()

IDAPA 17 - INDUSTRIAL COMMISSION
17.10.01 - GENERAL SAFETY AND HEALTH STANDARDS --
GENERAL PROVISIONS

DOCKET NO. 17-1001-9601

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 Sections 67- 5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 261 through 266.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 01

GENERAL SAFETY AND HEALTH STANDARDS -- GENERAL PROVISIONS

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996,
Pages 261 through 266.

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
17.10.03 - GENERAL SAFETY AND HEALTH STANDARDS --
SAFE PLACE STANDARDS

DOCKET NO. 17-1003-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 267 through 272.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 03

GENERAL SAFETY AND HEALTH STANDARDS -- SAFE PLACE STANDARDS

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 267 through 272.**

**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
17.10.04 - GENERAL SAFETY AND HEALTH STANDARDS --
EGRESS STANDARDS

DOCKET NO. 17-1004-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 273 through 315.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 04

GENERAL SAFETY AND HEALTH STANDARDS -- EGRESS STANDARDS

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 273 through 315.

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
17.10.05 - GENERAL SAFETY AND HEALTH STANDARDS --
PERSONAL PROTECTION

DOCKET NO. 17-1005-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 316 through 331.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 05

GENERAL SAFETY AND HEALTH STANDARDS -- PERSONAL PROTECTION

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 316 through 331.

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
17.10.08 - GENERAL SAFETY AND HEALTH STANDARDS --
FIRE SAFETY

DOCKET NO. 17-1008-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 332 through 358.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 08

GENERAL SAFETY AND HEALTH STANDARDS -- FIRE SAFETY

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 332 through 358.

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
17.10.10 - GENERAL SAFETY AND HEALTH STANDARDS --
WORK PLACE STANDARDS

DOCKET NO. 17-1010-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 359 through 461.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 10

GENERAL SAFETY AND HEALTH STANDARDS -- WORK PLACE STANDARDS

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 359 through 461.**

**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
17.10.12 - GENERAL SAFETY AND HEALTH STANDARDS --
SANITATION, VENTILATION, AND ILLUMINATION

DOCKET NO. 17-1012-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 462 through 488.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 12

GENERAL SAFETY AND HEALTH STANDARDS --
SANITATION, VENTILATION, AND ILLUMINATION

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 462 through 488.

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
17.10.15 - GENERAL SAFETY AND HEALTH STANDARDS --
OCCUPANCIES

DOCKET NO. 17-1015-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 489 through 541.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 15

GENERAL SAFETY AND HEALTH STANDARDS -- OCCUPANCIES

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 489 through 541.**

**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
17.10.17 - GENERAL SAFETY AND HEALTH STANDARDS -- ELECTRICAL SAFETY
DOCKET NO. 17-1017-9601
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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 542 through 560.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 17

GENERAL SAFETY AND HEALTH STANDARDS -- ELECTRICAL SAFETY

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 542 through 560.**

**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
17.10.20 - GENERAL SAFETY AND HEALTH STANDARDS --
OCCUPATIONAL NOISE EXPOSURE

DOCKET NO. 17-1020-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 561 through 571.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 20

GENERAL SAFETY AND HEALTH STANDARDS -- OCCUPATIONAL NOISE EXPOSURE

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 561 through 571.

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

17.10.22 - GENERAL SAFETY AND HEALTH STANDARDS -- SAFETY MARKING STANDARDS

DOCKET NO. 17-1022-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 572 through 585.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

**IDAPA 17
TITLE 10
Chapter 22**

GENERAL SAFETY AND HEALTH STANDARDS -- SAFETY MARKING STANDARDS

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 572 through 585.**

**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
17.10.24 - GENERAL SAFETY AND HEALTH STANDARDS -- RADIATION SAFETY
DOCKET NO. 17-1024-9601
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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 586 through 597.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 24

GENERAL SAFETY AND HEALTH STANDARDS -- RADIATION SAFETY

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 586 through 597.**

**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
17.10.25 - GENERAL SAFETY AND HEALTH STANDARDS -- MATERIALS SAFETY
DOCKET NO. 17-1025-9601
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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 598 through 701.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 25

GENERAL SAFETY AND HEALTH STANDARDS -- MATERIALS SAFETY

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 598 through 701.**

**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
17.10.27 - GENERAL SAFETY AND HEALTH STANDARDS -- EQUIPMENT SAFETY
DOCKET NO. 17-1027-9601
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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 702 through 848.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 27

GENERAL SAFETY AND HEALTH STANDARDS -- EQUIPMENT SAFETY

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 702 through 848.**

**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
17.10.30 - GENERAL SAFETY AND HEALTH STANDARDS --
TOXIC AND HAZARDOUS SUBSTANCES

DOCKET NO. 17-1030-9601

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become 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 pending rules. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 7, 1996 Administrative Bulletin, Volume 96-8, pages 849 through 916.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these pending rules, contact Mike Poulin, Bureau of Logging and Industrial Safety at (208) 334-2129.

DATED this 2nd day of September 1996.

Patricia S. Ramey, Commission Secretary
Industrial Commission
P. O. Box 83720
Boise, Idaho 83720-0041
Telephone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17
TITLE 10
Chapter 30

GENERAL SAFETY AND HEALTH STANDARDS -- TOXIC AND HAZARDOUS SUBSTANCES

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 96-8, August 7, 1996
Pages 849 through 916.

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 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.44 - SCHEDULE OF FEES, LICENSES, AND MISCELLANEOUS CHARGES

DOCKET NO. 18-0144-9601
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 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 address below.

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

This rule amends the existing rule to make fees, licenses, and miscellaneous charges non-refundable unless otherwise noted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these temporary and proposed rules, contact James M. Alcorn at 208-334-4202.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before November 27, 1996.

Dated this 25th day of September, 1996.

James M. Alcorn, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0144-9601

011. FEE SCHEDULE.

The director shall collect in advance, and persons so served shall pay to him in advance, fees, licenses and miscellaneous charges as follows: (7-1-93)

- 01. Original Authorization. Original certificate of authority, license or registration: (7-1-93)
 - a. Filing application (except Motor Clubs pursuant to 41-4507(3), Idaho Code) -- \$2,000.*NR (7-1-93)()
 - b. Filing annual or financial statement (except Motor Clubs pursuant to 41-4507(3), Idaho Code) -- \$370.*NR (7-1-94)()

- c. Filing and certifying charter or articles of incorporation and by-laws (except Motor Clubs pursuant to 41-4507(3), Idaho Code) -- \$90. (7-1-93)
- d. Filing appointment of director as process agent (except Motor Clubs pursuant to 41-4507(3), Idaho Code) -- \$90. (7-1-93)
- e. Motor Clubs: filing application, charter or articles of incorporation, by-laws, financial statement or annual statement, appointment of director as agent for service of process -- \$320. ~~NR.~~ (7-1-93)()
- f. Issuance of certificate of authority, license, or registration -- \$370. (7-1-94)
- g. Risk retention group registration, filing plan of operation, appointment of director as agent for service of process, and financial statement -- \$1,000. (7-1-93)
- h. Purchasing group registration -- \$100. (7-1-93)
- i. Appointment of director as agent for service of process for purchasing group -- \$90. (7-1-93)
- j. Review of plan of operation for formation of domestic insurer -- \$1,000. (7-1-93)
- k. Statutory deposit account annual maintenance fee -- \$100. (7-1-93)
- 02. Reinsurance. (7-1-93)
 - a. Filing and review for reinsurance only authorization -- \$1,000. (7-1-93)
 - b. Filing annual or financial statement -- \$360. (7-1-93)
- 03. Annual License Renewal. Annual continuation of certificate of authority, license or registration: (7-1-93)
 - a. Stock, mutual or reciprocal insurers -- \$150. (7-1-93)
 - b. County mutual insurers -- \$100. (7-1-93)
 - c. Fraternal benefit societies -- \$150. (7-1-93)
 - d. Hospital and professional service corporations -- \$150. (7-1-93)
 - e. Health maintenance organizations -- \$150. (7-1-93)
 - f. Motor clubs -- \$200. (7-1-93)
 - g. Risk Retention Groups -- \$200. (7-1-93)
 - h. Purchasing Groups -- \$100. (7-1-93)
 - i. Withdrawal of Certificate of Authority -- \$30. (7-1-94)
- 04. Annual Statement Filing. Filing annual or financial statement (other than as part of application for original authorization): (7-1-93)
 - a. Stock, mutual or reciprocal insurers -- \$370. (7-1-94)
 - b. County mutual insurers -- \$190. (7-1-94)
 - c. Fraternal benefit societies -- \$480. (7-1-94)

- d. Hospital and professional service corporations -- \$370. (7-1-94)
- e. Health maintenance organizations -- \$370. (7-1-94)
- f. Reinsurance only insurers -- \$370. (7-1-94)
- g. Hospital liability insurance trusts -- \$370. (7-1-94)
- h. Self-funded health care plans -- \$370. (7-1-94)
- i. Risk retention groups -- \$370. (7-1-94)
- 05. Reinstatement. Reinstatement of certificate of authority -- \$2,500. (7-1-93)
- 06. Certified Copy. Certified copy of certificate of authority, license or registration -- \$50. (7-1-93)
- 07. Amendment. Amending certificate of authority -- \$190. (7-1-94)
- 08. Reservation. Reservation of name -- \$200. (7-1-93)
- 09. Articles of Incorporation. Filing and certifying amendment of charter or articles of incorporation -- \$90. (7-1-93)
- 10. Bylaws Amendment. Filing amendment to by-laws -- \$90. (7-1-93)
- 11. Rating Organization. Rating organization, triennial license fee -- \$300. (7-1-93)
- 12. Solicitation Permit. Organization and financing of insurer: (7-1-93)
 - a. Filing application for solicitation permit -- \$900. ~~NR~~ (7-1-93)()
 - b. Issuance of solicitation permit -- \$180. (7-1-93)
- 13. Miscellaneous. Miscellaneous services: (7-1-93)
 - a. Director's certificate under seal (except certificate of authority, certified copies thereof or licenses) - \$20. (7-1-93)
 - b. For each copy of document filed in his office, a reasonable cost as fixed by the director. (7-1-93)
 - c. For valuing life insurance, actual cost of valuation but not to exceed one cent for each one thousand dollars (\$1,000) of insurance. (7-1-93)
 - d. For receiving and forwarding copy of summons or other process served upon the director as process agent of an insurer -- \$30. (7-1-93)
 - e. For receiving and forwarding copy of summons or other process served upon the director as process agent of a nonresident agent, broker or consultant -- \$10. (7-1-94)
- 14. Review of Application. For filing and review of application to add or delete lines of business including variable authority -- \$260. (7-1-94)
- 15. Review of Miscellaneous Documents. File and review of miscellaneous documents. (7-1-93)
 - a. Reinsurance, acquisition and assumption agreements, registration statements, notice of Idaho Code Section 41-3807(2) transactions, extraordinary dividends, other -- \$200. (7-1-93)

- b. Documents filed pursuant to Chapter 47, Title 41, Idaho Code (Small Employee Health Insurance): (7-1-93)
- i. Application to become a risk-assuming carrier -- \$1,500. (7-1-93)
- ii. Application to change status from risk-assuming to reinsuring carrier -- \$250. (7-1-93)
- iii. Annual filings of Board, pursuant to Idaho Code Section 41-4711(12) -- \$300. (7-1-93)
- 16. Quarterly Filings. Quarterly statement filings -- \$50. (7-1-93)
- 17. Original License Application. Filing application for original license, and including issuance of license, if issued: (7-1-93)
 - a. Administrators -- \$300.~~*NR~~ (7-1-93)()
 - b. Agents: (7-1-93)
 - i. Life and/or disability insurance -- \$90.~~*NR~~ (7-1-93)()
 - ii. Property and/or casualty (general lines) insurance -- \$90.~~*NR~~ (7-1-93)()
 - iii. Motor vehicle physical damage insurance (only) -- \$90.~~*NR~~ (7-1-93)()
 - iv. Transportation ticket-selling insurance (only) -- \$90.~~*NR~~ (7-1-93)()
 - v. Credit life and credit disability insurance (only) -- \$90.~~*NR~~ (7-1-93)()
 - vi. Credit property insurance (only) -- \$90.~~*NR~~ (7-1-93)()
 - vii. Involuntary unemployment insurance (only) -- \$90.~~*NR~~ (7-1-93)()
 - viii. Surety insurance (only) -- \$90.~~*NR~~ (7-1-93)()
 - ix. Title insurance (only) -- \$50.~~*NR~~ (7-1-93)()
 - x. Motor Club (only) -- \$10.~~*NR~~ (7-1-93)()
 - xi. Designation as a managing general agent -- \$190.~~*NR~~ (7-1-94)()
 - xii. Variable annuity fee -- \$60.~~*NR~~ (7-1-94)()
 - c. Adjusters -- \$90.~~*NR~~ (7-1-93)()
 - d. Brokers: (7-1-93)
 - i. Life insurance -- \$370.~~*NR~~ (7-1-94)()
 - ii. General lines insurance -- \$370.~~*NR~~ (7-1-94)()
 - e. Consultants: (7-1-93)
 - i. Life insurance -- \$370.~~*NR~~ (7-1-94)()
 - ii. General lines insurance -- \$370.~~*NR~~ (7-1-94)()

- f. Reinsurance intermediary -- \$300.~~*NR~~ (7-1-93)()
- g. Solicitors -- \$90.~~*NR~~ (7-1-93)()
- h. Surplus lines brokers --\$90.~~*NR~~ (7-1-93)()
18. Examination Fees. Application and/or Examination Fees: (7-1-93)
- a. Agents, adjusters, brokers, solicitors -- application for examination and each time taken, other than
as to variable contracts -- \$60.~~*NR~~ (7-1-93)()
- b. Consultants: (7-1-94)
- i. Life and Disability - application and each time taken -- \$90. ~~*NR~~ (7-1-94)()
- ii. Property and Casualty - application and each time taken -- \$90. ~~*NR~~ (7-1-94)()
19. Temporary License. Temporary license -- \$90. (7-1-93)
20. Vending Machines. Vending machines -- each machine annually -- \$80. (7-1-93)
21. Fingerprint Processing. Processing fingerprints, where required -- \$60. (7-1-93)
22. Original Appointment. Original appointment of each agent, each insurer -- \$20.~~*NR~~(7-1-93)()
23. License Renewal. Renewal or continuation of license, per license: (7-1-93)
- a. Adjusters, agents, solicitors (biennial) -- \$40.~~*NR~~ (7-1-94)()
- b. Redesignation as managing general agent (annual) -- \$140.~~*NR~~ (7-1-93)()
- c. Administrators (annual) -- \$140.~~*NR~~ (7-1-93)()
- d. Brokers, consultants (biennial) -- \$290.~~*NR~~ (7-1-94)()
- e. Surplus lines brokers (biennial) -- \$70.~~*NR~~ (7-1-93)()
- f. Title agents (annual) -- \$50.~~*NR~~ (7-1-93)()
- g. Motor Club agents (annual) -- \$10. (7-1-93)
24. Appointment Renewal. Biennial continuation of appointment, each insurer -- \$20.~~*NR~~
(7-1-94)()
25. Duplicate License. Duplicate license -- administrators, adjusters, agents, brokers, consultants,
solicitors -- \$50.~~*NR~~ (7-1-93)()
26. Publications. Publications: (7-1-93)
- a. Newsletter -- \$1. (7-1-93)
- b. Annual Report -- \$5. (7-1-93)
27. Rates and Forms. Policy Forms and Rate Filings: Property, casualty, life, disability, credit life,
credit disability, variable contract, surety, title, mortgage guaranty, and inland marine coverages: (7-1-93)
- a. Each policy form, certificate, endorsement, advertisement, rider or rate filing filed by an insurer --

\$20. Drafting Note: Forms and Rate filings filed by an insurer may only be used by the insurer making the filing. (7-1-93)

b. Form, endorsement, rate or loss cost filing by rating organization: Each filing: \$180. (7-1-93)

28. Continuing Education. Filing continuing education applications for approval and certification of subjects of courses (each application) -- \$50.*NR- (7-1-93)()

29. Merger or Acquisition of Control. Fees to be paid by proposed acquiring party on merger or acquisition of control pursuant to Chapter 38, Title 41, Idaho Code: (7-1-93)

a. Filing fee: \$3,000. (7-1-93)

b. Bond (pursuant to Section 41-3805(4), Idaho Code): \$25,000. (7-1-93)

c. Any additional reasonable expenses incurred in processing proposed merger or acquisition as required by Section 41-3805(4), Idaho Code (determined on a case by case basis). (7-1-93)

30. Small Employer Health Program. Administrative expenses incurred in implementing and approving Idaho small employer health reinsurance program and plan of operation. (7-1-93)

a. Initial deposit for program setup, approval and processing: \$1,000. (7-1-93)

b. Any additional reasonable expenses incurred in establishing and maintaining the program. (7-1-93)

*NR These fees are non-refundable.

31. Refunds. All fees, licenses and miscellaneous charges are non-refundable except as noted. ()

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.60 - LONG-TERM CARE INSURANCE MINIMUM STANDARDS

DOCKET NO. 18-0160-9601
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has proposed rule making. This rule is proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 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 purpose of this proposed rule is to amend the existing rule by eliminating subsection 011.05.f.iii., to conform with the 1996 amendments to section 41-4605, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OR WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ken Hurt at 208-334-4350.

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 received on or before November 27, 1996.

Dated this 16th day of September, 1996.

James M. Alcorn
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone (208)334-4250
Fax: (208)334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0160-9601

011. POLICY PRACTICES AND PROVISIONS.

01. Renewability. The terms "guaranteed renewable" and "noncancelable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 012 of this chapter. (7-1-93)

02. Conditions for Nonrenewal. No such policy issued to an individual shall contain renewal provisions less favorable to the insured than "guaranteed renewable." However, the Director may authorize nonrenewal on a state-wide basis, on terms and conditions deemed necessary by the Director, to best protect the interests of the

- insureds, if the insurer demonstrates. (7-1-93)
- a. That renewal will jeopardize the insurer's solvency; or (7-1-93)
 - b. That: (7-1-93)
 - i. The actual paid claims and expenses have substantially exceeded the premium and investment income associated with the policies; and (7-1-93)
 - ii. The policies will continue to experience substantial and unexpected losses over their lifetime; and (7-1-93)
 - iii. The projected loss experience of the policies cannot be significantly improved or mitigated through reasonable rate adjustments or other reasonable methods; and (7-1-93)
 - iv. The insurer has made repeated and good faith attempts to stabilize loss experience of the policies, including the timely filing for rate adjustments. (7-1-93)
03. **Guaranteed Renewable.** The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis. (7-1-93)
04. **Noncancellable.** The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate. (7-1-93)
05. **Limitations and Exclusions.** No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows. (7-1-93)
- a. Preexisting conditions or diseases; (7-1-93)
 - b. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease; (7-1-93)
 - c. Alcoholism and drug addiction; (7-1-93)
 - d. Illness, treatment or medical condition arising out of: (7-1-93)
 - i. War or act of war (whether declared or undeclared); (7-1-93)
 - ii. Participation in a felony, riot or insurrection; (7-1-93)
 - iii. Service in the armed forces or units auxiliary thereto; (7-1-93)
 - iv. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or (7-1-93)
 - v. Aviation (this exclusion applies only to non-fare paying passengers). (7-1-93)
 - e. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance. (7-1-93)
 - f. No long-term care insurance policy may: (7-1-93)

i. Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the deteriorating of the mental or physical health of the insured individual or certificate holder; or (7-1-93)

ii. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder. (7-1-93)

~~iii. Provide coverage for skilled nursing care only or for skilled nursing care in a facility only, and such policy shall also provide coverage for additional services including, but not limited to, personal care services, adult foster care, adult day care, in-home services and home-delivered meals. (7-1-93)~~

g. Subsection 011.05 is not intended to prohibit exclusions and limitations by type of provider or territorial limitations. (7-1-93)

06. Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy. (7-1-93)

07. Continuation or Conversion. (7-1-93)

a. Group long-term care insurance issued in this state on or after the effective date of this rule shall provide covered individuals with a basis for continuation or conversion of coverage. (7-1-93)

b. For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements service availability, benefit levels and administrative complexity. (7-1-93)

c. For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six (6) months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability. (7-1-93)

d. For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefits levels and administrative complexity. (7-1-93)

e. Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually. (7-1-93)

f. Unless the group policy from which conversion is made replaced previous group coverage, the

premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced. (7-1-93)

g. Continuation of coverage or issuance of a converted policy shall be mandatory, except where: (7-1-93)

i. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or (7-1-93)

ii. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage: (7-1-93)

(a) Providing benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided by the terminating coverage; and (7-1-93)

(b) The premium for which is calculated in a manner consistent with the requirements of Subsection 011.07.f. of this chapter. (7-1-93)

h. Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than one hundred percent (100%) of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable. (7-1-93)

i. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect. (7-1-93)

j. Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage. (7-1-93)

k. For the purpose of this section: a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks. (7-1-93)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.76 - FIRE ALARM SYSTEM CONTRACTORS

DOCKET NO. 18-0176-9601

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has proposed rule making. This rule is proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 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 purpose of this rule is to assure the people of Idaho that fire alarm systems and their appurtenances, whether required by code, ordinance or at the discretion of the owner, are being installed in accordance with applicable codes and standards and maintained by qualified persons and organizations that contract to sell, design, modify, install, service, or maintain such systems; to safeguard lives and property and protect the public interest; to require insurance, and bonding to register such persons and organization; to establish regulation by the State Fire Marshal through the Department of Insurance; and to set penalties and fees for the administration of this rule.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: License fees for fire alarm contractors are - (a) Examination Fee - One hundred dollars (\$100); (b) License Fee - Four hundred dollars (\$400); (c) Annual License Renewal Fee - One hundred dollars (\$100); (d) Duplicate License Fee - Twenty five dollars (\$25); (e) Branch Office Fee - One hundred dollars (\$100).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OR WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don McCoy at 208-334-4376.

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 received on or before November 27, 1996.

Dated this 16th day of September, 1996.

James M. Alcorn, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone: (208)334-4250
Fax: (208)334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0176-9601

IDAPA 18
TITLE 01
Chapter 76

FIRE ALARM SYSTEM CONTRACTORS

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to authority granted by Section 41-254(2), (3) and Chapter 52 of Title 67, Idaho Code, and Article 10 Uniform Fire Code. ()

001. TITLE AND SCOPE.

01. Purpose. The purpose of this rule is to assure the people of Idaho that fire alarm systems and their appurtenances, whether required by code, ordinance or at the discretion of the owner, are being installed in accordance with applicable codes and standards and maintained by qualified persons and organizations that contract to sell, design, modify, install, service, or maintain such systems; to safeguard lives and property and protect the public interest; to require insurance, and bonding to register such persons and organizations; to establish regulation by the State Fire Marshal through the Department of Insurance; and to set penalties and fees for the administration of this rule. ()

02. Persons Affected. This rule will affect any person, individual, partnership, joint venture, corporation, or any combination thereof, association, business trust or organized group of persons, who by himself or through others, offers to undertake, represents himself as being able to undertake, or does undertake contracting for the sale, design, installation, modification, alteration, repair, maintenance, or maintenance inspection of any fire alarm system or its appurtenances. ()

002. -- 003. (RESERVED).

004. DEFINITIONS.

01. Fire Alarm System. "Fire Alarm System" is a combination of approved and listed compatible devices with the necessary electrical interconnection and energy to produce an alarm signal in the event of fire or system activation. This installation shall include, but is not limited to, smoke detection devices, heat detection devices, fire detection devices, audible alerting devices, visual alerting devices, manual pull stations, water flow devices, fire alarm control panel and associated components, supervisory devices, and associated wiring. Nothing contained in this law is intended to require persons installing single station smoke detectors in one and two family dwellings (R-3 occupancies), to be a fire alarm contractor. ()

02. Fire Alarm Contractor. "Fire Alarm Contractor" means those persons described in Section 001.02 of this rule who contract to install, repair, modify, or maintain fire alarm systems. ()

03. Installer. "Installer" means those persons who install and maintain fire alarm systems and who work under the supervision of a Fire Alarm Contractor. ()

04. Shop Drawings. "Shop Drawings" shall be prepared and submitted by the fire alarm contractor as per Subsection, 021.01, 02, 04, and 05. ()

005. -- 010. (RESERVED).

011. POWERS AND DUTIES OF THE STATE FIRE MARSHAL.

In addition to the powers and duties prescribed in this rule, the State Fire Marshal shall. ()

01. Assistants, Inspectors and Other Employees. Appoint an adequate number of assistants, inspectors

and other employees that may be necessary to carry out the provisions of this rule, prescribe their duties, and fix their compensation within the amount appropriated. ()

02. Licensing Procedures. Establish procedures for licensing of fire alarm contractors and installers, set forth the form and content of applications, investigate and examine all applicants as to their qualifications and fitness for such licensing. ()

03. Records. Keep records of all licenses issued, suspended or revoked. ()

04. Suspension or Revocation of License. Suspend or revoke any license for any cause prescribed by this rule, and refuse to grant any license for any cause which would be grounds for revocation or suspension. ()

05. Examinations. Prepare, administer, and grade such applicable examinations and tests for applicants as may be required for the purposes of this rule, and determine the score that shall be deemed as passing. ()

06. Fees. Collect fees, including applications, testing, licensing, renewals, and duplication fees from the applicants, and license holders for the purpose of administering and funding this rule. ()

07. Advisory Board. May appoint an advisory board consisting of six (6) members whose duties shall be to advise and counsel the State Fire Marshal on matters contained in this rule. One or more representatives from each of the following professions or occupations shall be appointed to the board. ()

a. Architect. ()

b. Electrical Engineer. ()

c. Fire Service Official. ()

d. General Contractor. ()

e. Licensed Fire Alarm Contractor - Two (2). ()

f. The terms of the members of the board first appointed shall expire as follows: three (3) members two (2) years later, three (3) members three (3) years later. Thereafter, appointments shall be for three (3) years. At its first meeting of every calendar year the board shall elect a president from its members, and a secretary who may or may not be a member of the board. Members of the board shall serve without compensation. The staff of the office of the State Fire Marshal shall provide such assistance as the board may require. ()

012. QUALIFICATIONS FOR CONTRACTORS LICENSE.

Applicants seeking registration and licensing as fire alarm contractors shall meet the following minimum qualifications. ()

01. Owner, Officer, or Manager. The applicant shall be an owner, officer or manager of his company, corporation, partnership or proprietorship. ()

02. Examination, Education, or Experience. The applicant must: ()

a. If doing work in Idaho, register with the State Fire Marshal's office as to intent of becoming a licensed contractor before 1 July 1998; ()

b. Satisfactorily pass an examination prescribed by the State Fire Marshal and provide proof to the effect that the applicant has been engaged in the installation of fire alarms for at least five (5) years; or ()

c. Provide proof of successful attainment of Level III Certification in Fire Alarm Systems from the National Institute for Certification in Engineering Technologies. ()

d. Provide proof of at least eight (8) hours of continuing education in the installation, testing or maintenance of fire alarm systems on a bi-annual basis after date of license. ()

013. LICENSE REQUIRED.

01. Prohibition as to Unlicensed Persons. No person within the purview of this rule shall, after June 30, 1999, act, or assume to act, or advertise, as a fire alarm installer without a license obtained under and in compliance with this rule. ()

02. Conflict with Local Rule. Where there is a conflict between this rule and any code, ordinance, or rule adopted by local authority, the more stringent requirement providing the greatest fire and life safety to the public shall apply. Possession of a license does not excuse the licensee from compliance which is more stringent. ()

014. LICENSE, DISPLAY, RENEWALS, DUPLICATES, APPLICATIONS.

01. Time Period. All licenses shall be valid for a period of not longer than one (1) year and shall expire on the 30th day of June of each year, regardless of the month issued. ()

02. Posting of License. Each license issued pursuant to this rule shall be posted in a conspicuous place in the contractor's place of business. ()

03. Renewal. Any license which has not been suspended or revoked may, upon payment of the renewal fees prescribed, be renewed for an additional period of one (1) year from its expiration upon filing an application for such renewal on such forms as are prescribed by the State Fire Marshal. ()

04. Duplicate License. A duplicate license may be issued for one lost, destroyed, or mutilated upon application for such a form prescribed by the State Fire Marshal and the payment of the fee prescribed. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaced. ()

05. Bids Shall Bear License Number. All written bids, proposals and offers, and all shop and field installation drawings shall bear the contractor's license number. ()

06. Forms and Fees. Application for a license must be made on forms prescribed by the State Fire Marshal. Each application must be accompanied by the required fee. ()

015. ACTION ON APPLICATIONS AND LICENSE FEES.

Within one hundred twenty (120) days after the filing of a complete application for a license and the payment of the required fees, the State Fire Marshal shall. ()

01. Investigation of Applicants. Conduct an investigation of applicants, such investigation may inquire the name and address of the applicant; whether the applicant is associated in any partnership, corporation or other entity; the names, addresses, and official capacities of all such associates; and any other pertinent information as the State Fire Marshal may deem relevant. ()

02. Fees. License fees for fire alarm contractors are as follows: ()

a. Examination Fee - One Hundred dollars (\$100). ()

b. License Fee - Four Hundred dollars (\$400). ()

c. Annual License Renewal Fee - One Hundred dollars (\$100). ()

d. Duplicate License Fee - Twenty five dollars (\$25). ()

e. Branch Office Fee - One Hundred dollars (\$100). ()

f. Examination fees, when paid, are earned and are not subject to refund. ()

03. Branch Office License. Branch offices of a licensed firm doing business in this state must obtain a branch office license. Each license must provide a shop or a vehicle as a place of business properly equipped and subject to inspection by the authority. A separate license is required for each business location. Any advertisement that the services of installing or maintaining fire alarm systems constitutes prima facie evidence that the premises, building, room, shop, store, or establishment in or upon which it appears or to which it refers is a separate business location. ()

04. Arson, Fire, and Fraud Prevent Account. All license fees collected shall be deposited in the Arson, Fire, and Fraud Prevention Account as per Section 41-268(d), Idaho Code. ()

016. FINANCIAL RESPONSIBILITY.

01. Bonding. ()

a. The State Fire Marshal shall require each applicant, individual or corporation who is a contractor to put up a license bond in an amount not less than two thousand dollars (\$2,000) in favor of the state of Idaho by a surety company authorized to do business in the state of Idaho as a surety. ()

b. The bond shall remain in full force until released by the State Fire Marshal, or until canceled by the surety. Without prejudice to liability previously incurred thereunder, the surety may cancel the bond upon thirty (30) days advance notice to both the contractor and the State Fire Marshal. ()

02. Insurance. Prior to issuance of a license as a fire alarm contractor, the applicant shall obtain and maintain at all times in full force and effect a full term comprehensive general liability insurance policy from an insurance company authorized to do business in the State of Idaho, which policy shall have aggregate limits of not less than two hundred fifty thousand dollars (\$250,000) and including the following. ()

a. Comprehensive Form. ()

b. Premises Operations. ()

c. Products/Completed Operations Hazard. ()

d. Contractual Insurance. ()

e. Broad Form Property Damage. ()

f. Independent Contractors. ()

g. Personal Injury. ()

h. Evidence of such insurance should be filed with the State Fire Marshall's Office. ()

017. REVOCATION, SUSPENSION, AND NON-RENEWAL OF LICENSE.

01. Causes for Revocation, Suspension, or Refusal to Renew License. The State Fire Marshal may revoke any license issued hereunder, or suspend the right of the license holder to use such license, or refuse to renew any such license for any of the following causes. ()

a. Fraud, bad faith, misrepresentation, or bribery, either in securing a license or in the conduct of business under a license. ()

b. The making of any false statement as to a material matter in any application for license. ()

c. Failure by the contractor to perform his contract with the property owner. ()

- d. The manipulation of assets or of any accounts covering the subject matter of this rule, or by fraud or bad faith. ()
- e. Failure to display the license as provided in Section 014.02 of this rule. ()
- f. Failure to secure or maintain workmen's compensation insurance when not authorized to act as a self-insurer. ()
- g. Knowingly entering into a contract with an unregistered contractor involving the performance of work or activity which requires a license under this rule. ()
- h. The licensee has pled guilty to, or was found guilty of, a felony. ()
- i. Violation of any provision of this rule. ()
- 02. Length of Suspension. No license shall be suspended for longer than five (5) years. ()
- 03. Eligibility to Reapply After Revocation. No person whose license is revoked shall be eligible to apply for a new license until the expiration of five (5) years. ()

018. HEARINGS.

In every case where it is proposed to refuse to grant a license, revoke a license, or to refuse to renew a license, the State Fire Marshal shall give adequate notice and provide a hearing if requested. Notice of hearing shall be given in writing by registered or certified mail with return receipt requested at least fifteen (15) days prior to the hearing. ()

019. APPROVED EQUIPMENT AND MATERIALS.

No component or devices of a fire alarm system may be sold, leased, or installed in this state unless it has been approved, labeled, and listed by Underwriters Laboratories, Inc., Underwriters Laboratories of Canada, Factory Mutual Laboratories, or other testing laboratories approved by the State Fire Marshal as qualified to test such component or device. ()

- 01. Fire Alarm Components. Only new fire alarm components may be employed in the installation of a fire alarm system. ()
- 02. Minimum Requirements. Fire alarm systems installed in the State shall meet the minimum requirements of all current appropriate NFPA standards and the State adopted edition of the Uniform Fire Code, but may exceed these minimums. ()

020. SERVICE EVIDENCE.

- 01. Conformance to Standards. Where fire alarm systems are installed, the installer shall complete the Inspection and Testing Form (figure 7-5.1) or current form in the appropriate edition of NFPA 72. All systems must be under the supervision of a licensed contractor. These persons shall cause proper tests and inspections to be made at prescribed intervals and must have general charge of all alterations and additions to the systems under their supervision. ()
- 02. Service Evidence. A service tag conforming to the requirements of this chapter shall be attached to all systems. ()

021. DESIGN REQUIREMENTS.

- 01. Submission of Plans. Detailed plans in accordance with applicable NFPA standards must be submitted by a licensed contractor for approval to the local fire department as per 1994 Uniform Fire Code Section 1001.3 and subsequent editions as may be adopted. In addition starting July 1, 1999 plans shall be submitted to the State Fire Marshal. ()

02. Conformance to Standards. The specifications must state that the installation will conform to the applicable standards listed in this rule and be approved by the local fire department and the State Fire Marshal as per 021.01. ()

03. Tests. The specifications must include the specific acceptance tests required to meet the standards of the current NFPA 72 for approval of the local fire department and the State Fire Marshal. ()

04. Scale. Shop drawings must be drawn to an indicated scale, be suitably dimensioned, and must be made so that they can be easily reproduced. ()

05. Detail. Shop drawings must contain sufficient detail to evaluate the effectiveness of the system. To include but not limited to a floor plan; location of all alarm initiating and alarm signaling devices; alarm control and trouble signaling equipment; annunciation; power connection; battery calculations; conductor type and sizes; voltage drop calculations, with length of wire run if feet for indicating circuits; and manufacturer model numbers and listing information for all equipment, devices and materials. ()

06. Prior Approval of Plans. Plans must be submitted to the State Fire Marshal as per 021.01 and the local fire department and approved, before work starts. A plans review/ inspection fee of five cents (\$.05) per square foot of building area including all floors shall accompany the plans sent to the State Fire Marshal beginning July 1, 1999. ()

07. Corrected Plans. Where field conditions necessitate any substantial change from the approved plan, the corrected plan showing the system as installed must be submitted to the local fire department and the State Fire Marshal for approval. ()

022. SERVICE TAG.

01. Form. Fire Alarm service tags must be in a form prescribed by the State Fire Marshal and a new tag installed each time work is performed on the system. ()

02. Location. The Fire Alarm service tag shall be attached to the control panel so as not to impair any function or conceal any operating instruction or warning lights. ()

023. SEVERABILITY.

If any provision of this rule or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

024. -- 999. (RESERVED).

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.77 - ACTUARIAL AND MEMORANDUM RULE
DOCKET NO. 18-0177-9601
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 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 address below.

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

This rule sets forth guidelines and standards for statements of actuarial opinion and supporting memoranda required of insurers by Section 41-612(12), Idaho Code, guidelines and standards for statements of actuarial opinion required when a company is exempt from the requirements of Section 41-612(12), Idaho Code, and rules applicable to appointment of actuaries by insurers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Bob Murphy at 208-334-4240.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before November 27, 1996.

Dated this 25th day of September, 1996.

James M. Alcorn, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0177-9601

IDAPA 18
TITLE 01
Chapter 77

ACTUARIAL OPINION AND MEMORANDUM RULE

000. LEGAL AUTHORITY.

This rule is promulgated and adopted pursuant to the authority vested in the Director under Title 41, Chapter 2, Idaho Code. ()

001. TITLE AND SCOPE.

01. Application of Rule. This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this State. ()

02. Application to All Annual Statements. This rule shall be applicable to all annual statements filed with the office of the Director after the effective date. Except with respect to companies which are exempted pursuant to Section 006, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 008, and a memorandum in support thereof in accordance with Section 009, shall be required each year. Any company so exempted must file a statement of actuarial opinion pursuant to Section 007. ()

03. Statement of Actuarial Opinion. Notwithstanding the foregoing, the Director may require any company otherwise exempt pursuant to this rule to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Sections 008 and 009 if, in the opinion of the Director, an asset adequacy analysis is necessary with respect to the company. ()

04. Purpose. The purpose of this rule is to prescribe. ()

a. Guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with Section 41-612(12), Idaho Code, and for memoranda in support thereof; ()

b. Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from Section 41-612(12), Idaho Code, and ()

c. Rules applicable to the appointment of an appointed actuary. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, Model Rules of Administrative Procedure of the Office of the Attorney General. ()

004. DEFINITIONS.

01. Actuarial Opinion. ()

a. With respect to Sections 008, 009 or 010, the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section 008 and with presently accepted Actuarial Standards; ()

b. With respect to Section 007, the opinion of an Appointed Actuary regarding the calculation of reserves and related items, in accordance with Section 007 and with those presently accepted Actuarial Standards which specifically relate to this opinion. ()

02. Actuarial Standards Board. The board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice. ()

03. Annual Statement. Statement required by Section 41-335 of the Idaho Code to be filed by the company with the office of the Director annually. ()

04. Appointed Actuary. Any individual who is appointed or retained in accordance with the requirements set forth in Subsection 005.03 to provide the actuarial opinion and supporting memorandum as required by Section 41-612(12) of the Idaho Code. ()

05. Asset Adequacy Analysis. An analysis that meets the standards and other requirements referred to in Subsection 005.04. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory. ()

06. Director. The Director of the Idaho Department of Insurance. ()

07. Company. A life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule. ()

08. Non-Investment Grade Bonds. Those designated as classes 3, 4, 5 or 6 by the NAIC Securities Valuation Office. ()

09. Qualified Actuary. Any individual who meets the requirements set forth in Subsection 005.02. ()

005. GENERAL REQUIREMENTS.

01. Submission of Statement of Actuarial Opinion. ()

a. There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 008; provided, however, that any company exempted pursuant to Section 006 from submitting a statement of actuarial opinion in accordance with Section 008 shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with Section 007. ()

b. If in the previous year a company provided a statement of actuarial opinion in accordance with Section 007, and in the current year fails the exemption criteria of Subsections 006.03.a., 006.03.b., or 006.03.e. to again provide an actuarial opinion in accordance with Section 007, the statement of actuarial opinion in accordance with Section 008 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Section 007 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with Section 008. ()

c. In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Director may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the Director determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State. ()

d. Upon written request by the company, the Director may grant an extension of the date for submission of the statement of actuarial opinion. ()

02. Qualified Actuary. An individual who. ()

a. Is a member in good standing of the American Academy of Actuaries; and ()

b. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and ()

c. Is familiar with the valuation requirements applicable to life and health insurance companies; and ()

d. Has not been found by the Director (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have. ()

i. Violated any provision of, or any obligation imposed by any law in the course of his dealings as a qualified actuary; or ()

ii. Been found guilty of fraudulent or dishonest practices; or ()

iii. Demonstrated his incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or ()

iv. Submitted to the Director during the past five (5) years, pursuant to this rule, an actuarial opinion or memorandum that the Director rejected because it did not meet the provisions including standards set by the Actuarial Standards Board; or ()

v. Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and ()

e. Has not failed to notify the Director of any action taken by any Director of any other state similar to that under Subsection 005.02.d. ()

03. Appointed Actuary. A qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this rule; either directly by or by the authority of the board of directors through an executive officer of the company. The company shall give the Director timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Subsection 005.02. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Director timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Subsection 005.02. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement. ()

04. Standards for Asset Adequacy Analysis. The asset adequacy analysis required by this rule: ()

a. Shall conform to the Standards of Practice as promulgated by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with Section 008; and ()

b. Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board. ()

05. Liabilities to Be Covered. ()

a. Under authority of Section 41-612(12), Idaho Code, the statement of actuarial opinion shall apply to all in force business on the statement date regardless of when or where issued, e.g., reserves of Exhibits 8, 9 and 10 of the annual statement, and claim liabilities in Exhibit 11, Part I and equivalent items in the separate account statement or statements of the annual statement. ()

b. If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Section 41-612(12), Idaho Code, the company shall establish such additional reserve. ()

c. For years ending prior to December 31, 1998, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following. ()

- i. December 31, 1996: The additional reserve divided by three (3). ()
- ii. December 31, 1997: Two (2) times the additional reserve divided by three (3). ()
- d. Additional reserves established under Subsections 005.05.a. or 005.05.b. and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation. ()

006. REQUIRED OPINIONS.

01. General. In accordance with Section, Idaho Code, every company doing business in this State shall annually submit the opinion of an appointed actuary as provided for by this rule. The type of opinion submitted shall be determined by the provisions set forth in Section 006 and shall be in accordance with the applicable provisions in this rule. ()

02. Company Categories. For purposes of this rule, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable. ()

a. Category A shall consist of those companies whose admitted assets do not exceed twenty (\$20) million; ()

b. Category B shall consist of those companies whose admitted assets exceed twenty (\$20) million but do not exceed one hundred (\$100) million; ()

c. Category C shall consist of those companies whose admitted assets exceed one hundred (\$100) million but do not exceed five hundred (\$500) million; ()

d. Category D shall consist of those companies whose admitted assets exceed five hundred (\$500) million. ()

03. Exemption Eligibility Tests. ()

a. Any Category A company that, for any year beginning with the year in which this rule becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Section 008 for the year in which these criteria are met. The ratios in Subsections 006.03.a.i., ii., and iii. shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable. ()

i. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to one tenth (.10). ()

ii. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than three tenths (.3). ()

iii. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than five tenths (.5). ()

iv. The Examiner Team for the National Association of Insurance Directors (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Director of the state of domicile and the Director has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office. ()

b. Any Category B company that, for any year beginning with the year in which this rule becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial

opinion in accordance with Section 008 for the year in which the criteria are met. The ratios in Subsections 006.03.b.i., ii., and iii. shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable. ()

i. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to seven one hundredths (.07). ()

ii. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than four tenths (.4). ()

iii. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than five tenths (.5). ()

iv. The Examiner Team for the National Association of Insurance Directors (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Director of the state of domicile and the Director has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office. ()

c. Any Category A or Category B company that meets all of the criteria set forth in Subsection 006.03.a. or b., whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with Section 008 unless the Director specifically indicates to the company that the exemption is not to be taken. ()

d. Any Category A or Category B company that, for any year beginning with the year in which this rule becomes effective, is not exempted under Subsection 006.03.c. shall be required to submit a statement of actuarial opinion in accordance with Section 008 for the year for which it is not exempt. ()

e. Any Category C company that, after submitting an opinion in accordance with Section 008, meets all of the following criteria shall not be required, unless required in accordance with Subsection 006.03.f., to submit a statement of actuarial opinion in accordance with Section 008 more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Section 008 for that year. The ratios in Subsection 006.03.e.i., ii. and iii. shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable. ()

i. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to five one hundredths (.05). ()

ii. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than five tenths (.5). ()

iii. The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than five tenths (.5). ()

iv. The Examiner Team for the National Association of Insurance Directors (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Director of the state of domicile and the Director has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office. ()

f. Any company which is not required by Section 006 to submit a statement of actuarial opinion in accordance with Section 008 for any year, shall submit a statement of actuarial opinion in accordance with Section 007 for that year unless as provided for by Subsection 001.02 the Director requires a statement of actuarial opinion in accordance with Section 008. ()

04. Large Companies. Every Category D company shall submit a statement of actuarial opinion in accordance with Section 008 for each year beginning with the year in which this rule becomes effective. ()

007. STATEMENT OF ACTUARIAL OPINION NOT INCLUDING AN ASSET ADEQUACY ANALYSIS.

01. General Description. The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this rule from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 007; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's opinion as required by Section 41-612(12), Idaho Code. ()

02. Recommended Language. The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with Section 007. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in Section 007. ()

a. The opening paragraph should indicate the appointed actuary's relationship to the company. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies." ()

i. For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as:

"I, [name and title of actuary], a member of the American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies." ()

b. The regulatory authority paragraph should include a statement such as the following:

"Said company is exempt pursuant to rule [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 007." ()

c. The scope paragraph should contain a sentence such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, []."

The scope paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include but not be necessarily limited to. ()

i. Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8 of the annual statement; ()

ii. Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9 of the annual statement; ()

iii. Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included Exhibit 10 of the annual statement; and ()

iv. Policy and contract claims--liability end of current year included in Exhibit 11, Part I of the annual statement. ()

d. If the appointed actuary has examined the underlying records, the scope paragraph should also include the following:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary.” ()

e. If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following:

“I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by [name and title of company officer certifying in force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary.”; or

“I have relied upon [name of accounting firm] for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary.” ()

i. The statement of the person certifying shall follow the form indicated by Subsection 007.02.j. ()

f. The opinion paragraph should include the following:

“In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

(a) Are computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of the Insurance Law and rules of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion.” ()

g. The concluding paragraph should document the eligibility for the company to provide an opinion as provided by this Section 007. It shall include the following:

“This opinion is provided in accordance with Section 007 of the NAIC Actuarial Opinion and Memorandum rule. As

such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them.

Eligibility for Section 007 is confirmed as follows:

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criterion based on the admitted assets of the company (Subsection 006.03).

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company (Subsection 006.03).

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of .50.

(d) To my knowledge, the NAIC Examiner Team has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile.

(e) To my knowledge there is not a specific request from any Director requiring an asset adequacy analysis opinion.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary”

()

h. If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in Subsection 007.02.f.(d) above to consistency should read as follows:

“... with the exception of the change described on Page [] of the annual statement (or in the preceding paragraph).”
()

i. The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph. ()

ii. If the appointed actuary is unable to form an opinion, he shall refuse to issue a statement of actuarial opinion. If the appointed actuary’s opinion is adverse or qualified, he shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph. ()

j. If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

“I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and

summaries of policies and contracts in force as of December 31, [], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company
or Accounting Firm

Address of the Officer of the Company
or Accounting Firm

Telephone Number of the Officer of the
Company or Accounting Firm”

()

008. STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS.

01. General Description. The statement of actuarial opinion submitted in accordance with this section shall consist of. ()

a. A paragraph identifying the appointed actuary and his qualifications (see Subsection 008.02.a.); ()

b. A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary’s work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, (see Subsection 008.02.b.) and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed; ()

c. A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see Subsection 008.02.c.), supported by a statement of each such expert in the form prescribed by Subsection 008.05.; and ()

d. An opinion paragraph expressing the appointed actuary’s opinion with respect to the adequacy of the supporting assets to mature the liabilities (see Subsection 008.02.f.). ()

e. One (1) or more additional paragraphs will be needed in individual company cases as follows. ()

i. If the appointed actuary considers it necessary to state a qualification of his opinion; ()

ii. If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis; ()

iii. If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis. ()

iv. If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion. ()

v. If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release. ()

vi. If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion. ()

02. Recommended Language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section. ()

a. The opening paragraph should generally indicate the appointed actuary's relationship to the company and his qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies." ()

b. The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 19[]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

TABLE 008.02.b.

	Asset Adequacy Tested Amounts			Reserves and Liabilities		
	Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
A	Exhibit 8 Life Insurance					
B	Annuities					
C	Supplementary Contracts Involving Life Contingencies					
D	Accidental Death Benefit					
E	Disability - Active					
F	Disability - Disabled					
G	Miscellaneous					

Asset Adequacy Tested Amounts			Reserves and Liabilities			
	Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
	Total (Exhibit 8 Item 1, Page 3)					
A	Exhibit 9 Active Life Reserve					
B	Claim Reserve					
	Total (Exhibit 9 Item 2, Page 3)					
1	Exhibit 10 Premiums and Other Deposit Funds					
1.1	Policyholder Premiums (Page 3, Line 10.1)					
1.2	Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3	Other Contract Deposit Funds (Page 3, Line 10.3)					
2	Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3	Dividend and Coupon Accumulations (Page 3, Line 5)					
	Total Exhibit 10					
1	Exhibit 11 Part 1 Life (Page 3, Line 4.1)					
2	Health (Page 3, Line 4.2)					
	Total Exhibit 11, Part 1					
	Separate Accounts (Page 3, Line 27)					
	TOTAL RESERVES					
	IMR (Page ___ Line ___)					
	AVR (Page ___ Line ___)		(c)			

Notes:

(a) The additional actuarial reserves are the reserves established under Subsection 005.05.b. or 005.05.c.

(b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in Subsection 005.04, by means of symbols which should be defined in footnotes to the table.

(c) Allocated amount.” ()

c. If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

“I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement,...”; or

“I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement.” ()

i. Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Subsection 008.05. ()

d. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary.” ()

e. If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force and/or asset records prepared by the company or a third party, the reliance paragraph should include a sentence such as:

“I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary.”; or

“I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary.” ()

i. Such a section must be accompanied by a statement by each person relied upon of the form prescribed by Subsection 008.05. ()

f. The opinion paragraph should include the following:

“In my opinion the reserves and related actuarial values concerning the statement items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of the Insurance Law and rule of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.”; or

“The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

Note: Choose one (1) of the above two (2) paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company’s future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary”

()

03. Assumptions for New Issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 008. ()

04. Adverse Opinions. If the appointed actuary is unable to form an opinion, then he shall refuse to issue a statement of actuarial opinion. If the appointed actuary’s opinion is adverse or qualified, then he shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph. ()

05. Reliance on Data Furnished by Other Persons. If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

“I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19[], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company

or Accounting Firm

Address of the Officer of the Company
or Accounting Firm

Telephone Number of the Officer of the
Company or Accounting Firm”; or

“I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company,
Accounting Firm or the Security Analyst

Address of the Officer of the Company,
Accounting Firm or the Security Analyst

Telephone Number of the Officer of the
Company, Accounting Firm or
the Security Analyst”

()

009. DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS.

01. General. ()

a. In accordance with Section 41-612(12), Idaho Code, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his opinion regarding the reserves under a Section 008 opinion. The memorandum shall be made available for examination by the Director upon his request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Director. ()

b. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Subsection 005.02, with respect to the areas covered in such memoranda, and so state in their memoranda. ()

c. If the Director requests a memorandum and no such memorandum exists or if the Director finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements, the Director may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Director. ()

d. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Director; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as examination workpapers and shall be kept confidential to the same extent as is prescribed by Section 41-227, Idaho Code. The reviewing actuary shall not be an employee of a consulting firm

involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three (3) years. ()

02. Details of the Memorandum Section Documenting Asset Adequacy Analysis (Section 008). When an actuarial opinion under Section 008 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Subsection 005.04 and any additional standards under this rule. It shall specify. ()

- a. For reserves. ()
 - i. Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant; ()
 - ii. Source of liability in force; ()
 - iii. Reserve method and basis; ()
 - iv. Investment reserves; ()
 - v. Reinsurance arrangements. ()
- b. For assets: ()
 - i. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets; ()
 - ii. Investment and disinvestment assumptions; ()
 - iii. Source of asset data; ()
 - iv. Asset valuation bases. ()
- c. Analysis basis: ()
 - i. Methodology; ()
 - ii. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed; ()
 - iii. Rationale for degree of rigor in analyzing different blocks of business; ()
 - iv. Criteria for determining asset adequacy; ()
 - v. Effect of federal income taxes, reinsurance and other relevant factors. ()
- d. Summary of Results; ()
- e. Conclusion(s). ()

03. Conformity to Standards of Practice. The memorandum shall include a statement:

“Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.” ()

010. ADDITIONAL CONSIDERATIONS FOR ANALYSIS.

01. Aggregation. For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Section 008, reserves and assets may be aggregated by either of the following methods: ()

a. Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated. ()

b. Aggregate the results of asset adequacy analysis of one (1) or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one (1) or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated. ()

i. Are developed using consistent economic scenarios, or ()

ii. Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves. In the event of any aggregation, the actuary must disclose in his opinion that such reserves were aggregated on the basis of method Subsection 010.01.a., b.i., or b.ii., whichever is applicable, and describe the aggregation in the supporting memorandum. ()

02. Selection of Assets for Analysis. The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in Subsection 010.03. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum. ()

03. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve. An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum. ()

04. Required Interest Scenarios. ()

a. For the purpose of performing the asset adequacy analysis required by this rule, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios: ()

i. Level with no deviation; ()

ii. Uniformly increasing over ten (10) years at one half percent (1/2%) per year and then level; ()

iii. Uniformly increasing at one percent (1%) per year over five (5) years and then uniformly decreasing at one percent (1%) per year to the original level at the end of ten (10) years and then level; ()

iv. An immediate increase of three percent (3%) and then level; ()

v. Uniformly decreasing over ten (10) years at one half percent (1/2%) per year and then level; ()

vi. Uniformly decreasing at one percent (1%) per year over five (5) years and then uniformly increasing at one percent (1%) per year to the original level at the end of ten (10) years and then level; and ()

vii. An immediate decrease of three percent (3%) and then level. ()

b. For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield would be at fifty (50%) of its initial level. ()

c. The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios. ()

05. Documentation. The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. ()

011. -- 999. (RESERVED).

IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
27.01.01 - RULES GOVERNING THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-9502
NOTICE OF VACATION OF PROPOSED RULE-MAKING

AUTHORITY: In compliance with Section 67-5201, Idaho Code, notice is hereby given that this agency has vacated the rule-making previously initiated under this docket. The action is authorized pursuant to Section 54-1717, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for the vacation:

Docket No. 27-0101-9502 was originally published in Volume 95-7 of the Idaho Administrative Bulletin on July 5, 1995 at page 193 as a temporary and proposed rule. The proposed Section 490 is now being vacated and reserved. The information contained in proposed Section 490 is now codified in Idaho Code Section 37-2705 which negates the necessity for the rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation, contact Richard K. Markuson, Executive Director, Idaho State Board of Pharmacy, telephone (208) 334-2356.

Dated this 23rd day of September, 1996.

Richard K. Markuson
Executive Director
Idaho State Board of Pharmacy
280 N. 8th Street, Suite 204
Boise, Idaho 83702
Telephone: (208) 334-2356
FAX: (208) 334-3536

IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
27.01.01 - RULES GOVERNING THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-9601
NOTICE OF PENDING RULES

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 Sections 67 5442 and 675291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

ACTION: This action, under Docket NO. 27-0101-9601, concerns the final adoption of the amendments to the rules governing the Idaho State Board of Pharmacy, IDAPA 27.01.01.

AUTHORITY: In compliance with Section 675224, Idaho Code, notice is hereby given that this agency has pending a final rule. The action is authorized pursuant to Idaho Code Section 54-1717.

DESCRIPTIVE SUMMARY: The text of the proposed rules is published in full in Volume 96-2, February 7, 1996, of the Idaho Administrative Bulletin on page 45. The following is a summary in nontechnical language of the substance of the final rule and reasons for adoption.

Pursuant to Idaho Code Section 54-1705(25) and 54-1722, the Board of Pharmacy may establish the preceptor sites for internship training for pharmacists. The Board has changed its rules so that the actual sites are now licensed as opposed to each pharmacist at each site. Thus, although the actual fee has increased, it will be a reduction in the preceptor fee for most locations because most locations have multiple pharmacists.

ASSISTANCE ON TECHNICAL QUESTIONS: Contact Richard K. Markuson, Executive Director, Idaho State Board of Pharmacy, telephone (208) 334-2356.

DATED this 23rd day of September 1996.

Val Middleton, Chairman of the Board
Idaho State Board of Pharmacy
280 N. 8th Street, Suite 204
Boise, Idaho 83702
Telephone: (208) 334-2356 / Fax: (208) 334-3536

IDAPA 27
TITLE 10
Chapter 01

RULES OF THE IDAHO STATE BOARD OF PHARMACY

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-2, February 7, 1996, Page 45.**

**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 27 - IDAHO STATE BOARD OF PHARMACY
27.01.01 RULES GOVERNING THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-9602
NOTICE OF PROPOSED RULES

ACTION: This action, under Docket No. 27-0101-9602, concerns the proposed amendments to the rules governing the Idaho State Board of Pharmacy, IDAPA 27.01.01.

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 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking 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 on or before November 20, 1996.

The hearing site 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 call the undersigned at (208) 334-2356.

DESCRIPTIVE SUMMARY: The following is a statement in non-technical language of the substance of the proposed rules:

The proposed changes include various differing subject matters. First, Rule 253 will allow pharmacists to provide certain home health nurses with specified noncontrolled emergency medications for use in emergency situations. Second, Rule 253 will allow pharmacists to appoint designees to restock properly maintained emergency kits. Third, Rule 191 will allow pharmacists with a physical disability to apply for inactive license status and will alter the licensing of preceptors to preceptor sites. Fourth, Rule 257 will allow a 34 day supply of drugs to be delivered to nursing home facilities in lieu of the current 8 day supply and will allow for return credit in appropriate situations. Fifth, Rule 154 requires that new or remodeled pharmacies provide an area for patient counseling as to the use, side effects or other issues relating to dispensed medication. The final, Rule 134, a change will require pharmacists to attend some of their continuing education requirements at live programs without increasing the number of hours required for pharmacists.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Richard K. Markuson, Executive Director, Idaho State Board of Pharmacy, telephone (208) 334-2356. 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 November 27, 1996.

Dated this 23rd day of September, 1996.

Val Middleton, Chairman of the Board
Idaho State Board of Pharmacy
280 N. 8th Street, Suite 204
Boise, Idaho 83702
Telephone: (208) 334-2356 / FAX: (208) 334-2631

TEXT OF DOCKET NO. 27-0101-9602

134. AMOUNT OF CONTINUING EDUCATION.

The equivalent of one and one-half (1.5) continuing education unit (CEU) shall be required annually of each applicant for renewal of license. One continuing education unit is the equivalent of ten (10) clock hours of participation in programs approved by the Board of Pharmacy. (7-1-93)

01. ACPE. CME. At a minimum, eight clock hours (0.8 CEU) will be all or a combination of American Council of Pharmaceutical Education (ACPE) or Continuing Medical Education (CME) approved programs. (12-7-94)

02. Pharmacy Law. One clock hour (0.1 CEU) must be Board of Pharmacy approved jurisprudence (pharmacy law) programs. (7-1-93)

03. Non-ACPE Approved. A maximum of six clock hours (0.6 CEU) may be non-ACPE approved programs. (12-7-94)

04. Live Attendance. Three clock hours (0.3 CEU) of the required one and one-half (1.5) continuing education units (CEU) must be obtained by attendance at live continuing education programs. ()

(BREAK IN CONTINUITY OF SECTIONS)

154. SPACE AND FIXTURES.

01. Requirements. The stock, library and equipment should be housed in a suitable well-lighted, well-ventilated room or department with temperature maintained within the comfort zone, with clean and sanitary surroundings devoted primarily to the compounding of prescriptions, the manufacture of pharmaceutical preparations, and the operations necessary to assure strength and purity of medicines. (7-1-93)

02. Space. The space should be adequate to prevent overcrowding and be equipped with necessary counters, tables, drawers, shelves and storage cabinets; a sink with hot and cold water, refuse disposal, proper sewerage outlet, and refrigeration storage equipment of a reasonable capacity. There must be facilities for the proper cleaning of the premises, equipment and utensils. (7-1-93)

03. Lavatory. There must be lavatory facilities restricted for pharmacy staff adjoining or in the pharmacy. (7-1-93)

04. Remodeled Pharmacy. Any new pharmacy or any existing pharmacy which is being remodeled must comply with the following provisions. ()

a. Approval of plans. The prescription area (including patient consultation area, merchandising area, and waiting area when applicable), storeroom, restroom, partitions (including but not limited to walls, doors and windows), and trade fixtures shall be indicated on floor plans, showing appropriate elevations, submitted to the board at the time the application for a new pharmacy is filed, or prior to remodeling an existing pharmacy. Such plans shall be submitted to the board prior to proceeding with any construction. All plans submitted must receive board approval before a pharmacy permit is issued. ()

b. A patient consultation area must be provided. The patient consultation area must afford the patient privacy from auditory and visual detection by any person other than persons authorized by the patient. The patient consultation area must be accessible by the patient through an entrance and exit that does not require the patient to enter or traverse any part of the prescription or drug storage areas. The patient consultation area must be handicap accessible. ()

(BREAK IN CONTINUITY OF SECTIONS)

191. INACTIVE STATUS LICENSE.

An inactive status pharmacist license may be issued by the Board at a fee set by the Board. (8-4-94)

01. Requirements. The inactive license may be offered under the following circumstances in which the applicant: (8-4-94)

a. Must be a registered pharmacist in the state of Idaho; (8-4-94)

b. Must be ~~age sixty-five (65) or older~~ at least sixty-five (65) years of age or unable to practice pharmacy because of a physical disability and complete the required application; ()

02. Inactive Status License. The following conditions will apply to an Inactive Status License: ()

ea. Will be exempt from the requirement of continuing education; (8-4-94)

db. Must not engage in the practice of pharmacy while on inactive status. (8-4-94)

~~023.~~ Active Status. If the applicant wishes to return to active status the applicant shall: ~~(7-1-93)~~()

a. Take a practical examination or serve an internship approved by the Board under a licensed ~~preceptor; pharmacist at a licensed preceptor site;~~ ~~(7-1-93)~~()

b. Take and pass the Board of Pharmacy jurisprudence examination; (8-4-94)

c. Complete thirty (30) hours of continuing education; (8-4-94)

d. Pay a reinstatement fee as set by the Board; (8-4-94)

e. Make an appearance before the Board. (8-4-94)

(BREAK IN CONTINUITY OF SECTIONS)

253. EMERGENCY KITS.

01. Institutional Facility. In a facility which does not have an institutional pharmacy drugs may be provided for use by authorized personnel by emergency kits located at such facility, provided, however, such kits meet the following requirements. (7-1-93)

02. Defined. Emergency kit drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining such drugs from such other source. (7-1-93)

03. Supplying Pharmacy. All emergency kit drugs shall be provided by one pharmacy licensed by the Board of Pharmacy, retained for such purpose; upon retaining each such pharmacy, the institutional facility shall notify the Board in writing. Such pharmacy shall meet the requirements of Subsection 257. 01. (7-1-93)

04. Drugs Included. The supplying pharmacist and the committee responsible for pharmaceutical services of the institutional facility shall jointly determine the drugs, by identity and quantity to be included in emergency kits. (7-1-93)

05. Storage. Emergency kits shall be stored in locked areas, suitable to prevent unauthorized access, and to insure a proper environment for preservation of the drugs within them. (7-1-93)

06. Labeling, Exterior. The exterior of emergency kits shall be labeled so as to clearly and unmistakably indicate that it is an emergency drug kit and it is for use in emergencies only; and in addition, such label shall also contain a listing of the drugs contained therein, including name, strength, quantity and expiration of contents, and the name, address(es) and telephone number(s) of the supplying pharmacist. (7-1-93)

07. Labeling, Interior. All drugs contained in emergency kits shall be labeled in accordance with Subsection 255.04 and shall also be labeled with such other and further information as may be required by the medical staff of the institutional facility to prevent misunderstanding or risk of harm to the patients of the facility. (7-1-93)

08. Removal. Drugs shall be removed from emergency kits only pursuant to a valid physician's order by authorized personnel, or by the supplying pharmacist. (7-1-93)

09. Notifications. Whenever an emergency kit is opened, the supplying pharmacist shall be notified within a reasonable time, and the pharmacist or pharmacist designee shall restock the kit. (~~7-1-93~~)()

10. Expiration Dates. Upon the occurrence of any expiration date, the supplying pharmacist shall replace expired drugs with current dated drugs. (7-1-93)

11. Procedures. The supplying pharmacist shall, in conjunction with the committee responsible for pharmaceutical services of the institutional facility develop and implement written policies and procedures to insure compliance with the provisions of Section 253. (7-1-93)

12. Noninstitutional Facility Home Health Nurses. An Idaho licensed pharmacy may supply certain limited emergency drug kits for state licensed or Medicare certified home health agencies. ()

a. All Subsections of Section 253 shall apply to home health agency emergency kits except as modified in this Subsection 253.12. ()

b. Home health agency emergency kit drugs may only contain such drugs as specifically approved by rule of the Board. Such drugs are limited to the following: ()

i. Epinephrine injection. ()

ii. Diphenhydramine injection. ()

iii. Corticosteroid injection. ()

iv. Narcotic antagonist. ()

v. Sterile water. ()

vi. Sterile saline solution for injection. ()

vii. Heparin flush. ()

c. Storage. Home health agency emergency kits shall be stored in locked areas, suitable to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs within that period. ()

i. Provided, however, that nurses licensed by the Idaho Board of Nursing and employed by such state licensed or Medicare certified home health agencies may carry such home health agency emergency kits on their person while on duty and in the course and scope of their employment for the home health agency. When not actually on duty and within the course and scope of their employment, the nurses must return the home health agency emergency kits to the storage area identified in Subsection 253.12.c. ()

d. The legend drugs included in the home health agency emergency kit shall remain the property of,

and under the responsibility of, the Idaho licensed supplying pharmacy. ()

(BREAK IN CONTINUITY OF SECTIONS)

257. DRUGS FROM OUTSIDE SOURCES.

01. Outside Pharmacies. Whenever drugs or pharmaceutical services are obtained from outside of the institutional facility arrangements shall be made to insure that such outside pharmacist provides his services with sufficient professionalism, quality and availability to adequately protect the safety of the patients and to properly serve the needs of the facility. Such arrangements shall be made in writing and shall, at a minimum, specify that: (7-1-93)

a. The outside pharmacist is to act in the capacity of a part-time Director and therefore, subject to these rules. (7-1-93)

b. The pharmacist shall provide on-call service at all times. (7-1-93)

c. Adequate storage facilities for drugs will be provided. (7-1-93)

d. All drugs in oral solid dosage form supplied to a licensed skilled nursing care facility, whether from an outside source or in-house pharmacy, shall be limited to no more than an eight day supply except where USP indicates the drug shall be dispensed in the original container. Up to a thirty-four (34) day supply will be allowed if provided in "Unit Dose," as defined in Idaho Board of Pharmacy Subsection 156.05. or if non-legend Non-legend, over the counter drugs are prescribed, in which case the count will not exceed one hundred (100). may be dispensed in a thirty-four (34) day supply or stock bottles of one-hundred (100). Return of these drugs will only be allowed if they are supplied in "Unit Dose." (8-4-94)()

e. All drugs in liquid form will be supplied in amounts not to exceed sixteen (16) ounces or an amount not to exceed ~~an eight (8) day supply.~~ a thirty-four (34) day supply. Returns will only be allowed for liquid medications that have been supplied and remain in unopened, manufacturer sealed containers. (8-4-94)()

f. All drugs housed in long term care facilities will be labeled according to Idaho Board of Pharmacy Rule 159. (8-4-94)

g. Automatic refilling of medications is prohibited, except where unit dose is used in a daily delivery system. Any continuation of medications must be reordered by the licensed skilled nursing care facility pursuant to a current physician's order. (7-01-94)

h. All drugs supplied shall be labeled so as to insure that recalls can be effected and that proper control and supervision of such drugs may be exercised. (7-1-93)

02. Patient's Own Drugs. Whenever patients bring drugs into an institutional facility such drugs shall not be administered unless they can be precisely identified; administration shall be pursuant to a physician's order only. (7-1-93)

a. If such drugs are not to be administered, then the Director shall, according to procedures specified by him in writing, have them turned in to the pharmacy which shall package and seal them and return them to an adult member of the patient's immediate family or store and return them to the patient upon discharge. (7-1-93)

IDAPA 37 - DEPARTMENT OF WATER RESOURCES
37.02.02 - RULES GOVERNING THE IDAHO WATER RESOURCE FUNDING PROGRAMS
DOCKET NO. 37-0202-9601
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 upon adjournment of the legislature, 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 modified a rule. The action is authorized pursuant to Sections 42-1758, and 42- 1734, Idaho Code.

DESCRIPTIVE SUMMARY: The original text of the proposed rules was published in the Idaho Administrative Bulletin, Volume 96-8. The pending rules are being adopted as proposed, with the exception of Rule 045.02.j. This rule has been changed from "an application fee...will be charged" to read "an application fee...may be charged."

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact William Graham at (208) 327-7966.

DATED this September 20, 1996.

KARL DREHER
DIRECTOR, Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

IDAPA37
TITLE 02
Chapter 02

RULES GOVERNING THE IDAHO WATER RESOURCE FUNDING PROGRAMS

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The complete original text was published in the Idaho Administrative Bulletin, Volume 96-8, August 7, 1996 Pages 952 through 958.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0202-9601

045. APPLICATION REQUIREMENTS (Rule 45).

01. Preparation. The applicant shall be responsible for ~~preparing~~ providing the necessary data for presentation or feasibility studies for presentation of the project to the Board for approval. The sponsor applicant may apply for a loan or grant from the Water Management Account to conduct necessary investigations or feasibility studies separate from the funding request for the proposed project. ~~However, no loans shall be made from the Revolving Development Account to finance feasibility studies except as part of the overall project costs.~~
(7-1-93)(____)

02. Investigations. ~~The Board will consider applications for grants to conduct investigations on qualified water projects on a matching dollar-for-dollar basis up to twenty five thousand dollars (\$25,000). A commitment for a grant to conduct an investigation carries no further guarantee of financial assistance from the Idaho Water Resource Board.~~
(7-1-93)

03. ~~Not Used for Refinancing. It is Board policy that funds are not to be used for refinancing except when deemed necessary to prevent default.~~
(7-1-93)

042. Contents. Application for project or study funding shall include all or part of the following:
(7-1-93)

a. Project data or a feasibility study for the construction, operation and maintenance of the proposed project, providing including information as to its expected costs and benefits;
(7-1-93)(____)

b. A ~~complete and legible~~ legal description of the ~~entire~~ project area, including a map showing the layout of the project, and the location and number of acres, residences, or other points served by the project (e.g. assessors' maps, aerial photographs or other similar maps);
(7-1-93)(____)

c. A ~~complete and legible~~ copy of the legal description of the property being offered as security for the loan, together with ~~any assessor's plat~~ a map on which the proposed security ~~may be~~ is identified; (7-1-93)(____)

d. A ~~review~~ discussion of the water required to satisfy project needs; including a description of the source and amounts of the supply, rights to the water, and water quality; ~~and a schedule of flows to meet project requirements;~~
(7-1-93)(____)

e. ~~A complete and~~ An itemized cost estimate of the proposed project (an estimate from a commercial supplier, ~~or contractor, or engineer~~ is preferred);
(7-1-93)(____)

f. Proof of ownership, easements or agreements, showing that the applicant holds or can acquire all lands, ~~other than public lands, and interest therein~~ rights-of-way and water rights necessary for the construction and operation of the proposed project; ~~Copies of deeds to lands served, easements or agreements and water right permits would constitute the required proof;~~
(7-1-93)(____)

g. Information that demonstrates that the project complies with applicable local land use regulations and other applicable regulations and ordinances, including permits or letters of authorization;
(7-1-93)

h. A description of the ~~Organization~~ sponsoring the project - including the name, type of organization, brief history of organization, powers and authority under state law, taxing or assessing authority, financial status, organization by-laws, articles of incorporation, and physical assets;
(7-1-93)(____)

i. For municipal borrowers, a letter from the borrowers' legal counsel affirming that the constitutional issue of borrowing has been satisfactorily resolved;
(7-1-93)(____)

j. An application fee of two percent (2%) of the loan amount; or ~~a minimum of one hundred dollars (\$100), whichever is more,~~ to cover initial costs of application review ~~will~~ may be charged for loans. This fee must be received before Board action ~~and is non-refundable.~~ The fee may be financed in the loan ~~and it is refundable in part or in total if the loan is not approved.~~ ~~In addition, the Board shall charge the applicant the amount required to reimburse the Board for costs that exceed the application fee incurred in connection with the application. The applicant shall be advised of these additional costs before they are incurred. Costs may include, but are not limited to, any of the following: appraisal fees, site visit, copying, field survey, personnel costs, drafting graphics and other costs incurred in the processing of the application. The Board will provide a checklist of items to assist the applicant.~~

(7-1-93)()

k. Project authorization by the applicant's governing body as required by law or as required by the applicant's by-laws. ()

IDAPA 45 - IDAHO HUMAN RIGHTS COMMISSION
45.01.01 - RULES OF THE HUMAN RIGHTS COMMISSION
DOCKET NO. 45-0101-9601
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 1996.

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

The changes to these rules include a number of "housekeeping" matters such as: use of modernized language and inclusion of the Human Rights Commission's new address.

The rules have been simplified with the removal of repetitive sections, the elimination of confusing or unnecessary sections, and clarification of confusing terminology.

A rule allowing for sworn testimony of witnesses along with a rule regarding the Commission's three-year document destruction policy have been added.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these rules, contact Daniel L. Steckel at (208) 334-2873.

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 November 27, 1996.

DATED this 26th day of September, 1996

DANIEL L. STECKEL
Deputy Attorney General
Idaho Human Rights Commission
P.O. Box 83720
Boise, Idaho 83720-0040
(208) 334-2873 phone; (208) 334-2664 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 45-0101-9601

002. WRITTEN INTERPRETATIONS.

Explanations for rule changes are available for public inspection in the Office of the Human Rights Commission, ~~450 West State Street, Boise, Idaho 83720~~ 1109 Main St., Ste. 400, Boise, Idaho 83720-0040. Brochures explaining various provisions of anti-discrimination laws are also available at the address given above. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

006. OFFICE - OFFICE HOURS - ADDRESS - RECORDS.

The office of the Idaho Human Rights Commission is located at ~~450 W. State Street, Boise, Idaho 83720~~ 1109 Main St., Ste. 400, Boise, Idaho 83720-0040. Office hours are from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. This is the office where all filings must be made and where records are kept. The director of the agency is the custodian of records. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Commission. The Idaho Human Rights Commission as created by the Human Rights Act. (7-1-93)
02. Commissioner. A duly appointed member of the Idaho Human Rights Commission. (7-1-93)
03. Complainant. Any person who files a complaint with the Commission pursuant to the Human Rights Act. (7-1-93)
04. Complaint. A statement filed with the Commission pursuant to these Rules alleging an unlawful practice within the meaning of the Human Rights Act. The complaint may be in the form of a letter ~~or telegram and~~ but, whenever timely possible, should be written on a complaint form provided by the Commission or on the complaint form used by the Equal Employment Opportunity Commission, and signed by the Complainant or their legal representative. (7-1-93)()
05. Conciliation Agreement. A written agreement settling the issues raised by the complaint and signed by the parties after a determination on the merits of the complaint by the Commission. (7-1-93)
06. Discriminatory Wage Act. The Act set forth in Idaho Code, Title 44, Chapter 17, "Discriminatory Wage Rates Based Upon Sex." (7-1-93)
07. E.E.O.C. The United States Equal Employment Opportunity Commission or any of its designated representatives. (7-1-93)
08. Federal Civil Rights Act Terms. Religion shall have the meaning set forth in the Civil Rights Act of 1964, as codified in 42 U.S.C.A. 2000e(j). The term "because of sex" shall have the meaning set forth in the Civil Rights Act of 1964, as codified in 42 U.S.C.A. 2000e(k). (7-1-93)
09. Human Rights Act. As used herein, the term "Human Rights Act" shall mean the Human Rights Commission Act of 1969, as amended and codified as Idaho Code, Title 67, Chapter 59. (7-1-93)
10. Mental Condition. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. (7-1-93)
11. Party or Parties. The Complainant, the Respondent, the Commission, and any other person authorized by the Commission to intervene in any proceeding. (7-1-93)
12. Physical Condition. Any physiological disorder, condition, cosmetic disfigurement, anatomical loss, or abnormality affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine. (7-1-93)

13. Record of Such a Disability. A person may have "a record of such a disability" when ~~she~~ he/she has a history of or has been misclassified as having a physical or mental condition that substantially limits one or more major life activities. (7-1-93)()

14. Regarded as Having Such a Disability. A person may be "regarded as having such a disability" when ~~she~~ he/she: (7-1-93)()

a. Has a physical or mental impairment that does not substantially limit a major life activity but is treated by others as constituting such a limitation; (7-1-93)

b. Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or (7-1-93)

c. Has none of the impairments listed above but is treated by others as having such an impairment. (7-1-93)

15. Respondent. Any person against whom a complaint is filed in accordance with the Human Rights Act and these Rules. (7-1-93)

16. Settlement Agreement. A written agreement settling the issues raised by the complaint and signed by the parties prior to the Commission's making a determination on the merits of the complaint. (7-1-93)

17. Staff Director. The Staff Director appointed by the Commission pursuant to the Human Rights Act. (7-1-93)

18. Substantial Disability. A physical or mental condition constitutes a "substantial disability" when it interferes with or affects, over a significant period of time, one or more of a person's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

100. TEMPORARY DISABILITIES.

Minor illnesses or conditions which are only temporarily disabling will not be considered to be ~~handicaps~~ disabilities under this act. Examples of such conditions include, but are not limited to: broken bones, sprains, or colds. (7-1-93)()

101. ~~HANDICAPS~~ DISABILITIES.

01. Contagious Diseases. A person suffering from a chronic contagious disease is ~~handicapped a person with a disability~~ if ~~she or he~~ he/she meets the requirement of Section 67-5902(15), Idaho Code. That person is entitled to an individualized medical inquiry to determine if ~~he or she~~ he/she is qualified for the job in question. Factors to be considered include the nature, duration and severity of the risk of infection, and the probability that the disease would be transmitted and would cause varying degrees of harm. (7-1-93)()

02. Alcoholism. Alcoholism is a ~~handicap~~ disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See I.C. 67-5910(d).) Whenever alcoholism includes current use of alcohol, an employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-93)()

03. Drug Addiction. Drug addiction is a ~~handicap~~ disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See I.C. 67-5910. No accommodation is necessary for drug addiction which includes current illegal use, possession, or selling of

a controlled substance. An employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-93)(____)

04. Reasonable Accommodations. Reasonable accommodations are adjustments or modifications to the work assignment or work environment to enable a ~~handicapped person~~ person with a disability to fulfill employment responsibilities. They may include, but are not limited to: (7-1-93)(____)

- a. Making the worksite accessible to and usable by ~~handicapped persons~~ persons with a disability; (7-1-93)(____)
- b. Modification of equipment or tools so they can be used by a ~~handicapped person~~ person with a disability; (7-1-93)(____)
- c. Job restructuring; (7-1-93)
- d. Modified work schedules, particularly as they may be necessary for the person to receive treatment for a disability; (7-1-93)
- e. Acquisition of adaptive aids or devices; (7-1-93)
- f. Reassignment to a vacant position. (7-1-93)

05. Accommodations of a Personal Nature. Employers shall not be required to provide accommodations of a personal nature, such as wheelchairs and hearing aids. Nor shall they be required to hire two (2) full-time employees to fill one (1) position. (7-1-93)

06. Cooperation. A ~~handicapped person~~ person with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the "best" accommodation or the one most desired by the employee or applicant. The determination of "reasonableness" will be made on a case-by-case basis. (7-1-93)(____)

07. Pre-Employment Inquiry. An employer, labor organization, or employment agency shall not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment or as to the nature or severity of such impairment. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

200. MEDICAL ISSUES.

01. Medical Examinations; and Inquiries. Medical examinations and inquiries are permitted as follows: (7-1-93)(____)

a. A covered entity may require a medical examination or inquiry after making an offer of employment to an applicant and before ~~she~~ he/she begins employment duties, and may condition an offer of employment on the results of such examination or inquiry, if all entering employees in the same job category are subjected to such an examination or inquiry regardless of disability. Medical inquiries or examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. If certain criteria are used to screen out an applicant, however, the exclusionary criteria must be job-related and consistent with business necessity. (7-1-93)(____)

b. A covered entity may require a medical examination or make an inquiry of an employee that is job-related and consistent with business necessity. Inquires may be made into the ability of an employee to perform job-

related functions. (7-1-93)

c. A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program. (7-1-93)

02. Disabilities Not Presently Job-Related. An employer shall not discriminate against an applicant or employee because of a disability which is not presently job-related but which may worsen and become job-related in the future. A narrow exception to this rule exists when, in light of the individual's work history and medical history, employment of that person would pose a reasonable probability of substantial harm. See *Mantolete v. Bolger*, 767 F.2d 1416 (9th Cir. 1985). (7-1-93)

03. Confidentiality; Exceptions. Information about the medical condition or history of an applicant or employee should be considered confidential except that: (7-1-93)

a. Supervisors and managers may be informed regarding restrictions on the work or duties of ~~handicapped persons~~ persons with a disability and regarding any accommodations or health or safety precautions; (7-1-93)()

b. First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and (7-1-93)

c. Enforcement agencies shall be provided relevant information upon request when investigating complaints under state or federal law. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

300. COMPLAINTS.

01. Who May File. A complaint may be filed by any of the following: (7-1-93)

a. Any person for ~~herself~~ himself/herself or also on behalf of ~~another claiming~~ himself/herself and other similarly situated individuals claiming to be aggrieved by an alleged unlawful discriminatory practice as defined in the Act; (7-1-93)()

b. A Commissioner or Staff Director requesting the Commission to initiate a complaint, provided ~~she~~ he/she has sufficient reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring. Upon such request the Commission shall review the reasons provided by the initiating Commissioner or Staff Director and may initiate a complaint if satisfied that there is reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring; (7-1-93)()

c. Any person claiming that ~~she~~ he/she has been discharged, expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because ~~she~~ he/she opposed practices forbidden under the Human Rights Act, or because ~~she~~ he/she has filed a complaint, testified, assisted or participated in any manner in an investigation, hearing or other procedure before the Commission. (7-1-93)()

~~02. Multiple Parties. Persons complaining of unlawful discriminatory practices arising out of the same transaction, occurrence or succession or series of transactions or occurrences may join as Complainants in a single complaint. All persons charged with unlawful discriminatory practices arising out of the same transaction, occurrence, or succession or series of transactions or occurrences may be joined as Respondents in the same charge. (7-1-93)~~

~~0302.~~ Commission Assistance. Assistance in ~~drafting and~~ filing complaints shall be available to any Complainant by a Commissioner, the Staff Director, or staff member. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Staff Director, there is no reason to suspect that illegal

discrimination may have occurred, or if the action is barred by the terms of ~~Rule 300.07.a.~~ Subsection 300.06.a. (7-1-93)(____)

~~0403.~~ Contents of Complaint. A complaint should contain the following: (7-1-93)

a. The full name, mailing address, and telephone number (if any) of the Complainant or Complainants; (7-1-93)

b. The full name, mailing address, and telephone number (if any and if known) of the Respondent or Respondents; (7-1-93)

c. A brief written statement of the facts which give rise to the alleged unlawful discriminatory practice or practices sufficiently clear to identify the practices and to describe generally the action or practice alleged to be unlawful; (7-1-93)(____)

d. The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

e. ~~A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint.~~ (7-1-93)

~~0504.~~ Medical Documentation. Persons filing handicap disability discrimination complaints may be required to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Medical reports from the following sources will be accepted: physicians and osteopathic physicians, nurse practitioners, counselors, psychologists, occupational therapists, clinical social workers, dentists, audiologists, speech pathologists, podiatrists, optometrists, chiropractors, physical therapists, and substance abuse treatment providers, insofar as any opinion or evaluation within the scope of the relevant license applies to the individual's physical or mental impairment. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (7-1-93)(____)

~~0605.~~ Method of Filing. A complaint may be filed as follows: (7-1-93)(____)

a. ~~By~~ by personal delivery, ~~ordinary~~ mail, ~~registered~~ mail, ~~certified~~ mail, ~~telegram~~, or ~~telegraph~~ or facsimile delivered to the Commission office in Boise; (7-1-93)(____)

b. ~~By delivery to a Commissioner, the Staff Director, or any member of the Director's staff for filing in the Commission office in Boise.~~ (7-1-93)

~~0706.~~ Time for Filing. The following time limitations apply to the filing of complaints with the Commission: (7-1-93)

a. A complaint must be filed within one year after the alleged unlawful practice occurs. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice shall be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint shall have been filed if the alleged unlawful practice continues. (7-1-93)

b. Upon receipt of a complaint at the Commission's office, the date of such receipt shall be noted thereon. For purposes of compliance with Idaho Code 67-5908(4), the date of notation shall be the date of filing. (7-1-93)

c. Notwithstanding any other provisions of these rules, a complaint shall be deemed to have met the timelines requirement of ~~Rule 300.07.a.~~ Subsection 300.06.a. when the Commission receives, in any manner described in ~~Rule Subsection 300.0605.a.~~ a written statement sufficiently precise to identify the practices and to describe generally the action or practice alleged to be unlawful. (7-1-93)(____)

~~0807.~~ Complaints Deferred by E.E.O.C. Any complaint deferred to the Commission by the E.E.O.C. shall be treated, for purposes of filing requirements, according to the rules as stated above. (7-1-93)

~~0908.~~ Amended Complaints. A complaint may be amended, before the determination by the Commission and at the discretion of the Staff Director, to cure technical defects or omissions, or to clarify and/or amplify allegations by the Complainant. ~~Such amendments relate back to the original filing date, provided, however, an amendment alleging additional acts constituting unlawful discrimination practices not related to or growing out of the subject matter of the original charge will be permitted only where at the date of the amendment the allegation could have been timely filed as a separate charge.~~ (7-1-93)()

~~1009.~~ Supplemental Complaint. The Complainant may file a supplemental complaint setting forth actions which have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (7-1-93)

~~1110.~~ Withdrawal of Complaint. Upon the request of the Complainant, on a form provided by the Staff Director stating the reasons for such request, a complaint, or any part thereof, may be withdrawn upon the written consent of the Staff Director. If a complaint is withdrawn pursuant to the provision of these Rules, the Staff Director shall close the case and notify the parties. (7-1-93)

~~1211.~~ Initial Actions. Upon the filing of a complaint, said complaint shall be docketed, assigned a complaint number, and assigned to the staff for settlement or investigation and conciliation. (7-1-93)

~~1312.~~ Service on Respondent. As promptly as possible, the Commission shall cause a copy of said complaint to be personally delivered, or sent by certified mail to the Respondent. (7-1-93)

~~1413.~~ Mediation. Upon the filing of a complaint, the Commission or its delegated staff member shall endeavor to resolve the matter by informal means. Such informal means may include, at the discretion of the Commission staff, the holding of a ~~fact-finding~~ mediation conference at a time and place acceptable to all participants. If held, a ~~fact-finding~~ mediation conference shall be for the purposes of clarifying the positions of the parties to the complaint and of exploring any bases for no-fault settlement. A ~~fact-finding~~ mediation conference is not, and shall not be considered for any purposes to be, a contested case hearing under Idaho Code 67-5209. (7-1-93)()

~~1514.~~ Settlement. If terms of settlement are agreed to by the parties at any time prior to a determination by the Commission as to the merits of the charge, said terms shall be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Staff Director will cause the case to be closed. (7-1-93)

~~1615.~~ Answers. The Respondent shall answer or otherwise respond to the complaint in writing within thirty (30) days of receiving it. A copy of said answer, including any attachments thereto, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause shown extend the time within which the answer may be filed. The answer shall be fully responsive to each allegation contained in the complaint. Any allegation in the complaint which is not denied or admitted in the answer shall be deemed admitted unless the Respondent shall state in the answer ~~he or she~~ he/she is without knowledge or information sufficient to form a belief. If the Respondent fails to answer or otherwise respond to the complaint within thirty (30) days of receipt or such time as may be extended by the Commission, the Commission ~~shall~~ may act on the complaint based on the information provided by the Complainant. Upon application, the Commission may for good cause shown permit the Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, shall be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, shall be submitted within ten (10) working days. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause shown. (7-1-93)()

~~1716.~~ Interrogatories. At any time after the filing of a complaint the Commission staff may issue to either the Complainant or the Respondent interrogatories regarding any matter, not privileged, which is relevant to the subject matter involved. It is not ground for objection that the information sought will be inadmissible in court if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (7-1-93)

~~18~~17. Interrogatory Answers Returned. Answers to the interrogatories shall be returned to the Commission office within thirty (30) days from the date of service of said interrogatories. (7-1-93)

~~19~~18. Extension. Upon application by a party, for good cause shown, the Staff Director may grant one extension of time for filing answers to interrogatories, said extension not to exceed an additional fifteen (15) days. (7-1-93)

~~20~~19. Orders. In the event that a party objects to certain interrogatories, and after an attempt has been made to resolve any difference between the Commission and the party, the Commission may issue an order compelling the party to answer the interrogatories. This order must be signed by at least two Commissioners. An order issued under this rule shall be enforceable by application to the District Court. (7-1-93)

~~21~~20. Narrative Statement. The Commission staff may, in specific cases, seek from a party a narrative statement of response in addition to or rather than answers to interrogatories. In such cases, the narrative statement should include all information which the party desires considered by the Commission, in determining whether to credit the allegations of the complaint. (7-1-93)

21. File Briefs. Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law. ()

22. Sworn Testimony. Commission staff may require that oral or written testimony be given under oath. ()

~~22~~23. Summary of Investigation. At the completion of the investigation, the staff member to whom the case is assigned shall prepare a report containing a summary of the investigation and submit it to the Staff Director to review. (7-1-93)

~~23~~24. Administrative Closure. At any point during the handling of a particular case the Commission, or a designated panel of at least three Commissioners, may close the case for administrative reasons. Such reasons shall include, but are not limited to: (7-1-93)

- a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)
- b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories or failure to provide medical information as requested; (7-1-93)
- c. Inability to locate the Complainant; (7-1-93)
- d. It appearing upon investigation that the case is not jurisdictional with the Commission; (7-1-93)
- e. The Complainant's filing of a suit in either state or federal court alleging the same unlawful practices as complained of to the Commission. (7-1-93)

~~24~~25. Notification of Closure. The Staff Director shall notify the parties of such administrative closure, including the grounds therefor, as promptly as possible. (7-1-93)

~~25~~26. Decision on the Merits. At the completion of the investigation and approval of the summary by the Staff Director, the Commission or a designated panel of at least three Commissioners shall determine whether there is probable cause to believe that the Respondent has been or continues to be engaged in any unlawful discriminatory practices defined in the Act. (7-1-93)

~~26~~27. No Probable Cause. If the Commission or designated panel finds no probable cause to credit the allegations of the complaint, a ~~Statement of No Probable Cause and Order of Dismissal~~ statement of no probable cause and order of dismissal will be issued for the Commission by the Staff Director. The ~~Summary of Investigation, Statement and Order~~ summary of investigation, statement, and order shall be sent to Complainant and Respondent by certified mail, thereby closing the case. (7-1-93)()

~~2728.~~ Probable Cause. If the Commission or designated panel finds probable cause to credit the allegations of the complaint, a ~~Statement of Probable Cause~~ statement of probable cause shall be issued. The ~~Summary of Investigation and Statement~~ summary of investigation and statement shall be sent to the Complainant and the Respondent by certified mail. (7-1-93)()

~~2829.~~ Conciliation. If the Commission finds probable cause to credit the allegations of the complaint, the Commission staff shall endeavor through conference with the parties to redress and eliminate the possible unlawful discriminatory practice by conciliation. (7-1-93)

~~2930.~~ Conciliation Agreement. If the Commission staff shall succeed in endeavors to conciliate, a written Conciliation Agreement shall be prepared which shall set forth all measures to be taken by any party, and if appropriate, compliance provisions. The Conciliation Agreement shall be signed by the parties, and the Staff Director shall cause the case to be closed. (7-1-93)

~~3031.~~ Failure of Agreement. In the event of failure to reach terms of conciliation agreeable to all parties, the Staff Director shall so certify and assign the case to the Commission's legal counsel. The Commission, after review by its legal counsel, shall determine whether or not to pursue the case in the District Court. (7-1-93)

~~3132.~~ No Action. If the Commission determines not to pursue the case in District Court, the Staff Director shall so notify Complainant and Respondent, close the case, and advise Complainant of his or her right to pursue the case through a private cause of action. (7-1-93)

~~3233.~~ Action. If the Commission decides to pursue a case, it shall direct its legal counsel to file an action in District Court in the name of the Commission for the use of the person or persons alleging discrimination. (7-1-93)

~~3334.~~ Confidentiality of Records. In order to protect the interests of all parties in reaching successful settlements of discrimination charges without resorting to court action, the Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation or to cooperate with other government law enforcement agencies. (7-1-93)

~~301. — 399.~~ **(RESERVED).**

~~400.~~ **DISCRIMINATORY WAGE RATES BASED UPON SEX.**

~~01.~~ Complaint. At any time within one (1) year of the date that an alleged violation of the Discriminatory Wage Act occurs, an aggrieved person may file a complaint with the Idaho Human Rights Commission on a form furnished by the Commission. Said complaint shall state the name and address of the employer alleged to have violated the Act. The complaint shall be signed by the complaining party. (7-1-93)

~~02.~~ Notification. The employer against whom the complaint has been filed shall be sent a copy of the complaint, including any attachments thereto, by the Commission. Within 30 days of receipt thereof, the employer shall submit a written response to the complaint. A copy of the response and any attachments will be sent by the Commission to the complaining party. Upon application, the Commission may for good cause shown extend the time within which the response may be filed. (7-1-93)

~~03.~~ Informal Resolution of Dispute. The Commission staff shall endeavor to resolve the dispute between the parties by informal means which may include, at the discretion of the Commission staff, the holding of a fact-finding conference. If held, a fact-finding conference shall be for the purposes of clarifying the positions of the parties to the complaint and to discuss any bases for no-fault settlement. A fact-finding conference is not, and shall not be considered for any purpose to be, a contested case hearing under Idaho Code 67-5209. (7-1-93)

~~04.~~ Agreement. If terms of settlement are agreed to by the parties at any time prior to commencement of a lawsuit, said terms shall be reduced to writing in a settlement agreement. Upon the signing of a settlement agreement by the parties and the Commission representative, the Commission Director will cause the case to be closed. The case may also be closed by the Commission if, upon investigation, it appears to be without merit, or for administrative reasons. Such reasons include, but are not limited to: (7-1-93)

- a. ~~Failure of the complaining party to cooperate with the Commission in investigation of the allegations;~~ (7-1-93)
- b. ~~Failure of the complaining party to accept a full relief settlement offer;~~ (7-1-93)
- e. ~~The complaining party's filing of a lawsuit in either state or federal court, alleging the same unlawful pay practice as complained of to the Commission;~~ (7-1-93)
- d. ~~In the discretion of the Commission, a lawsuit pursuant to Idaho Code 44-1704(4) being deemed not appropriate.~~ (7-1-93)

~~05. Investigation. The Commission staff may conduct an investigation of any alleged violation of the Act when a complaint has been filed with it. Such investigation may include, but is not limited to, meetings with the parties, interviews with the parties and any witnesses, taking of statements, inspection and copying of documents, and sending interrogatories to any party.~~ (7-1-93)

~~06. File Briefs. Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law.~~ (7-1-93)

~~07. Powers of Director. The power given to the Director to bring any legal action necessary on behalf of an employee specified in 44-1704(4), Idaho Code, shall also include the right to bring such action either for an individual employee or for the individual employee and other employees similarly situated. The complaint filed by an employee with the Commission alleging a violation of the Act shall constitute the written request which is required under 44-1704(4), Idaho Code.~~ (7-1-93)

~~08. Cooperation with Other Agencies. The Commission shall have the power to cooperate with other State and Federal agencies in any manner which is designed to aid in the enforcement of the Act.~~ (7-1-93)

~~0935. Federal Compliance. In the interest of consistency and to avoid confusion on the part of persons governed by both the State and Federal equal pay laws anti discrimination laws, the Commission will generally follow the interpretations of the Federal Equal Pay Act, 29 U.S.C. 206(d), anti discrimination laws in examining the merits of a complaint filed with it under this Act. If a person files a complaint under both this Act and Title 67, Chapter 59, Idaho Code, and Title 44, Chapter 17, Idaho Code, the Commission will attempt to avoid duplication in investigation and settlement efforts, whenever possible.~~ (7-1-93)()

~~36. Document Destruction. The Commission will retain closed investigatory files for three (3) years from the date of closure at which time these documents may be destroyed at the discretion of the Staff Director.~~ ()

~~401301. -- 999. (RESERVED).~~

IDAPA 46 - IDAHO STATE BOARD OF VETERINARY MEDICINE
46.01.01 - RULES GOVERNING THE IDAHO STATE BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-9601
NOTICE OF PENDING RULES

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 Sections 67-5442 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

ACTION: This action, under Docket No. 46-0101-9601, concerns the final adoption of amendments to the rules governing the Idaho State Board of Veterinary Medicine, IDAPA 46.01.01.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has pending a final rule. The action is authorized pursuant to Idaho Code Section 54-2105(5)(n). The pending rule amendments may be rejected, amended or modified by concurrent resolution of the legislature. The effective date of all rule amendments in IDAPA 46.01.01 is July 1, 1997.

DESCRIPTIVE SUMMARY: The text of the proposed rules is published in full in Volume 96-9 of the Administrative Bulletin. The following is a summary in nontechnical language of the substance of the final rule and reasons for adoption. IDAPA 46.01.01. was originally published in full as a proposed rule in Volume 95-10, the October 4, 1995 issue of the Administrative Bulletin on Pages 272 through 343. Following a public hearing on December 14, 1995, information offered during the public comment period and the hearing officer's recommendations were incorporated into the proposed rules and IDAPA 46.01.01 was adopted and published as a pending, final rule in Volume 96-6, the June 5, 1996 issue of the Administrative Bulletin on Pages 281 through 310. Based on further comments received IDAPA 46.01.01, Sections 46.01.01.100 and 46.01.01.201 through 46.01.01.206, are being published as a pending rule to allow therapeutic options or alternate therapies to be performed by qualified lay individuals under the indirect supervision of a veterinarian, but only after an examination of the animal and referral by a veterinarian; and to allow access to restraint drugs by law enforcement agencies who are licensed as certified euthanasia agencies and law enforcement personnel who are employed by a certified euthanasia agency and licensed as a certified euthanasia technician.

Notice is also given that IDAPA 46.01.01, Subsection 46.01.01.155, pertaining to therapeutic options or alternate therapies, published in full in Volume 96-6 of the Administrative Bulletin on Pages 296 through 300, has been deleted in order to allow for the performance of therapeutic options or alternate therapies by qualified lay individuals.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this final rule, contact Sheila Jensen at (208) 332-8588.

DATED this 25th of September, 1996.

Dr. Richard D. Allen, President
Idaho Board of Veterinary Medicine
2270 Old Penitentiary Road
P. O. Box 7249
Boise, Idaho 83707
(208) 332-8588
FAX: (208) 334-2170

IDAPA 46
TITLE 01
Chapter 01

RULES GOVERNING THE IDAHO STATE BOARD OF VETERINARY MEDICINE

**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 272 through 343, Volume 96-6, June 5, 1996,
Pages 281 through 310.**

**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 49 - CERTIFIED SHORTHAND REPORTERS BOARD
49.01.01 - RULES GOVERNING CERTIFIED SHORTHAND REPORTERS BOARD
DOCKET NO. 49-0101-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These rules are effective January 1, 1997.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-3101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 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 the required finding and a concise statement of the supporting reasons for temporary rulemaking and a statement in nontechnical language of the substance of the proposed rule:

The Certified Shorthand Reporters Board is changing testing requirements to meet national standards. The Board will be giving a test in February and would like to be in compliance with national standards at that time. The Board is also clarifying rules for revocation, suspension or reinstatement of a certified shorthand reporters' certificate. This clarifies the responsibilities of the Board, the attorney general and adds the right to appeal by the reporter.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to.

Approval of these rules effective January 1, 1997 will allow the Board to meet national standards at the next Idaho court reporters examination.

FEE SUMMARY: No fee increase is involved in these rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sheri Schneider at 334-2517.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 1996.

DATED this September 25, 1996.

Sheri Schneider
Board President
550 W. State St.
P.O. Box 83720
Boise, ID 83720-0017

THE FOLLOWING IS THE TEXT OF DOCKET NO. 49-0101-9601

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 49.01.01, Rules of Procedure of the Idaho Certified Shorthand Reporters Board. These rules establish procedures for the organization and operation of the ~~b~~Board. (7-1-93)(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

The ~~b~~Board shall hold hearings on disputed matters or complaints as provided for in the ~~a~~Act, in these Rules of Procedure, or in Title 67, Chapter 52, Idaho Code. The chairman, or a member of the ~~b~~Board appointed by the chairman, shall ~~a~~Act as presiding officer at all hearings. Rules of procedure for the conduct of such hearings shall be in accordance with the applicable provisions of the ~~a~~Act, of these Rules of Procedure, and of Title 67, Chapter 52, Idaho Code (7-1-93)(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of these rules: (7-1-93)

01. Act. ~~Title 54, Chapter 31, Idaho Code. The legislation enacted by the Second Regular Session of the Forty-second Legislature (Chapter 31, 1974 Session Laws) providing for certification of shorthand reporters.~~ (7-1-93)(1-1-97)T

02. Shorthand Reporting. The making of written symbols or abbreviations in shorthand or machine shorthand writing of a verbatim record of any oral court proceedings, deposition, or proceedings before any grand jury, referee, or ~~court~~ commissioner. (7-1-93)(1-1-97)T

03. Certified Shorthand Reporter or its abbreviation C.S.R. Any person holding a valid regular or temporary certificate as a shorthand reporter as provided in the ~~a~~Act. (7-1-93)(1-1-97)T

04. Board. The Idaho Certified Shorthand Reporters Board. (7-1-93)

05. Official Court Reporter. The official court reporter of a federal district court in the state or the district court reporter of the state district court, but does not include any reporter of the magistrates' division of the state district court. (7-1-93)

06. Freelance Reporter. Any shorthand reporter engaged in the practice of shorthand reporting as defined in the ~~a~~Act, who is not an official court reporter. (7-1-93)(1-1-97)T

07. Temporary Certified Shorthand Reporter. Any person who possesses the education, character, and proficiency as specified in Section 54-3109, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL PROVISIONS.

01. Offices. The principal office of the ~~b~~Board shall be maintained at ~~Room B-83, 650550~~ West State Street, Boise, Idaho. The mailing address is P.O. Box ~~426583720~~, Boise, Idaho ~~83704~~ 83720-0017, to which all correspondence, and fees shall be directed. The telephone number of the ~~b~~Board is (208) 334-2517. (7-1-93)(1-1-97)T

02. Meetings. The ~~b~~Board shall meet at least once a year. In addition to this annual meeting, the president may call special meetings from time to time when, ~~in his/her opinion,~~ it is deemed necessary, or upon request of two (2) or more members of the ~~b~~Board. ~~(7-1-93)(1-1-97)T~~

03. Order of Business. The order of business at meetings shall be as follows: (7-1-93)

a. Reading of minutes. (7-1-93)

b. Financial report. (7-1-93)

c. Reports of officers. (7-1-93)

d. Reports of committees. (7-1-93)

e. Reading of communications. (7-1-93)

f. Unfinished business. (7-1-93)

g. New business. (7-1-93)

h. Consideration of applications and fees. (7-1-93)

i. Consideration of charges, suspensions and revocations. (7-1-93)

j. Election of officers for the ensuing year. (7-1-93)

k. Miscellaneous. (7-1-93)

l. Adjournment. (7-1-93)

m. Roberts' Rules of Order shall govern procedure of the ~~b~~Board except as otherwise provided by the ~~a~~Act or these rules and Rules of Procedure. ~~(7-1-93)(1-1-97)T~~

04. Officers. Officers elected from the ~~b~~Board shall be president, and secretary/treasurer. An executive secretary may be ~~elected~~ appointed who ~~need is~~ not be a member of the ~~b~~Board. ~~(7-1-93)(1-1-97)T~~

a. The president shall be the executive head of the ~~b~~Board and shall: preside at meetings; appoint committees; perform all duties pertaining to the office of the president. ~~(7-1-93)(1-1-97)T~~

b. The secretary/treasurer shall, with the assistance of the executive secretary and under the direction of the ~~b~~Board, perform the following functions and duties: ~~(7-1-93)(1-1-97)T~~

i. Keep correct minutes of the ~~b~~Board and furnish a copy to all members of the ~~b~~Board; ~~(7-1-93)(1-1-97)T~~

ii. Send written notice of all regular and special ~~b~~Board meetings to each certified shorthand reporter member in good standing not less than ten (10) days in advance thereof. ~~(7-1-93)(1-1-97)T~~

iii. Review each application for temporary or regular certification for essential data prior to consideration thereof by the ~~b~~Board. ~~(7-1-93)(1-1-97)T~~

iv. Address inquiries, where deemed necessary, to references of applicants to verify qualification, experience, or character. ~~(7-1-93)(1-1-97)T~~

v. Make arrangements, as required by the ~~b~~Board, for examinations, interviews and hearings. ~~(7-1-93)(1-1-97)T~~

- vi. Report to the **b**Board members the result of every examination. (7-1-93)(1-1-97)T
- vii. Keep all records, including minutes, register of applicants for examination and a roster of Idaho certificate holders. (7-1-93)
- viii. Receive and deposit all funds and fees, as provided by the **a**Act, and keep records of all deposits and disbursements. (7-1-93)(1-1-97)T
- ix. Perform all other duties as prescribed by the **a**Act or which normally pertain to the office of secretary/treasurer. (7-1-93)(1-1-97)T
05. Committees. Regular or special committees may be appointed by the president and shall present reports to the **b**Board at the time specified or at the earliest regular or special meeting of the **b**Board. A special voluntary committee from the public, which may include members of the **b**Board, may be formed to render special services during examinations or as the **b**Board may assign to them. (7-1-93)(1-1-97)T
06. Quorum. As provided in the **a**Act, a quorum shall be at least three members of the **b**Board legally holding office at the time of meeting. Official business of the **b**Board shall be conducted only at **b**Board meetings with a quorum present. (7-1-93)(1-1-97)T
07. Fees. The **b**Board shall be entitled to charge and collect such fees as authorized in the **a**Act. (7-1-93)(1-1-97)T
08. Certificates. Certificates of registration shall be issued to each certified shorthand reporter, as prescribed by the **a**Act, on forms adopted by the **b**Board. Certificates shall be displayed by certified shorthand reporters in their place of business. A new certificate may be issued by the **b**Board to replace one lost, destroyed, or mutilated upon receipt of a replacement fee of ten dollars (\$10). Each certificate shall bear an individual number as assigned to that particular C.S.R. by the **b**Board. (7-1-93)(1-1-97)T
09. Amendments. The rules may be amended by a majority vote of **b**Board membership at any regular or special meeting of the **b**Board after prior notice by publication as may be required by the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

200. APPLICATION PROCEDURES.

01. Applications. Applications for registration shall be. (7-1-93)
- a. Filed on a form or forms prescribed by the **b**Board. (7-1-93)(1-1-97)T
- b. Filed at the Boise office of the **b**Board, accompanied by the required application fee. (7-1-93)(1-1-97)T
- c. Received by the **b**Board, not less than thirty (30) days prior to the date of examination. (7-1-93)(1-1-97)T
- d. An application which is not fully completed by the applicant need not be considered or acted upon by the **b**Board and shall be returned to the applicant by the executive secretary with a statement of the reason for return. (7-1-93)(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

300. EXAMINATIONS.

01. Time and Place. Examinations for certified shorthand reporter shall be held annually or semi-annually, the exact time and place to be determined by the ~~b~~Board. ~~(7-1-93)(1-1-97)T~~

a. Late applicants shall not be admitted to the examination room. (1-1-97)T

02. Examination Required. Every applicant for certification shall take and pass an examination as prescribed by the ~~b~~Board except as may be specifically exempted from such examination under the terms of the ~~a~~Act. ~~(7-1-93)(1-1-97)T~~

03. Eligibility. (7-1-93)

a. Any person having graduated from an accredited high school or having had an equivalent education shall be entitled to take an examination for certification as a shorthand reporter as provided in the ~~a~~Act. ~~(7-1-93)(1-1-97)T~~

b. An applicant shall further be of good moral character and shall have filed a complete application with the ~~b~~Board, accompanied by the nonrefundable required fee, as set forth ~~elsewhere~~ in the ~~a~~Act. ~~(7-1-93)(1-1-97)T~~

04. Residence. Residency is not required to practice court reporting in Idaho. Nonresidents who pass the Idaho examination shall be issued a valid Idaho certificate. (7-1-93)

05. Picture Identification. Picture identification shall be shown by all applicants before taking an examination. (7-1-93)

06. Examination Irregularities. (7-1-93)

a. Examinees are forbidden to receive any unauthorized assistance during the examination. Communication between examinees or possession of unauthorized ~~matter~~ material or devices during the examination is strictly prohibited. ~~(7-1-93)(1-1-97)T~~

b. Only scheduled examinees, ~~b~~Board members, the executive secretary and authorized personnel shall be admitted to the examination room. ~~(7-1-93)(1-1-97)T~~

07. Scope of Examination. (7-1-93)

a. The complete examining procedure for certification as a certified shorthand reporter consists of two sections. The first section is the written examination covering subjects as are ordinarily given in a school of court reporting and which are common to all fields of practice. The second section is the ~~dictated~~ skills portion which shall consist of the following "takes" and speeds. ~~(7-1-93)(1-1-97)T~~

i. Question and Answer - Two hundred ~~twenty-five~~ (200/225) words per minute. ~~(7-1-93)(1-1-97)T~~

ii. Jury Charge - ~~One hundred eighty~~ Two hundred ~~(180/200)~~ words per minute. ~~(7-1-93)(1-1-97)T~~

iii. Literary - One hundred ~~sixty~~ eighty ~~(160/180)~~ words per minute. ~~(7-1-93)(1-1-97)T~~

iv. Density of Exam - The syllabic content of the dictated exam shall be one point four (1.4). (7-1-93)

b. Examination prepared and graded by the National Court Reporters Association (NCRA) may be used by the ~~b~~Board. ~~(7-1-93)(1-1-97)T~~

- c. The examination is the same for all applicants. (7-1-93)
- d. The examining committee which shall consist of the three C.S.R. ~~b~~Board members, shall inform applicants of the approximate time allowed for typing the ~~dictated section~~ skills portion of the examination. (7-1-93)(1-1-97)T
08. Grading. (7-1-93)
- a. Each applicant must attain a grade of seventy-five percent (705%) or above to pass the written examination and ninety-seven-and-one-half five percent (97.55%) or above in each "take" to pass the ~~dictated section~~ skills portion. (7-1-93)(1-1-97)T
- b. Every applicant receiving a grade of less than seventy-five percent (705%) in the written examination shall be deemed to have failed such examination and shall have ~~his~~ the application denied without prejudice. (7-1-93)(1-1-97)T
- c. Every applicant receiving a grade of less than ninety-seven-and-one-half five percent (97.55%) in each ~~dictated~~ "take" shall be deemed to have failed such examination and shall have ~~his~~ the application denied without prejudice. (7-1-93)(1-1-97)T
- d. An applicant failing either the written section, or the ~~dictated section~~ skills portion, and having filed a new application for examination, shall be required to take and pass within a two (2) year period only the section for which a failing grade was received. (7-1-93)(1-1-97)T
09. Inspection of Examination. (7-1-93)
- a. An applicant who fails to obtain a passing grade in the ~~dictated section~~ skills portion may inspect his/her examination papers at such times and locations as may be designated by the ~~b~~Board. Inspection of such examination papers shall be permitted within a thirty (30) day period after receipt of notice by the applicant of his/her failure to pass the examination. (7-1-93)(1-1-97)T
- b. At the time of inspection no one other than the examinee or his/her attorney and a representative of the ~~b~~Board shall have access to such examination papers. (7-1-93)(1-1-97)T
10. Inspection Review. (7-1-93)
- a. Within thirty (30) days after the date notice of the results of the examination has been mailed to him, an applicant who was unsuccessful in the examination may petition the ~~b~~Board for a review of his/her examination papers. (7-1-93)(1-1-97)T
- b. The petition for review shall be made in writing stating the reason for such review and citing the item or items against which the request is directed. (7-1-93)
- c. The ~~b~~Board shall, upon receiving such petition for review, conduct a hearing at the next scheduled ~~b~~Board meeting. (7-1-93)(1-1-97)T
11. Retention of Examinations. The ~~b~~Board shall retain for at least six (6) months, all examination papers and notes submitted by applicants. (7-1-93)(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

400. TEMPORARY CERTIFICATION.

01. Eligibility. (7-1-93)

- a. Any one or more of the following shall be considered as minimum evidence that the applicant is qualified to hold a temporary certificate: (7-1-93)
- i. Hold a National Court Reporters Association (NCRA) merit certificate; (7-1-93)
 - ii. Hold a Certificate of Registered Professional Reporter (RPR) issued by the National Court Reporter Association (NCRA); (7-1-93)
 - iii. Hold a Certified Shorthand Reporter certificate in good standing from another state; (7-1-93)
 - iv. Hold a diploma or certificate of completion of all requirements to graduate from a National Court Reporter Association (NCRA) approved school; (7-1-93)
 - v. Has otherwise demonstrated his/her proficiency by a certificate from an agency from another state. ~~(7-1-93)~~(1-1-97)T
- b. The applicant shall in addition. (7-1-93)
- i. Have graduated from an accredited high school, or have had an equivalent education. (7-1-93)
 - ii. Be of good moral character, and have filed a complete application with the ~~b~~Board, accompanied by the required fees, as set forth in the ~~a~~Act. ~~(7-1-93)~~(1-1-97)T
02. Certificate. All temporary certificates shall be issued for a period of one (1) year and may be renewable for a single additional year upon payment of the required fees, as set forth in the ~~a~~Act, and showing of just cause. ~~(7-1-93)~~(1-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

500. RULES FOR REVOCATION, SUSPENSION OR REINSTATEMENT OF CERTIFIED SHORTHAND REPORTERS' CERTIFICATES.

01. Scope and Purpose. Pursuant to Title 54, Chapter 31, Idaho Code, the following procedures are adopted to govern the revocation, suspension, or reinstatement of the regular or temporary certificate of a certified shorthand reporter by the Idaho Certified Shorthand Reporters ~~b~~Board. ~~(7-1-93)~~(1-1-97)T
02. Grounds for Revocation or Suspension. The ~~b~~Board may revoke or suspend a certificate for any of the reasons provided by law. ~~(7-1-93)~~(1-1-97)T
03. Complaint and Preliminary Investigation. (7-1-93)
- a. Upon receiving a verified complaint in writing, which is not obviously unfounded or frivolous, from a member of the ~~b~~Board, from a reporter, or from any person claiming to have been injured or defrauded, setting forth possible grounds for revocation or suspension of a certificate, the ~~b~~Board shall ~~cause~~ determine if a preliminary investigation is to be conducted. ~~(7-1-93)~~(1-1-97)T
 - b. Upon receiving such information from other sources or in forms other than a verified complaint, as provided in subsection (a) above, the ~~b~~Board may cause a preliminary investigation to be conducted. ~~(7-1-93)~~(1-1-97)T
 - ~~e. After a preliminary investigation has been initiated, the Attorney General or one of his assistants shall participate as a member and chairman of the board during the course of the investigation and any further proceedings. (7-1-93)~~

d.c. The preliminary investigation shall be conducted by a person appointed by the bBoard. A written report of the investigation shall be furnished to the bBoard. (7-1-93)(1-1-97)T

ed. The reporter in question shall be notified upon commencement of a preliminary investigation, unless the bBoard determines that early notice may impair the investigation. In any event, the reporter shall be notified, and afforded an opportunity to provide information to the investigator before completion of the preliminary investigation. The notice shall furnish such information as may be necessary to inform the reporter of the subject matter and purpose of the preliminary investigation. (7-1-93)(1-1-97)T

fe. Upon receipt of the report of preliminary investigation, the bBoard shall determine any of the following: (7-1-93)(1-1-97)T

i. The matter should be closed for lack of reasonable cause to believe that there exists any grounds for revocation or suspension of the certificate; (7-1-93)(1-1-97)T

ii. The matter should be closed upon informal admonition to the reporter; (7-1-93)

iii. Formal proceedings for revocation or suspension of the certificate should be instituted. The reporter and any complaining party shall be notified promptly of the bBoard's determination. (7-1-93)(1-1-97)T

g. Any papers submitted to, or other information received by the bBoard before or during the preliminary investigation, shall be confidential and privileged. However, confidentiality shall cease if waived by the reporter or if public statements are made by any party, requiring the bBoard to respond in order to clear the public record. Moreover, if the bBoard institutes formal proceedings, it shall cause a formal proceedings file to be created, containing all papers and information relevant to the formal proceedings; and such papers and information shall no longer be confidential. (7-1-93)(1-1-97)T

04. ~~Interim~~ Suspension of Certificate. If the bBoard institutes formal proceedings, and if the bBoard finds from the report of preliminary investigation that fraud or injury to any person, or irreparable harm to the administration of justice is likely to result from allowing a certificate to remain in force during formal proceedings, the bBoard may, upon furnishing the reporter in question a reasonable opportunity to be heard, suspend the certificate or impose conditions for allowing it to remain in force while formal proceedings are pending. The bBoard may review and modify any such order upon notice and reasonable opportunity to be heard, at any time until formal proceedings are concluded. (7-1-93)(1-1-97)T

05. Formal Proceedings. (7-1-93)

a. Upon determining to institute formal proceedings, the bBoard may appoint an examiner, who may have been the investigator, but who ~~must be a member in good standing of the Idaho State Bar, must be the attorney general of the state of Idaho or one of his/her assistants designated by him/her,~~ to prepare and ~~prosecute~~assist in a complaint for revocation of r suspension of the certificate. (7-1-93)(1-1-97)T

b. The complaint shall be filed with the bBoard and served personally upon the reporter, together with a summons to answer. The time and method of answering, all other procedures, and the record compiled, shall be provided in Title 67, Chapter 52, Idaho Code, and as provided in the Idaho Rules of Civil Procedure to the extent that such rules are not inconsistent with the aAct or with the rules set forth herein. (7-1-93)(1-1-97)T

c. The bBoard shall be the hearing body. The secretary of the bBoard shall maintain the file of formal proceedings. Any member of the bBoard may administer oaths and affirmances, or subpoena witnesses. The bBoard may hear and receive evidence at any location in the state of Idaho, upon at least twenty days' notice to the reporter in question. The bBoard may continue its hearing from time to time, and from place to place, as justice may require. (7-1-93)(1-1-97)T

d. The reporter shall have the right to be represented by counsel at all stages of formal proceedings. (7-1-93)

06. Disposition. (7-1-93)
- a. At any time prior to conclusion of formal proceedings, the ~~b~~B~~o~~ard may dismiss the complaint if it finds that the evidence is unlikely to establish grounds for revocation or suspension of the certificate, or dismissal otherwise would be in the interest of justice. (~~7-1-93~~)(1-1-97)T
- b. Upon conclusion of formal proceedings, or upon the filing of a stipulation by the reporter, the ~~b~~B~~o~~ard shall prepare written findings of fact and conclusions of law, and shall enter an order of any of the following: (~~7-1-93~~)(1-1-97)T
- i. Dismissing the complaint; (7-1-93)
- ii. Revoking or suspending the certificate; (7-1-93)
- iii. Censuring the reporter and/or allowing the certificate to remain in force, subject to certain conditions. (7-1-93)
- c. Where grounds for revocation or suspension are established, the ~~b~~B~~o~~ard may consider other circumstances, including any prior actions taken by the ~~b~~B~~o~~ard against the reporter, in selecting the appropriate disposition. (~~7-1-93~~)(1-1-97)T
- d. Censure or imposition of conditions may be selected where grounds for revocation or suspension have been established, but the ~~b~~B~~o~~ard determines, from all the circumstances, that justice requires a lesser sanction. Suspension may be coupled with imposition of such other concurrent or subsequent conditions as the ~~b~~B~~o~~ard may deem just. (~~7-1-93~~)(1-1-97)T
07. Change of Disposition. The ~~b~~B~~o~~ard may reinstate a certificate that has been revoked or suspended, or may modify or discontinue any conditions imposed, when the reporter submits a verified application with an application fee as set forth in the ~~a~~A~~c~~t, if the ~~b~~B~~o~~ard finds that. (~~7-1-93~~)(1-1-97)T
- a. Grounds for revocation, suspension or imposition of condition no longer exists; or (7-1-93)
- b. The reporter has made adequate restitution for any damages caused by his/her prior actions or omissions, (including the costs of proceedings before the ~~b~~B~~o~~ard), has complied with any other condition imposed by the ~~b~~B~~o~~ard, and has demonstrated good moral character sufficient to indicate that the misconduct shall not recur. If the certificate was originally revoked or suspended for incompetency, the reporter shall also be required to take and pass the reporters' examination and to pay an examination fee. (~~7-1-93~~)(1-1-97)T
08. Right to Appeal. Any person who shall be aggrieved by any action of the Board in denying, refusing to renew, suspending or revoking a certified shorthand reporter certificate may appeal to the district court. The appeal shall be as provided in Idaho Code Section 54-3114, and Idaho Code Section 67-5270. (1-1-97)T
089. Miscellaneous Provisions. (1-1-97)
- a. No reporter member of the ~~b~~B~~o~~ard shall participate as a ~~b~~B~~o~~ard member in any investigation or proceedings in regard to his/her own certificate; nor shall any judge member of the ~~b~~B~~o~~ard participate as a ~~b~~B~~o~~ard member in any investigation or proceedings as to an official reporter appointed by him. (~~7-1-93~~)(1-1-97)T
- b. The ~~b~~B~~o~~ard may send any notice required under these rules by certified mail to a reporter at his/her last address indicated in the records of the ~~b~~B~~o~~ard. (~~7-1-93~~)(1-1-97)T

IDAPA 50 - COMMISSION FOR PARDONS AND PAROLE
50.01.01 - RULES OF THE COMMISSION FOR PARDONS AND PAROLE
DOCKET NO. 50-0101-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATES: This temporary repeal is effective August 1, 1996.

ACTION: The intended action, under Docket No. 50-0101-9601, involves the repeal of rules governing IDAPA 50, Title 01, Chapter 01, Rules of the Commission of Pardons and Parole.

AUTHORITY: In compliance with Section 67-5206, Idaho Code, notice is hereby given that this agency is intending to repeal rules adopted July 1, 1993. The intended action is authorized pursuant to Section 20-223, 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, not later than November 20, 1996.

Any hearing site will be accessible to the physically handicapped. 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) 334-2520.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the intent to repeal rules:

The Commission of Pardons and Parole is intending to temporarily repeal governing rules adopted July 1, 1993, and replace them with temporary rules until July 1, 1997. Permanent rule-making procedures will be pursued during this time.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and are necessary to protect the public welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Barbara McIntosh, Commission of Pardons and Parole, P.O. Box 83720, Boise, ID 83720, 208-334-2520.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 1996.

Dated this 13th day of September 1996.

Olivia Craven, Executive Director
Commission of Pardons and Parole
P.O. Box 83720
Boise, ID 83720-1807
208-334-2520

THIS RULE IS REPEALED IN ITS ENTIRETY.

**It is replaced by a new rule that is published in this bulletin under
Docket No. 50-0101-9602 following this notice.**

IDAPA 50 - COMMISSION FOR PARDONS AND PAROLE
50.01.01 - RULES OF THE COMMISSION FOR PARDONS AND PAROLE
DOCKET NO. 50-0101-9602
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These rules are effective August 1, 1996.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, And Section 67- 5226, Idaho Code, notice is hereby given that this agency has initiated temporary and proposed rules. The proposed action is authorized pursuant to Section 20-223, 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, not later than November 20, 1996.

Any hearing site will be accessible to the physically handicapped. 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) 334-2520.

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

All agency rules governing the procedures under which any prisoner, excepting any under sentence of death, may be allowed to go upon parole have been rewritten.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and are necessary to protect the public welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Barbara McIntosh, Commission of Pardons and Parole, P.O. Box 83720, Boise, ID 83720, 208- 334-2520.

Anyone can submit written comment regarding the proposed rules. All written comments and data concerning the proposed rules must be directed to the undersigned and must be postmarked or delivered on or before November 27, 1996.

Dated this 13th day of September 1996.

Olivia Craven, Executive Director
Commission of Pardons and Parole
P.O. Box 83720
Boise, ID 83720
208-334-2520

IDAPA 50
TITLE 01
Chapter 01

RULES OF THE COMMISSION OF PARDONS AND PAROLE

000. LEGAL AUTHORITY.

In accordance with Section 20-223(a), Idaho Code, the commission shall promulgate rules. (8-1-96)T

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 50.01.01, Rules of the Commission of Pardons and Parole. The rules govern parole for the state of Idaho. (8-1-96)T

002. WRITTEN INTERPRETATION.

There are no written interpretation of these rules. (8-1-96)T

003. -- 009. (RESERVED).

010. DEFINITIONS.

01. Abscond. Depart secretly or to avoid supervision. (8-1-96)T
02. Commission Warrant. Warrant of arrest for alleged parole violation issued by the executive director or a commissioner. This warrant is a non-bondable warrant. (8-1-96)T
03. Commutation. Clemency powers granted to the commission and governor which allow for a sentence to be modified. (8-1-96)T
04. Concurrent Sentence. Sentence served at the same time as another. (8-1-96)T
05. Conditions of Parole. Conditions under which a prisoner is released to parole supervision. (8-1-96)T
06. Confidential. Privileged from disclosure. (8-1-96)T
07. Consecutive Sentence. Sentence served upon completion of another sentence or before beginning another sentence. (8-1-96)T
08. Decision. A determination arrived at after consideration, a conclusion. (8-1-96)T
09. Detainer. Implementation of constitutional duty and interstate compact to hold in custody for another jurisdiction. (8-1-96)T
10. DOR. Disciplinary Offense Report. (8-1-96)T
11. Early Parole Discharge. Release from further custody of parole supervision prior to the maximum expiration date and after statutory minimum of one (1) year has been completed. (8-1-96)T
12. Escape. Flight from confinement. (8-1-96)T
13. Fixed Term. Portion of sentence during which the convicted person is not eligible for parole. (8-1-96)T
14. Full Term Release Date. The date a prisoner completes the term of sentence without good time credits. (8-1-96)T
15. Good time Release Date. The date a prisoner completes the term of sentence, minus statutory good time credits when applicable. (8-1-96)T
16. Hearing. A proceeding in which evidence, including file material, letters, and/or testimony, is considered for use in decision-making. (8-1-96)T

17. Hearing Session. A series of hearings conducted by the commission. (8-1-96)T
18. Institutional Parole. Parole granted to one (1) or more consecutive sentences or terms where the inmate/parolee remains incarcerated on other consecutive sentences. If released to parole on the remaining consecutive sentences, the parole becomes a regular parole. (8-1-96)T
19. Jacket, File, or Case Review. Review of central file, Commission file, and/or additional information submitted, without testimony or interview of inmate or parolee. (8-1-96)T
20. NCIC. National Crime Information Center. (8-1-96)T
21. Non Restricted Sentence. Sentence not restricted by statute. (8-1-96)T
22. On-Site Parole Violation Hearing. Parole violation hearing to determine guilt or innocence which may be held near the site of the alleged violation(s). (8-1-96)T
23. Open Parole Date. Tentative parole granted without setting an actual tentative parole date and subject to release by commission authorization; a tentative parole date will become an open parole date if the tentative parole date passes without the subject being released to an acceptable plan on the specific date. (8-1-96)T
24. Pardon. Clemency powers granted to the commission and governor that allows release from consequences of conviction of a crime. (8-1-96)T
25. Parole. Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and a convicted felon. Parole is not a right, but is a matter of grace. (8-1-96)T
26. Permanently Incapacitated. As defined in Section 20-223, Idaho Code, permanently incapacitated shall mean a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. (8-1-96)T
27. Recision. Cancellation of a previous decision. (8-1-96)T
28. Reprieve. Temporary suspension of the execution of sentence; delay a punishment. (8-1-96)T
29. Restricted Sentence. Sentence restricted by Idaho Statutes, by carrying a mandatory minimum to serve prior to parole eligibility. (8-1-96)T
30. Return of Service. Documents required to be served on an alleged parole violator at the time he is served with specific charges of parole violation. Describes hearings and rights the subject is entitled to. (8-1-96)T
31. Revocation File. File containing the documents pertinent to a particular violation/revocation proceeding. (8-1-96)T
32. Session. See "Hearing Session". (8-1-96)T
33. Statutory Release Date. Maximum full-term expiration date, minus any good time credits accumulated during incarceration. (8-1-96)T
34. Substantive Conditions of Parole. Conditions of parole which relate to the rehabilitation of a parolee (performance of community service, use of alcohol, use of a motor vehicle, limitations on financial matters, etc.). (8-1-96)T
35. Technical Violation. Violation of parole by not conforming to rules of parole, not to include absconding and new criminal conviction. (8-1-96)T
36. Terminally Ill. As defined by Section 20-223, Idaho Code, terminally ill shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill. (8-1-96)T

37. Victim. As described by Section 19-5304, Idaho Code, "shall mean a person or entity, named in the complaint, information or indictment, who suffers economic loss or injury as the result of the defendant's criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases." (8-1-96)T

38. Witness. Anyone who observes a hearing, appears as attorney for the subject of a hearing, or others who provide written or verbal testimony. (8-1-96)T

011. -- 099 (RESERVED).

100. GENERAL PROVISIONS.

The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the commission. The commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and statutes. (8-1-96)T

01. Hearings. All hearings of the commission shall be conducted in accordance with the open meeting law as provided in Chapter 23, Title 67 Idaho Code and as modified by Section 20-213A, Idaho Code. (8-1-96)T

a. Deliberations concerning the granting, revoking, reinstating or refusing of paroles, or related decisions, may be made in executive session. (8-1-96)T

b. Votes of individual members will not be made public. (8-1-96)T

i. A written record of the vote by each commission member shall be kept confidential and privileged from disclosure, provided the record shall be made available upon request, for all lawful purposes as outlined by Section 20-213A. (8-1-96)T

ii. Distribution of the record by a commissioner or an employee of the commission to any person not specifically listed in this section shall be a misdemeanor. (8-1-96)T

c. Any person can obtain the results of any action taken by the commission without reference to the manner in which any individual member voted, and such information shall be public information. (8-1-96)T

02. Hearing Sessions. The commission may schedule regular monthly hearings but will meet at least quarterly. (8-1-96)T

a. The executive director will schedule hearing sessions. (8-1-96)T

b. The executive director may designate one (1) of the members of the commission as the presiding officer to conduct individual hearings or a hearing session. (8-1-96)T

03. Business Meetings. The commission shall conduct a business meeting at least quarterly or at the call of the executive director and notice of such meetings will comply with the open meeting law requirements. (8-1-96)T

04. Record of Hearings and Meetings. (8-1-96)T

a. Summary minutes of individual hearings and case reviews will be maintained in the commission office and will be approved and signed by the executive director or a commissioner. (8-1-96)T

b. Summary minutes of business meetings will be maintained in the commission office. (8-1-96)T

i. The summary minutes of the business meetings will be reviewed by the commissioners who are present at a subsequent business meeting. (8-1-96)T

- ii. The summary minutes as approved by the commissioners will be signed by the executive director. (8-1-96)T
- 05. Previous Decisions. The commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. (8-1-96)T
- 06. Individual Polling of the Commission. The executive director may conduct an individual poll of the commission to obtain a majority vote regarding a case or business matter in which a decision must be made prior to the next session or meeting. (8-1-96)T
- 07. APA Applicability. The commission shall have the power to establish rules under Chapter 52, Title 67, Idaho Code (Administrative Procedures Act). No other provision or requirement of the Administrative Procedures Act shall apply to the commission. (8-1-96)T
- 08. Rights, Powers, and Authority of the Commission. (8-1-96)T
 - a. The commission succeeds to and has all rights, powers and authority of the Board of Pardons as granted and provided by the provision of the constitution of the state of Idaho, in reference to commutation, pardon, and remission of fines. (8-1-96)T
 - b. The commission has the power to decide whether or not any prisoner who is eligible for parole may be released to parole. (8-1-96)T
 - c. The commission may act as the advisory commission to the board of correction and may exercise such powers and duties as are delegated by the board. (8-1-96)T

101. -- 149. (RESERVED).

150. COMMISSION AND STAFF.

- 01. Commission Members. (8-1-96)T
 - a. The commission is composed of five (5) members appointed by the board of correction. (8-1-96)T
 - i. No more than three (3) members shall be from one (1) political party. (8-1-96)T
 - ii. Appointments are for five (5) year terms; vacancies for unexpired terms will be for the remainder of the term; and appointees may be reappointed. (8-1-96)T
 - iii. Appointments are subject to the advice and consent of the senate. (8-1-96)T
 - b. The commissioners are compensated as provided by Section 59-509(I), Idaho Code and Section 20-210, Idaho Code. (8-1-96)T
- 02. Commission Staff. (8-1-96)T
 - a. The executive director is the official representative for the commission and is responsible for the managing and administration of the commission business and shall have other duties and responsibilities as assigned by the board of correction. (8-1-96)T
 - i. The commission has delegated to the executive director the authority to approve recommended conditions of parole following the hearing process, issue commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to, paroles, commutations, pardons, and remissions of fines. (8-1-96)T
 - ii. The executive director shall assume all authority and duties as may be delegated by the commission and the board of correction. (8-1-96)T

b. The commission, the executive director, and all staff will maintain professional integrity in all matters of commission business. (8-1-96)T

151. -- 199. (RESERVED).

200. HEARING PROCESS.

01. Information for Scheduled Hearings. (8-1-96)T

a. A schedule of hearings will be prepared prior to a hearing session. (8-1-96)T

i. The schedule will be available one (1) week prior to a hearing session. (8-1-96)T

ii. The schedule will reflect the date, location and starting time of each hearing session. (8-1-96)T

iii. The schedule is subject to change at any time due to circumstances beyond the control of the commission. (8-1-96)T

b. A list of inmates scheduled for hearings may be prepared and submitted to district judges, county prosecutors, sheriffs, legislators, and others as requested. (8-1-96)T

02. Location of Hearings. The executive director will determine the location of hearings, based upon available information when the schedule is set. (8-1-96)T

a. Due to circumstances beyond the commission's control, it may be necessary to change the location and date of a hearing. (8-1-96)T

b. It may be necessary to continue a hearing to a later date to allow for the inmate's personal appearance. (8-1-96)T

03. Hearing/Interview Method. A hearing may be conducted by a personal interview, by telephone, or by other electronic means. (8-1-96)T

04. Psychological Reports. (8-1-96)T

a. A psychological report will be reviewed by the commission for all inmates serving a commitment for a sex offense as described in 20-223, Idaho Code. (8-1-96)T

b. The commission, the executive director, or a hearing officer can order a psychological report for an inmate serving a commitment for any crime. (8-1-96)T

c. All psychological reports will be maintained in a confidential manner. (8-1-96)T

05. Interview/Hearing. The subject of a hearing may be required to be present at a scheduled hearing. (8-1-96)T

a. Parole. If the inmate declines to be present at a parole consideration hearing, the inmate is encouraged to submit a statement to the commission stating that he declines attending the hearing; a decision may be made by the commission based upon available information. (8-1-96)T

b. Parole Revocation. The parolee/inmate is required to be present at the revocation hearing, with the exception of an absentia revocation hearing as explained in Subsection 400.04.h. (8-1-96)T

c. Commutation. The subject is encouraged to be present at the scheduled commutation hearing. (8-1-96)T

d. Pardon and Remission of Fine. The subject of the hearing is encouraged to be present at the hearing; the commission may make such appearance mandatory or may make a final decision based upon the information which is available. (8-1-96)T

06. Witnesses and Documents. The commission allows for the participation of attorneys, families of the subject, victims, and others who have a direct relationship to the specific hearing or subject of the hearing. (8-1-96)T

a. Persons who want to participate in a hearing shall notify the commission staff five (5) days in advance of the scheduled hearing, but children under the age of sixteen (16) may not be allowed to attend the hearings without prior approval of the executive director. (8-1-96)T

b. All written documents and letters to be considered at a particular hearing must be submitted seven (7) days in advance of the scheduled hearing in order to ensure that it will be considered; other documents may be allowed by unanimous consent of the commissioners present. (8-1-96)T

c. An attorney or others as determined by the executive director or commission may be seated with the subject of the hearing. (8-1-96)T

d. Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. (8-1-96)T

e. Contacts from the public to an individual commissioner outside of the hearing process, are to be forwarded to the executive director in order that all commissioners will receive the information. (8-1-96)T

07. Conflict of Interest. A commissioner who has personal knowledge of a case, will make such knowledge available, and the sitting members of the commission will make the decision if that commissioner should be disqualified from participating in deliberation and voting. (8-1-96)T

08. Decisions. (8-1-96)T

a. Any decision of the commission requires a vote of three (3) commissioners, which is a majority decision. (8-1-96)T

b. As a rule, decisions will be given orally following the interview and deliberation of a case, and written notice of the decision will follow within a reasonable time. (8-1-96)T

c. Following the decision being given orally, further testimony is allowed only at the discretion of the commission, executive director, or hearing officer. (8-1-96)T

d. Any decision made by the commission may be reconsidered at any time. (8-1-96)T

09. Rules of Conduct at Hearings. (8-1-96)T

a. All persons attending any hearing will conduct themselves in a manner which does not disrupt the proceedings or they may be removed from the hearing room and/or facility. (8-1-96)T

b. All persons attending a hearing or hearing session, must abide by security policies of the department of correction and pertinent statutes, to include but not be limited to: no smoking; no unauthorized food or drink in the hearing room; no purses or other belongings; follow department of correction dress code; number of witnesses will be in line with life and safety codes; and all persons may be screened through metal detectors and will be subject to search. (8-1-96)T

c. Tape recording or video-taping of any hearing or any hearing session may be allowed at the discretion of the commission; such recordings will proceed only at the direction of the commission as to the placement and manner and type of equipment. (8-1-96)T

- d. The media is invited to attend any hearing or session of the commission. (8-1-96)T
- i. Interviews with inmates or witnesses will not be allowed during the hearing process and the commission and staff will not be responsible for arranging any interviews. (8-1-96)T
- ii. During the hearing process, interviews with victims are not allowed without the express consent of the victim. (8-1-96)T
- iii. Arrangements for interviewing the commission or staff should be made in advance. (8-1-96)T
- 10. Official Record of Hearing/Review. The official record of a hearing or case review will be the summary minutes of that hearing or review, and the original record will be maintained in the commission office. (8-1-96)T

201. -- 249. (RESERVED).

250. PAROLE.

- 01. Parole Determination. Parole determination is at the complete discretion of the commission. (8-1-96)T
- a. The commission may release an inmate to parole on or after the date of parole eligibility, or not at all. (8-1-96)T
- b. Parole consideration is evaluated by the individual merits of each case. (8-1-96)T
- c. The commission allows for parole consideration criteria, but no prediction regarding the granting of parole can be based upon any hearing standard or criteria. (8-1-96)T
- i. Seriousness and aggravation and/or mitigation involved in the crime. (8-1-96)T
- ii. Prior criminal history of the inmate. (8-1-96)T
- iii. Failure or success of past probation and parole. (8-1-96)T
- iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior. (8-1-96)T
- v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (8-1-96)T
- vi. Information or reports regarding physical or psychological condition. (8-1-96)T
- vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (8-1-96)T
- 02. Primary Review. A review for the purpose of setting the initial parole hearing will be conducted on all inmates, except those serving a court-retained jurisdiction and those inmates sentenced to death; the commission is not responsible for the setting of a hearing until an official sentence calculation sheet has been received. (8-1-96)T
- a. The executive director or a designee will conduct the review following receipt of the sentence calculation from the department of correction, records office. (8-1-96)T
- b. The month and year of the initial parole hearing will be established based upon the sentence calculation. (8-1-96)T
- i. In cases of offenses committed prior to February 1, 1987 or offenses committed after February 1,

1987 with no specified fixed minimum term, the following guideline outlined in "Table 1" will be utilized in scheduling the initial hearings. (8-1-96)T

TABLE 1

LENGTH OF SENTENCE	MINIMUM TIME TO BE SERVED BEFORE INITIAL HEARING
Three (3) Years of Less	Nine (9) Months
More Than Three (3) Years to Less Than Five (5) Years	Twelve (12) Months
Five (5) Years to Less Than Seven (7) Years	Fifteen (15) Months
Seven (7) Years to Less Than Ten (10) Years	Twenty (20) Months
Ten (10) Years to Less Than Sixteen (16) Years	Twenty-Four (24) Months
Sixteen (16) Years to Less Than Twenty-Six (26) Years	Thirty-Six (36) Months
Twenty-Six (26) Years Up To Life Sentence	Forty-Eight (48) Months
Life Sentence	Sixty (60) Months

(8-1-96)T

ii. In cases of offenses committed on or after February 1, 1987, and a minimum fixed term has been specified, the initial hearing may be scheduled prior to the parole eligibility date, during the month of parole eligibility, or as soon as possible if parole eligibility has been reached. (8-1-96)T

iii. Consecutive Sentences. All fixed terms will be served before the indeterminate terms commence. (8-1-96)T

iv. When more than one (1) sentence is being served concurrently, the initial hearing will not be scheduled until all fixed terms have been served. (8-1-96)T

v. If an inmate escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the inmate's return, taking into consideration any additional commitments. (8-1-96)T

c. The commission is not responsible for the accuracy of the sentence calculation as determined by the department of correction, records office. (8-1-96)T

03. General Conditions of Parole. The commission establishes rules and conditions for every inmate released to parole, and those conditions are. (8-1-96)T

a. Parolee will go directly to the destination approved by the commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the commission staff. (8-1-96)T

b. The parolee shall. (8-1-96)T

i. Work diligently in a lawful occupation or a program approved by the commission or supervising officer and not change employment or designated program without written permission from the commission or supervising officer. (8-1-96)T

ii. Support dependents to the best of his ability. (8-1-96)T

iii. Live within lawful income without incurring unnecessary indebtedness. (8-1-96)T

- c. The parolee shall submit a complete and truthful report to the assigned parole officer, or other person designated by the commission, on forms available, before the fifth (5th) day of each month, or as otherwise instructed. (8-1-96)T
- d. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee and he is unavailable, communication will be directed to the district supervisor. (8-1-96)T
- e. The parolee will: (8-1-96)T
- i. Obey all municipal, county, state and federal laws. (8-1-96)T
- ii. Conduct himself, in a manner which is not, nor intended to be, harmful to himself or others. (8-1-96)T
- iii. Follow written or oral instructions of the parole officer or commission. (8-1-96)T
- iv. Not purchase, own, sell, or have in his control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. (8-1-96)T
- v. Not have any dangerous weapons used or intended to be used for other than normal purposes, such as knives for household use. (8-1-96)T
- f. The parolee shall: (8-1-96)T
- i. Abstain from excessive use of alcoholic beverages. (8-1-96)T
- ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (8-1-96)T
- iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol or narcotics, which may be at the parolee's expense. (8-1-96)T
- iv. Participate in treatment programs as specified by the commission or ordered by the parole officer. (8-1-96)T
- g. The parolee will submit to a search of person and/or property, to include residence and vehicle, at any time and place, by any agent of field services or the commission, and he does waive his constitutional right to be free from such searches. (8-1-96)T
- h. The parolee is fully advised that written permission is required to: (a) wilfully change employment; (b) wilfully change residence; and (c) leave the assigned district. (8-1-96)T
- i. The parolee will make himself available for supervision and will not actively avoid supervision. (8-1-96)T
04. Special Conditions of Parole. (8-1-96)T
- a. In addition to general rules of parole, the commission may add special conditions appropriate to the individual case. (8-1-96)T
- b. The commission delegates the authority to the executive director to add special conditions, before an inmate has been released to parole or while on parole, once the subject has signed a statement agreeing to the special conditions. (8-1-96)T
05. Institutional Parole. (8-1-96)T

- a. An inmate committed to the department of correction, who has a consecutive sentence and one or more commitments do not have a fixed minimum term to serve prior to parole eligibility, may be considered for institutional parole while remaining incarcerated. (8-1-96)T
- b. Institutional parole may be considered at the discretion of the commission. (8-1-96)T
- c. While serving institutional parole, the parolee/inmate is subject to all the rules of the housing facility and conditions ordered by the commission, to include, but not be limited to, submitting monthly reports as directed. (8-1-96)T
- d. If rules of the institution or orders of the commission are violated, the executive director or a commissioner will determine when a report of conduct/violation should be submitted. (8-1-96)T
- i. In the case of a report of violation, established rules of the violation/revocation process will apply. (8-1-96)T
- ii. The executive director will determine the site of all hearings. (8-1-96)T
- iii. If institutional parole is revoked, the time spent on institutional parole shall be forfeited; however, time served on the consecutive sentence will be credited once that sentence commences to be served. (8-1-96)T
- e. Conversion. Upon release from custody on any subsequent parole or upon completion of the consecutive sentence, and time remains on the institutional parole sentence, there will be an automatic conversion from institutional parole to regular parole, subject to all regular and special conditions of parole. (8-1-96)T
06. Unsupervised Parole. In extraordinary cases, the commission may elect to grant an unsupervised parole. (8-1-96)T
- a. The parolee will be subject to all regular conditions of parole and any ordered special conditions, with the exception of the regular supervision of a parole officer. (8-1-96)T
- b. Monthly reports must be submitted to the commission office. (8-1-96)T
- c. Communication from the parolee is to be directed to the commission office. (8-1-96)T
- d. At any time, the parolee may be placed under regular supervision of a parole officer. (8-1-96)T
07. Medical Parole. The commission may parole an inmate for medical reasons during the determinate portion of a sentence. (8-1-96)T
- a. An inmate may be considered for medical parole during the determinate portion of a sentence only when the prisoner is permanently incapacitated or terminally ill and when the commission reasonably believes the prisoner no longer poses a threat to the safety of society. (8-1-96)T
- b. An inmate or designated department of correction personnel may petition the commission to consider medical parole. (8-1-96)T
- c. For any consideration or hearing to consider medical parole, the commission will require specific medical information reference the condition, the treatment or care plan if released, and any other information as deemed necessary. (8-1-96)T
- d. The commission may conduct an actual hearing or review of the case, or may designate commission staff to provide additional information. (8-1-96)T
- e. An annual report will be submitted to the house and senate judiciary committees and will contain the inmates' names, medical condition, current status and crime for which the inmates were incarcerated. (8-1-96)T

08. Intensive Supervision. The commission may order a program of intensive supervision which has been designed by and may be amended by the department of correction. (8-1-96)T
09. Discharge from Parole. (8-1-96)T
- a. When the maximum sentence has expired, a final discharge will be issued by the commission, unless a commission warrant was issued before the full term or the good time release date. (8-1-96)T
- b. The commission may make a final order of discharge prior to completion of the maximum sentence when the commission believes such a discharge is compatible with the parolee's welfare and that of society, and subject to the following requirements. (8-1-96)T
- i. The commission will not consider an early discharge from parole in any case until the parolee has served at least one (1) year on parole. (8-1-96)T
- ii. The commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to the maximum expiration date has been served on parole; or until five (5) years have been served on parole on a life sentence for any crime. (8-1-96)T
- iii. A parole officer or other designated agent may petition the commission to consider an early discharge. (8-1-96)T
- iv. Any decision by the commission to grant an early discharge will not be effective until the official discharge document has been signed by the executive director or a commissioner. (8-1-96)T
- v. If a decision has been made by the commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. (8-1-96)T
- vi. The executive director may issue a commission warrant based upon the new information and the discharge grant will automatically be voided without further action by the commission. (8-1-96)T
- vii. If the executive director does not issue a warrant, the information will be referred to the commission for reconsideration. (8-1-96)T
10. Detainers. (8-1-96)T
- a. The commission may grant a parole to any county, state, or federal detainer which has been lodged against an inmate. (8-1-96)T
- i. While in the custody of the detaining jurisdiction, the parolee is subject to all rules of the housing facility and must submit monthly reports to commission staff or others as designated. (8-1-96)T
- ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must contact the commission office immediately and must report to the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. (8-1-96)T
- iii. If the parolee is released from custody by the detaining jurisdiction, the parolee must abide by all regular rules of parole and any special conditions ordered by the commission. (8-1-96)T
- b. The commission may grant a parole to a federal immigration detainer in order that the inmate may be deported to the country of citizenship. (8-1-96)T
- i. If the parolee is granted a release on bond or it is determined by the federal authorities that the parolee can remain in the United States, the parolee must contact the commission office immediately and must contact the nearest probation and parole office within five (5) days of release or as otherwise instructed by the

commission staff. (8-1-96)T

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States; any such return to the United States during the parole period and after deportation, is considered a violation of the parole contract. (8-1-96)T

iii. The commission considers this type of parole grant an unsupervised parole, but the parolee is not obligated to submit monthly reports nor maintain contact with the commission as long as he remains outside of the United States. (8-1-96)T

11. Special Progress Reports. A special progress report may be submitted by field supervision personnel to request modification of a special condition of parole, advise of problems that have developed, or to request interstate transfer of a case. (8-1-96)T

251. -- 299. (RESERVED).

300. VICTIMS.

01. Program for Victims. The commission has established a program for victims of criminal offenses for which an inmate has been committed to the institution and is not serving a court-retained jurisdiction term. (8-1-96)T

a. The commission will establish a record for victims of inmates who may be considered for parole, commutation, or pardon. (8-1-96)T

i. To establish a victim record, the commission must receive official written notice from the clerk of the sentencing court or the county prosecutor's office; the commission will not be responsible to notify victims of their rights if this official notice has not been received. (8-1-96)T

ii. If the commission has not received official notice of the victim, the commission or staff may be advised directly by the victim, family or other; commission staff will verify the name or names of the victim(s) with the county prosecutor and a record will be established. (8-1-96)T

b. The commission will notify legal victims of their right to be notified of parole, commutation, and pardon hearings and decision of these hearings; their right to submit written statements or information; and, their right to provide testimony. (8-1-96)T

c. Notice of rights, hearings, decisions, and parole releases will be sent to the victim of record to the last known address, and it is the responsibility of the victim to provide any change of address. (8-1-96)T

d. A victim may request that he not be notified or contacted, and such request will be honored. (8-1-96)T

e. Victims will receive notices of releases to parole, but the commission is not responsible to advise of any other releases such as inmate transfers to other facilities, release by completion of the sentence, or escapes from custody as these are not under the authority of the commission. (8-1-96)T

02. Confidentiality of Victim's Address and Written Testimony. The victim's record maintained by the commission to include the address and written testimony or information will be maintained in a confidential manner and is not subject to disclosure to anyone for any reason. (8-1-96)T

03. Testimony of Victim. (8-1-96)T

a. The victim is invited to attend any and all hearings pertinent to the case and to provide testimony. (8-1-96)T

b. The executive director and the commission may choose to allow for the victim's testimony away

from the actual hearing process. (8-1-96)T

i. The victim may give information to the executive director or commissioner(s) at the commission office or other location as determined and such information may be maintained in a confidential manner. (8-1-96)T

ii. The victim may be allowed to testify before the commission during a hearing session but a time separate from the actual hearing with the inmate, and such testimony will be made a part of the record. (8-1-96)T

c. If the commission was not officially notified of the victim and does become aware of the victim's desire to be heard following a hearing, any scheduled release to parole may be held in abeyance until a decision is made by the commission. (8-1-96)T

i. The commission may review any written testimony by the victim and may elect to take no further action, may schedule another hearing, or may void the release date and reconsider the parole grant. (8-1-96)T

ii. The executive director may schedule a hearing without the vote of the commission to allow for the victim's testimony. (8-1-96)T

301. -- 349. (RESERVED).

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. The parole plan needs to provide for the positive re-entry of the inmate back into the community. (8-1-96)T

a. The inmate must submit the proposed parole plan on designated forms provided by the commission through the institution. (8-1-96)T

b. The proposed parole plan must be available at the parole consideration hearing and must address the following: (8-1-96)T

i. A stable residence must be developed which will provide for the most positive re- entry into the community if a release to parole is granted. (8-1-96)T

ii. If the inmate is unable to work, information must be provided as to the maintenance and care which will be provided. (8-1-96)T

iii. The particular needs of the offender must be addressed, such as treatment for alcohol or drug problems, mental health problems, sex offender treatment, or other. (8-1-96)T

c. Educational programs may be considered, provided the offender presents evidence of his ability to complete the proposed program, can function at the proposed academic or vocational level, and that he can provide evidence of adequate economic funding to include living expenses. (8-1-96)T

d. In cases where the commission does not approve the proposed parole plan and a tentative parole date is granted, the commission will determine what type of plan would be acceptable and will determine if the commission must review the new plan or whether the executive director can approve the plan. (8-1-96)T

e. All parole plans will be investigated by field services staff in the area in which the prospective parolee plans to reside, and necessary information will be submitted along with the investigation request. (8-1-96)T

i. An Idaho parole plan may take a minimum of six (6) weeks to submit the information, investigate the plan, and plan for release. (8-1-96)T

ii. An out-of-state plan may take at least three (3) months to investigate and process the plan. (8-1-96)T

02. Tentative Parole Dates. All parole release dates granted by the commission are tentative. (8-1-96)T
- a. The parole plan must be approved and received at the commission office before the actual release date can be set to allow time for processing the release. (8-1-96)T
 - b. If the inmate should have disciplinary problems following the parole grant hearing, the commission may reconsider the decision, and the tentative parole date may be voided. (8-1-96)T
 - c. If the commission receives information that was not available at the time of the parole grant hearing, the commission may review the information or may schedule another hearing, and the tentative parole date may be voided. (8-1-96)T
03. Contract. Prior to any release to parole, the prospective parolee must sign a contract with the commission and must agree to all general and special conditions of parole. (8-1-96)T
04. Reporting and Release Instructions. (8-1-96)T
- a. The parolee will be given instructions who to report to, which will include the address and the telephone number of the supervising office. (8-1-96)T
 - b. It is the responsibility of the parolee to arrange for transportation upon release. (8-1-96)T
 - i. The parolee must go directly to the destination approved by the commission or executive director. (8-1-96)T
 - ii. The parolee must request permission to deviate from direct travel to the approved location, and such request must be in writing to the commission office at least two (2) weeks in advance of the established release date. (8-1-96)T

351. -- 399. (RESERVED).

400. PAROLE REVOCATION PROCESS.

01. Initiated. The parole revocation process is initiated by a written or verbal report describing the rules of parole which are alleged to have been violated. (8-1-96)T
- a. Verbal information may be provided to the executive director. (8-1-96)T
 - b. A progress report may be submitted to the executive director. (8-1-96)T
 - c. A report of violation may be submitted to the executive director. (8-1-96)T
02. Warrants. A warrant may be issued for the offender's arrest. (8-1-96)T
- a. A supervising agency may issue an investigative warrant which may be referred to as an agent's warrant. (8-1-96)T
 - b. A commission warrant may be issued by the executive director or a commissioner, and issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. (8-1-96)T
 - i. If the location of the parolee is known, the warrant may be served on the offender or placed as a detainer. (8-1-96)T
 - ii. If the location of the offender is unknown, the warrant will be entered into NCIC or I-HOT and will designate which states the commission will extradite the offender from once arrested. (8-1-96)T
 - iii. If another state is holding the offender in custody on new charges in their state, the warrant may be

placed as a detainer only and written notice of this action will be submitted to the holding facility; if the detainer is officially served on the offender without notice of this action to the commission, the commission will not be held responsible for the time limits prescribed by law for service of charges. (8-1-96)T

iv. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant; during the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (8-1-96)T

03. Due Process. Every parolee arrested on a commission warrant for alleged violation(s) of parole is entitled to pertinent due process. (8-1-96)T

a. The alleged parole violator is entitled to reasonable notice of the date, time and location of any and all hearings involved in the revocation process. (8-1-96)T

b. The alleged parole violator has the right to appear at a hearing and address the allegations. (8-1-96)T

c. The alleged parole violator may confront and cross-examine person(s) who have given adverse information on which the charges have been based. (8-1-96)T

04. Witnesses. The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (8-1-96)T

a. The commission has no subpoena power to compel any witness to attend a hearing. (8-1-96)T

b. The alleged parole violator may make a timely written request to the commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. (8-1-96)T

c. If it is determined by the hearing officer or the executive director that the identification of an informant or the personal appearance of a witness would subject such person to risk or harm, confrontation or cross-examination will not be allowed and the record will reflect such determination. (8-1-96)T

d. The personal appearance of a witness may not be feasible; the hearing officer may determine if the witness should be interviewed by telephone and whether the information specifically addresses the allegations. (8-1-96)T

e. It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify the witnesses of the date, time, and location of any and all hearings or change of hearings. (8-1-96)T

05. Attorney. The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process. (8-1-96)T

a. An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself. (8-1-96)T

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. (8-1-96)T

c. It is the alleged parole violator's responsibility to provide the attorney with any and all reports and documents; in addition, the subject's attorney may also obtain copies by making a request to the commission office. (8-1-96)T

06. Hearings. The alleged parole violator will be advised of any and all hearing dates and locations

- within a reasonable time frame. (8-1-96)T
- a. The hearing officer or executive director will determine the location of all hearings. (8-1-96)T
 - b. The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (8-1-96)T
 - c. The type of charges addressed in the allegations will determine the kinds of hearings available to the alleged parole violator. (8-1-96)T
 - i. **Non-Technical Violations.** If the alleged parole violator is charged with a conviction for a misdemeanor or felony criminal conviction or is charged with absconding from supervision, the subject is not entitled to a preliminary or on-site hearing, and is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. (8-1-96)T
 - ii. **Technical Violations.** If the alleged parole violator is charged with a violation of the rules of parole other than a misdemeanor or felony criminal conviction or absconding from supervision, the subject is entitled to a preliminary hearing and an on-site hearing, and is entitled to a hearing to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (8-1-96)T
 - d. **Preliminary Hearing.** A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of field and community services or as otherwise directed by the executive director. (8-1-96)T
 - e. **On-Site Hearing.** A technical parole violator is entitled to an on-site hearing. (8-1-96)T
 - i. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). (8-1-96)T
 - ii. In situations where the violation(s) occurred outside the state of Idaho, the executive director or hearing officer will determine the location of the hearing. (8-1-96)T
 - f. **Violation Hearing.** In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence and may dismiss some or all allegations. (8-1-96)T
 - g. **Revocation.** Pursuant to a violation hearing or waiver of such hearing, the commission will consider whether or not parole will be revoked. (8-1-96)T
 - i. A commission hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (8-1-96)T
 - ii. The commission will consider whether the parole will be revoked. (8-1-96)T
 - iii. The commission will consider parole and state the reasoning if parole is not granted. (8-1-96)T
 - h. **Absentia Hearing.** The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The Commission will determine if parole will be considered once the revocation decision has been made. (8-1-96)T
 - i. If new criminal charges result in a new commitment and incarceration, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (8-1-96)T
 - ii. If the subject has absconded supervision and is reincarcerated in another state without a new conviction, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (8-1-96)T
07. **Miscellaneous Revocation Information.** (8-1-96)T

- a. The executive director will determine who will conduct all hearings involved in the revocation process. (8-1-96)T
- b. The commission, through the executive director shall designate the county, state, or other facility where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (8-1-96)T
- c. The alleged parole violator can request a continuance of any hearing. (8-1-96)T
- i. The hearing officer, executive director, or the commission will determine if the continuance will be granted. (8-1-96)T
- ii. If the alleged parole violator requests a continuance of any hearing, he, thereby, waives any and all time limits involved. (8-1-96)T
- 08. Inability to Assist in Defense. (8-1-96)T
 - a. Specific time limits pertinent to the case may be waived. (8-1-96)T
 - b. At the hearing officer or executive director's discretion, an attorney may be appointed at commission expense. (8-1-96)T
 - c. A psychological evaluation may be requested and mental health treatment may be deemed appropriate. (8-1-96)T
 - d. A status update of the case will be made at regular intervals, and the executive director will determine how the case will proceed. (8-1-96)T
- 09. Findings/Decisions. (8-1-96)T
 - a. At any time following arrest on a commission warrant, the parole officer may request that the parolee be released to continue parole and the executive director or the commission will decide if the parolee will be released to continue parole. (8-1-96)T
 - b. If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (8-1-96)T
 - c. After a violation hearing, the hearing officer will prepare a report of findings. (8-1-96)T
 - i. The report will be a summary of the violation hearing, to include testimony, and will make specific findings for each allegation. (8-1-96)T
 - ii. The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (8-1-96)T
 - iii. The offender is entitled to receive a copy of all reports of findings of hearings. (8-1-96)T
 - iv. The offender is entitled to a verbal or written decision within twenty (20) days of the hearing. (8-1-96)T
- 10. Forfeiture of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest on an investigative warrant and/or commission warrant will be forfeited and not deemed a part of the sentence for which the offender was committed. (8-1-96)T
 - a. The time the offender is incarcerated on an investigative agent's warrant and a commission warrant

will be credited toward the sentence. (8-1-96)T

b. If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case. (8-1-96)T

c. The offender will not receive credit for incarceration time if the incarceration was for a new crime and the commission and parole officer did not initiate violation proceedings. (8-1-96)T

d. The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration. (8-1-96)T

401. -- 449. (RESERVED).

450. COMMUTATION.

Commutation is a process whereby clemency may be considered and granted to modify a sentence imposed by the sentencing jurisdiction. This process pertains only to inmates currently incarcerated and requires both the submission of a petition and a hearing. (8-1-96)T

01. Petition. An inmate requesting a commutation must submit a petition for commutation. (8-1-96)T

a. The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (8-1-96)T

b. The petition must be completed correctly per instructions on the form or it may be returned. (8-1-96)T

c. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. (8-1-96)T

i. Change a consecutive sentence to concurrent. (8-1-96)T

ii. Reduce the maximum length of sentence. (8-1-96)T

iii. Change a fixed sentence to indeterminate. (8-1-96)T

iv. Change a sentence in any other manner not described. (8-1-96)T

d. The commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (8-1-96)T

e. Petitions may be considered at any time by the commission, but are usually scheduled for consideration for the quarterly sessions of January, April, July, and October. (8-1-96)T

f. Petitions must be received no later than the first day of the month of a designated quarterly session. (8-1-96)T

g. Review or deliberation on the petition by the commission will be conducted in executive session. (8-1-96)T

h. Any petition may be continued for additional information or for further consideration. (8-1-96)T

i. The petitioner will be sent written notice of the decision. (8-1-96)T

j. The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (8-1-96)T

02. Hearing. The scheduling of a hearing is at the complete discretion of the commission; if a commutation hearing is scheduled, the commission will determine the date of the hearing. (8-1-96)T

a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho at least once a week for four (4) consecutive weeks immediately prior to the hearing. (8-1-96)T

b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. (8-1-96)T

c. All rules of procedure governing hearings will apply to a commutation hearing. (8-1-96)T

d. The decision and supporting documents regarding commutation will be filed with the secretary of state. (8-1-96)T

i. All written material considered in the decision process of a commutation will be a matter of public record with the exception of the presentence investigation report and victim information. (8-1-96)T

ii. Dissenting votes of the commissioners voting will be a matter of public record. (8-1-96)T

03. Approving and Granting. Only rarely will circumstances be extraordinary enough to approve a petition for a commutation hearing or to grant a commutation. (8-1-96)T

a. The granting of a commutation hearing shall not be interpreted as intent to commute a sentence. (8-1-96)T

b. Habilitative progress alone will not be regarded as sufficient to grant a commutation hearing or to commute a sentence. (8-1-96)T

04. Authority to Grant. The commission has full and final authority to grant commutations except with respect to sentences for murder, voluntary manslaughter, rape, kidnaping, lewd and lascivious conduct with a minor child, and manufacture or delivery of a controlled substance. (8-1-96)T

a. In the cases of offenses listed in this section, the commission's decision shall constitute a recommendation only to the governor. (8-1-96)T

b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (8-1-96)T

c. No commutation for the offenses listed in this section will be effective until presented to and approved by the governor, and any commutation recommendations not so approved within thirty (30) days of the commutation hearing shall be deemed denied. (8-1-96)T

05. Death Sentence. (8-1-96)T

a. An individual file of each inmate under sentence of death will be maintained in the commission office and the status of each case will be updated annually. (8-1-96)T

b. At any time, the commission may review a file, information, or interview an inmate without activating the commutation process. (8-1-96)T

c. Commutation consideration must be initiated by the inmate or his legal counsel. (8-1-96)T

i. The petition must contain the signature of the petitioner. (8-1-96)T

ii. Legal counsel must provide verification that he has been retained by the inmate or his family to prepare and submit the petition. (8-1-96)T

d. The commission may elect to receive and consider a petition for a death penalty modification at any time. (8-1-96)T

451. -- 499. (RESERVED).

500. SELF-INITIATED PROGRESS REPORT.

An inmate may appeal the last parole decision of the commission. (8-1-96)T

01. Petition. An inmate making a request for reconsideration of parole denial must initiate the process by submitting an application. (8-1-96)T

a. The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (8-1-96)T

b. The petition must be completed correctly per instructions on the form or it may be returned. (8-1-96)T

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (8-1-96)T

d. The commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (8-1-96)T

e. Petitions may be considered at any time by the commission, but are usually scheduled for consideration for the quarterly session of January, April, July, and October. (8-1-96)T

f. Petitions must be received no later than the first day of the month of a designated quarterly session. (8-1-96)T

g. The petition may be submitted no sooner than six (6) months following the last hearing. (8-1-96)T

h. Review or deliberation on the petition by the commission will be conducted in executive session. (8-1-96)T

i. Any petition may be continued for additional information or for further consideration. (8-1-96)T

j. The petitioner will be sent written notice of the decision. (8-1-96)T

k. The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (8-1-96)T

02. Hearing. The scheduling of a hearing is at the complete discretion of the commission. (8-1-96)T

a. If a special hearing is scheduled, the commission will determine the date of the hearing. (8-1-96)T

b. If a special hearing is scheduled, the previous decision of the commission may be considered null and void. (8-1-96)T

03. Amended Decision. The commission may elect to amend any decision without conducting another hearing. (8-1-96)T

501. -- 549. (RESERVED).

550. PARDON.

A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. (8-1-96)T

01. General. An application for a pardon may not be considered until a period of time has elapsed since

- the applicant's discharge from custody as defined below. (8-1-96)T
- a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than three (3) years after completion of the sentence. (8-1-96)T
 - b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted five (5) years after completion of the sentence. (8-1-96)T
02. Application. A pardon application can be obtained from the commission office. (8-1-96)T
- a. The application must be completed and returned to the commission office. (8-1-96)T
 - i. The completed application must include the reasons why the pardon is requested. (8-1-96)T
 - ii. The applicant may attach letters of recommendation or other documents to support the request. (8-1-96)T
 - b. Following receipt of the completed application, a request for an investigation will be made of correctional field personnel in the area in which the applicant resides, and the report shall include, but shall not be limited to the following: (8-1-96)T
 - i. A criminal record check of the applicant. (8-1-96)T
 - ii. The applicant's employment history since completion of sentence. (8-1-96)T
 - iii. The applicant's status as a good citizen. (8-1-96)T
 - iv. An interview with the applicant should be conducted and a summary of the interview provided. (8-1-96)T
 - v. Any additional information as deemed necessary or appropriate. (8-1-96)T
03. Report. Pursuant to the receipt of the completed report, a review will be conducted at the next scheduled hearing session of the commission. (8-1-96)T
- a. The commission will conduct such review in executive session. (8-1-96)T
 - b. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision. (8-1-96)T
 - c. Any application may be continued for further consideration or additional information. (8-1-96)T
04. Hearing. The scheduling of a hearing is at the complete discretion of the commission or the executive director; if a pardon hearing is scheduled, the commission will determine the date of the hearing. (8-1-96)T
- a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (8-1-96)T
 - b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (8-1-96)T
 - c. Written notice of the hearing date, time and location will be sent to the applicant at the address given on the application or as otherwise requested. (8-1-96)T
 - i. The applicant's appearance at the hearing is not mandatory but is encouraged. (8-1-96)T
 - ii. The commission may continue the hearing to a later date in order for the applicant to make a

personal appearance and such continuance will not require additional publication of the hearing. (8-1-96)T

d. All rules of procedure governing hearings will apply at a pardon hearing. (8-1-96)T

e. The decision and supporting documents regarding the decision to grant or deny a pardon will be filed with the secretary of state. (8-1-96)T

i. Dissenting votes of the commissioners voting are submitted to the office of the secretary of state and become a matter of public record. (8-1-96)T

ii. All written material considered in the decision process with the exception of the presentence investigation report and victim information will be submitted to the office of the secretary of state and will be a matter of public record. (8-1-96)T

f. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (8-1-96)T

05. Authority to Grant. The commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnaping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances. (8-1-96)T

a. In the cases listed in this section, the commission's decision to grant a pardon shall constitute a recommendation only to the governor. (8-1-96)T

b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (8-1-96)T

c. No pardon for the offenses listed in this section will be effective until presented to and approved by the governor, and any pardon recommendations not so approved within thirty (30) days of the pardon hearing shall be deemed denied. (8-1-96)T

551. -- 599. (RESERVED).

600. REMISSION OF FINE OR PENALTY

01. Request. An application for remission of fine or penalty must be made to the commission. (8-1-96)T

a. The application must be in writing. (8-1-96)T

b. The application must outline the reasons action is requested to remit such fine or penalty. (8-1-96)T

c. The commission will obtain a certified copy of the fine or penalty from the jurisdiction which assessed such penalty. (8-1-96)T

02. Review. The commission will review the request to remit a fine or penalty. (8-1-96)T

a. The commission will usually review such application on a month designated as a quarterly session, but may make such review during any session. (8-1-96)T

b. The commission will conduct such review in executive session. (8-1-96)T

c. Any application may be continued for further consideration or additional information. (8-1-96)T

d. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision in writing. (8-1-96)T

03. Hearing. The scheduling of a hearing is at the complete discretion of the commission. (8-1-96)T
- a. If a hearing is scheduled, the commission will determine the date of the hearing. (8-1-96)T
- b. If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho at least once a week for four (4) consecutive weeks immediately prior to the hearing. (8-1-96)T
- c. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (8-1-96)T
- d. All rules of procedure governing hearings will apply to such scheduled hearing. (8-1-96)T
- e. The decision and supporting documents regarding the remission will be filed with the secretary of state. (8-1-96)T
- i. All written material considered in the decision process will be a matter of public record. (8-1-96)T
- ii. Dissenting votes of the commissioners voting will be a matter of public record. (8-1-96)T
- f. Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. (8-1-96)T
- i. The applicant's appearance at the hearing is not mandatory; however, appearance may be required and the applicant will be notified. (8-1-96)T
- ii. The commission may continue the hearing to a later date for any reason and such continuance will not require notice to be published again. (8-1-96)T
04. Satisfaction of Judgment. If the commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. (8-1-96)T

601. -- 999. (RESERVED).

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

DOCKET NO. 59-0106-9503

NOTICE OF PENDING RULE

EFFECTIVE DATE: This temporary rule is effective July 1, 1995, the pending rule becomes final and effective on the first day after the Fifty-fourth Legislature, First Regular Session adjourns sine die unless the rule is 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 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 temporary rule which is also now a pending rule. The action is authorized by Sections 59-1301, 59-1305(4), 59-1314, 59-1372, 59-1383, 67-5224, and 67-5226, Idaho Code.

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

The rule was adopted by PERSI because an actuarial study was performed and the contingent annuitant option tables required revisions.

IDAPA 59.01.06.162 has been adopted as a temporary/pending rule as initially proposed in the Idaho Administrative Bulletin, Volume 95-9, September 6, 1995, pp 108 through 116 and, therefore, has not been republished with this Notice.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Bernadette Buentgen at 208-334-2451, ext. 271.

DATED this 23rd day of September, 1996.

BERNADETTE C. BUENTGEN
Deputy Attorney General for PERSI
607 North Eighth Street
Boise, ID 83702

IDAPA 59
Title 01
Chapter 06

RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 95-9, September 6, 1995, Pages 108 through 116.**

**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 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

DOCKET NO. 59-0106-9601

NOTICE OF PENDING RULE

EFFECTIVE DATE: The temporary rule is effective January 1, 1996, the pending rule becomes final and effective on the first day after the Fifty-fourth Legislature, First Regular Session adjourns sine die unless the rule is 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 temporary rule which is also a pending rule. The action is authorized by Sections 59-1301, 59-1305, 59-1392, 67-5221, 67-5226, 72-1405, 72-1406, and 72-1471, Idaho Code.

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

IDAPA 59.01.06.163 (Rule 163) was amended to comply with Title 72, Chapter 14, Section 72-1471. Rule 163 states the procedure for adopting the mandatory COLA for the FRF as opposed to the exact COLA amount.

IDAPA 59.01.06.163 has been adopted as initially proposed in the Idaho Administrative Bulletin, Volume 96-1, January 3, 1996, pp. 370 and 371 and, therefore, has not been republished with this Notice.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Bernadette Buentgen at 208-334-2451, ext. 271.

DATED this 23rd day of September, 1996.

BERNADETTE C. BUENTGEN
Deputy Attorney General for PERSI
607 North Eighth Street
Boise, ID 83702

IDAPA 59
TITLE 01
Chapter 06

RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-1, January 3, 1996, Pages 370 through 371.**

**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 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM
DOCKET NO. 59-0106-9602
NOTICE OF VACATION OF RULE-MAKING

ACTION: This action under Docket No. 59-0106-9602 vacates the Proposed rules of PERSI, IDAPA 59, Title 01, Chapter 06, Retirement Rules of the Public Employee Retirement System of Idaho.

AUTHORITY: In compliance with Section 67-5201, Idaho Code, notice is hereby given that this agency is vacating previous rule making under Docket No. 59-0106-9602.

DESCRIPTIVE SUMMARY: This rule-making is being vacated because the changes made under this docket were rewritten and readopted as temporary and proposed rules under Docket No. 59-0106-9603 and were published in Idaho Administrative Bulletin Volume 96-6.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Bernadette Buentgen at 208-334-2451, ext. 271.

DATED this 23rd day of September, 1996.

BERNADETTE C. BUENTGEN
Deputy Attorney General for PERSI
607 North Eighth Street
Boise, ID 83702

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

DOCKET NO. 59-0106-9603

NOTICE OF PENDING RULES

EFFECTIVE DATE: The temporary and proposed rules are effective as follows: IDAPA 59.01.06.104 - May 1, 1996 (temporary/proposed rule); IDAPA 59.01.06.123 - first day after the fifty-fourth legislature, first regular session adjourns sine die (proposed rule); IDAPA 59.01.06.161 - March 16, 1996 (temporary/proposed rule); and IDAPA 59.01.06.552 - September 1, 1996 (temporary/proposed rule), all pending rules will become final and effective on the first day after the Fifty-fourth Legislature, First Regular Session adjourns sine die unless the rule is 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 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 temporary rules which are now also pending rules. The action is authorized by Sections 33-1228, 33-2109A, 59-1301, 59-1302(5)(B)(e), 59-1302(31), 59-1305, 59-1322, 59-1325, 59-1333, 59-1355, 59-1392, 67-5220, 67-5221, 67-5224, 67-5226, and 67-5339, Idaho Code.

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

IDAPA 59.01.06.104 - Exclude from current rule the refund on lump sum payments of employee and employer contributions at time of retirement. IDAPA 59.01.06.123 - Correct a typographical error concerning the section. IDAPA 59.01.06.161 - To establish a procedure that the Board will use to determine the post retirement cost of living adjustment for PERSI retirees. IDAPA 59.01.06.552 - To increase the sick leave rate for school districts to maintain the actuarial soundness of the sick leave fund. IDAPA 59.01.06.104; 59.01.06.123; 59.01.06.161 and 59.01.06.552 have been adopted as initially proposed in the Idaho Administrative Bulletin, Volume 96-6, June 5, 1996, pp. 296 through 298, and therefore, have not been republished with this Notice.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Bernadette Buentgen at 208-334-2451, ext. 271.

DATED this 23rd day of September, 1996.

BERNADETTE C. BUENTGEN
Deputy Attorney General for PERSI
607 North Eighth Street
Boise, ID 83702

IDAPA 59
TITLE 01
Chapter 06

RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-6, June 5, 1996, Pages 296 through 298.**

**The rules have been adopted as Final by the Agency and is now pending
review by the 1997 Idaho State Legislature for final adoption.**

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

DOCKET NO. 59-0106-9604

NOTICE OF PENDING RULE

EFFECTIVE DATE: The pending rule becomes final and effective on July 1, 1997 unless the rule is 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 by Sections 59-1301, 59-1305, 59-1351, 59-1392, 67-5220, and 67-5221, Idaho Code.

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

IDAPA 59.01.06.162--Subtracts .01 from the factor for each year the contingent annuitant is more than 15 years younger than the member for Option 1 retirements and subtracts .006 from the factor for Option 2 retirements.

IDAPA 59.01.06.162 has been adopted as initially proposed in the Idaho Administrative Bulletin, Volume 96-7, July 3, 1996, pp. 215 through 223 and, therefore, has not been republished with this Notice.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Bernadette Buentgen at 208-334-2451, ext. 271.

DATED this 23rd day of September, 1996.

BERNADETTE C. BUENTGEN
Deputy Attorney General for PERSI
607 North Eighth Street
Boise, ID 83702

IDAPA 59
TITLE 01
Chapter 06

RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-7, July 3, 1996, pages 215 through 223.**

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

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