

IDAHO ADMINISTRATIVE BULLETIN

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IDAPA 20 - DEPARTMENT OF LANDS
20.06.02 - RULES GOVERNING LICENSING AND CHECKSCALES OF THE
IDAHO BOARD OF SCALING PRACTICES

DOCKET NO. 20-0602-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section 38-1208, Idaho Code.

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

Monday, October 6, 1997, 7:00 p.m. (PDT)
Department of Fish and Game, Panhandle Room
2750 Kathleen Avenue, Coeur d'Alene, Idaho

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 address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

This chapter is being repealed in its entirety and replaced by new rules designed to clarify and simplify the rules. The new chapter is being promulgated under Docket No. 20-0602-9702 immediately following this notice.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ernest Bauer, Head Check Scaler, Idaho Board of Scaling Practices, at (208) 769-1445.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to Henry Gotz, Executive Director, Idaho Board of Scaling Practices, c/o Idaho Department of Lands, 954 W. Jefferson, P.O. Box 83720, Boise, Idaho, 83720-0050; and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997

Henry Gotz
Executive Director
Idaho Board of Scaling Practices
N. 9407 Government Way, Suite #8
P.O. Box 999
Hayden ID 83835-0999
Phone: (208) 769-1445
Fax: (208) 769-1485

THIS RULE IS BEING REPEALED IN ITS ENTIRETY

IDAPA 20.06.02 - DEPARTMENT OF LANDS
20.06.02 - GENERAL RULES, LICENSING, AND CHECKSCALES
OF THE IDAHO BOARD OF SCALING PRACTICES

DOCKET NO. 20-0602-9702

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DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

This rule-making is designed to clarify and simplify the rules by replacing elements of IDAPA 20.06.02, 20.06.03, and 20.06.04.

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

Subsection 820.02 sets the fee for a requested check scale at "two hundred dollars (\$200) for each day, or part of a day, that the check scaler is scaling the logs," in accordance with Section 38-1215, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ernest Bauer, Head Check Scaler, Idaho Board of Scaling Practices, at (208) 769-1445.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to Henry Gotz, Executive Director, Idaho Board of Scaling Practices, c/o Idaho Department of Lands, 954 W. Jefferson, P.O. Box 83720, Boise, Idaho, 83720-0050; and must be delivered on or before October 22, 1997.

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Phone: (208) 769-1445
Fax: (208) 769-1485

TEXT OF DOCKET NO. 20-0602-9702

IDAPA 20
TITLE 06
Chapter 02

20.06.02 - GENERAL RULES, LICENSING, AND CHECK SCALES OF THE
IDAHO BOARD OF SCALING PRACTICES

000. LEGAL AUTHORITY.

In accordance with Section 38-1208, Idaho Code, the Board has the power to adopt and amend rules. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.06.02, "General Rules, Licensing, and Check Scales of the Idaho Board of Scaling Practices," IDAPA 20, Title 06, Chapter 02. ()

02. Scope. These rules constitute the levy of assessment, payment for logging and hauling, licensing standards and renewals, and check scaling operations. ()

002. WRITTEN INTERPRETATIONS.

The Board has no written interpretive statements pertaining to the interpretation of rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

Appeals of check scaling reports to the Board are governed by the provisions of Sections 38-1222 and 67-5201, et seq, Idaho Code, and IDAPA 20.06.01. ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Check Scaling. The comparison of scaling practices between a Board-appointed check scaler and any other scaler. ()

02. Combination Log. Any multiple-segment log involving more than one (1) product classification. ()

03. Decimal "C". A log rule that uses tens of board feet as its basic unit of measure; one (1) decimal "C" equals ten (10) board feet. The standard Scribner Coconino decimal "C" volumes as listed in the Appendix, Table I, IDAPA 20.06.03. ()

04. Gross Scale. The log rule volume of timber products before deductions are made for defects. ()

05. Gross Weight. The actual weight of the products hauled. ()

06. Log Brands. A unique symbol or mark placed on or in forest products for the purpose of identifying ownership. ()

07. Net Scale. The remaining log rule volume of timber products after deductions are made for defects, based on the product classification that is used. ()

08. Official Seal. An official seal of the Idaho Board of Scaling Practices is hereby adopted. The seal shall be round, of a diameter of at least one and one-half inches (1-1/2"), and be so constructed that it may readily be imprinted on paper. The seal appears in the appendix hereto. ()

09. Prize Logs. As described in Section 38-809, Idaho Code. ()

10. Product Classification. Classification as sawlog, pulp log, or cedar products log for purposes of check scaling. ()

11. Purchaser. The principal individual, partnership, or corporation entitled to ownership at the first (1st) determination of scale for forest products harvested in Idaho. Purchaser shall also include the owner of the timber as provided in Section 38-1209(b), Idaho Code. ()

12. Requested Check Scale. A check scale performed pursuant to Section 820 of these rules. ()

13. Relicense Check Scale. A check scale requested and scheduled in advance, by a licensed scaler, for purposes of license renewal. ()

14. Routine Check Scale. A check scale that is not a relicense, temporary permit, or requested check scale. ()

15. Temporary Permit Check Scale. A check scale performed pursuant to provisions of Section 240 of these rules. ()

16. Written Scaling Specifications. A written document provided to the scaler that states the information necessary to scale logs in accordance with a contractual scaling agreement. ()

011. -- 049. (RESERVED).

050. ASSESSMENT.

In accordance with provisions of Section 38-1209, Idaho Code, the Board is authorized and directed to levy an assessment. ()

01. Purchaser. The purchaser, as defined in Subsection 010.11, shall pay the assessment levied by the Board. ()

02. Assessment. The assessment shall be transmitted to the Board on or before the twentieth (20th) day of each month for all timber harvested during the previous month. Forms provided by the Board shall be completed and submitted with the assessment. ()

03. Weight. On forest products harvested and purchased solely on the basis of weight, no levy of assessment is applicable. ()

051. -- 059. (RESERVED).

060. LOG BRANDS.

In accordance with the provisions of Section 38-808, Idaho Code, the Board is responsible for approval and registration of all log brands. ()

01. Applications. All applications for log brands or renewals shall be submitted and approved prior to use. ()

02. Fees. Log brand registration, renewal, and transfer of ownership fees are twenty-five dollars (\$25) for each log brand. ()

061. -- 069. (RESERVED).

070. PRIZE LOGS.

In accordance with provisions of Section 38-809, Idaho Code, the Board is responsible for the disposition of prize logs. ()

071. -- 099. (RESERVED).

100. PAYMENT FOR LOGGING OR HAULING.

Provisions of Section 38-1202(c), Idaho Code, govern payment for logging or hauling. ()

01. Gross Scale Determination. Gross scale shall be determined in accordance with IDAPA 20.06.03, "Measurement Rules for Forest Products of the Idaho Board of Scaling Practices." ()

02. Compliance with Gross Scale Determination. Notwithstanding the mensuration criteria contained in IDAPA 20.06.03, compliance shall be determined to have been met when check scale results on gross scale comparisons are within allowable standards of variation as contained in these rules. ()

101. -- 199. (RESERVED).

200. LICENSES.

01. Application Form. Application for a scaling license shall be made on a form prescribed and furnished by the Board. ()

02. Revocation or Suspension for Incompetency. If check scale results on three (3) occasions in any twelve (12) month period are found unacceptable based on standards of variation established under Section 810, the scaler's license may be revoked or suspended as provided in Section 38-1218, Idaho Code. ()

201. -- 219. (RESERVED).

220. APPRENTICESHIP CERTIFICATE.

01. General. Will be issued at no charge to those individuals with no previous scaling experience who wish to practice scaling techniques in view of becoming a licensed scaler. ()

02. Procedure to Obtain. ()

a. Submit the application form. ()

b. After making application, a candidate will be required to take the written examination. Upon passing the written examination, the Apprenticeship Certificate will then be issued. ()

03. Regulations. The apprentice shall be authorized to scale only under the direct supervision of a licensed scaler. The scale determined by the apprentice will under no circumstances be used as the sole basis for payment. ()

221. -- 239. (RESERVED).

240. TEMPORARY PERMIT.

01. General. Will be issued for a period of time, not to exceed three (3) months, to individuals with previous scaling experience who need to scale for commercial purposes. ()

02. Procedure to Obtain. ()

a. Submit the application form. ()

b. Remit the required twenty-five dollar (\$25) fee. ()

c. Submit a letter from the employer requesting the temporary permit and identifying where the permittee would be scaling. ()

d. Take and pass the written portion of the scaler's examination, and demonstrate practical scaling abilities in the form of an acceptable check scale. ()

03. Regulations. ()

a. Permits shall expire the date of the next practical examination in the area or three (3) months from the date of issuance, whichever comes first. The scale determined by the holder of a temporary permit may be used as a basis for payment. ()

b. Should the holder of a temporary permit fail to appear to take the practical portion of the scaler's examination after being notified in writing of the time and place of said examination, the temporary permit will be canceled. ()

c. Temporary permits will not be issued to applicants or relicensees who have failed the practical examination two (2) or more times until thirty (30) days following the individual's last exam failure. ()

241. -- 259. (RESERVED).

260. SPECIALTY LICENSE.

01. General. Will be issued to handle situations where the applicant would not be required to possess the exacting skills needed to scale sawlogs. ()

02. Procedure to Obtain. ()

a. Submit the application form. ()

b. Remit the required twenty-five dollar (\$25) fee. ()

c. Submit a letter from the employer describing scaling that would justify the issuance of a specialty license. ()

d. Successfully complete the examination as may be devised by the Board. ()

03. Regulations. Specialty license holders are only allowed to scale the products specified on the individual's license. ()

261. -- 279. (RESERVED).

280. STANDARD LICENSE.

01. General. Will be issued to individuals who demonstrate competency in scaling principles and techniques. ()

02. Procedure to Obtain. ()

a. Submit the application form. ()

b. Remit the required twenty-five dollar (\$25) fee. ()

c. Take and pass the examination as described under Section 300. ()

03. Regulations. The holder of a standard license is qualified to scale all species and products. ()

281. -- 299. (RESERVED).

300. STANDARD LICENSE EXAMINATION.

- 01. General. To be taken by all persons applying for the standard license. ()
- 02. Written Examination. ()
 - a. Will be based upon the National Forest Log Scaling Handbook, FSH 2409.11, Amendment No. 6, chapters 10, 20, and 30, and established rules of the Board. ()
 - b. Any score of seventy percent (70%) or better is a passing grade. ()
 - c. The written test must be taken and passed before the practical examination can be attempted. ()
- 03. Practical Examination. ()
 - a. The practical examination for a scaler’s license will consist of scaling a minimum of not less than two hundred (200) logs with a net decimal "C" scale determination for sawlogs of not less than twenty thousand (20,000) board feet, or not less than fifteen thousand (15,000) board feet in the southeast Idaho area. ()
 - b. The logs will first be scaled by three (3) qualified check scalers, except the southeast Idaho area shall be two (2) or more qualified check scalers, and the agreed-upon results will be the basis for grading the examination. ()
 - c. To obtain a passing grade, a scaler must be within allowable limits of variation in the following categories:

CATEGORY		ALLOWABLE VARIATION
Gross volume	For logs in round form	+/- 2.0 percent
	For logs in fractional or slab form	+/- 5.0 percent
Net volume	Check scale percent of defect on logs checked	
	Up to 10	+/- 2.0 percent
	10.1 to 15	+/- 3.0 percent
	15.1 to 20	+/- 0.2 percent
	Over 20	for each percent of defect +/- 5.0 percent
Species identification errors		3.0 percent

()

301. -- 399. (RESERVED).

400. RENEWAL OF STANDARD AND SPECIALTY LICENSES.

- For scalers who hold “Standard” and “Specialty” licenses, the process for renewal will consist of the following. ()
- 01. To Renew a License By the Expiration Date: ()
 - a. Receive an acceptable check scale performed by a Board check scaler. ()
 - b. Pay renewal fee of twenty-five dollars (\$25). ()

02. To Renew a License Within Two (2) Years After the Expiration Date: ()
- a. Request and receive an acceptable check scale performed by a Board check scaler. When the check scale is unacceptable, the individual is required to reapply for the standard license. ()
- b. Pay renewal fee of twenty-five dollars (\$25). ()
03. To Renew a License More Than Two (2) Years After the Expiration Date. An individual is required to reapply for the standard license. ()
04. Option To a Check Scale for Standard License Renewal. A practical examination successfully completed may be used in-lieu-of a check scale for renewal. ()
05. Option To a Check Scale for Specialty License Renewal. An examination as may be devised by the Board may be used in-lieu-of a check scale for renewal of specialty licenses. ()

401. -- 799. (RESERVED).

800. CHECK SCALING PROCEDURES.

01. Valid Check Scale. ()
- a. Check scaling shall require a minimum of fifty (50) logs containing a decimal "C" gross scale of at least ten thousand (10,000) board feet. When other methods of measurement are used, the check scaler will investigate the situation and determine the most logical method of check scaling. ()
- b. Check scaling will be performed without scaler's knowledge, when possible. ()
- c. Check scales shall be performed only on logs that are in the same position as presented to the scaler. ()
- d. Check scales shall not be performed if the logs are not spread adequately enough, in the check scaler's discretion, to allow for accurate scaling. If these conditions arise, the check scaler shall make a written report describing the conditions and surrounding circumstances. The Board shall make a decision as to the disposition of these conditions and direct the check scaler accordingly. ()
- e. The check scaler shall use the written scaling specifications that have been provided to the scaler. In the absence or omission of written scaling specifications, logs shall be check scaled according to IDAPA 20.06.03, "Measurement Rules for Forest Products of the Idaho Board of Scaling Practices." ()
02. Cooperative Scaling. Cooperative scaling involves two (2) scalers, using different scaling specifications, working together to determine the log scale volume. In these instances, each scaler shall be individually responsible for the scale recorded. ()
03. Team Scaling. Team scaling is two (2) scalers, using the same scaling specifications, working together to determine the log scale volume. In these instances, both scalers shall be responsible for the scale recorded, except that if one (1) of the individuals is an apprentice scaler, the licensed scaler shall be responsible for the scale recorded. ()
04. Holding Check Scale Log Loads. All log loads involved in an unacceptable check scale will be held at the point of the check scale until such time as the logs have been reviewed with the scaler, or for a period up to forty- eight (48) hours. ()
- a. During this period the load(s) shall not be moved or tampered with in any way. ()
- b. The Board's check scaler shall affix a tag to all loads which must be held, and notify the scaler and landing supervisors respectively. ()

801. -- 809. (RESERVED).

810. CHECK SCALING STANDARDS OF VARIATION.

01. Allowable Limits of Variation. To determine a check scale as acceptable or unacceptable for Board consideration, and when the method of measurement is the Coconino Scribner decimal C log rule, a scaler must be within allowable limits of variation in the following categories:

CATEGORY		ALLOWABLE VARIATION	
Gross Volume			
For logs in round form		+/- 2.0 percent	
For logs in fractional or slab form		+/- 5.0 percent	
Net Volume	Sawlogs	Check scale percent of defect on logs checked	
		Up to 10	+/- 2.0 percent
		10.1 to 15	+/- 3.0 percent
		15.1 to 20	+/- 0.2 percent
		for each percent of defect	
		+/- 5.0 percent	
	Pulp Logs	+/- 5.0 percent	
	Cedar Product Logs	+/- 8.0 percent	
Species Identification Errors		3.0 percent	
Product Classification Errors		3.0 percent	

()

02. Combination Logs. For purposes of determining product classification errors, combination logs shall be counted as one-half (1/2), one-third (1/3), one-fourth (1/4) -- depending on the number of scaling segments - - to arrive at a piece or log count variation. Combination logs shall be considered only when provided for in a contractual scaling agreement or written scaling specifications.

()

03. Check Scales Involving Multiple Variations. Some check scales will involve more than one (1) parameter of variation. The overall allowable limit of variation to determine acceptability or unacceptability of the total gross or net scales shall be determined by the following formula:

OAV	=	$\frac{(a \times D) + (b \times E) + (c \times F)}{(D + E + F)}$
OAV	=	overall allowable percentage variation
a	=	allowable percentage variation for gross/net sawlog scale
b	=	allowable percentage variation for gross/net pulp log scale
c	=	allowable percentage variation for gross/net cedar products scale
D	=	check scaler's gross/net sawlog scale
E	=	check scaler's gross/net pulp log scale
F	=	check scaler's gross/net cedar products log scale

()

811. -- 819. (RESERVED).

820. REQUESTED CHECK SCALE.

A check scale may be performed upon request of any individual, company, or corporation. ()

01. Submission of Request. ()

a. The request must be in writing and approved by the executive director. ()

b. The request must be made by a party directly affected and involve disputes on scaling. ()

02. Cost of a Requested Check Scale. The fee is two hundred dollars (\$200) for each day, or part of a day, that the check scaler is scaling the logs. ()

821. -- 829. (RESERVED).

830. CHECK SCALE REPORT.

01. Check Scale Results. The check scaler shall make a report of his findings to the Board. ()

02. Persons Entitled to a Copy of the Check Scale Report. ()

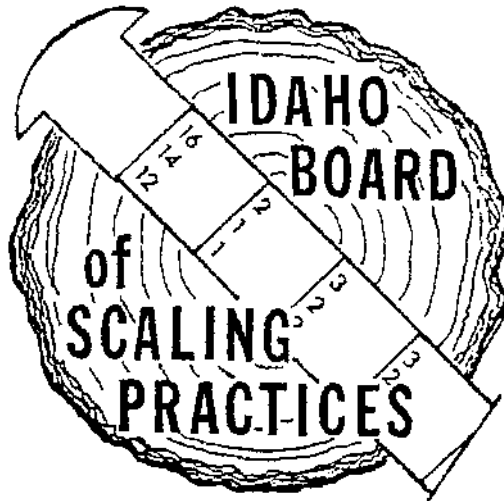
a. Persons directly affected and entitled to a copy of the check scale report on temporary permits and relicensure check scales are the scaler and the scaler's employer(s). ()

b. Persons directly affected and entitled to a copy of the check scale report on routine and requested check scales include the scaler, the scaler's employer(s), the scaler's supervisor(s), the logging contractor(s), or other persons directly affected by the check scale report as determined by the executive director of the Idaho Board of Scaling Practices. ()

831. -- 999. (RESERVED).

APPENDIX

I. Official Seal.



IDAPA 20 - DEPARTMENT OF LANDS
20.06.03 - SCALING SPECIFICATIONS AND CHECKSCALING STANDARDS
OF THE STATE BOARD OF SCALING PRACTICES

DOCKET NO. 20-0603-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section 38-1208, Idaho Code.

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

Monday, October 6, 1997, 7:00 p.m. (PDT)
Department of Fish and Game, Panhandle Room
2750 Kathleen Avenue, Coeur d'Alene, Idaho

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 address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

This chapter is being repealed in its entirety and replaced by new rules designed to clarify and simplify the rules. The new chapter is being promulgated under Docket No. 20-0603-9702 immediately following this notice.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ernest Bauer, Head Check Scaler, Idaho Board of Scaling Practices, at (208) 769-1445.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to Henry Gotz, Executive Director, Idaho Board of Scaling Practices, c/o Idaho Department of Lands, 954 W. Jefferson, P.O. Box 83720, Boise, Idaho, 83720-0050; and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997

Henry Gotz
Executive Director
Idaho Board of Scaling Practices
N. 9407 Government Way, Suite #8
P.O. Box 999
Hayden ID 83835-0999
Phone: (208) 769-1445
Fax: (208) 769-1485

THIS RULE IS BEING REPEALED IN ITS ENTIRETY

IDAPA 20 - DEPARTMENT OF LANDS
20.06.03 - MEASUREMENT RULES FOR FOREST PRODUCTS
OF THE IDAHO BOARD OF SCALING PRACTICES

DOCKET NO. 20-0603-9702

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section 38-1208, Idaho Code.

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

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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 address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

This rule-making is designed to clarify and simplify the rules by replacing elements if IDAPA's 20.06.02, 20.06.03, and 20.06.04.

FEE SUMMARY: There were no changes between the proposed repeal of IDAPA 20.06.03 and this proposed replacement of IDAPA 20.06.03.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ernest Bauer, Head Check Scaler, Idaho Board of Scaling Practices, at (208) 769-1445.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to Henry Gotz, Executive Director, Idaho Board of Scaling Practices, c/o Idaho Department of Lands, 954 W. Jefferson, P.O. Box 83720, Boise, Idaho, 83720-0050; and must be delivered on or before October 22, 1997.

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Phone: (208) 769-1445
Fax: (208) 769-1485

TEXT OF DOCKET NO. 20-0603-9702

IDAPA 20
TITLE 06
Chapter 03

20.06.03 - MEASUREMENT RULES FOR FOREST PRODUCTS OF THE
IDAHO BOARD OF SCALING PRACTICES

000. LEGAL AUTHORITY.

In accordance with Section 38-1208, Idaho Code, the Board has the power to adopt and amend rules. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.06.03, "Measurement Rules for Forest Products of the Idaho Board of Scaling Practices," IDAPA 20, Title 06, Chapter 03. ()

02. Scope. These rules constitute the measurement criteria for scaling within the state of Idaho. ()

002. WRITTEN INTERPRETATIONS.

The Board has no written interpretive statements pertaining to the interpretation of rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

There is no provision for administrative appeals before the Idaho Board of Scaling Practices under this chapter. ()

004 -- 009. (RESERVED).

010. DEFINITIONS.

01. Cubic Volume. A log rule that uses cubic feet as its basic unit of measure. As described in the National Forest Cubic Scaling Handbook, FSH 2409.11a, Amendment No. 2409.11a-91-1. ()

02. Decimal "C". A log rule that uses tens of board feet as its basic unit of measure; one (1) decimal "C" equals ten (10) board feet. The standard Scribner Coconino decimal "C" volumes as listed in the Appendix, Table I. ()

03. Gross Scale. The log rule volume of timber products before deductions are made for defects. ()

04. Gross Weight. Gross weight means the actual weight of the products hauled. ()

05. National Forest Log Scaling Handbook. The National Forest Log Scaling Handbook, FSH 2409.11, Amendment No. 6. Regional supplements to the National Forest Log Scaling Handbook, unless specifically adopted by the Board, are only applicable to the United States Forest Service. ()

06. Net Scale. The remaining log rule volume of timber products after deductions are made for defects, based on the product classification rules that are used. ()

011. -- 049. (RESERVED).

050. SCALER REQUIREMENTS.

01. Written Scaling Specifications. ()

a. At all scaling sites, all licensed scalers shall have immediately available a written document that states the information necessary to scale logs in accordance with a contractual scaling agreement. ()

b. Where written scaling specifications omit items of specific information necessary to scale logs, scalers shall use the appropriate criteria contained in these rules. ()

02. Gross Scale Determination. All licensed scalers shall determine a gross scale volume in accordance with these rules. ()

03. Net Scale Determination. All licensed scalers shall determine a net scale volume in accordance with these rules in the absence of written scaling specifications to the contrary. ()

04. Recording Measurements on Scale Tickets. For each log scaled, all scalers shall record a combination of data from which both gross and net volume can be derived. This data shall include scaling length and scaling diameter(s). ()

05. Load Identification. Scalers shall ensure that all loads are readily identified upon completion of scaling. ()

051. -- 099. (RESERVED).

100. UNITS OF MEASURE.

01. Gross Weight. ()

02. Decimal "C". ()

03. Cubic Volume. ()

04. Other Gross Volume Measurements. Other gross volume measurements converted to decimal "C" or cubic volume in accordance with Section 280. ()

05. Standards For Poles. Manufacturing and grading specifications based on standards for poles as established by the American National Standards Institute, Inc. ()

101. -- 199. (RESERVED).

200. GROSS DECIMAL "C" SCALE DETERMINATION FOR LOGS IN ROUND FORM.

01. Volumes. The gross scale shall be determined by measuring and applying the scaling length and scaling diameter, in accordance with the decimal "C" volume table, as listed in the Appendix, Table I, of these rules. ()

02. Scaling Length. The scaling length shall be determined by the length of the scaling cylinder as explained in the National Forest Log Scaling Handbook. Refer to the Appendix, Table III, of these rules for scaling length determination. ()

03. Scaling Diameters. The scaling diameter shall be determined by the methods outlined in the National Forest Log Scaling Handbook and the following provisions: ()

a. Scaling diameters are measured from a minimum top diameter of five and fifty-one hundredths inches (5.51") actual measure -- the six-inch (6") class. ()

b. Topwood that is smaller than the minimum top diameter of five and fifty-one hundredths inches (5.51") actual measure shall be disregarded, except when a written agreement specifies a smaller minimum top diameter. ()

c. Midpoint diameters on second-cut, multi-segment logs are determined on the basis of calculated taper. ()

d. Midpoint diameters on butt-cut, multi-segment logs shall be determined by the methods stated in the Appendix, Table II of these rules. ()

201 -- 219. (RESERVED).

220. GROSS DECIMAL "C" SCALE DETERMINATION FOR LOGS IN FRACTIONAL OR SLAB FORM.

01. Definitions. ()

a. Fractional form. Fractional form means portions of logs greater than or equal to one-half (1/2) original diameter with a merchantable slab missing. For cedar species logs, the minimum top diameter is fifteen (15) inches as measured using the Coconino-type scalestick. For all other species of logs, the minimum top diameter is twenty-one (21) inches as measured using the Coconino-type scalestick. ()

b. Slab form. Slab form means portions of logs less than one-half (1/2) original diameter. For cedar species logs, a minimum merchantable slab is four (4) inches shell thickness by five (5) inches width as measured using a Coconino-type scalestick. For all other species of logs, a minimum merchantable slab is six (6) inches height by six (6) inches width as measured using a Coconino-type scalestick. ()

02. Volumes. Gross scale volumes shall be determined in accordance with the decimal "C" volume table, Appendix, Table I, and in accordance with the measurement criteria hereinafter described. ()

03. Scaling Length. Scaling length determination shall be the same as used for logs in round form. ()

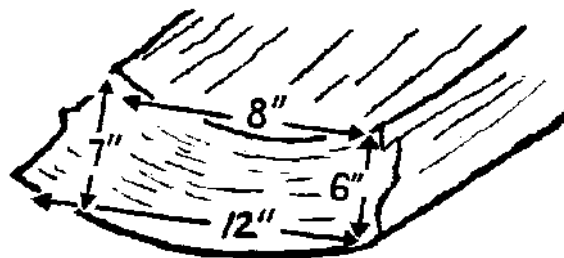
04. Scaling Diameters. ()

a. Fractional form. Diameter determination shall be the same as used for logs in round form. ()

b. Slab form. Mentally "square-up" the sound wood within the slab; figure an approximate square or rectangle that can be shaped on the small end of the slab.

For illustration only:

DIAGRAM I



- the average width is ten inches (10")
- the average shell thickness is six inches (6")
- this approximates a rectangle of six inches (6") by ten inches (10")

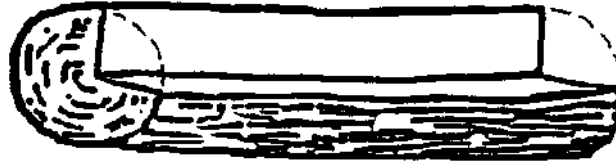
()

05. Volume Determination. ()

a. Fractional form logs shall be gross scaled according to the portion that exists.

For illustration only:

DIAGRAM II



- sixteen feet (16') scaling length
- twenty-inch (20") scaling diameter

If this were an entire log intact with no slab missing, it would gross scale twenty-eight (28) decimal "C". However, since one-fourth (1/4) of the log is missing, the gross scale would be one-fourth (1/4) less or twenty-one (21) decimal "C". This is determined by figuring:

$$1/4 \times 16' = 4'$$

$$16' - 4' = 12'$$

The volume for twelve feet (12') with a twenty-inch (20") scaling diameter is twenty-one (21) decimal "C". Estimates for the merchantable slab missing are the same as those used for pie-cut deductions -- one-sixteenth (1/16), one-eighth (1/8), one-sixth (1/6), one-fourth (1/4), one-third (1/3). ()

b. Slab form logs use the following formula to determine volume:

$W \times H \times (L/16) =$ volume in board feet -- round this to the nearest ten (10) board feet to arrive at Scribner decimal "C" volume; five (5) board feet or more rounds up.

W	=	the width of the slab in inches as measured using a Coconino-type scalestick
H	=	the shell thickness of the slab in inches as measured using a Coconino-type scalestick
L	=	the scaling length of the slab in feet

If we use the "DIAGRAM I" illustration: $10 \times 6 \times 16/16 = 60$

This slab would gross scale sixty (60) board feet or six (6) decimal "C". ()

221. -- 279. (RESERVED).

280. CONVERSION FACTORS FOR OTHER GROSS VOLUME MEASUREMENTS.

01. Conversion to Gross Decimal "C" or Gross Cubic Volume. All gross volume measurement determined in a manner other than decimal "C" or cubic volume shall be converted to an equivalent decimal "C" or cubic volume gross scale. ()

02. Conversion Factors. Standard converting factors as listed in the Appendix, Table XV, of the National Forest Log Scaling Handbook shall be considered acceptable (see Appendix, Table IV, of these rules). ()

03. Other Conversion Factors. Conversion factors not listed in the National Forest Log Scaling Handbook shall be considered and determined by the Board of Scaling Practices upon written request. ()

04. Truckload Volume Formula. The cordwood, or cube, formula for measuring truckload volumes:

$$(L \times W \times H) \div 0.256 = \text{Volume in board feet}$$

Length (L), width (W), and height (H) are measured and expressed to the nearest one-tenth (1/10) of a foot. ()

281. -- 299. (RESERVED).

300. PRODUCT CLASSIFICATION FOR NET SCALE.

01. Definition. Identification and usage of a general class of scaling applications to reflect the net scale of a log segment. A combination log is any multiple-segment log involving more than one (1) product classification. ()

02. Product Class Identification. The general classes are identified by their common applications in recognition of scaling defects and associated defect deduction methods. ()

a. Sawlogs. ()

b. Pulp logs. ()

c. Cedar products logs. ()

03. Product Class Usage. ()

a. Written scaling specifications dictate the product classification for scaling. ()

b. In the absence of written scaling specifications, all logs shall be scaled for sawlog product classification. ()

301. -- 319. (RESERVED).

320. NET DECIMAL "C" SCALE DETERMINATION FOR SAWLOGS.

01. Definition. Sawlogs are those logs which are suitable for the manufacture of lumber, beams, or veneer. Classification as "sawlog" requires a log segment(s) to meet minimum merchantability specifications. ()

02. Species Identification. Species differentiation for check scaling purposes shall be made according to normal commercial species. Written scaling specifications may establish further species differentiation or identification. For illustration only:

WP	Western or Idaho White Pine (<i>Pinus monticola</i>)
PP	Ponderosa Pine (<i>Pinus ponderosa</i>)
LP	Lodgepole Pine (<i>Pinus contorta</i>)
WB	Whitebark Pine or Limber Pine (<i>Pinus albicaulis</i> , <i>Pinus flexilis</i>)
DF	Douglas Fir or Red Fir (<i>Pseudotsuga menziesii</i>)
L	Western Larch or Tamarack (<i>Larix occidentalis</i>)
GF	Grand Fir or White Fir (<i>Abies grandis</i> , <i>Abies concolor</i>)
AF	Subalpine Fir (<i>Abies lasiocarpa</i>)
H	Western Hemlock (<i>Tsuga heterophylla</i>)

MH	Mountain Hemlock (<i>Tsuga mertensiana</i>)
S	Engelmann Spruce (<i>Picea engelmanni</i>)
C	Western Redcedar (<i>Thuja plicata</i>)
CW	Black Cottonwood (<i>Populus trichocarpa</i>)
O	All other tree or shrub species shall be classified as "other"

()

03. Defect Deductions. ()

a. The net scale of a sawlog is the usable scale volume, after deductions have been made for scaling defects; it is subject to minimum merchantability specifications. ()

b. Types of defects and methods of deduction for sawlogs shall be made according to the National Forest Log Scaling Handbook and as described in these rules. ()

c. Rot defects require thorough inspection of a log to determine the extent of loss. This includes deciding if rot is in initial or advanced stages, recognition of external indicators to judge extent of decay, and knowledge of rot characteristics in specific stands of timber. ()

d. When nothing is evident to determine the overall extent of decay to the contrary, for "Fomes rot" and "Indian Paint rot", the following shall be used as guidelines: ()

i. Except in White Pine species, from the "punk" or indicator of decay, rot shall be estimated to extend four feet (4') up the log and six feet (6') down the log and affect the entire heartwood. ()

ii. In White Pine species, from the "punk" or indicator of decay, rot shall be estimated to extend two feet (2') up the log and four feet (4') down the log and affect one-half (1/2) of the scaling cylinder. ()

04. Net Scale Specifications. ()

a. Minimum merchantability of net scale in relation to gross scale shall be thirty-three and one-third percent (33-1/3%). ()

b. Minimum diameter shall be five and fifty-one hundredths inches (5.51") actual measure -- the six-inch (6") class -- and also applies as the minimum sound core recovery within a defect. ()

c. Minimum log length shall be eight feet (8') and one inch (1"). ()

d. Scaling length usage shall be the same as used for gross scaling length (see Appendix, Table III). ()

e. Minimum lumber length recovery shall be six feet (6') and a one-inch (1") by four-inch (4") board, nominal measurement. ()

f. On multi-segment logs, each segment shall be judged individually in order to determine if it meets merchantability minimums. ()

g. There are no "combination logs" on multi-segment pieces. ()

05. Net Scale Contractual Agreement. Contractual scaling agreements relating to determination of net scale may establish scaling requirements that vary from Section 320 of these rules. ()

321. -- 329. (RESERVED).

330. NET DECIMAL "C" SCALE DETERMINATION FOR PULP LOGS.

01. Definition. Pulp logs are logs, or log segments, that are suitable for the manufacture of "wood chips."
()

02. Species Identification. Normally, no species differentiation shall be made for pulp logs; classification shall be "pulp." A contractual scaling agreement may provide otherwise, including limitations as to species acceptable or the differentiation of species. ()

03. Defect Deductions. The net scale of a pulp log shall be determined by deducting defects which reduce the pulp log volume, subject to minimum merchantability. Deduction procedures and deductible defects are as follows:
()

a. Diameter cut. Use a diameter reduction for rotten sapwood extending around or part-way around the circumference of the log. The deduction procedure is the same as in sawlogs. Only wood that has deteriorated to a degree severe enough to reduce chip volume shall be deductible. ()

b. Pie-cut. Use this method when the pulp defect can be confined to a sector of a circle for the length affected. It applies to V-shaped rot pockets sometimes found in conjunction with sap rot or surface scars. The deduction procedure is the same as in sawlogs. ()

c. Interior defects. Usually caused by various fungi which have decayed the wood to the point where it becomes unsuitable for pulp manufacture, soft rot is probably the most common and extensive type of defect in pulp logs. Not all stages of decay cause loss of volume. The usual field test to determine usability shall be to chop into the defect with a sharp ax, removing a "chip" of wood. If the "chip" holds together it is usable; if the "chip" crumbles or falls apart it is not usable. After determining that a defect is deductible, the deduction procedure shall be to take out "a log within a log" for the length affected. This is accomplished by measuring the size of the defect to approximate an equivalent "log" diameter and deducting the "log" volume, or percentage of this volume if there is some pulp recovery within the defect measured, for the length affected. ()

04. Net Scale Specifications. ()

a. Minimum merchantability of net scale in relation to gross scale shall be fifty percent (50%). ()

b. Minimum diameter shall be five and fifty-one hundredths inches (5.51") actual measure -- the six-inch (6") class. ()

c. Minimum log length shall be eight feet (8') and one inch (1"). ()

d. Scaling length usage shall be the same as used for gross scaling length (see Appendix, Table III). ()

e. A log segment must be mechanically debarkable. ()

f. A log segment must be free of char. ()

g. On multi-segment logs, each segment shall be judged individually in order to determine if it meets merchantability minimums. ()

h. There are no "combination logs" on multi-segment pieces. ()

05. Net Scale Contractual Agreement. Contractual scaling agreements relating to determination of net scale may establish scaling requirements that vary from Section 330 of these rules. ()

331. -- 339. (RESERVED).

340. NET DECIMAL "C" SCALE DETERMINATION FOR CEDAR PRODUCTS LOGS.

01. Definition. Cedar products are usually derived from logs that do not meet minimum merchantability specifications for sawlogs classification. ()

02. Defect Deductions. ()

a. The Scribner decimal "C" method of determining volume for cedar products shall be to measure the scaling diameter and scaling length to compute a gross volume, subtract the deductible defect, and arrive at a net volume. The concept of a "scaling cylinder" is modified when scaling cedar products logs. Taper is not actually considered, but recognized, because shell thickness reflects volume. ()

b. Deductible defects in the scaling of cedar products are those defects which reduce the usable quantity of cedar products that can be derived. They do not include such things as heart checks and straight splits. For cedar products scaling there are four (4) types of defect deduction methods. ()

c. Interior defect deduction method. ()

i. The deduction procedure for interior rot is to deduct a round cylinder with dimensions equal to the average rot diameter on the small end of each segment. When the averaged diameter falls on the half-inch (1/2"), it is rounded up. The resulting diameter is used to find the corresponding "log volume" from the scale rule. This volume is the defect deduction. ()

ii. On multi-segment, second-cut logs the midpoint diameter of the rot is determined by averaging the sizes of the rots showing on the ends of the log. When this average falls on the half-inch (1/2") it is rounded up. ()

iii. On multi-segment, butt-cut logs the rot is first measured on the top end. The mid-point diameter of the rot is then increased according to the taper of the log, unless there are definite indications to the contrary. ()

iv. If sound wood exists within any interior defect, as is sometimes the case with "ring rot," it must have a diameter of at least ten (10) inches, Scribner class measure, on the small end. Careful examination of the log must be made to ensure that there is indeed recoverable sound material. ()

d. Diameter reduction method. ()

i. Defects such as sap rot, large massed wormholes, and shallow catfaces affect only the outer circumference of a cedar products log. The diameter reduction method is used to determine defect volume. ()

ii. The procedure is to reduce the diameter to obtain a "new" diameter for the resulting sound core. The difference of these corresponding volumes is the defect deduction. If only a portion of the circumference is affected the defect is a fraction of the volume difference. ()

e. Length-cut method. ()

i. Defects such as crook and sweep, fluted butts, abrupt flare, twisted grain, and some types of "thin shells" usually can be confined or reduced to an equivalent loss of length. The length-cut method is used to determine defect volume. ()

ii. The procedure is to determine the length affected and make a length-cut deduction that provides a net scale length which is in a multiple of two-feet (2'). ()

f. Pie-cut method. ()

i. Defects such as large knots, burls, deep catfaces, scars, twisted grain, and portions of "thin shells"

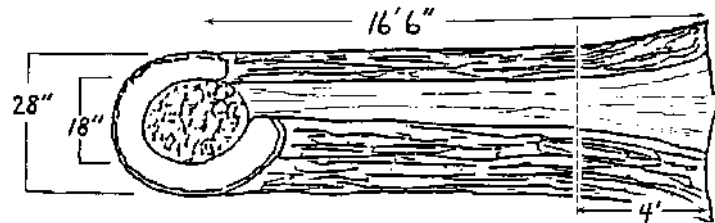
can be deducted using the pie-cut method. ()

ii. Based on the fraction of the length affected, the procedure shall be to compute the volume of the length affected, then reduce by the affected fraction. All defect computations ending in five (5) board feet are rounded up for a deduction of ten (10) board feet or one (1) decimal "C." ()

03. Sequence of Defect Deduction Methods. One (1) or more of these defect deduction methods may be applied to any particular log, provided that the order of application shall be: (1) length-cut method, (2) interior defect deduction method, (3) diameter reduction method, (4) pie-cut method.

For illustration only:

DIAGRAM III



()

a. This is a cedar product log with a sixteen-foot (16') scaling length and a twenty-eight inch (28") scaling diameter. The defects are:

- a flared "thin shell" estimated to affect the butt end for a length of four feet (4'),
 - interior rot measuring eighteen inches (18") on the small end,
 - sap rot affecting the collar to a one-inch (1") depth,
 - a catface affecting one-fourth (1/4) of the shell.
- ()

b. After determining that the shell thickness meets merchantability requirements -- four inches (4") of sound shell wood thickness in this example -- the next step is the determination of gross scale:

- twenty-eight inches (28") on sixteen feet (16') = fifty-eight (58) decimal "C."

The next step is defect deductions, in the order of application. ()

c. Length-cut method. The butt end of this log requires a four-foot (4') length cut; sixteen feet (16') minus four feet (4') equals twelve feet (12'); the difference between the volumes of a sixteen-foot (16') log and a twelve-foot (12') log is fourteen (14) decimal "C."

$$\begin{array}{r}
 58 \text{ (total gross scale)} \\
 -14 \text{ (length-cut defect)} \\
 \hline
 44
 \end{array}$$

()

d. Interior defect deduction method. This log has eighteen inches (18") of rot which will be deducted for a twelve-foot (12') length, since four feet (4') has already been deducted; eighteen inches (18") on twelve feet (12') equals sixteen (16) decimal "C."

$$\begin{array}{r}
 44 \text{ (total scale remaining after step \#1)} \\
 -16 \text{ (interior defect deduction)} \\
 \hline
 28
 \end{array}$$

()

e. Diameter reduction method. This log has rotten sapwood affecting the collar to a one-inch (1") depth which requires a two-inch (2") diameter drop; the difference between the gross scale, twenty-eight inches (28")

for twelve feet (12'), and the core scale twenty-six inches (26") for twelve feet (12') is seven (7) decimal "C."

28 (total scale remaining after step #2)
- 7 (diameter reduction defect)
21 ()

f. Pie-cut method. The catface causes a loss of one-fourth (1/4) of the remaining volume (the shell thickness); one-fourth (1/4) of twenty-one (21) equals five (5) decimal "C."

21 (total scale remaining after step #3)
- 5 (pie-cut defect)
16 ()

g. This cedar products log has a gross scale of fifty-eight (58) decimal "C", a net scale of sixteen (16) decimal "C", and a defect of forty-two (42) decimal "C." ()

04. Net Scale Specifications. ()

a. Minimum merchantability of net scale in relation to gross scale shall be ten percent (10%). ()

b. Minimum diameter shall be eight and zero-tenths inches (8.0") actual measure. ()

c. Minimum log length shall be eight feet (8') and one inch (1"). ()

d. Scaling length usage shall be the same as used for gross scaling length (See Appendix, Table III). ()

e. Minimum product recovery shall be six feet (6') long and a four inches (4") by five inches (5") product, Scribner class measurement. ()

f. Minimum shell thickness shall be four and zero-tenths inches (4.0") actual measure. ()

g. Minimum slab size is four and zero-tenths inches (4.0") shell thickness by four and fifty-one hundredths inches (4.51") width, actual measure. ()

h. On multi-segment logs, each segment shall be judged individually in order to determine if it meets merchantability minimums. ()

i. There are no "combination logs" on multi-segment pieces. ()

05. Net Scale Contractual Agreement. Contractual scaling agreements relating to determination of net scale may establish scaling requirements that vary from Section 340 of these rules. ()

06. Cord Measurement and Piece Count. Cord measurement may be used on material shorter than eight feet (8') and one inch (1") in length; a piece count measure may be used on posts, rails, and shake bolts. ()

341. -- 999. (RESERVED).

APPENDIX

- Table I -- Volume Table**
- Table II -- Midpoint Taper on Multi-Segment Butt Logs**
- Table III -- Log Length Table**
- Table IV -- Standard Converting Factors**

TABLE I																	
Volume Table																	
Log Length (in feet)																	
Diameter (in inches)	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
3										1	1	1	1	1	1	1	1
4					1	1	1	1	1	1	1	1	1	1	1	1	1
5		1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2
6		1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2
7	1	1	1	1	1	1	1	2	2	2	2	2	3	3	3	3	3
8	1	1	1	1	1	1	2	2	2	2	2	2	3	3	3	3	3
9	1	1	1	2	2	2	3	3	3	3	3	3	4	4	4	4	4
10	1	1	2	2	3	3	3	3	3	4	4	5	6	6	6	6	7
11	1	2	2	2	3	3	4	4	4	5	5	6	7	7	8	8	8
12	2	2	3	3	4	4	5	5	6	6	7	7	8	8	9	10	10
13	2	3	4	4	5	5	6	7	7	8	8	9	10	10	11	12	12
14	3	4	4	5	6	6	7	8	9	9	10	11	11	12	13	14	14
15	4	4	5	6	7	8	9	10	11	12	12	13	14	15	16	17	18
16	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
17	5	6	7	8	9	10	12	13	14	15	16	17	18	20	21	22	23
18	5	7	8	9	11	12	13	15	16	17	19	20	21	23	24	26	27
19	6	8	9	10	12	13	15	16	18	19	21	22	24	25	27	28	30
20	7	9	11	12	14	16	17	19	21	23	24	26	28	30	31	33	35
21	8	10	12	13	15	17	19	21	23	25	27	28	30	32	34	36	38
22	8	10	13	15	17	19	21	23	25	27	29	31	33	35	38	40	42
23	9	12	14	16	19	21	23	26	28	31	33	35	38	40	42	44	47
24	10	13	15	18	21	23	25	28	30	33	35	38	40	43	45	48	50
25	11	14	17	20	23	26	29	31	34	37	40	43	46	49	52	54	57
26	12	16	19	22	25	28	31	34	37	41	44	47	50	53	56	59	62
27	14	17	21	24	27	31	34	38	41	44	48	51	55	58	62	65	68
28	15	18	22	25	29	33	36	40	44	47	51	54	58	62	65	69	73
29	15	19	23	27	31	35	38	42	46	49	53	57	61	65	68	72	76
30	16	21	25	29	33	37	41	45	49	53	57	62	66	70	74	78	82
31	18	22	27	31	36	40	44	49	53	58	62	67	71	75	80	84	89
32	18	23	28	32	37	41	46	51	55	60	64	69	74	78	83	88	92
33	20	24	29	34	39	44	49	54	59	64	69	73	78	83	88	93	98
34	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
35	22	27	33	38	44	49	55	60	66	71	77	82	88	93	98	104	109

TABLE I																	
Volume Table																	
Log Length (in feet)																	
Diameter (in inches)	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
36	23	29	35	40	46	52	58	63	69	75	81	86	92	98	104	110	115
37	26	32	39	45	51	58	64	71	77	84	90	96	103	109	116	122	129
38	27	33	40	47	54	60	67	73	80	87	93	100	107	113	120	126	133
39	28	35	42	49	56	63	70	77	84	91	98	105	112	119	126	133	140
40	30	38	45	53	60	68	75	83	90	98	105	113	120	128	135	142	150
41	32	39	48	56	64	72	79	87	95	103	111	119	127	135	143	151	159
42	33	42	50	59	67	76	84	92	101	109	117	126	134	143	151	160	168
43	35	43	52	61	70	79	87	96	105	113	122	131	140	148	157	166	174
44	37	46	56	65	74	83	93	102	111	120	129	139	148	157	166	176	185
45	38	47	57	66	76	85	95	104	114	123	133	143	152	161	171	180	190
46	39	49	59	69	79	89	99	109	119	129	139	149	159	169	178	188	198
47	41	52	62	72	83	93	104	114	124	134	145	155	166	176	186	196	207
48	43	54	65	76	86	97	108	119	130	140	151	162	173	184	194	205	216
49	45	56	67	79	90	101	112	124	135	146	157	168	180	191	202	214	225
50	47	58	70	82	94	105	117	129	140	152	164	175	187	199	211	222	234
51	48	61	73	85	97	110	122	134	146	158	170	183	195	207	219	231	243
52	50	63	76	89	101	114	127	139	152	165	177	190	202	215	228	240	253
53	52	66	79	92	105	118	132	145	158	171	184	197	210	224	237	250	263
54	54	68	82	96	109	123	137	150	164	177	191	205	218	232	246	260	273
55	56	71	85	99	113	127	142	156	170	184	198	212	227	241	255	269	283
56	59	73	88	103	118	132	147	162	176	191	206	220	235	250	264	279	294
57	61	76	91	107	122	137	152	167	183	198	213	228	244	259	274	289	304
58	63	79	95	110	126	142	158	174	189	205	221	237	252	268	284	300	315
59	65	81	98	114	131	147	163	180	196	212	229	245	261	278	294	310	327
60	67	84	101	118	135	152	169	186	203	220	237	253	270	287	304	321	338
61	70	87	105	123	140	158	175	193	210	228	245	263	280	298	315	332	350
62	72	90	108	127	145	163	181	199	217	235	253	271	289	307	325	344	362
63	74	93	112	131	149	168	187	205	224	243	261	280	299	317	336	354	373
64	77	96	116	135	154	174	193	213	232	251	270	290	309	329	348	368	387
65	79	99	119	139	159	179	199	219	239	259	279	299	319	339	358	378	398
66	82	103	123	144	164	185	206	226	247	268	288	309	329	350	370	391	412
67	85	106	127	148	170	191	212	233	254	275	297	318	339	360	381	402	423
68	87	109	131	153	175	197	219	240	262	284	306	328	350	371	393	415	437
69	90	113	135	158	180	203	226	248	271	294	316	339	361	384	406	429	452
70	93	116	139	163	186	209	232	256	279	302	325	349	372	395	419	442	465
71	96	120	144	167	192	215	240	263	287	311	335	359	383	407	430	454	478
72	98	123	148	173	197	222	247	271	296	321	345	370	395	419	444	468	493
73	101	127	152	178	203	229	254	280	305	330	356	381	406	432	457	482	508
74	104	130	157	183	209	236	261	288	314	340	366	393	418	445	471	497	523
75	107	134	161	188	215	242	269	296	323	350	377	404	430	458	484	511	538

TABLE II -- Midpoint Taper on Multi-Segment Butt Logs		
1. North Idaho Area (north of the Salmon River, and including the northeastern Washington area bounded by the Snake River on the south, to the Columbia River, north to the Okanogan River, north to Canada) --- midpoint taper shall be a standard taper as follows:		
Larch & Lodgepole Pine	21' - 48'	Shall be 1-inch per segment.
Larch & Lodgepole Pine	49' - 60'	Shall be 2-inch top segment, 1-inch remaining segment.
Cedar	21' - 40'	Shall be 2-inches per segment.
All Other Species	21' - 40'	Allow 1-inch taper on pieces with an odd top diameter; allow 2-inch taper on pieces with an even top diameter (Odd-Even Rule).
All Species (except Larch & Lodgepole Pine)	41' - 60'	Take two measurements, small end and 16' up from the butt. The diameter at the 16' measurement point shall be determined by actual measure. Apply calculated taper distribution to determine scaling diameter of the second segment.
All Species	61' and longer	Take two measurements, small end and top of the second segment up from the butt. The top diameter of the second segment shall be determined by actual measure. Apply calculated taper distribution to top segment(s) and standard taper rule for the appropriate species to bottom segment.
2. Southwest Idaho Area --- midpoint taper shall be a standard taper as follows:		
Larch	21' - 40'	Shall be 1-inch taper.
All Other Species	21' - 40'	Shall be 2-inch taper.
Multiple segment butt logs not addressed shall be determined with actual taper applied.		
3. Southeast Idaho Area ---		
a. Targhee National Forest Area -- midpoint taper shall be a standard taper as follows:		
Douglas Fir, Alpine Fir, & Engelmann Spruce	21' - 40'	Shall be 2-inch taper.
Lodgepole Pine	21' - 31'	Shall be 1-inch taper.
Lodgepole Pine	32' - 40'	Shall be 2-inch taper.
b. Other Southeast Areas -- midpoint taper(s) shall be determined with actual taper applied.		
c. Multiple segment butt logs not addressed shall be determined with actual taper applied.		
4. Except as previously addressed, the butt-log taper tables developed by the USFS at the point of origin of the forest products shall be utilized on all forest products scaled within the state of Idaho. Multiple-segment butt logs not addressed shall be determined with actual taper applied.		

TABLE III							
Log Length Table							
Log Length	Scaling Length	Butt Segment	Segment Length	Segment Length	Segment Length	Segment Length	Segment Length
8'1" - 8'8"	8						
8'9" - 9'8"	9						
9'9" - 10'8"	10						
10'9" - 11'8"	11						
11'9" - 12'8"	12						
12'9" - 13'8"	13						
13'9" - 14'8"	14						
14'9" - 15'8"	15						
15'9" - 16'8"	16						
16'9" - 17'8"	17						
17'9" - 18'8"	18						
18'9" - 19'8"	19						
19'9" - 20'8"	20						
20'9" - 22'2"	21	11	10				
22'3" - 23'2"	22	12	10				
23'3" - 24'2"	23	12	11				
24'3" - 25'2"	24	12	12				
25'3" - 26'2"	25	13	12				
26'3" - 27'2"	26	14	12				
27'3" - 28'2"	27	14	13				
28'3" - 29'2"	28	14	14				
29'3" - 30'2"	29	15	14				
30'3" - 31'2"	30	16	14				
31'3" - 32'2"	31	16	15				
32'3" - 33'2"	32	16	16				
33'3" - 34'2"	33	17	16				
34'3" - 35'2"	34	18	16				
35'3" - 36'2"	35	18	17				
36'3" - 37'2"	36	18	18				
37'3" - 38'2"	37	19	18				
38'3" - 39'2"	38	20	18				

TABLE III							
Log Length Table							
Log Length	Scaling Length	Butt Segment	Segment Length	Segment Length	Segment Length	Segment Length	Segment Length
39'3" - 40'2"	39	20	19				
40'3" - 41'2"	40	20	20				
41'3" - 42'8"	41	14	14	13			
42'9" - 43'8"	42	14	14	14			
43'9" - 44'8"	43	15	14	14			
44'9" - 45'8"	44	16	14	14			
45'9" - 46'8"	45	16	15	14			
46'9" - 47'8"	46	16	16	14			
47'9" - 48'8"	47	16	16	15			
48'9" - 49'8"	48	16	16	16			
49'9" - 50'8"	49	17	16	16			
50'9" - 51'8"	50	18	16	16			
51'9" - 52'8"	51	18	17	16			
52'9" - 53'8"	52	18	18	16			
53'9" - 54'8"	53	18	18	17			
54'9" - 55'8"	54	18	18	18			
55'9" - 56'8"	55	19	18	18			
56'9" - 57'8"	56	20	18	18			
57'9" - 58'8"	57	20	19	18			
58'9" - 59'8"	58	20	20	18			
59'9" - 60'8"	59	20	20	19			
60'9" - 61'8"	60	20	20	20			
61'9" - 63'2"	61	16	16	15	14		
63'3" - 64'2"	62	16	16	16	14		
64'3" - 65'2"	63	16	16	16	15		
65'3" - 66'2"	64	16	16	16	16		
66'3"-67'2"	65	17	16	16	16		
67'3"-68'2"	66	18	16	16	16		
68'3"-69'2"	67	18	17	16	16		
69'3"-70'2"	68	18	18	16	16		
70'3"-71'2"	69	18	18	17	16		

TABLE III							
Log Length Table							
Log Length	Scaling Length	Butt Segment	Segment Length	Segment Length	Segment Length	Segment Length	Segment Length
71'3"-72'2"	70	18	18	18	16		
72'3"-73'2"	71	18	18	18	17		
73'3"-74'2"	72	18	18	18	18		
74'3"-75'2"	73	19	18	18	18		
75'3"-76'2"	74	20	18	18	18		
76'3"-77'2"	75	20	19	18	18		
77'3"-78'2"	76	20	20	18	18		
78'3"-79'2"	77	20	20	19	18		
79'3"-80'2"	78	20	20	20	18		
80'3"-81'2"	79	20	20	20	19		
81'3"-82'2"	80	20	20	20	20		
82'3"-83'8"	81	17	16	16	16	16	
83'9"-84'8"	82	18	16	16	16	16	
84'9"-85'8"	83	18	17	16	16	16	
85'9"-86'8"	84	18	18	16	16	16	
86'9"-87'8"	85	18	18	17	16	16	
87'9"-88'8"	86	18	18	18	16	16	
88'9"-89'8"	87	18	18	18	17	16	
89'9"-90'8"	88	18	18	18	18	16	
90'9"-91'8"	89	18	18	18	18	17	
91'9"-92'8"	90	18	18	18	18	18	
92'9"-93'8"	91	19	18	18	18	18	
93'9"-94'8"	92	20	18	18	18	18	
94'9"-95'8"	93	20	19	18	18	18	
95'9"-96'8"	94	20	20	18	18	18	
96'9"-97'8"	95	20	20	19	18	18	
97'9"-98'8"	96	20	20	20	18	18	
98'9"-99'8"	97	20	20	20	19	18	
99'9"-100'8"	98	20	20	20	20	18	
100'9"-101'8"	99	20	20	20	20	19	
101'9"-102'8"	100	20	20	20	20	20	

TABLE III							
Log Length Table							
Log Length	Scaling Length	Butt Segment	Segment Length	Segment Length	Segment Length	Segment Length	Segment Length
102'9"-104'2"	101	18	18	17	16	16	16
104'3"-105'2"	102	18	18	18	16	16	16
105'3"-106'2"	103	18	18	18	17	16	16
106'3"-107'2"	104	18	18	18	18	16	16
107'3"-108'2"	105	18	18	18	18	17	16
108'3"-109'2"	106	18	18	18	18	18	16
109'3"-110'2"	107	18	18	18	18	18	17
110'3"-111'2"	108	18	18	18	18	18	18
111'3"-112'2"	109	19	18	18	18	18	18
112'3"-113'2"	110	20	18	18	18	18	18
113'3"-114'2"	111	20	19	18	18	18	18
114'3"-115'2"	112	20	20	18	18	18	18
115'3"-116'2"	113	20	20	19	18	18	18
116'3"-117'2"	114	20	20	20	18	18	18
117'3"-118'2"	115	20	20	20	19	18	18
118'3"-119'2"	116	20	20	20	20	18	18
119'3"-120'2"	117	20	20	20	20	19	18
120'3"-121'2"	118	20	20	20	20	20	18
121'3"-122'2"	119	20	20	20	20	20	19
122'3"-123'2"	120	20	20	20	20	20	20

In the above Table, the butt segment is the longest.

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TABLE IV		
Standard Converting Factors-- USFS Log Scaling Handbook, Appendix XV		
Product	Assumed Dimensions	Equivalent in Board Feet
Cord, standard	4 by 4 by 8 feet	500
Cord, long	4 by 4 by 8 feet	625
Cord, shingle bolts	4 by 4 by 8 feet	600
Cord, small material (averaging less than 5" middle diameter in the round)	do	333-1/3
Cord, short	4 by 3 by 8 feet	375
Cord, short, small material	do	250
Load (small, irregular pieces that cannot be ricked)	4 by 4 by 8 feet	333-1/3
Tie, standard	7 by 9 inches by 8 feet	35
Do	7 by 8 inches by 8 feet	30
Do	6 by 6 inches by 8 feet	20
Tie, narrow gage	7 by 8 inches by 6-1/2 feet	25
Do	6 by 7 inches by 6-1/2 feet	20
Do	6 by 6 inches by 6-1/2 feet	15
Pole (telephone) or piling	8 inches by 45 feet	200
Do	8 inches by 40 feet	150
Do	8 inches by 35 feet	100
Do	7 inches by 60 feet	280
Do	7 inches by 50 feet	200
Do	7 inches by 40 feet	100
Do	7 inches by 35 feet	80
Do	7 inches by 30 feet	60
Do	7 inches by 25 feet	50
Do	5 inches by 25 feet	30
Cubic foot	13.6 inches by 1 foot	6
Linear foot	10 inches by 1 foot	3
Linear foot (long piling)	80 to 125 feet by 6 inches	5-1/2
Derrick pole	7 inches by 30 feet	60
Derrick set (11 pieces)		480
Post, fence	6 inches by 7 feet	7
Do	5 inches by 7 feet	5
Post, split	18 inches circumference by 7 feet	6
Brace, fence	4 inches by 6 feet	2
Stake, fence	3 inches by 5 feet	1
Stay, fence	2 inches by 6 feet	1/2
Rail, fence (split)	20 inches circumference by 16 feet	15
Pole, fence	4 inches by 20 feet	10
Pole (12 pieces)	4 inches by 16 feet	100
Pole, converter	4 inches by 20 feet	10
Prop	6 inches by 10 feet	10
Lagging (6 pieces)	3 inches by 6 feet	10

IDAPA 20.06.04 - DEPARTMENT OF LANDS

**20.06.04 - RULES GOVERNING FOREST PRODUCTS MEASUREMENT FOR THE PURPOSE OF
PAYMENT FOR LOGGING OR HAULING LOGGED FOREST PRODUCTS ONLY**

DOCKET NO. 20-0604-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section 38-1208, Idaho Code.

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

**Monday, October 6, 1997, 7:00 p.m. (PDT)
Department of Fish and Game, Panhandle Room
2750 Kathleen Avenue, Coeur d'Alene, Idaho**

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 address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

This chapter is being repealed in its entirety and replaced by new rules designed to clarify and simplify the rules. The new chapters are being promulgated under Docket Nos. 20-0602-9702 and 20-0603-9702, preceding this notice.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ernest Bauer, Head Check Scaler, Idaho Board of Scaling Practices, at (208) 769-1445.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to Henry Gotz, Executive Director, Idaho Board of Scaling Practices, c/o Idaho Department of Lands, 954 W. Jefferson, P.O. Box 83720, Boise, Idaho, 83720-0050; and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997

Henry Gotz
Executive Director
Idaho Board of Scaling Practices
N. 9407 Government Way, Suite #8
P.O. Box 999
Hayden ID 83835-0999
Phone: (208) 769-1445
Fax: (208) 769-1485

THIS RULE IS BEING REPEALED IN ITS ENTIRETY

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.01.01 - RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS

DOCKET NO. 24-0101-9701

NOTICE OF PENDING RULES

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1998, 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 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 54-312, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, Volume No. 97-7, July 2, 1997, Pages 201 through 206.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Dee Ann Randall at (208) 334-3233.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

IDAPA 24
TITLE 01
Chapter 01

RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 97-7, July 2, 1997,
pages 201 through 206.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA - BUREAU OF OCCUPATIONAL LICENSES
24.02.01 - RULES OF THE BOARD OF BARBER EXAMINERS
DOCKET NO. 24-0201-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-521, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: Delete reference to the Cosmetology Board in the address of the Barber Board; add definitions for first aid kit and hospital grade; add the size of the photographs to be submitted with an application; change the deadline date for filing applications to 30 days prior to the examination; add requirement that a barber instructor must complete a minimum six (6) month course of barber teaching as a student in a licensed barber college; delete superfluous language regarding the GED Test; change requirement for licensure by endorsement so that applicant must be licensed in another state for at least three (3) years immediately prior to making application in Idaho; delete reference to three (3) year practical experience requirement for licensure by endorsement; add to the practical examination shave and hair color; delete optional service on practical examination; add that approved water source in a barber establishment must be within the perimeters of the licensed establishment and separate from the toilet facilities; update the inspection and sanitary rules for barber schools and establishments to reflect current standards.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-0201-9701

010. DEFINITIONS (Rule 10).

01. "Approved" or "Approval." Approved by or approval of the Board as evidenced by formal action of the Board by a written instrument signed by the secretary of the Board or its agent. (7-1-93)

02. "Barber College." A school or college approved by the Board to teach the practice of barbering as required by these rules. (7-1-93)

03. Board. The Board of Barber Examiners as prescribed in Section 54-521, Idaho Code. (7-1-93)
04. First Aid Kit. First-aid kit means a commercially packaged and identifiable assortment of medical supplies, including adhesive bandages, skin antiseptic, approved bio-hazard disposable container, disposable gloves, and gauze, which may be used for cleaning and protecting minor emergency traumas of the human body. ()
045. "General Barbering Practice." Practicing barbering under the supervision of an instructor as provided in Section 54-507, Idaho Code. (7-1-93)
06. Hospital Grade. Hospital Grade means a sanitizing agent registered by the Environmental Protection Agency as an effective germicidal/bactericidal, fungicidal, and virucidal disinfectant when used in accordance with the manufacturer's instructions. ()
057. "Idaho Code." Idaho Code of 1947 with additions and corrections thereto. (7-1-93)
068. Masculine Gender. Masculine gender includes the feminine gender. (7-1-93)
079. "Practice of Barbering." Practice of barbering as defined by Section 54-502, Idaho Code. (7-1-93)
0810. "Registered Barber." Any person who holds a valid certificate authorizing him to practice as a registered barber pursuant to Section 54-512, Idaho Code. (7-1-93)
0911. "Scientific Barbering Practice." Practicing under the supervision of an instructor all phases of the practice of barbering other than cutting hair and shaving. (7-1-93)
102. Teacher or Instructor. The words "Teacher" and "Instructor" mean the same and are used synonymously. (7-1-93)
143. "Theoretical Scientific Study." The study of theoretical subjects of instruction in the practice of barbering which shall include the subjects set forth in Section 54-507, Idaho Code. (7-1-93)

200. APPLICATIONS (Rule 200).

01. Application for License. Application for license shall be made on forms furnished by the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702, and received in that office at least ~~fifteen (15)~~ thirty (30) days prior to the date of examination. (7-1-93)()
02. Photographs Required. Two (2) ~~three (3)~~ by two (2) inch identical photographs, bust only, shall be provided: one (1) to be attached to the application, one (1) to the ~~license certificate~~. (Section 54-509, Idaho Code). (7-1-93)()
03. Registered Barber Qualifications. Applicants for license as a registered barber must qualify under the provisions of Section 54-505, Idaho Code. (7-1-93)
04. Applicants for License from Other States. Applicants for license from other states must qualify under the provisions of Section 54-512, Idaho Code. (7-1-93)
05. Applicants for Barber Instructor License. Applicants for barber instructor license under the provisions of Sections 54-527 and 54-528, Idaho Code, shall have ~~been a registered (master barber) in Idaho for at least satisfactorily completed a minimum six (6) month course of barber teaching as a student in a properly licensed barber college or had a minimum of three (3) years experience in practical barbering. A barber instructor must obtain twenty (20) hours of continued education approved by the board within the twelve (12) months preceding license renewal application. Twelve (12) hours must be in educational training and eight (8) hours in seminars, trade shows, etc. No person shall be issued a certificate until he has had not less than three (3) years experience in practical barbering. Any person who makes application to obtain a certificate to teach barbering must pass satisfactorily the barber teacher examination to be conducted by the Board of Barber Examiners.~~ (7-1-93)()

a. Any person who makes application to obtain a certificate to teach barbering must pass satisfactorily the barber teacher examination to be conducted by the Board of Barber Examiners. ()

b. A barber instructor must obtain twenty (20) hours of continued education approved by the board within the twelve (12) months preceding license renewal application. Twelve (12) hours must be in educational training and eight (8) hours in seminars, trade shows, etc. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. EDUCATIONAL REQUIREMENTS AND EQUIVALENCY (Rule 250).

01. High School Education. The Idaho law as amended by the 1959 Session of the Idaho State Legislature requires that an applicant for license under Sections ~~54-505~~, 54-506 and 54-512, Idaho Code, show proof of having at least two (2) years of high school education. This provision has been interpreted as satisfactory completion of the tenth grade - eligibility to commence the eleventh grade. (7-1-93)()

02. General Education Development Tests. ~~Arrangements have been made for use of t~~The Board has selected the General Education Development Tests approved by the Idaho Department of Education for the purpose of furnishing proof of determining equivalent of two (2) years of high school tenth grade education. Following is a list of locations and examiners to contact in regard to such examinations: (7-1-93)()

- a. ~~Boise - Boise State University.~~ (7-1-93)
- b. ~~Coeur d'Alene - North Idaho College.~~ (7-1-93)
- e. ~~Idaho Falls - Vocational Technical Education.~~ (7-1-93)
- d. ~~Lewiston - Lewis and Clark State College.~~ (7-1-93)
- e. ~~Moseow - University of Idaho.~~ (7-1-93)
- f. ~~Pocatello - Council and Testing service, Idaho State University.~~ (7-1-93)
- g. ~~Rexburg - Ricks College.~~ (7-1-93)
- h. ~~Twin Falls - College of Southern Idaho.~~ (7-1-93)

03. Attendance and Test Fees. ~~The applicant may go to the school in his area, or in the area in which the occupational school he will attend is located, to be examined.~~ A fee is required for the examination. If an applicant takes the G.E.D. tests and receives an average cutting score of not less than thirty-five (35), with no category below a cutting score of thirty (30), he or she is considered to have the equivalent of a tenth grade education. (7-1-93)()

350. ENDORSEMENT (Rule 350).

01. Requirements For Licensure Without Examination. (7-1-93)

a. Applicants for license by endorsement under the provisions of Section 54-512, Idaho Code, must make application on Form B-37 and furnish proof of current license in another state, ~~territory, possession~~ or country, having requirements substantially equal to the requirements of Idaho, or ~~must have completed three (3) years of practical experience as a licensed barber within the immediately preceding five (5) years~~ who has been licensed as a barber in another state or country for at least three (3) years immediately prior to making application in this state. (7-1-93)()

b. Form Bar-53 must be completed and signed by the licensing agency of such other state, ~~territory,~~

possession or country, and filed in the office of the Bureau of Occupational Licenses with the application for license. (7-1-93)(____)

e. Proof of three (3) years practical experience, in the form of an affidavit signed by a licensed barber, verifying applicant's statement of such practical experience is required. The letter of recommendation, page 3 of the Form B-37, may be used for this purpose. Dates and places of such practical experience must be given. (7-1-93)

d. Application for license by endorsement must be accompanied by proof of applicant having met the education requirements as set forth in Section 54-5056, Idaho Code; proof of having satisfactorily completed at least two (2) years of high school (tenth grade), or equivalent education. (7-1-93)(____)

ed. Applications for license by endorsement must be accompanied by the endorsement fee and the license fee. If the Idaho Barber Board finds that the applicant is ineligible for license by endorsement, but is eligible for license by examination, a refund may be made of the endorsement fee in excess of the required examination fee, and the applicant permitted to take the examination. (7-1-93)

02. Requirements For Licensure By Examination. (7-1-93)

a. Credit of fifty (50) hours of training in an approved school of barbering, will be given for each three (3) months of practical experience as a licensed barber in another state, territory, possession or country. (Example: If a barber is licensed in a state which does not have requirements equal to the requirements of Idaho, or for any other reason does not have endorsement with Idaho, such applicant is required to meet the educational requirements of Idaho. If he has completed a course of one thousand five hundred (1500) hours of training in a licensed school in such other state and has one (1) year of practical experience as a licensed barber, he is considered to have completed two hundred (200) hours of training in school, and is eligible to take the examination for Idaho barber license. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

400. EXAMINATION (Rule 400).

01. Content and Passing Grade on Exam. The examination will consist of two (2) portions: theory and practical. An applicant must obtain at least a seventy-five percent (75%) grade on each portion to pass the examination. (7-1-93)

02. Subjects on Exam. The following subjects will be included in the practical examination: personal appearance and hygiene, shampoo, haircutting (includes blow dry and style), permanent waving, shave, and ~~an~~ optional service which will be selected by the Board at the time of examination. The optional service will be either a shave, a massage, or hair color. (7-1-93)(____)

03. Failure of Exam. An applicant who fails to obtain a grade of at least seventy-five (75%) percent in either the practical or theoretical portion of the examination is considered to have failed that portion of the examination and is required to comply with Sections ~~54-505, 54-506; and 54-512 and 67-2617~~, Idaho Code and be successfully reexamined on the failed portion(s) prior to licensure. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

450. BARBER SHOP REQUIREMENTS (Rule 450).

01. Primary Shop, Licensure and Operation Requirements. (7-1-93)

a. Plans and specifications complying with local ordinances and zoning shall be submitted to the Idaho Barber Board for approval before opening a new shop; (7-1-93)

b. There is a working floor space of not less than one hundred eight (108) square feet for a single station shop in addition to any restroom and access areas and an additional fifty (50) square feet of floor space for every station in excess of one; (7-1-93)

c. Business other than cosmetology or barber shops, and living quarters shall be separate and apart; (7-1-93)

d. There is approved hot and cold running water source and drainage systems that are available also to any contiguous cosmetology or barber shop that may exist; and must be within the perimeters of the licensed establishment and separate from the toilet facilities. (7-1-93)(____)

e. The license area does not overlap any portion of a contiguous or other primary shop designated area; (7-1-93)

f. There is access to restrooms from within the building; and (7-1-93)

g. Home shops must provide a separate outside entrance directly into the shop. All doors to a shop from adjacent rooms shall be closed. (7-1-93)

02. Contiguous Shop, Licensure and Operation Requirements. (7-1-93)

a. Plans and specifications complying with local ordinances and zoning shall be submitted to the Idaho Barber Board for approval before opening a new shop. (7-1-93)

b. The licensed area is contiguous by a minimum three (3) foot access to an area licensed as a primary cosmetology establishment or primary barber shop. (7-1-93)

c. The licensed area does not overlap any portion of a primary or other contiguous shop designated area. (7-1-93)

d. The licensed area provides a minimum of fifty (50) square feet of working floor space for each individual station. (7-1-93)

e. There is access to restrooms from within the building. (7-1-93)

03. Barber Shop Changes in Ownership - Location. (7-1-93)

a. Whenever a change of ownership or location of a barber shop occurs, an original registration fee must be paid and compliance with all rules concerning a new establishment met, before a new license will be issued. LICENSE IS NOT TRANSFERABLE. (7-1-93)

b. Deletion of an owner from multiple ownership does not constitute a change in ownership. (7-1-93)

c. Addition of an owner to multiple ownership constitutes a change in ownership. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

550. INSPECTION AND SANITARY RULES. (Rule 550).

Each cosmetological establishment and school of cosmetology and barber shop and school of barbering is subject to inspection by agents of the board or bureau in accordance with the following rules (reference Sections 54-824, and 54-524, Idaho Code). Grade score is indicated by number following rule. (7-1-93)

01. Premises. All shops and schools shall be open to inspection during business hours to authorized

~~representatives agents of the Cosmetology and Barber Boards. The use of shops or and schools as must be separated from living, dining, or sleeping compartments is prohibited areas by substantial walls and/or closable doors. All shops and schools shall must be maintained in an orderly manner.~~

Score.....3 (7-1-93)

~~02. Heat, Light, and Ventilation. Such establishments and shall be heated, lighted, and ventilated in such a manner so as to be safe and comfortable to the operators and to the customer patrons.~~

Score35 (7-1-93)()

~~03. Floors, Walls, and Ceilings. Floors, walls, ceilings, furniture, and all other fixtures must shall be kept clean and in good repair at all times.~~

Score5 (7-1-93)()

~~04. Instrument Cleaning. Razors, combs, brushes, cutting heads of clipping machines, and all other instruments used by operators upon the customers shall be thoroughly cleaned after each usage. Every precaution must be used to prohibit the transfer of bacteria, material and arthropods from one person to another by means of instruments. Instruments to be cleaned prior to storage. All instruments used by operators shall be thoroughly cleaned after each use and prior to storage and/or sanitation.~~

Score1215 (7-1-93)()

~~05. Instrument Sanitizing Sanitation. All instruments must used by operators shall be sanitized, after cleaning previous and prior to use, on each patron. This may be done by totally immersing the instruments in an approved sanitizing solution for not less than two minutes. Other methods of sanitizing, may be used, if approved by the Cosmetology and Barber Boards with a sanitizing agent registered by the Environmental Protection Agency as Hospital Grade or better. Every precaution shall be taken to prevent the transfer of disease-causing pathogens from person to person.~~

Score1215 (7-1-93)()

~~06. Use of Prohibited or Restricted Equipment. Latherizer or other approved method such as aerosol lather to be used. (Other approved method does not mean a Mug & Brush.) Neckduster prohibited unless they are sterilized after each customer.~~

Score12 (7-1-93)

~~07. Towels. Clean towels shall be used for each patron served. A neckband of paper or clean towels shall be placed around the neck of each patron when a multi-use cloth or cape is used. A clean paper or cloth neckband shall be used to provide a sanitary barrier which shall be maintained between each patron's neck and all multi-use capes. Paper towels and paper neckstrips shall be disposed of after one (1) use.~~

Score5 (7-1-93)()

~~08. Storage of Equipment. All instruments, towels, and clean linens and towels and all instruments shall be stored in a clean, closed cabinets, or in sanitizing equipment drawers, and/or containers after they are cleaned and sanitized.~~

Score5 (7-1-93)()

~~09. Dispensers. All liquids and powder dispensers shall be in shaker top containers. No multi-use powderpuff, sponge or duster shall be used. The use of styptic sticks or pencils is prohibited. All solutions and/or compounds shall be maintained and dispensed in a sanitary manner. All single-use applicators shall be disposed of after one (1) use. Paraffins, waxes and all other solutions and/or compounds shall be maintained free of any foreign contaminants.~~

Score5 (7-1-93)()

~~10. Uniforms. Every person working as an operator shall wear a clean and washable uniform, apron or coat while working. All clothing worn by operators shall be clean and washable.~~

Score35 (7-1-93)()

~~11. Hands. Every operator or person working in a shop shall wash his hands before waiting on any and each customer.~~

Score.....5 (7-1-93)

~~1209. Water Supply. Water supplies for shops and schools shall be from an approved source, convenient access from within the work area. Hot and cold running water with sufficient basins with approved disposal system. Sufficient basins with hot and cold running water, approved drainage systems, soap and single-use towels shall be conveniently located within the work area. Every operator and/or student shall wash their hands prior to providing service to any patron.~~

Score.....510 (7-1-93)()

~~130. Toilet Facilities. Clean Adequate and convenient toilet facilities shall be located and accessible from within the building for use by patrons and persons working in shops and schools. Sink and single use towels shall be provided. where the shop or school is located, shall be available for use by operators and patrons. A basin with hot and cold running water, approved drainage systems, soap and single-use towels shall be provided within said facilities.~~

Score.....810 (7-1-93)()

~~141. Safety. The premises of building in which shops or schools are operated shall be maintained in an orderly manner which will not create or be a fire or safety hazard. Each shop or school shall have an approved first-aid kit. No pets or birds shall be allowed. Each shop and school shall have a clearly identifiable first-aid kit readily accessible on the premises. No animals are allowed in shops or schools except those animals trained to provide service to the physically impaired.~~

Score.....75 (7-1-93)()

~~15. Headrests. No operator shall permit any person to use the headrest of any chair unless the headrest has been covered with a clean linen or paper towel.~~

Score.....2 (7-1-93)

~~16. Certificates. The owner or manager of any shop or school shall post a copy of these rules, class card and sanitary compliance card, conspicuously in the place of business for the information and guidance of persons working or employed therein and for the public, generally.~~

Score.....5 (7-1-93)

~~172. Licenses and Certificates. It shall be unlawful to own or operate a shop without proper licensure and unless it is at all times under the direct supervision and management of a registered cosmetologist, electrologist/esthetician, nail technician or esthetician in a cosmetology shop or a registered barber in a barber shop. Establishment and operators' licenses shall be displayed in a conspicuous place. All shops and schools must be licensed prior to their operation and must be under the direct supervision of a licensed operator. A current shop and/or school license, valid operator license(s) or permit(s), a copy of these rules, and a valid classification card shall be conspicuously displayed in the work area of each shop and/or school for the information of operators, board agents, and the public in general.~~

Score.....315 (7-1-93)()

~~18. Grading of Shops And Schools. A for a score of ninety (90) through one hundred (100), B for a score of eighty (80) through eighty nine (89), and C for a score of seventy nine (79) or below. The C classification denotes unacceptable rating and improvements are required within thirty (30) days for continued operation. (7-1-93)~~

~~13. Classification of Shops and Schools. Following an inspection, each shop and school will receive classification as follows: 100% - 90% = "A"; 89% - 80% = "B"; 79% - 0% = "C". The "C" classification denotes an unacceptable rating and improvements are required within thirty (30) days for continued operation. ()~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS
DOCKET NO. 24-0301-9701
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective July 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 rule-making procedures have been initiated. The action is authorized pursuant to Section 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: establish rules regarding peer review; establish the purpose and composition of peer review committee; define Board, Patient, Peer Review, Peer Review Committee Members and Individual Reviewers; establish committee criteria; establish the standards in conducting a review; establish who may utilize the services of the committee; set forth the forms for submission of request for review; establish fee structure for reviews; establish the procedures for review.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To implement a system of peer review as authorized by the legislature.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fees to be established for peer review are: if requested by patient, no charge; if requested by treating physician, insurer or third party provider: \$125 for 25 pages or less; \$250 for up to 50 pages; \$350 for more than 50 and up to 100 pages; every increment above 100 pages of one to 50 more pages \$100. Statute authorizing these fees is 54-708, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dee Ann Randall, (208) 334-3233.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-0301-9701

600. CHIROPRACTIC PEER REVIEW (Rule 600).

01. Purpose and Composition of Peer Review Committee. There is hereby established a Peer Review Committee, the members of which will function at the will of the Idaho State Board of Chiropractic Physicians.

(7-1-97)T

a. The purpose of the Peer Review Committee is to review those matters relative to the appropriateness, quality, utilization, and cost of chiropractic care in the state of Idaho.

(7-1-97)T

b. The Committee will be comprised of a chairman and a minimum of five (5) members, all of whom will be appointed by the members of the Board, and all of whom will serve at the pleasure of the Board. They may be removed from the Committee by vote of the Board, at any time, without cause.

(7-1-97)T

c. The Board will appoint one (1) of its members to act as a liaison between the Board and the Committee. This liaison will serve at the pleasure of the Board and may be removed by the Board, at any time, without cause.

(7-1-97)T

02. Definitions.

(7-1-97)T

a. "Board" means the Idaho State Board of Chiropractic Physicians.

(7-1-97)T

b. "Patient" means an individual who has received treatment from an Idaho licensed chiropractor, or who has received treatment under the supervision or direction of an Idaho licensed chiropractor, which treatment is within the scope of practice for a chiropractor within the state of Idaho.

(7-1-97)T

c. "Peer Review" means an evaluation performed by members of the Committee, which review will include the appropriateness, quality, utilization, and cost of chiropractic services and ethical performance of chiropractic care.

(7-1-97)T

d. "Peer Review Committee Members" shall mean those individuals appointed by the Board to serve on the Peer Review Committee.

(7-1-97)T

e. "Individual Reviewers" means those individual members of the Committee who are designated by the chairman of the Committee to conduct a peer review evaluation of any particular matter.

(7-1-97)T

03. Committee Criteria.

(7-1-97)T

a. Requirements for Membership: To be considered for appointment to the Committee, an applicant shall:

(7-1-97)T

i. Hold a current Idaho license to practice chiropractic, which license is in good standing and which has never been the subject of a formal disciplinary action in any jurisdiction;

(7-1-97)T

ii. Be actively engaged in the practice of chiropractic for the past four (4) years, with the most recent two (2) of those years having been spent in Idaho.

(7-1-97)T

b. Appointment Process: Each year the Board will notify all Idaho licensed chiropractors of the process and deadlines by which they may self-submit for membership on the Committee.

(7-1-97)T

i. The submissions will be maintained on file for one (1) year; after which time they will be discarded without notice to the applicants.

(7-1-97)T

ii. The Board will notify those individuals who are named to the Committee of their appointment.

(7-1-97)T

c. Limitations of Peer Review Committee Members. While serving on the Peer Review Committee, a member shall not:

(7-1-97)T

i. Solicit to do independent medical examinations and/or reviews for insurance companies, attorneys or other third parties; (7-1-97)T

ii. Utilize any designation or other reference to Committee membership on any advertisement, including telephone book, office, letterhead, or any other place. (7-1-97)T

d. Reimbursement: Committee members will be afforded expense reimbursement in accordance with state employee travel regulations upon Board approval. (7-1-97)T

04. Standards. (7-1-97)T

a. In conducting any review, the Committee will utilize the Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference, and Procedural/Utilization Facts, Chiropractic/Physical Therapy Treatment Standards, a Reference Guide, 5th Edition, Robert E. Olson, D.C. (7-1-97)T

b. The reviewing chiropractors will be expected to utilize their own experience and other reference sources in ascertaining the reasonableness and appropriateness of care provided. (7-1-97)T

05. Who May Utilize the Services of the Committee. A request for peer review may be submitted to the Committee by a patient, the patient's legal representative, an insurer or other third-party payor or health care provider, or the treating chiropractic physician. (7-1-97)T

06. Form of Request. A request for peer review must be submitted to the Committee on forms available from the Board offices. (7-1-97)T

07. Fees for Review. The following fees will be assessed: (7-1-97)T

a. If review is requested by a patient: no charge. (7-1-97)T

b. If review is requested by a treating physician, an insurer or third party provider: (7-1-97)T

i. One hundred twenty-five dollars (\$125) for a review of records and documents consisting of twenty-five (25) pages or less; (7-1-97)T

ii. Two hundred fifty dollars (\$250) for a review of records and documents consisting of more than twenty-five (25) pages and up to fifty (50) pages; (7-1-97)T

iii. Three hundred fifty dollars (\$350) for a review of records and documents consisting of more than fifty (50) pages and up to one hundred (100) pages; (7-1-97)T

iv. For every increment above one hundred (100) pages, of one (1) to fifty (50) more pages, one hundred dollars (\$100). (7-1-97)T

c. Payment for reviews by the insurer or third-party provider is required prior to implementation of any review process. (7-1-97)T

08. Procedures for Review. (7-1-97)T

a. All reviews will be blind reviews. The identity of the patient, treating physician, and any insurer or third-party payor for the services will be unknown to the individual reviewers. (7-1-97)T

b. Peer review will be conducted only upon request. The opportunity for participation in the review will be made available to the non-requesting party or parties. With the exception of the treating chiropractic physician, there is no requirement of participation in the peer review process. (7-1-97)T

c. Reviews will be conducted by three (3) individual reviewers, to be chosen from the membership of the Committee by the chairman. (7-1-97)T

d. The individual reviewers will conduct their evaluation, reach an agreement as to the outcome, and report that outcome to the chairman. If any of the parties desire to appeal this decision, they may notify the chairman who will appoint one (1) new reviewer to conduct an evaluation and report the outcome to the chairman. There will be no further rights to appeal. Decisions of the individual reviewer will not be subject to challenge. (7-1-97)T

e. The chairman will provide regular reports to the Board liaison. If it is the opinion of the reviewers that a licensed chiropractic physician has violated any of the laws and rules governing continued licensure, the Committee chairman will notify the Board liaison, immediately. The liaison will then refer the matter for further investigation and potential disciplinary action by the Board. (7-1-97)T

6001. RULE MAKING HISTORY PRIOR TO JULY 1, 1993 (Rule 6001).

Supersedes Rules adopted September 7, 1977
Authority Chapter 7, Title 54, Idaho Code, July 1, 1980
Adopted Under Emergency Provisions, June 10, 1982
Final Adoption, August 21, 1982
As Amended December 21, 1987
Effective January 11, 1988
Adopted Under Emergency Provisions, March 29, 1993
Adopted Under Temporary Provisions, July 1, 1997

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

6012. -- 999. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.04.01 - RULES OF THE BOARD OF COSMETOLOGY
DOCKET NO. 24-0401-9701
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective July 10, 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 rule-making procedures have been initiated. The action is authorized pursuant to Section 54-821, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Clarify failure of the practical examination to be below 75% and reexam shall consist of the entire exam; change reference to theory examination to written examination; add that applicants failing below 75% in either or both the theory or Idaho jurisprudence exams will not be required to complete additional training prior to the first reexam; delete requirement to complete minimum operations in categories for additional training.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The Cosmetology Board has recently contracted for a national practical examination. Idaho's rules concerning grading are not compatible with the scoring of the national examination. This proposed rule change eliminates the conflict between Idaho's grading criteria and the new examination scoring. New rule also clarifies training requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dee Ann Randall, (208) 334-3233.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-0401-9701

450. EXAMINATIONS - GENERAL (Rule 450).

01. Dates and Places.

(7-1-97)

- a. Examinations for licensure are to be held at the discretion of the board. (7-1-97)
- b. The dates and places of examination will be published annually. (7-1-97)
02. Written Examination. The written examination consists of two (2) parts: theory and Idaho jurisprudence. (7-1-97)
- a. The theory examination will be the national examination provided by the National Interstate Council of State Boards of Cosmetology. (7-1-97)
- b. The Idaho jurisprudence examination will be a comprehensive written examination which will include all aspects of Idaho laws and rules relating to the provision of cosmetological services. (7-1-97)
03. Oral Test. As authorized by Idaho Code 54-810, the examiners may direct questions to individual examinees during the course of the practical examination. (7-1-97)
04. Supplies. Each applicant is required to bring adequate supplies and materials for the practical examination. Detailed information will be provided upon notification of acceptance for examination. (7-1-97)
05. Failure to Pass Examination. Failure to pass examination. (7-1-97)
- a. The practical examination is failed when an applicant obtains an average score below seventy-five percent (75%) ~~in one or more categories~~. Reexamination shall consist ~~only of the practical category or categories~~ failed entire examination. (7-1-97)(7-10-97)T
- b. Written examination is failed when the applicant obtains a score of below seventy-five percent (75%) on the national theory examination or the Idaho jurisprudence examination. Reexamination shall consist of the written examination on the portion or portions failed. (7-1-97)
- c. When an applicant fails either a written or practical examination on a second attempt, reexamination shall consist of the written and practical examinations in their entirety. (7-1-97)
06. Eligibility for Reexamination. A new application must be filed with the board. The prescribed fee must accompany said application. (7-1-97)
07. Termination. All application records in the bureau of applicants who have not qualified for reexamination within five (5) years of notification of failure in any examination under the Cosmetology Law will be terminated and destroyed. (7-1-97)

451. COSMETOLOGY LICENSURE EXAMINATION (Rule 451).

01. ~~Theory~~ Written Examination. The ~~theory~~ written examination will cover both theory and Idaho jurisprudence. Theory will include all phases of the art of cosmetology, hair dressing, manicuring and pedicuring, facial massage, and sanitation ~~sanitation~~. (7-1-97)(7-10-97)T
02. ~~The Categories on the~~ Practical Examination. The practical examination will be the NIC examination. ~~The categories on the practical examination are hair color, permanent waving, haircutting, thermal waving, wet set styling, facials, manicure/nail.~~ (7-1-97)(7-10-97)T
03. Practical Examination Additional Training. Additional training required to qualify for practical reexamination shall be as follows: (7-1-97)
- a. Applicant failing below seventy-five percent (75%) ~~in one category only of the practical examination~~ will not be required to complete any additional training prior to the first reexamination. (7-1-97)(7-10-97)T
- b. ~~Applicant failing below 75% in two or more categories of the practical examination will be required~~

~~to complete a minimum of 400 hours of additional training. (7-1-97)~~

~~eb. Upon failing any category of the practical examination on a second attempt, applicant must complete a minimum of four hundred (400) hours of additional training. (7-1-97)(7-10-97)T~~

~~04. Written Examination Additional Training. Additional training required to qualify for the written reexamination shall be as follows: (7-1-97)~~

~~a. Applicant failing below seventy-five percent (75%) in either the theory or Idaho jurisprudence examination will not be required to complete any additional training prior to the first reexamination. (7-1-97)(7-10-97)T~~

~~b. On reexamination. Applicant failing below seventy-five percent (75%) in either or both the theory and Idaho jurisprudence examination may qualify for reexamination by taking not less than forty (40) hours of additional training in theory and Idaho jurisprudence, in a curriculum approved by the board, in an Idaho licensed school, and complying with all other requirements for reexamination. (7-1-97)(7-10-97)T~~

~~05. Reexamination. An applicant who has failed the practical portion of the Idaho Cosmetology examination must receive, as a student or apprentice, additional training as set forth in Rule 451, and must obtain a minimum of operations set out below in each category where a score below seventy-five percent (75%) was received: (7-1-97)~~

- ~~a. Permanent Waves—Thirty (30). (7-1-97)~~
- ~~b. Hairstyling—Twenty-five (25). (7-1-97)~~
- ~~c. Hair Shaping—Thirty-five (35). (7-1-97)~~
- ~~d. Hair Tinting & Bleaches—Twenty-five (25). (7-1-97)~~
- ~~e. Facials—Fifteen (15). (7-1-97)~~
- ~~f. Thermal Styling—Twenty-five (25). (7-1-97)~~
- ~~g. Manicures—Fifteen (15). (7-1-97)~~
- ~~h. Artificial Nails—Five (5). (7-1-97)~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.06.01 - RULES OF THE BOARD OF HEARING AID DEALERS AND FITTERS
DOCKET NO. 24-0601-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-2914, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: change the annual statement due date to the time of annual renewal.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-0601-9701

100. REGISTRATION STATEMENT (Rule 100).

Each organization as referred to in Section 54-2902, Idaho Code, shall file with the board the required statement and list of dealers and fitters ~~on August 15th of each year or within 30 days thereafter~~ at the time of annual renewal. Failure to do so is in violation of Section 54-2913(i), Idaho Code. (7-1-93)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.08.02 - RULES OF THE IDAHO STATE BOARD OF MORTICIANS
GOVERNING CREMATORIES IN IDAHO

DOCKET NO. 24-0802-9701

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective July 14, 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 rule-making procedures have been initiated. The action is authorized pursuant to Section 54-1106, 27-303, 27-305, 27-306, 27-307, 27-308 and 27-309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Crematory law change transferred crematory licensing from Health and Welfare to the Board of Mortician Examiners. The Mortician Board is adopting rules to accommodate this transfer.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: No rules currently exist for crematories as law transferred them from Health and Welfare to the Board of Mortician Examiners. For the health, safety and welfare of the public, rules need to promulgated as soon as possible.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dee Ann Randall, (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-0802-9701

IDAPA 24
TITLE 08
Chapter 02

24.08.02 - RULES OF THE IDAHO STATE BOARD OF MORTICIANS
GOVERNING CREMATORIES IN IDAHO

000. LEGAL AUTHORITY. (Rule 0).

The Idaho State Board of Morticians pursuant to the authority granted in Sections 54-1106, 27-303, 27-305, 27-306, 27-307, 27-308 and 27-309, Idaho Code, hereby adopts rules relating to crematories. (7-14-97)T

001. TITLE AND SCOPE (Rule 1).

These rules shall be cited as IDAPA 24, Title 08, Chapter 02, "Rules of the Idaho State Board of Morticians Governing Crematories in Idaho." (7-14-97)T

002. WRITTEN INTERPRETATIONS (Rule 2).

The board may have written statements which pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (7-14-97)T

003. ADMINISTRATIVE APPEALS (Rule 3).

Contested case appeals shall be governed by the Idaho Administrative Procedures Act 67-5201 et. seq., Idaho Code. (7-14-97)T

004. DEFINITIONS (Rule 4).

01. Board. The Idaho State Board of Morticians as prescribed in Section 54-1102, Idaho Code. (7-14-97)T

02. Bureau. The Bureau of Occupational Licenses, Department of Self-Governing Agencies as established by Section 67-2601, Idaho Code. (7-14-97)T

03. Address. Address of the Idaho State Board of Morticians, Bureau of Occupational Licenses. (7-14-97)T

04. Embalming. The disinfecting, preparing or preserving for final disposition dead human remains in whole or in part, by the use or application of chemical substances, fluids or gases on the body, or by the introduction of the same into the body by vascular or hypodermic injection or by direct introduction into organs or cavities, or by any other method or process. (7-14-97)T

005. -- 099. (RESERVED).

100. APPLICATION FOR LICENSE TO OPERATE A CREMATORY (Rule 100).

01. Contents of Application. Each applicant for a license to operate a crematory in Idaho shall supply to the Idaho Board of Morticians the following information: (7-14-97)T

a. Name and address of corporation or firm; and (7-14-97)T

b. Number of retorts; and (7-14-97)T

c. Signature of applicant; and (7-14-97)T

d. Date of signature. (7-14-97)T

02. Forms Issued by the Board. The required "Application for License to Operate a Crematory" will be issued in blank and be made available to applicants by the Board. (7-14-97)T

03. Equipment Listing, Drawing Approval and Air Quality Standards. As a part of the initial application for licensure, the applicant must submit the following to the Board: (7-14-97)T

a. Detailed information regarding the retort specifically documenting that the retort and accompanying equipment is listed by an approved testing agency as listed in the Uniform Fire Code; (7-14-97)T

b. One (1) set of blueprints for the proposed new construction or remodeling where the retort is to be located. The blueprints must be approved by the local building department as being in compliance with applicable building codes and ordinances; and (7-14-97)T

c. A copy of the permit issued by the Division of Environmental Quality, Department of Health and Welfare, indicating compliance with air quality standards. (7-14-97)T

109. -- 199. (RESERVED)

200. MINIMUM STANDARDS (Rule 200).

01. Reasonable Sanitation and Safety Required. In the interest of the protection of the public welfare, no license will be issued on an application to operate a crematory unless it is apparent that the crematory can, and will, be operated in a reasonably sanitary and safe manner, free from substantial annoyance to the public. (7-14-97)T

02. Reduction of Ashes. No crematory will be licensed or operated unless it is efficiently capable of reducing dead human bodies to ashes containing not more than five percent (5%) of the weight of the body immediately after death. (7-14-97)T

03. Delay Before Cremation. No dead human body, regardless of cause of death, is to be cremated, nor is actual cremation of such a body to be commenced, unless the county coroner in the county in which the death occurred gives his written authorization to cremate the body. (7-14-97)T

04. Embalming. If a dead human body is to be held by the crematory longer than twenty-four (24) hours prior to cremation, the body must be either embalmed or refrigerated at thirty-six degrees Fahrenheit (36F) or less until cremated. No body can be held longer than fourteen (14) days after death prior to cremation unless there is a written request from the next-of-kin for holding the body. (7-14-97)T

05. Casket Not Necessary. It is not necessary for the body to be in a casket for cremation to take place. (7-14-97)T

a. This is not to be construed to mean that the crematory must cremate without a casket; and (7-14-97)T

b. It will not prevent the operators from developing their own internal requirements for aesthetic or sanitary reasons. (7-14-97)T

201. -- 249. (RESERVED)

250. RECEIPT FOR BODIES TO BE CREMATED (Rule 250).

The following must be performed by the operator of a crematory upon receipt of a human body for cremation: (7-14-97)T

01. Provide a Receipt. A receipt must be delivered to the licensed mortician or funeral director, his agent, or another person who delivers such body to the crematory. (7-14-97)T

02. Contents of Receipt. The receipt must show: (7-14-97)T

a. The name of the decedent whose body was received; and (7-14-97)T

b. The date on which that body was received; and (7-14-97)T

c. The place where that body was received; and (7-14-97)T

d. The name and address of the funeral establishment from whom that body was received; and (7-14-97)T

e. The name and address of the person, or the names and addresses of the persons, if more than one (1), who actually deliver the body. (7-14-97)T

251. -- 299. (RESERVED).

300. RECORDS OF CREMATION OF BODIES (Rule 300).

01. Content of Record. Each crematory must maintain a record of each cremation of human remains, disclosing: (7-14-97)T

- a. The name of the decedent whose body was cremated; and (7-14-97)T
- b. The name and address of the person, or names and addresses of the persons, if more than one (1), authorizing the cremation of that body as received by the crematory or its representative; and (7-14-97)T
- c. The date upon which that body was received by the crematory; and (7-14-97)T
- d. The place where that body was received; and (7-14-97)T
- e. A statement as to whether or not the body was embalmed; and (7-14-97)T
- f. The date of the cremation of that body; and (7-14-97)T
- g. The subsequent disposal of the cremated remains of that body by the crematory. (7-14-97)T

02. Responsibility for Record. Such record must be made as soon as reasonably possible after the cremation and must be dated and signed by the owner and operator of the crematory and by the licensed mortician who supervised or was otherwise directly responsible for the cremation. (7-14-97)T

03. Inspection by the Board. Such records must be maintained at the crematory and open for inspection at any reasonable time by the Board or its designated representatives. (7-14-97)T

301. -- 350. (RESERVED).

351. CONFIDENTIALITY OF RECORDS (Rule 351).

Any disclosure of information obtained by the Board in connection with licensure activities or records of cremations must comply with Idaho Public Records Act 9-337 et. seq., Idaho Code. (7-1-4-97)T

352. -- 999. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.09.01 - RULES OF THE BOARD OF EXAMINERS OF
NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: change reference to re-certification to renewal of license; provide that applicants for reciprocity licensure must have taken and passed the national examination; establish that trainees must work on a full time basis in an Idaho licensed nursing health care facility; establish that quarterly reports for trainees employed in a nursing home must reflect that the preceptor has instructed, assisted and given assignments necessary to fulfill the requirements; change the phases required of a nursing home administrator-in-training; establish that if the facility administrator is not the preceptor, trainee must spend no less than thirty-two (32) hours a month with the preceptor; deletion of six months extension on a temporary permit; delete provision for an emergency permit; delete fee for issuance of an emergency permit; housekeeping as to terminology.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-0901-9701

200. EDUCATIONAL AND TRAINING REQUIREMENTS (Rule 200).

01. Educational Requirements. In order to be credited toward the educational requirements of the Act, a seminar or course of study must be relevant to nursing home administration as determined by the Board and sponsored by accredited universities or colleges, State or National health related associations, and/or approved by NCERS (National Continuing Education Review Service). (7-1-93)

02. Requirements For License Renewal. The department shall refuse to renew a Nursing Home Administrators license unless the required fee is accompanied by evidence of having met the educational and training

requirement set forth in these rules on the form provided for that purpose by the Bureau of Occupational Licenses beginning with applications for the 1972 license year. (7-1-93)(____)

03. ~~Re-Certification~~ Renewal of License. Applicants for renewal of license ~~re-certification~~ shall be required to attend a minimum of twenty (20) clock hours of courses approved under Subsection 200.01 within the preceding twelve (12) month period. (7-1-93)(____)

04. Credit Received Toward ~~Re-Certification~~ Renewal of License. Credit received toward ~~re-certification~~ renewal of license may not be used again toward ~~re-certification~~ renewal of license for another license year. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

300. RECIPROCAL ENDORSEMENT (Rule 300).

~~An applicant for licensure by reciprocal endorsement must have received a score in the examination taken in any other state at least equivalent to that required for licensure in Idaho. The examination must be the examination as given by the Idaho Board of Nursing Home Administrators or one that is recognized by the American College of Nursing Home Administrators. The~~ An applicant for licensure by reciprocal endorsement will be required to take and pass the examination pertaining to Idaho law and rules governing nursing homes. Applicants are required to have taken and passed the National Association of Boards of Examiners for Nursing Home Administrators (NAB) examination. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

400. NURSING HOME ADMINISTRATORS-IN-TRAINING (Rule 400).

01. ~~RelatedHealthCareField.~~ "Relatedhealthcarefield" shall mean a field in health care related to administration. (7-1-93)

02. Trainees. Trainees must work on a full time basis in an Idaho licensed nursing health care facility, preferably a nursing home. Full time shall be a forty (40) hour per week work schedule with consideration for normal leave taken. Failure to comply with this rule or Section 54-1610, Idaho Code, shall not receive credit as a Nursing Home Administrator-In-Training. (7-1-93)(____)

a. Quarterly reports for those trainees employed in a nursing home must reflect that the preceptor of the trainee has instructed, assisted and given assignments as deemed necessary to fulfill the requirements of Subsection 400.03. (____)

03. Nursing Home Administrator-In-Training Requirements. A Nursing Home Administrator-in-Training shall be required to train in all phases of nursing home administration including the following: (7-1-93)

- a. ~~Patient~~ Resident Care Management. (7-1-93)(____)
- b. Personnel Management. (7-1-93)
- c. Financial Management. (7-1-93)
- d. ~~Marketing-Financial~~ Environmental Management. (7-1-93)(____)
- e. ~~Physical-Public Relations~~ Meeting Regulations and Governing Entities Directives. (7-1-93)(____)
- f. ~~Laws, Regulatory Codes, Resource~~ Organizational Management and Governing Regulations.

(7-1-93)()

04. ~~Trainee Employed In Other Than A Nursing Home. Any trainee employed in a health care facility other than a nursing home must spend no less than four (4), eight hour (8) days a month in a nursing home with the trainee's preceptor in a training and/or observational situation in the six areas of nursing home administration as outlined in Subsection 400.03. Facility Administrator. If the facility administrator is not the preceptor, the trainee must spend no less than thirty-two (32) hours a month with the preceptor in a training and/or observational situation in the six (6) areas of nursing home administration as outlined in Subsection 400.03. Quarterly reports must reflect particular emphasis on the six (6) phases of nursing home administration during the time spent in the nursing home.~~

(7-1-93)()

a. ~~Quarterly reports for those trainees employed in a nursing home must reflect that the preceptor of the trainee has had personal contact no less than once a month, instructing, assisting and giving assignments as deemed necessary to fulfill the requirements of Subsection 400.03.~~

(7-1-93)

05. Preceptor Certification.

(7-1-93)

a. ~~On and after January 1, 1979, a~~ A nursing home administrator who serves as a preceptor for a nursing home administrator-in-training must be certified by the Board of Examiners of Nursing Home Administrators. The Board will certify the Idaho licensed nursing home administrator to be a preceptor who:

(7-1-93)()

i. Is currently practicing as a nursing home administrator ~~or~~ and who has practiced a minimum of two (2) consecutive years as a nursing home administrator; and

(7-1-93)()

ii. Who successfully completes a six (6) clock hour preceptor orientation course approved by the Board.

b. The orientation course will cover the philosophy, requirements and practical application of the nursing home administrator-in-training program and a review of the six (6) phases of nursing home administration as outlined in Subsection 400.03.

(7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

500. PERMITS (Rule 500).

01. Requirements For Issuance. A temporary permit may be issued for one (1) year upon application and payment of fees. ~~It may be extended upon request for a period of six (6) months. No more than one (1) temporary permit (and one extension) may be granted to any applicant for any reason.~~

(7-1-93)()

02. ~~Emergency Permit. An emergency permit may be issued upon application and payment of fees for a period not to exceed ninety (90) days. No more than one emergency permit may be issued to any applicant. A holder of an emergency permit may apply for issuance of a temporary permit.~~

(7-1-93)

03. ~~Issuance of an Emergency Temporary Permit Does Not Obligate the Board. Issuance of an emergency temporary permit does not obligate the board to subsequently issue either a license or a temporary permit. Issuance of a subsequent license or permit depends upon a successful application to the Board.~~

(7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

600. FEES (Rule 600).

- 01. Original License and Annual Renewal Fee. Original Licenses and Annual Renewal ~~(recertification)~~
Fee - Sixty-five dollars (\$65). ~~(7-1-93)~~(____)
- 02. Examination Fee. Examination Fee - One hundred fifty dollars (\$150). (7-1-93)
- 03. Examination Fee. Reexamination Fee - One hundred dollars (\$100). (7-1-93)
- 04. Reciprocal Endorsement Fee. Reciprocal Endorsement Fee (in addition to exam fee) - Sixty-five
dollars (\$65). (7-1-93)
- 05. Temporary Permit Fee. Temporary Permit Fee - Sixty-five dollars (\$65). (7-1-93)
- 06. ~~Emergency Permit Fee. Emergency Permit Fee - Fifty dollars (\$50).~~ ~~(7-1-93)~~

601. REISSUANCE OF A REVOKED LICENSE OR REGISTRATION.

Application for the re-issuance of a license ~~or registration~~ shall be made on the same form as an applicant for an original license and submit to a special examination at the discretion of the Board. ~~(7-1-93)~~(____)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.11.01 - RULES OF THE STATE BOARD OF PODIATRY
DOCKET NO. 24-1101-9701

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective August 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 rule-making procedures have been initiated. The action is authorized pursuant to Section 54-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Define podiatric residency; clarify application must be submitted prior to the date of the Idaho board examination; add residency certification as a requirement for credentials to be filed by all applicants; delete reference to written examination; establish applicants will be interviewed by the board on the third Tuesday of January of each year; establish the practical and/or oral examination will be held on the third Tuesday of January; establish the practical and/or oral examination shall cover subjects relating to podiatry which the board feels necessary; establish continuing education must be approved by the board and no more than six (6) hours may be home study; and adopt the American Podiatric Medical Association's Code of Ethics, as the same may be amended from time to time.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Implement rules to be in compliance with recent law change and to have the examination requirements in place prior to the December, 1997 examination.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dee Ann Randall, (208) 334-3233.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
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1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-1101-9701

152. PODIATRIC RESIDENCY (Rule 152).

01. Residency Required for Licensure. A candidate may not apply for licensure until completion of a podiatric surgical residency of a minimum of twelve (12) months or more as approved by the Council on Podiatric Medical Education or completion of equivalent surgical training as approved by the Board. (8-1-97)T

02. Submission of Verification of Residency Curriculum. Notwithstanding the provisions of Subsection 152.01, a candidate must submit verification of completion of the entire curriculum. Any deviation of this requirement must be approved by the Board. (8-1-97)T

1523. -- 199. (RESERVED).

200. CREDENTIALS TO BE FILED BY ALL APPLICANTS (Rule 200).

01. Application. An application shall be completed by all applicants for licensure upon a form prescribed by the state board of podiatry which must be submitted ninety (90) days before the date of the Idaho board examination, and is not returnable. (7-1-97)(8-1-97)T

02. Certified Copy of National Board Results. A copy of the applicable National Board results which has been certified as true and correct by the examining entity. (7-1-97)

03. Photograph Requirement. All applications shall be accompanied by an unmounted passport type photograph, head and shoulders only, taken not more than one (1) year prior to the date of application, which fact shall be attested to by the applicant's signature across the bottom of the picture and attested to before a public officer authorized to administer oaths. Informal pictures or snapshots are NOT acceptable. (7-1-97)

04. Educational Certificate Requirement. Each applicant may be required to furnish a certificate executed by proper authority proving that he or she graduated from a four (4) year high school, or school of equivalent standing, and a certificate proving the extent of his collegiate education to be not less than two (2) years in an accredited college or university giving instruction in letters and sciences. (7-1-93)

05. Diploma. Certified photostatic copy of diploma granted by any college of podiatry and copy of official transcripts indicating graduation from the program. (7-1-97)

06. Residency Certification Requirement. All applications shall include certification of completion of residency as defined in Rule 152. (8-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

400. LICENSURE BY WRITTEN EXAMINATION (Rule 400).

01. Examination of Applicants. Examination of applicants shall be conducted by the whole board or by its designated agents or representatives. (7-1-97)

02. Exam Required For Licensure. ~~Except as provided in Section 401, of these rules, n~~No person shall be licensed to practice podiatry unless he or she shall have passed an ~~written~~ examination given by the board. (7-1-93)(8-1-97)T

03. Interview of Applicants by Board. The Board will personally interview all applicants to certify their eligibility for licensure ~~during~~ on the third Tuesday of January of each year. (7-1-97)(8-1-97)T

04. Exam Dates. Written National Examinations shall be held at Boise, Idaho, the second Tuesday of June and optional December examination of each year and at such other times as the board shall direct. The practical and/or oral examination will follow the candidate interview on the third Tuesday of January, possibly extending

through Wednesday and/or Thursday of the third week of January. The practical and/or oral examination shall cover subjects relating to podiatry which the board feels necessary. (7-1-97)(8-1-97)T

05. Passing Grade. No applicant shall be granted a license unless he attains a passing grade as determined by the board in all subjects examined and a general average of seventy-five percent (75%) as established in Section 54-606, Idaho Code. (9-28-94)

06. Failure of Exam. An applicant failing in the examination shall be entitled within six (6) months to a reexamination upon the payment of an additional fee as established in Section 300. (9-28-94)

07. Failure of Reexam. An applicant who fails the examination on two (2) such reexaminations shall exhaust his privilege under his original application. (9-28-94)

08. Original Application. The original application will be considered null and void after a period of two (2) years from date of original application if no license has been issued. (7-1-97)

401. LICENSURE WITHOUT WRITTEN EXAMINATION (Rule 401).

~~01. Practical and/or Oral Examination. The board will require a practical and/or oral examination if it deems it necessary to determine the qualifications of an applicant. The practical and/or oral examination shall be conducted by the board at a time and place convenient to the board and shall cover subjects relating to podiatry which the board feels necessary.~~ (7-1-97)

~~02. Special Qualifications. Applicants for licensure under this section shall file all the credentials as provided in Section 200 and in addition shall provide a certified copy of the subjects and the grades obtained by written examination in some other state or territory or through the national board of podiatry examiners. Such examination must have been taken and passed within the preceding five (5) years from date of this application. Proof must be submitted that he or she meets the requirements of this section. Applicants must appear in person before the whole board or a quorum of the whole board and shall accompany their application with a fee of two hundred dollars (\$200), which fee shall be not returned if for any reason license is not granted.~~ (9-28-94)(8-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

500. STANDARDS OF THE ETHICAL PRACTICE OF PODIATRY (Rule 500).

The standards of the Ethical Practice of Podiatry are prescribed in Section 54-609, Idaho Code, and the American Podiatric Medical Association's Code of Ethics as the same may be amended from time to time; are hereby adopted and shall apply to all practitioners of podiatry. (7-1-93)(8-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

700. CONTINUING EDUCATION (Rule 700).

01. Post Graduate Education Requirement for License Renewal. Each podiatrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of twelve (12) full hours of approved post-graduate podiatry education courses ~~and copies of certificates of attendance which include the location of meetings approved by the Board of Podiatry shall accompany the renewal fee approved by the Board. No more than six (6) hours may be home study.~~ (7-1-93)(8-1-97)T

02. Submission of License Renewal Application Form. Each licensed Idaho podiatrist will be furnished a license renewal application form by the Bureau of Occupational Licenses on which each podiatrist shall list the name of the courses, the location, date and hours of attendance and shall submit the form with the renewal application for license filed each year. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

800. RULE MAKING HISTORY PRIOR TO JULY 1, 1993 (Rule 800).

All previous rules of this board are hereby repealed and these Rules approved by the board on January 25, 1978, shall become effective on this date. Amended and readopted effective October 15, 1987. Amended and readopted effective May 29, 1991. Amended and readopted effective August 1, 1997. ~~(7-1-93)~~(8-1-97)T

IDAPA - BUREAU OF OCCUPATIONAL LICENSES
24.11.01 - RULES OF THE STATE BOARD OF PODIATRY
DOCKET NO. 24-1101-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: increase the original license fee to \$50; increase the annual renewal fee to \$150.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fees being increased are as stated above in the descriptive summary. Statute authorizing these fees is 54-607, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-1101-9702

300. FEES (Rule 300).

01. Application Fee. A fee shall accompany all applications. The fee shall be two hundred dollars (\$200).
(7-1-97)
02. Original License Fee. The original license fee shall be one hundred fifty dollars (\$1050).
(7-1-97)()
03. Written Exam Fee. The fee for examination shall be that charged by the national examining entity, together with an additional twenty-five (\$25) dollar administrative fee.
(7-1-97)
04. Annual Renewal Fee. Fee for annual renewal of licenses, one hundred fifty dollars (\$1050) on or before the first day of July of each year.
(7-1-97)()

05. Re-Exam Fee. For candidates re-examining for the written and oral/practical examinations or written examination only, the fee for re-examination will be four hundred dollars (\$400). For candidates re-examining for the oral/practical only, the fee shall be two hundred dollars (\$200). (7-1-97)

06. Fee Non-Refundable. No fee shall be returnable. (7-1-93)

IDAPA - BUREAU OF OCCUPATIONAL LICENSES
24.12.01 - RULES OF THE STATE BOARD OF PSYCHOLOGIST EXAMINERS
DOCKET NO. 24-1201-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-2305, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: Increase annual renewal fee to \$200.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Increasing the annual renewal fee from \$140 to \$200. Authorized in 54-2307, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-1201-9701

150. FEES (Rule 150).

01. Annual Renewal Fee. Annual renewal fee - ~~one two hundred forty~~ two hundred dollars (\$~~140~~200). (7-1-93)()
02. Application Fee. Application fee - two hundred dollars (\$200). (7-1-93)
03. Examination Fee. Examination fee - one hundred fifty dollars (\$150). (7-1-93)
04. Reexamination Fee. Reexamination fee - one hundred fifty dollars (\$150). (7-1-93)
05. Reciprocity Fee. Reciprocity fee - one hundred dollars (\$100) as established by Section 54-2312, Idaho Code. (7-1-93)
06. Examination, Reexamination or Reciprocity Fee In Addition to Application Fee. The examination, reexamination or reciprocity fee shall be in addition to the application fee and must accompany the application. (7-1-93)

IDAPA - BUREAU OF OCCUPATIONAL LICENSES
24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS
DOCKET NO. 24-1401-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-3204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: Increase the application and original license fees for certified social worker, private and independent practice and social work to \$40; establish endorsement and license fee for private and independent practice to be \$45; increase renewal fee for certified social worker, certified social worker with private and independent practice and social worker to \$40; clarifies that continuing education classes taken in any renewal year, but not utilized for credit in that same year, may be utilized for credit in the next renewal year; clarifies that the reporting form for continuing education will include identification of the title, date, and location of the course; establish that licensees will maintain continuing education documentation for a period of three (3) years and this will be subject to audit by the Board.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fees being increased are as stated above in the descriptive summary. Statute authorizing these fees is 54-3209, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August , 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-1401-9701

300. FEES (Rule 300).

To administer and carry out the provisions of this Act, the following fees are established: (7-1-93)

- 01. Application and Original License Fee. Application and Original License Fee: (7-1-93)
- a. Certified Social Worker - ~~Twenty-five~~ Forty dollars (~~\$25~~40). (~~7-1-93~~)()

- b. Private and Independent Practice - ~~Twenty-five~~ Forty dollars (~~\$25~~40). (7-1-93)()
- c. Social Worker - ~~Twenty-five~~ Forty dollars (~~\$25~~40). (7-1-93)()
- d. Temporary permit, Social Worker or Certified Social Worker - Twenty-five dollars (\$25). (7-1-93)
- 02. Examination Fee. Examination fee will be set by the Board in concordance with the testing service fees. (7-1-93)
- 03. Endorsement and License Fee. Endorsement and License Fee: (Reference to Subsection 300.06) (7-1-93)
 - a. Certified Social Worker - Forty-five dollars (\$45). (7-1-93)
 - b. Social Worker - Forty-five dollars (\$45). (7-1-93)
 - c. Private and Independent Practice - Forty-five dollars (\$45). ()
- 04. Renewal Fee. Renewal Fee: (7-1-93)
 - a. Certified Social Worker - ~~Twenty-five~~ Forty dollars (~~\$25~~40). (7-1-93)()
 - b. Certified Social Worker with Private and Independent Practice - ~~Forty~~ Fifty dollars (~~\$40~~50). (7-1-93)()
 - c. Social Worker - ~~Twenty-five~~ Forty dollars (~~\$25~~40). (7-1-93)()
- 05. Reinstatement Fee. Reinstatement fees in accordance with Section 67-2614, Idaho Code. (7-1-93)
- 06. All Fees Under This Act Are Non-Refundable. All fees under this Act are non-refundable. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

351. CONTINUING EDUCATION (Rule 351).

- 01. Requirements. (7-1-95)
 - a. Beginning July 1, 1995, continuing education is required for renewal at all levels of social work licensure in Idaho. (7-1-95)
 - b. The minimum continuing education (CE) hours that are required to renew at each licensure level are: (7-1-95)
 - i. Certified Social Worker, Private/Independent Practice - Twenty (20) hours annually. (7-1-95)
 - ii. Certified Social Worker - Twenty (20) hours annually. (7-1-95)
 - iii. Social Worker - Twenty (20) hours annually. (7-1-95)
 - c. Beginning July 1, 1995, certified proof of attendance for formal continuing education hours will be required. (7-1-95)
 - d. Continuing education (CE) requirements for licensees are to be reported annually. A continuing education course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the

following renewal year.

(7-1-95)()

e. Each licensed social worker shall complete and return a Board approved continuing education report form as part of the annual renewal of licenses ~~and attach appropriate documentation.~~ This form will include identification of the title, date, and location of the course for which credit is claimed as well as a signature space for the licensee.

(7-1-95)()

f. Licensees will maintain document verifying CE attendance and curriculum for a period of three (3) years. This documentation will be subject to audit by the board.

()

fg. Licensees shall not be required to comply with this requirement during the first year in which they become licensed.

(7-1-95)

gh. One (1) continuing education hour shall equal one (1) clock hour.

(7-1-95)

hi. Courses that are part of the curriculum of a university, college or other educational institution shall be allotted CE credit at the rate of fifteen (15) CE hours for each semester hour or ten (10) CE hours for each quarter hour of school credit awarded.

(7-1-95)

ij. No more than ten (10) continuing education hours may be obtained from category II.

(7-1-95)

jk. As part of the required hours of continuing education, all licensees must complete at least four (4) hours of training every four (4) years in professional ethics.

(7-1-95)

02. Categories Of Continuing Education.

(7-1-95)

a. Category I. Category I includes formally organized learning events, ideally involving face-to-face interaction with a teacher for the purpose of accomplishing specific learning objectives. Courses, workshops, conferences, practice oriented seminars, staff development and training activities coordinated and/or taught by approved and recognized educators also are included in this category. Because of our geographic location and sparse population, closed circuit T.V., video tapes and correspondence courses may be substituted for face-to-face contact if coordinated by an approved instructor. Videotaped presentations require a discussion period to follow that reviews the learning objectives of the taped program.

(7-1-95)

b. Category II. Category II consists of a variety of self-directed professional study activities and growth experiences. Examples include making presentations on professional issues or programs, teaching a course, presenting a lecture, or conducting a workshop for the first time, editing or writing professional books or articles, and conducting professional research.

(7-1-95)

03. Continuing Education Sources.

(7-1-95)

a. Continuing education courses which are offered or approved by the National Association of Social Workers are automatically acceptable to the Board.

(7-1-95)

i. Professional Associations. Continuing education hours may be obtained by participating in activities sponsored by or approved by professional associations including but not limited to the specialties of Professional Counseling, Social Work, Marriage and Family Therapy, Psychiatry, Psychiatric Nursing, Psychology or Pastoral Counseling. The professional association shall certify the number of clock hours of educational content in each sponsored or approved activity.

(7-1-95)

ii. Educational Institutions. Continuing education hours may be obtained by completing coursework not below your level of licensing or by participating in continuing education programs sponsored by or approved by educational institutions accredited by a regional body recognized by the Council on Post Secondary Accreditation. The educational institution shall certify the number of clock hours of educational content in each sponsored or approved program.

(7-1-95)

iii. Government Agencies, Schools and Hospitals. Continuing education hours may be obtained by

participating in in-service training, courses or workshops sponsored by federal, state, or local government agencies, public school systems and licensed hospitals. The provider shall certify the number of clock hours of educational content in each approved activity. (7-1-95)

b. All continuing education hours must be relevant to the profession of social work at the individual's particular level of social work licensure. Final approval of acceptable programs rests with the Board. (7-1-95)

04. Documentation. (7-1-95)

a. Each licensee shall maintain for three (3) years from the date of submission to the Board their own record of the continuing education activities which they have completed. (7-1-95)

b. Licensees shall attest, on their annual license renewal application, that they have satisfied the continuing education requirements. Documentation of these activities should be retained by the licensee and also sent to the Board. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action, including revocation. (7-1-95)

c. Category I documents must be in the form of a certificate of attendance, a statement signed by the provider verifying participation in the activity, or an official transcript. Documentation of Category II shall be in the form of an affidavit which includes a description of the activity, the subject material covered, the dates and number of hours involved. (7-1-95)

d. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (7-1-95)

IDAPA - BUREAU OF OCCUPATIONAL LICENSES
24.15. 01 - RULES OF THE IDAHO COUNSELOR LICENSING BOARD
DOCKET NO. 24-1501-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-3404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: The purpose of the proposed rules are to establish rules for pastoral care counselors: establish requirement for the supervision of the practicum; establish continuing education requirement; establish national counselor examination must be passed by pastoral care applicants; establish application fee to be \$75; establish examination and reexamination fee to be \$50; establish original license fee to be \$75; and annual renewal fee to be \$60.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fees being charged are as stated above in the descriptive summary. Statute authorizing these fees is 54-3411, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

TEXT OF DOCKET NO. 24-1501-9701

227. -- ~~249~~34. (RESERVED).

235. LICENSED PASTORAL COUNSELORS (Rule 235).

The following requirements must be met for pastoral counselor licensure: ()

01. Graduate Degree. Hold a Master of Divinity (M.Div.) degree or doctoral degree meeting the requirements set forth in Section 54-3405A(1) Idaho Code, from an accredited university or religious institution. ()

a. An accredited university or religious institution shall be one accredited by: the Middle States

Association of Colleges and Secondary Schools; the New England State Association of Colleges and Secondary Schools; the North Central Association of Colleges and Secondary Schools; the Northwest Association of Colleges and Secondary Schools; the Southern Association of Colleges and Secondary Schools; or the Western Colleges Association.
()

b. The Pastoral Counselor Program May also be accredited by the Association of Theological Schools (ATS). ()

02. Practicum. Completion of a practicum of supervised counseling experience of four hundred (400) contact hours. ()

a. The four hundred (400) contact hours shall be supervised at a ratio of one (1) hour of supervision for each ten (10) contact hours. ()

b. The practicum must be supervised by a qualified counselor educator as part of a planned graduate program. ()

03. Post-Graduate Supervised Counseling Experience. The completion of two thousand (2,000) contact hours of post-graduate supervised counseling experience with an approved supervisor. ()

a. "Two thousand (2000) hours" hours is defined as two thousand (2,000) clock hours of experience working in a counseling setting. ()

b. The ratio of supervision to contact hours shall be one (1) hour of supervision for each twenty (20) contact hours. ()

c. An approved supervisor shall include an American Association of Pastoral Counselors approved supervisor, a licensed pastoral counselor, a licensed psychiatrist, a licensed psychologist, or licensed professional counselor. ()

04. Examination. ()

a. The Board requires successful completion of the national counselor examination. ()

b. The examination will be conducted at a time and place specified by the Board. ()

c. Successful performance on the examination will be established by the Board. ()

d. The first time the examination is failed, the applicant may take it again the next time it is given upon application and payment of fees. If the examination has been failed twice, the individual must wait at least one (1) year before taking it a third time. An individual must wait at least one (1) year and petition the Board for approval to take the examination a fourth time. The petition shall include evidence satisfactory to the Board that the applicant has taken additional study in the field of pastoral counseling before approval will be granted. ()

236. MATERIAL TO BE FILED BY LICENSED PASTORAL COUNSELOR APPLICANTS (Rule 236).
Each applicant must: ()

01. Complete an Application. Complete an application upon a form prescribed by the Counselor Licensing Board. ()

02. Verify Counseling Program. Verify counseling program identified in the application with official graduate transcripts sent by colleges or institutions to the Board. ()

03. Submit Verification of Supervised Practicum. Submit verification of supervised practicum counseling experience upon the form prescribed by the Board. ()

04. Submit Verification of Supervised Experience. Submit verification of supervised experience upon a

form prescribed by the Board. ()

05. Submit Application Fee. Submit a non-refundable application fee of seventy-five dollars (\$75). ()

237. CONTINUING EDUCATION FOR LICENSED PASTORAL COUNSELOR (Rule 237).
A licensed pastoral counselor must complete twenty (20) contact hours of continuing education to renew their license. ()

01. Contact Hours. The contact hours of continuing education must be undertaken within the following areas of study: ()

- a. Theories of personality and personality development: ()
- b. Theories of counseling and psychotherapy: ()
- c. Marriage and family dynamics and counseling: ()
- d. Group dynamics and counseling: ()
- e. Personality, culture and ethics: ()
- f. Psychology of religious experience: ()
- g. Pastoral assessment and treatment: ()
- h. Psychopathology: ()
- i. Theories of pastoral care: ()
- j. Research methods: ()
- k. Orientation to the helping professions. ()

02. Documentation. Documentation must be copies of verification from providers, transcripts, or certificates acceptable to the Board. ()

03. When Requirements Begin. Continuing education requirements shall begin upon the second renewal of the licensed pastoral counselor license. Prior to renewal, documentation of continuing education credits must be provided along with a renewal application. ()

238. -- 249. (RESERVED).

250. FEES (Rule 250).

- 01. Application Fee. Application fee: (7-1-97)
 - a. Licensed Professional Counselor - Seventy-five dollars (\$75). (7-1-97)
 - b. Licensed Professional Counselor-Private Practice seventy-five dollars (\$75). (7-1-97)
 - c. Licensed Pastoral Counselor - Seventy-five dollars (\$75). ()

02. Licensed Professional Counselor and Licensed Pastoral Counselor Examination or Reexamination Fee. Licensed Professional Counselor and Licensed Pastoral Counselor examination or reexamination fee - Fifty dollars (\$50). (~~7-1-97~~)()

- 03. Original License Fee. Original License fee: (7-1-97)
 - a. Licensed Professional Counselor - Seventy-five dollars (\$75). (7-1-97)
 - b. Licensed Professional Counselor-Private Practice - Twenty dollars (\$20) (7-1-97)
 - c. Licensed Pastoral Counselor - Seventy-five dollars (\$75). ()
- 04. Annual Renewal Fee. Annual ~~R~~ renewal fee for Licensed Professional Counselor, ~~and~~ Licensed Professional Counselor-Private Practice, and Licensed Pastoral Counselor - Sixty dollars (\$60). (~~7-1-97~~)()
- 05. Fees are Non-refundable. All fees are non-refundable. (7-1-93)

IDAPA - BUREAU OF OCCUPATIONAL LICENSES
24.19.01 - RULES OF THE BOARD OF RESIDENTIAL
CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-4205, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: housekeeping clarification regarding application documentation; dates and times of board meetings and examinations; adding information regarding contents of the examination; providing that applications are terminated if examination is not passed within two (2) years from first examination; and defining "emergency" for purposes of issuance of temporary permit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dee Ann Randall at (208) 334-3233.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dee Ann Randall
Owyhee Plaza
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TEXT OF DOCKET NO. 24-1901-9701

100. APPLICATIONS (Rule 100).

Applications will be on forms furnished approved by the Bureau of Occupational Licenses Board. No application will be considered for any action unless accompanied by the appropriate fees. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

200. BOARD MEETINGS - DATES - PLACES (Rule 200).

01. Board Meeting Dates. ~~The board shall meet on the second Thursday of November, 1992; May, 1993; September 1993. Thereafter~~ The board shall meet on the second Thursday of March and September of each year.

(7-1-93)()

02. Place of Board Meetings. Board meetings will be held in Boise, Idaho, at the bureau. (7-1-93)

03. Dates and Places May Be Changed. Dates and places of board meetings may be changed by the action of the majority of the board and advance public notice given. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

300. EXAMINATIONS (Rule 300).

01. Application and Deadline Date for Filing. An application for examination must be accompanied by the examination fee and proof of completion of approved curriculum. Applications must be received by the Bureau of Occupational Licenses at least thirty (30) days prior to the date of examination. (7-1-93)()

02. Individuals Who Have Special Needs. Individuals who have special needs as defined by the American Disabilities Act must specify those needs or required services as indicated on the application form. (7-1-93)

03. Dates of Exams. Examinations ~~will be administered on the second Tuesday of December, 1992; June, 1993; and October, 1993. Thereafter examinations will be administered semi-annually on the second Tuesday in April and October of each year beginning with April, 1994, at the office of the bureau at times and locations to be set by the Board.~~ (7-1-93)()

04. Contents of Exam. The examination will consist of two (2) Sections. (7-1-93)

a. Section One will include questions from all or some of the following topics: (7-1-93)()

i. Business Planning and Marketing. (7-1-93)

ii. Fiscal Planning and Management. (7-1-93)

iii. Human Resource Planning. (7-1-93)

iv. Residential Health Services. (7-1-93)

v. Nutrition and Food Service. (7-1-93)

vi. Working with the Elderly. (7-1-93)

vii. Working with the Mentally Ill. (7-1-93)

viii. Social and Recreational Activities. (7-1-93)

ix. Legal Issues. (7-1-93)

x. Licensing Process. (7-1-93)

xi. Housekeeping. (7-1-93)

xii. Physical Maintenance and Fire Safety. (7-1-93)

xiii. Developmentally Disabled. ()

b. Section Two will include questions from the Idaho Board and Care Act, Chapter 33, Title 39, Idaho Code and the Idaho Department of Health and Welfare rules promulgated thereunder and appearing at Title 3, Chapter 21. (7-1-93)

05. Passing Score on Exam. An examination is passed by obtaining a score of seventy percent (70%) or better on each section. Applicants who fail to pass one (1) section of the examination must retake and pass that section within two (2) years from the date of the first examination or the application file will be terminated without further notice to the applicant, and the applicant will be required to begin the process as a new applicant except that no further temporary permits will be granted. (7-1-93)()

06. Requirements for Retakes. There will be a seventy-five dollar (\$75) fee for retakes of any or all portions of the examination. Individuals desiring to be reexamined must file a letter of intent, together with the appropriate fee, with the board. The letter and fee must be received by the Bureau at least thirty (30) days prior to examination. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

402. TEMPORARY PERMITS - LIMITATIONS (Rule 402).

01. Requirements for Issuance. A temporary permit may be issued for six (6) months upon application and payment of fees. Temporary permits may be renewed one (1) time without further qualification. A second renewal will be issued, only where an applicant has taken and passed one (1) part of the two (2) part examination. No more than two (2) renewals will be issued for any reason. (7-1-96)

02. ~~Grandfathering. As of the effective date of this rule, individuals who hold temporary permits will be entitled to renew those permits only as set forth in Subsection 402.01.~~ Emergency Permit. An emergency permit will be issued only in the event that the facility experiences an unexpected vacancy. (7-1-96)()

(BREAK IN CONTINUITY OF SECTIONS)

500. RENEWAL/RECERTIFICATION/REINSTATEMENT (Rule 500).

Licenses expire on June 30 of each year and there will be no grace period for renewal. The Board shall refuse to renew a residential care administrators license unless the required fee is accompanied by an affidavit signed by the applicant setting forth the applicant's completion of continuing education requirements. (7-1-93)

01. Requirements For Reinstatement. Applicants, ~~due to lack of annual renewal,~~ seeking reinstatement of a license canceled for failure to renew within a five (5) years of the cancellation period, must pay a twenty-five dollar (\$25) reinstatement fee plus the back year or years fees and shall provide verification of twelve (12) hours of continuing education. (7-1-93)()

02. Beyond a Five (5) Year Lapse. Beyond a five (5) year lapse, the applicant will be treated as a new applicant and application shall be made on the same forms as an application for an original license. (7-1-93)

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD
25.01.01 - RULES GOVERNING OUTFITTERS AND GUIDES LICENSING BOARD
DOCKET NO. 25-0101-9701

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective August 15, 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 rule-making procedures have been initiated. The action is authorized pursuant to Section 36-2107(b) and (d), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rule-making was held as follows: 9:00 a.m., Wednesday, April 30, 1997, at the Salmon Public Library, 204 Main Street, Salmon, Idaho.

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 October 15, 1997.

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 address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The changes to the proposed rules include adding goat packing and parasailing to the definition of hazardous excursions. It adds the word "inactivity" to the definition of "Nonuse" and makes nonuse one of the reasons for relinquishment of a license. Failure to obey an order of the Board would be an additional form of unethical or unprofessional conduct. An outfitter's license would have client and harvest limitations or restrictions on it. The proposed rules provide for a one time employment of a guide on a temporary basis. They also clarify that applications postmarked or received by the Board on or after July 1 of each year will not be accepted for licensure and the license will therefore have expired. Procedures for amending an outfitter license are set out which are similar to a new outfitter license application. New Rule 049 provides for reports which have to be submitted to the Board. New Rule 058 provides for board allocation of deer and elk tags pursuant to House Bill 1172 passed by the 1997 legislative session. The amendments to Rule 059 provides for new outfitting activities on the Boise and Payette Rivers. A definition of the standard terms of probation are set out in Rule 068.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5526(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The addition of goat packing and parasailing to the definition of hazardous excursions is for the protection of the health, safety and welfare of the public when using goat packing and parasailing services. The addition of "inactivity" as a reason for relinquishment of a license grants a benefit to future outfitters for the utilization of the license which is to be vacated and a benefit to the public of having services offered again in the place of the inactive license. The addition of the violation for failure to obey an order of the Board is for the protection of the health, safety and welfare of the public from an outfitter or guide who has failed to obey an order of the Board. The inclusion of client and harvest limitations or restrictions to an outfitter license confers the benefit to the outfitter of being able to serve clients and harvest game, and protects the public and other outfitters from unlimited use of a resource or unlimited harvest of game. The provision for a temporary guide license confers the benefit to an employing outfitter for the use of a temporary guide when an fully qualified guide cannot be immediately located. The amendment to the rules setting a cut-off date for delinquent license applications is for the timely protection of the health, safety and welfare of the public from outfitters and guides who have not renewed their licenses. The provision for outfitter license amendment application process and procedures confers the benefit of amending a license to existing outfitters and guides who wish to amend their licenses. The provision for reports to the Board is for the protection of the health, safety and welfare of the public. The provision for the allocation of deer and elk tags to outfitter areas is to confer the benefit to licensed outfitters of having tags allocated to their operating areas and to the public clients of being assured of a tag allocation for the area in which they wish to hunt. The provisions for outfitting on the Boise and Payette Rivers is to confer this benefit to an outfitter to be able to operate on these sections and on the public on being able to obtain outfitted services on these areas. The provision for terms of probation on licensed outfitters and guides is for the protection of the health, safety and welfare of the public by specifying the standard terms of probation for outfitters and guides who are placed on probation.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fee increases imposed or increased.

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted at the public hearing.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact:

Dean Sangrey, Executive Director (208) 327-7380 - FAX 327-7382

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997.

Dean Sangrey, Executive Director
Outfitters and Guides Licensing Board
1365 North Orchard, Suite 172
Boise, Idaho 83706
(208) 327-7380 - FAX (208) 327-7382

TEXT OF DOCKET NO. 25-0101-9701

002. DEFINITIONS.

The Act defines certain terminology applicable to its interpretation and administration (Idaho Code 36-2102). Further definitions, for the purposes of these Rules are: (4-1-92)

01. Act. Shall mean Idaho Code, Title 36, Chapter 21, commonly known as the Outfitters and Guides Act, as amended. (4-1-92)

02. Authorized Person. An investigator or enforcement agent in the employ of the Board, a conservation officer of the Idaho Department of Fish and Game, or any local, state, or federal law enforcement officer. (4-1-92)

03. Board. The Idaho Outfitters and Guides Licensing Board. (4-1-92)

04. Board Meeting. The set schedule of meeting dates established for conduct of regular Board business on a calendar year basis. Additional meetings may be scheduled as necessary (See Section 071). (4-1-92)

05. Booking Agent. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. (4-1-92)

06. Compensation. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party shall not be deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. (4-1-92)

07. Completed Application. An application submitted for Board consideration which contains all of the material required to be submitted by the Board for that license category. (4-1-92)

08. Consideration. The receipt or taking of goods, services, or cash in exchange for the provision of facilities and services in the conduct of outfitted or guided activities. (4-1-92)

09. Desert. A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments. (4-1-92)

10. Designated Agent. An individual who meets all qualifications for an outfitter's license who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed by the Board to operate as an outfitter and who shall, together with the licensed outfitter, be responsible and accountable for the conduct of the licensed outfitter's operations. The name of each designated agent employed by an outfitter shall appear on the outfitter's bond. A designated agent may act as a guide if he possesses the qualifications of a guide as determined by the Board. (Previously referred to as Managing Agent). (4-1-92)

11. Drift Boats. Shall be substituted for and have the same meaning as "float boats" defined below. (4-1-92)

12. Enforcement Agent. An individual employed by the Board having the power of peace officers to enforce the provisions of the Idaho Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and the Rules promulgated thereunder. (4-1-92)

13. Facilities and Services. The provision of personnel, lodging (tent, home, lodge, or hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Idaho Code 36-2102(b). (4-1-92)

14. First Aid Card. A valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Board. (4-1-92)

15. Fishing. Fishing activities, on those waters and for those species described in the Idaho Department of Fish and Game "General Fishing Seasons Rules" and any anadromous fishing rules; for purposes of the "Act," fishing is defined as follows: (4-1-92)

a. Anadromous fishing means fishing for salmon or steelhead trout. (4-1-92)

b. Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (4-1-92)

c. Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by Idaho Department of Fish and Game rules. (4-1-92)

d. Incidental fishing means fishing conducted as a minor activity. (4-1-92)

e. Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (4-1-92)

f. Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (4-1-92)

16. Float Boats. Watercraft (inflatable watercraft, dories, drift boats, canoes, catarafts, kayaks, sport

yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steering only. Downstream steering does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. (4-1-92)

17. Guide. An individual who meets the criteria as set forth in Idaho Code 36-2102(c), and has further met the required qualifications as prescribed in the Rules to provide professional guided services to clientele in the pursuit and conduct of licensed activities. (4-1-92)

18. Guide License. A license issued by the Board to an individual who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities as defined in Idaho Code 36-2102(c). (4-1-92)

19. Hazardous Excursions. Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment which may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, parasailing, snowmobiling, survival courses, and motored and non-motored cycling. ~~(5-1-95)~~(8-15-97)T

20. He/his/him. Shall mean either the male or female gender. (4-1-92)

21. Hunting. The pursuit of any game animal or bird and all related activities including packing of camp equipment, supplies, game meat and clients to and from a hunting camp. (12-30-93)

22. Incidental Activity. Shall be and is the same as a minor activity. (4-1-92)

23. Incidental Amendment. All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. (4-1-92)

24. Investigator. An individual employed by the Board to monitor compliance with the provisions of the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and Rules promulgated thereunder and issue warning tickets for violations thereof. An investigator shall not have arrest powers nor any other power of a peace officer. (4-1-92)

25. Major Activity. A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. (4-1-92)

26. Major Amendment. All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. (4-1-92)

27. Minor Activity. A licensed activity the nature of which may be carried out in conjunction with a major activity, but is not intended to provide a significant amount of income to an outfitter. (4-1-92)

28. Mountainous. A region receiving limited to abundant annual precipitation with an associated vegetative cover of grass, weeds, shrubs, or trees. Cool summer temperatures and cold winter temperatures prevail. A mountainous area is a land surface ranging from level to gently rolling low hills to elevated lands that are often broken with poor to well-developed, deeply entrenched drainage systems, rims, cliffs, and escarpments to steep-sided land masses of impressive size and height. (4-1-92)

29. New Opportunity. A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. (4-1-92)

30. Nonresident. An individual, corporation, firm, or partnership who is not a resident of the state of Idaho. (See "Resident"). (4-1-92)

31. Nonuse. ~~Inactivity or A~~an outfitter's making zero use of major licensed activities for any two (2) of the three (3) preceding years. See Definitions, "Zero use," and Subsection 024.01. ~~(4-1-92)~~(8-15-97)T
32. Operating Area. The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-1-92)
33. Operating Plan. A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (4-1-92)
34. Outfitter. An individual, corporation, firm, partnership, or other organization or combination thereof that meets the criteria as set forth in Idaho Code 36-2102(b), and has further met the required qualifications as prescribed in the Rules to conduct an outfitting business in Idaho. (4-1-92)
35. Outfitter License. A license issued by the Board to an individual, partnership, corporation, or other duly constituted organization to conduct activities as defined in Idaho Code 36-2102(b). NOTE: The conduct of an outfitted operation on any private land(s) within an operating area approved by the Board is not authorized unless signed permission/lease is obtained from the private land owner(s), or their agent(s), and filed with the Board. (4-1-92)
36. Out-of-Pocket Costs. The direct costs attributable to a recreational activity. Such direct costs shall not include: (4-1-92)
- a. Compensation for either sponsors or participants; (4-1-92)
 - b. Amortization or depreciation of debt or equipment; or (4-1-92)
 - c. Costs of non-expendable supplies. (4-1-92)
37. Power Boats. All motorized watercraft used on Idaho waters open to commercial outfitting activities as set forth in Subsections 059.01 and 059.02. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steerage. (4-1-92)
38. Relinquishment of License Privileges. The failure to re-apply at the expiration of a license; the loss through nonuse, inactivity, revocation, or voluntary surrender of a license; or other loss of license. (See Subsection 030.03). ~~(4-1-92)~~(8-15-97)T
39. Resident. An individual, corporation, firm, or partnership who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license. (4-1-92)
40. Rules. The Rules of the Board. (4-1-92)
41. Stay of Board Action. An order, pursuant to Idaho Code 67-5215(c), stopping or delaying the enforcement of a Board decision, order or action. (4-1-92)
42. Third Party Agreement. The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (4-1-92)
43. Trainee. A person not less than sixteen (16) years of age who does not possess the necessary experience or skill qualifications required to obtain a guide license, but who is working toward obtaining the necessary experience or skill qualifications. This required training shall be recorded on a form provided by the Board. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (5-1-95)
44. Under Supervision. The trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during

training as long as the trainee's activity is closely monitored. (4-1-92)

45. Unethical/Unprofessional Conduct. Any activity(ies) by an outfitter or guide which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: an outfitter employing an unlicensed guide; providing false, fraudulent or misleading information to the Board; failure to obey an order of the Board; failure to provide services as advertised or contracted; harassment of the public in their use of Idaho's outdoor recreational opportunities; violation of state or federal fish and game laws; engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; or disregard for the conservation, maintenance or enhancement of fish, game, land and water resources.

~~(4-1-92)~~(8-15-97)T

46. Validated Training Form. An approved form bearing the "Great Seal of the State of Idaho" AND the official stamp of the Board affixed thereon. (4-1-92)

47. Watercraft. A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (4-1-92)

48. Zero Use. No or negligible use by an outfitter of his licensed activity unless the lack of use is due to an act of nature or season or hunting or fishing restrictions by a state or federal agency that limit the ability of the outfitter to seek and accommodate clientele. (4-1-92)

(BREAK IN CONTINUITY OF SECTIONS)

004. LICENSE REQUIREMENTS.

Idaho law (Idaho Code, Title 36, Chapter 21) requires that: (10-15-88)

01. License. An outfitter and/or guide license must be secured and in the possession of the licensee before commencing outfitting, guiding, or acting in any capacity as an outfitter or guide. The submission of a license application does not fulfill this requirement. (10-15-88)

02. Activities. An outfitter's license shall have set forth upon its face or an attachment thereto the operating area and the specific activities including client and harvest limitations or restrictions which the licensee is authorized to conduct. ~~(10-15-88)~~(8-15-97)T

03. Other. A guide license shall specify the activities for which the licensee is qualified to guide. The licensee shall guide only within the operating area and for activities covered by the employing outfitter's license (see Section 032). The employing outfitter(s)' operating area description shall not be attached to a guide license. (10-15-88)

04. Restrictions. It be deemed unlawful and a misdemeanor for any person to: (10-15-88)

a. Engage in the occupation of guiding unless said person is employed by a licensed Idaho outfitter and possesses a valid guide license issued by the Board; or (10-15-88)

b. Knowingly and willingly conspire to violate the provisions of Idaho Code, Title 36, Chapter 21, or the Rules promulgated thereunder. (10-15-88)

(BREAK IN CONTINUITY OF SECTIONS)

007. LICENSE RESTRICTIONS.

A license issued by the Board shall, for an outfitter license, specify the operating area and all activities for which the

outfitter is licensed; for a guide license, specify all activities for which a guide is qualified to guide and shall indicate the outfitter(s) who signed the guide license application as the employing outfitter(s); and identify such limitation(s) or qualification(s) as may be imposed by the Board in issue of said license. (10-15-88)

01. Restriction. An outfitter shall not conduct any activities not specified on the outfitter license, nor operate in any area(s), nor on any water(s) for which he is not licensed. (10-15-88)

02. Qualified. All outfitters must be qualified to guide or have in their employment a licensed guide or guides who are qualified for the activity(ies) for which the outfitter is licensed. (10-15-88)

03. Review. An outfitter's qualifications to guide shall be reviewed by the Board, and, if approved, he will be issued both an outfitter and guide license at no additional fee. (10-15-88)

04. Guide Restrictions. A guide shall not guide for any activity(ies), or on any water, or in any operating area for which his employing outfitter is not licensed. (5-1-95)

05. Qualifications. The qualification(s) of an outfitter or guide licensee shall be determined in accordance with Idaho Code, Title 36, Chapter 21, and Rules promulgated thereunder. (10-15-88)

06. Limitation. A limitation in number of clientele served, operating area, or any other criteria affecting the safety, health, and welfare, of the public or viability of the fish, and wildlife, or other natural resources shall be imposed in licensing where such limitation is deemed necessary by the Board in accordance with Idaho Code, Title 36, Chapter 21, and the Idaho Outfitters and Guides Licensing Board Rules. (10-15-88)

07. Notification. An outfitter shall notify the Board: (10-15-88)

a. When an outfitter permanently terminates the services of a licensed guide during the season, the Board shall be notified within fifteen (15) days, stating the date of termination. (10-15-88)

b. When an outfitter employs a guide who is not currently licensed under his outfitter's license, said outfitter shall notify the Board within fifteen (15) days. (10-15-88)

c. The above requirements shall not apply in the case of a temporary employment, or short term "loan" or transfer (less than fifteen (15) days duration) of a guide between outfitters, or termination of employment of a guide upon completion of the seasonal activity for which the guide was employed. (10-15-88)

d. In addition, an outfitter may employ a guide for ten (10) days or for one (1) excursion, whichever is less, using a one-time temporary guide license on a form provided by the Board. With the exception of a current first-aid card, the guide shall be otherwise fully qualified to provide guiding services in the area and for the activity guided. The employing outfitter shall certify to the Board that the guide is qualified and may only use one guide in this manner per license year. (8-15-97)T

(BREAK IN CONTINUITY OF SECTIONS)

015. FEES.

Prior to the issuance of a license, an applicant must submit the appropriate fee in the form of a certified check, cashier's check, money order, or outfitter's company check. The fee need not be submitted by a new applicant in order for the application to be considered complete but must accompany any renewal application. (4-1-92)

01. Fee. The fee for a resident or nonresident outfitter license is two hundred fifty dollars (\$250) for licenses effective April 1, 1992. When a completed renewal application is filed with the Board after March 31, the following penalty shall apply: (4-1-92)

a. A completed application postmarked or received by the Board prior to April 16 - no late fee shall apply.

(4-1-92)

b. A completed application postmarked or received by the Board April 16 through June 30 - a fifty dollar (\$50) late fee shall be paid before the license is issued. (4-1-92)

c. A completed application postmarked or received by the Board ~~on or after July 1 through March 31 of the ensuing license year must comply with the following before a license will be considered: will not be accepted for licensure. The license will have lapsed and therefore is void and vacated.~~ (4-1-92)

~~i. Payment of the fifty dollar (\$50) late fee; (4-1-92)~~

~~ii. Submission of a new application inclusive of an operating plan; (4-1-92)~~

~~iii. Submission of use records for the previous three (3) years; (4-1-92)~~

~~iv. If a completed application is not postmarked or otherwise received by the Board by March 31 June 30 of the ensuing renewal license year, the license is relinquished. (4-1-92)(8-15-97)T~~

02. Other Fee. The fee for a resident or nonresident guide license is eighty-five dollars (\$85) for licenses effective April 1, 1992. (4-1-92)

(BREAK IN CONTINUITY OF SECTIONS)

018. NEW OUTFITTER APPLICATION.

In order to be complete, a new outfitter license or outfitter license amendment application must, in addition to all other requirements: ~~(9-1-90)(8-15-97)T~~

01. Signed. Be signed by the applicant. A new outfitter license application must be signed under oath before a notary public and be accompanied by a bond on a form approved by the Board. ~~(9-1-90)(8-15-97)T~~

02. Other Signatures. Include the signatures of: (9-1-90)

a. The affected state and federal land managers in all areas where an outfitter plans to utilize lands administered by the state or federal government (this may involve memorandum of understanding procedures as applicable to proposed operation on national forest or public domain lands); and, (9-1-90)

b. Private land owners, or their agents, where an outfitter applicant proposes to use such private lands in his operation. (9-1-90)

03. Operating Plan. Include an operating plan. The operating plan shall include, among other things, the following: (9-1-90)

a. A list of the activities to be conducted in the operating area(s) requested. (9-1-90)

b. A detailed map showing the operating area(s) requested for each activity and a worded description of the boundaries of said operating area(s), described in terms of rivers, creeks, and ridges with prominent reference coordinates (section, township, and range). (9-1-90)

c. An outfitter whose operation is solely on rivers, streams, lakes or reservoirs should specify put-in and take-out points but need not send maps. (9-1-90)

d. A detailed description of how and when each operating area(s) will be used for each activity. (9-1-90)

- e. The proposed number of guests intended to be accommodated for each activity within the proposed operating area(s). (9-1-90)
- f. A list of the names and locations of camps that will be used for each activity, and whether on public or private land. (9-1-90)
- g. A list of the basic equipment, facilities, and livestock, and proof of financial capability necessary to conduct the proposed outfitted activity or business. (9-1-90)
- h. The number, title (guide, lead guide, etc.), and principal activities of individuals to be employed in the business operation. (9-1-90)
- i. A plan to assure the safety and provide for emergency medical care of guests. (9-1-90)

(BREAK IN CONTINUITY OF SECTIONS)

027. OUTFITTER LICENSE TENURE.

Tenure in any outfitter's operating area ceases with the expiration of his outfitter license at the end of any license year. Priority in the operating area may be maintained by submitting a complete application for a license for the ensuing license year before the expiration date of the current license. If a completed application is not postmarked or received by the Board by ~~March 31~~ June 30 of the ~~ensuing~~ renewal license year, the license is relinquished.

~~(4-1-92)~~(8-15-97)T

(BREAK IN CONTINUITY OF SECTIONS)

049. ~~(RESERVED)~~ REPORTS.

The licensee shall submit to the Board on an annual basis or as otherwise required by the Board, an activity, use, and harvest report and other information about outfitting or guiding activities as may be required by the Board.

(8-15-97)T

(BREAK IN CONTINUITY OF SECTIONS)

~~056.--058.~~ (RESERVED).

057. ALLOCATION OF DEER AND ELK TAGS.

The number of deer or elk tags allocated to each outfitter among the authorized operating areas within each game management area, unit or zone will be determined by the Board pursuant to Idaho Code, Sections 36-408(d) and 36-408(j), based on historical use and shall be noted on the license of each outfitter so affected.

(8-15-97)T

058. (RESERVED).

059. RIVER, LAKE AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS.

01. Licensable Waters -- Table. The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides. (4-1-92)

River/Section	Maximum Number Power	Maximum No. Float
(BL1) Blackfoot River - Morgan Bridge to Trail Creek Bridge.	none	2
(BO1) Boise River, South Fork - Danskin Bridge to the Neal Bridge EXCEPT on weekends or holidays. (Each outfitter may use only one (1) boat for fishing only with a maximum of two (2) fisherman.) No overnight camping or walk-and-wade fishing allowed.	none	2
(BO2) Boise River - Downstream westside of the Garden City municipal limits to the confluence with the Snake River.	none	2
(CF1) Clark Fork River - Montana stateline to Lake Pend Oreille (boating closing date September 30).	4 outfitters for either power or float or combination thereof	
(CL1) Clearwater River - Lowell to Kooskia (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.)	none	5
(CL2) Clearwater River - Kooskia to Orofino (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.)	6	10
(CL3) Clearwater River - Orofino to Lewiston (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.)	10	10
* (NFCL) North Fork Clearwater River - Kelly Forks Bridge downstream to backwaters of Dworshak Reservoir.	none	4
(CD1) Coeur d'Alene River - Devil's Elbow to South Fork confluence (boating closing date June 30).	none	5
* (JB1) Jarbidge/Bruneau Rivers	none	4
(KO1) Kootenai River - Montana stateline to Canada boundary.	5	5

River/Section	Maximum Number Power	Maximum No. Float
(LCL1) Little North Fork Clearwater River - Mouth of Canyon Creek to first bridge on the Little North Fork Clearwater River. Fishing only. (Each outfitter may use only two (2) boats per day with a maximum of two (2) fishermen per boat.)	none	2
* (LO1) Lochsa River	none	5
(MO1) Moyie River - Canada boundary to Bonners Ferry Municipal Dam (boating closing date July 20).	none	5
* (OW1) Owyhee River - Nevada stateline to Oregon stateline or South Fork to confluence with Owyhee River (and continuing on to a take-out point).	none	6
(PN1) Payette River, North Fork - Payette Lakes Outlet to Hartsell Bridge. Restrictions: NO FISHING ALLOWED. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN1A) Payette River, North Fork - Cascade City Park, 1/4 mile south of Cascade on Highway 55 to Cabarton. Restrictions: Catch and release for TROUT ONLY, other species F & G rules apply. No stopping by commercial groups from 1/4 mile above to 1/4 mile below heron nesting trees. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN2) Payette River, North Fork - Cabarton to Smiths Ferry Bridge.	none	5
(PS1) Payette River, South Fork - Grandjean to Deadwood River.	none	5
* (PS2) Payette River, South Fork - Deadwood River to Banks.	none	5
(PA1) Payette River - Banks to Black Canyon Dam.	none	5
<u>(PA2) Payette River - Black Canyon Dam to the confluence with the Snake River.</u>	<u>none</u>	<u>2</u>
(PO1) Pend Oreille River	5	5
(PR1) Priest River - Dickensheet Campground to Priest River City.	none	5

River/Section	Maximum Number Power	Maximum No. Float
* (MF1) Salmon River, Middle Fork - Boundary Creek to Indian Creek.	none	27
* (MF2) Salmon River, Middle Fork - Indian Creek to Cache Bar on the Salmon River.	none	27
(SA1) Salmon River - First bridge across Salmon River above Redfish Lake Creek to Torrey's Bar.	none	6
(SA2) Salmon River - Torrey's Bar to first Highway 93 bridge above Challis (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan).	none	5
(SA3) Salmon River - First Highway 93 bridge above Challis to Iron Creek (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan).	none	6
(SA4A) Salmon River - Iron Creek to North Fork - License period from May 1 to September 30. (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.)	5	11
(SA4B) Salmon River - Iron Creek to North Fork - License period from October 1 to April 30. (Each power boat outfitter may use at any one time a maximum of one (1) boat and each float boat outfitter may use at any one time a maximum of three (3) boats.)	2	10
(SA5) Salmon River - North Fork to Corn Creek.	3	9
* (SA6) Salmon River - Corn Creek to Spring Bar.	14	31
* (SA7A) Salmon River - Vinegar Creek to Hammer Creek - License period from April 1 to September 30. (No power boating allowed from the Saturday before Memorial Day through Labor Day from 10:30 a.m./Mountain Time to 5:00 p.m./Mountain Time daily between the Riggins City Boat Dock and Lucile.)	10	26
* (SA7B) Salmon River - Vinegar Creek to Spring Bar.	10	26

River/Section	Maximum Number Power	Maximum No. Float
* (SA7C) Salmon River - Spring Bar to Hammer Creek - Closed to all commercial boating from October 1 to March 31 (Three (3) designated outfitters may utilize float boats to fish from the Riggins City Boat Dock to Hammer Creek during the period October 1 to March 31).	none	3
* (SA8) Salmon River - Hammer Creek to Heller Bar or Lewiston on the Snake River.	15	35
* (SE1) Selway River - Paradise Campground to Selway Falls.	none	4
(SE2) Selway River - Selway Falls to the mouth of the Selway River at Lowell. (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.)	none	5
(SH1) Snake River, Henry's Fork - Henry's Lake Outlet to Hatchery Ford (Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing (No more than three (3) of these boats may be used at any one time on any of the following river reaches: Henry's Lake Outlet to Island Park Dam, Island Park Dam to Last Chance, Last Chance to Osborn Bridge, and Osborn Bridge to Hatchery Ford), and (b) five (5) boats for other boating activities. (The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan).	none	7
(SH2) Snake River, Henry's Fork - Mesa Falls to St. Anthony (Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing (No more than three (3) of these boats may be used at any one time on any one of the following river reaches: Mesa Falls to Warm River, Warm River to Ashton Dam, and Ashton Dam to St. Anthony), and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan).	none	8
(SH3) Snake River, Henry's Fork - St. Anthony to confluence with South Fork of Snake River (Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. (The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan).	none	4

River/Section	Maximum Number Power	Maximum No. Float
(SS1) Snake River - South Fork - Palisades Dam to confluence with Henry's Fork. No more than four (4) boats per section/per day may be used by an outfitter at any one time on any of the following river reaches: (a) Palisades Dam to Swan Valley Bridge; (b) Swan Valley Bridge to Black Canyon (Exception: Not more than eight (8) boats will be permitted in Section (b) on the same day, provided that no more than four (4) of said boats are in this Section after 11:00 a.m.); (c) Black Canyon to Poplar (Kelly Canyon); and (d) Poplar to the confluence with Henry's Fork. Restrictions: No outfitter may have more than twelve (12) boats on the SS1 in any one (1) day. Further, the lower boundary of Section (a) (Palisades Dam to Swan Valley Bridge) shall overlay Section (b) (Swan Valley Bridge to Black Canyon), and Section (b) shall overlay Section (c) to the Cottonwood access. Supply boats which do not carry clients are exempt from these restrictions.	5	6
(SN1) Snake River - Henry's Fork confluence downstream to Gem State Power Plant	3	3
(SN2) Snake River - Gem State Power Plant downstream to headwaters of American Falls Reservoir.	3	3
(SN3) Snake River - American Falls Dam to Massacre Rocks State Park.	3	3
(SN4) Snake River - Massacre Rocks State Park to Milner Dam.	3	3
* (SN5) Snake River - Milner Dam to Star Falls.	none	3
* (SN6) Snake River - Star Falls to Twin Falls.	none	5
(SN7) Snake River - Twin Falls to Lower Salmon Falls Dam.	3	3
(SN8) Snake River - Lower Salmon Falls Dam to Bliss Dam.	3	5
(SN9) Snake River - Bliss Dam to headwaters of C.J. Strike Reservoir.	5	5
(SN10) Snake River - C.J. Strike Dam to Walter's Ferry.	5 outfitters for either power or float or combination thereof	
(SN11) Snake River - Walter's Ferry to headwaters of Brownlee Reservoir.	5	none

River/Section	Maximum Number Power	Maximum No. Float
* (SN12) Snake River - Hells Canyon Dam to Pittsburg Landing.	18	15
* (SN13) Snake River - Hells Canyon Dam to Pittsburg Landing (Two (2) one-day float trips only).	none	2
(SN14) Snake River - Pittsburg Landing to Heller Bar or Lewiston.	19	15
(SN15) Snake River - Washington/Oregon stateline to Lewiston	Limitations pending. (This section is set aside for future rules of fishing only outfitters)	
(SJ1) St. Joe River - Spruce Tree Campground to St Joe City Bridge. St. Joe City Bridge to Lake Coeur d'Alene	none 2	2 none
(SM1) St. Maries River	5	5
(TE1) Teton River - Upper put-in to Cache Bridge (motors not to exceed 10 hp).	5 outfitters for either power or float or combination thereof	
(TE2) Teton River - Cache Bridge to Harrop Bridge (motors not to exceed 10 hp).	6 outfitters for either power or float or combination thereof	
(TE3) Teton River - Harrop Bridge to confluence with Snake River (motors not to exceed 10 hp).	none	5

* Classified rivers

(~~5-1-95~~)(8-15-97)T

02. Other -- Table. The following lakes and reservoirs or portions thereof that lie totally or partially within the state of Idaho shall be open to fishing by outfitters with the following limitations:

Lake or Reservoir	Maximum Number of Operators	Maximum Number Boats per Operator per Lake or Reservoir
Lake Coeur d'Alene	8	1
Dworshak Reservoir	7	2

Lake or Reservoir	Maximum Number of Operators	Maximum Number Boats per Operator per Lake or Reservoir
Hayden Lake	1	2
Henry's Lake	8	2
Island Park Reservoir	7	2
Magic Reservoir	3	2
Palisades Reservoir	10	2
Lake Pend Oreille	11	1
Priest Lake	5	1
American Falls Reservoir	3	2
C.J. Strike Reservoir	4	2
Brownlee Reservoir	5	2
Oxbow Reservoir	3	2
Hells Canyon Reservoir	3	2

(4-1-92)

03. Other Lakes and Reservoirs. All other Idaho lakes and reservoirs shall be limited to two (2) outfitters with a maximum of two (2) boats (float or power) per outfitter. (4-1-92)

(BREAK IN CONTINUITY OF SECTIONS)

068. ADMINISTRATIVE FINES/PROBATION/RESTRICTIONS.

01. Penalties -- Table. In lieu of suspension, probation, restriction or revocation of a license, the following penalties may be applied to that licensee or those licensees found to have violated the provisions of Idaho Code Title 36, Chapter 21 or the Rules of the Board. Each numbered penalty set forth below corresponds to the numbered sub-paragraph for discipline set forth in Idaho Code 36-2113(a) with such fine, suspension, probation, restriction or revocation of a license applicable to each numbered penalty.

	First Offense	Second Offense	Third Offense
1.	\$100-\$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License
2.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
3.	All penalties shall be within the Board's discretion.		
4.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
5.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine
6.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine

	First Offense	Second Offense	Third Offense
7.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
8.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License
9.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License
10.	\$100 - \$500 Fine	\$500 - \$2,500 Fine	\$2,500 - \$5,000 Fine
11.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine
12.	\$100 - \$500 Fine	\$500 - \$2,500 Fine	\$2,500 - \$5,000 Fine
13.	All penalties shall be within the Board's discretion.		
14.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine

(10-15-88)

02. Restrictions. No license shall be issued while any outstanding administrative fine monies are due unless an arrangement has been made and approved by the Board for the payment of same. (10-15-88)

03. Terms of Probation. The standard or usual terms of probation are that there be no violations of local, state or federal laws or ordinances, and that no amendments to the license will be permitted during the term of probation. Probation may also include such other restrictions as the Board shall order. (8-15-97)T

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.30 - IDAHO SAFE BOATING RULES

DOCKET NO. 26-0130-9701

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposes rule-making. The action is authorized pursuant to 67-7002, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The proposed changes are made necessary by changes in the Safe Boating Act adopted during the 1996 legislature. Substantive changes include: Amends the definition of "watercraft" to bring it into conformity with legislative changes in the definition of "vessel"; Includes "float houses" as an exclusion from the definition of "watercraft"; Deletes language concerning personal flotation devices on vessels under sixteen (16) feet in length; Establishes requirements and procedures for statutorily mandated education of rental personal watercraft operators; Establishes requirements and procedures for the issuance of vessel registrations; Deletes outdated language regarding use permits; Establishes requirements and procedures for the issuance of hull identification numbers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rinda Just, Deputy Attorney General, at the address and telephone below.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 19th day of August, 1997

Rinda Just, Deputy Attorney General
Natural Resources Division
Statehouse, Room 210
P. O. Box 83720
Boise, ID 83720-0010
Phone: (208) 334-4120
(relay service is available by
calling 1-800-377-1363 (voice)
or 1-800-377-3529 (TDD)).
Fax: 334-2690

TEXT OF DOCKET NO. 26-0130-9701

010. DEFINITIONS.

As used in this chapter:

(1-1-94)

01. Duly Constituted Water Ski School. A profit-making business which files Idaho income tax returns in accordance with the Idaho Income Tax Act (Title 63, Chapter 30, Idaho Code) substantiating that instruction of water ski students for the making of a profit is or was being performed by the instructor. (1-1-94)
02. Lifeboat. A vessel that: (7-1-93)
- a. Is owned by the owner of a vessel for which a valid certificate of number has been issued; (7-1-93)
 - b. Is kept with the numbered vessel during normal operation of the numbered vessel; and (7-1-93)
 - c. Is used solely in life threatening situations. (7-1-93)
03. Motorboat. Any vessel propelled by machinery, which is powered by an energy source other than human effort, whether or not such machinery is the principal source of propulsion. (7-1-93)
04. Sailboat. Any vessel equipped with mast(s) and sail(s), dependent upon the wind to propel the vessel in the normal course of operation of the vessel. (1-1-94)
05. Sailboard. A surfboard type sailboat with no freeboard and using a triangular sail on a swivel mounted mast not secured to a hull by guys or stays. (7-1-93)
06. Tender. A vessel equipped with propulsion machinery of less than ten (10) horsepower that: (7-1-93)
- a. Is owned by the owner of a vessel for which a valid certificate of number has been issued; (7-1-93)
 - b. Displays the number of that numbered vessel followed by the suffix "1"; and (7-1-93)
 - c. Is used for direct transportation between the numbered vessel and the shore and for no other purpose. (7-1-93)
07. Watercraft. Those devices designed as a means of transportation on water. The following devices are not considered watercraft: (7-1-93)
- a. Diver's aids operated and designed primarily to propel a diver below the surface of the water; and (7-1-93)
 - b. Non-motorized devices ~~including inflatable air mattresses, single inner tubes, and beach and water toys~~ not designed as a means of transportation on water, such as inflatable air mattresses, single inner tubes, and beach and water toys. (7-1-93)()
 - c. Float houses as defined in Section 67-7003(7), Idaho Code. ()
08. Whistle or Horn. Any sound producing appliance capable of producing the prescribed blasts and which complies with the specifications of 33 U.S.C. Section 2001 et seq. and 33 CFR Section 86.01 et seq. (1-1-94)
09. Other Definitions. Other definitions set forth in the Idaho Safe Boating Act (Title 67, Chapter 70, Idaho Code) are incorporated herein by reference. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

050. PERSONAL FLOTATION DEVICES (PFD's).

01. Personal Flotation Devices Required. Except seaplanes, sailboards, and as provided in Subsections 050.03 and 050.04. of this chapter, no person shall operate or permit to be operated any vessel on the waters of this state without carrying on board personal flotation devices (Type I life preservers, Type II buoyant vests, Type III special purpose marine buoyant devices, Type IV buoyant cushions or ring life buoys, or Type V restricted use devices) as follows: (7-1-93)

~~a. Recreational vessels (used for non-commercial use) less than sixteen (16) feet in length, and canoes and kayaks of any length, shall have one (1) type I, II, III, or IV personal flotation device of a suitable size for each person on board. This subsection expires on April 30, 1995. (1-1-94)~~

~~b.a. Recreational vessels (used for non-commercial use) less than sixteen (16) feet in length, and canoes and kayaks of any length, shall have one (1) type I, II, or III wearable personal flotation devices of a suitable size for each person on board. (5-1-95)~~

~~eb. Recreational vessels sixteen (16) feet in length and over, except as stated in Subsection 050.01.a. of this chapter, shall have one (1) type I, II, or III wearable personal flotation device of a suitable size for each person on board and, in addition, one (1) type IV throwable device. (1-1-94)~~

~~ec. Commercial vessels less than forty (40) feet in length not carrying passengers for hire shall have at least one (1) Type I, II, or III wearable personal flotation device of a suitable size for each person on board. (1-1-94)~~

~~ed. Commercial vessels carrying passengers for hire and commercial vessels forty (40) feet in length or longer not carrying passengers for hire shall have at least one Type I wearable personal flotation device of a suitable size for each person on board. (1-1-94)~~

~~fe. Commercial vessels twenty-six (26) feet in length or longer shall have at least one (1) Type IV throwable ring life buoy in addition to other requirements. (1-1-94)~~

02. Location and Condition. All personal flotation devices required by Section 050 of this chapter shall be readily accessible to persons on board and be of good and serviceable condition. All such devices shall be approved by the U.S. Coast Guard, and shall be marked in accordance with U.S. Coast Guard standards. All such devices shall comply with the construction and design standards set forth by 46 U.S.C. Section 2101 et seq. and Section 4301 et seq., and applicable federal regulations. (1-1-94)

03. Alternative PFD Requirement. A Type V personal flotation device may be carried in lieu of any required personal flotation device if U.S. Coast Guard approved for the activity engaged in. (7-1-93)

04. Exemptions. Racing shells, rowing sculls and racing kayaks are exempt from the requirements of Section 050 of this chapter provided they are manually propelled, recognized by a national or international racing association and designed solely for competitive racing. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

200. WARNING FLAGS FOR DOWNED SKIERS.

No person shall operate or permit to be operated any vessel used for towing waterskiers or similar devices in which persons or objects are being towed above, in, or on the waters of this state unless it shall have on board and display a warning flag as specified in Section 200 of this chapter. (7-1-93)

01. Size and Color. A warning flag shall be international orange or red in color and shall be at least one (1) foot square. (7-1-93)

02. Use. When any person being towed by the vessel becomes disengaged from the towline and is down in the water, a person in the vessel shall immediately hold the warning flag aloft, visible from all sides, as an indicator to other vessels in the area that a person is down in the water. As long as such downed person is in the water, the flag

shall remain displayed to prevent danger to that person and hazards to passing vessels. (1-1-94)

03. ~~Display Use Limited~~. Such warning flag shall be displayed only under the conditions set forth in Section 200 of this chapter or when other eminent danger exists. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

226. PERSONAL WATERCRAFT LIVERIES.

01. Education Required. All liveries renting, leasing or hiring out any personal watercraft shall provide education in the laws, rules and safe operation of the personal watercraft to each person that will operate the personal watercraft. No person shall operate any personal watercraft which is rented, leased or hired without first completing instruction in the laws, rules and safe operation of the personal watercraft. This instruction shall include: ()

() a. The complete reading of "Personal Watercraft Laws and Safe Operation," IDPR form REV 50.13; and

() b. The complete viewing of the video "Play It Safe," produced by the Personal Watercraft Industry Association.

02. Acknowledgment Required. All persons operating a rented, leased or hired personal watercraft shall carry on board for inspection by any law enforcement officer a valid "Idaho PWC Renter's Acknowledgment of Education," form, IDPR form REV 50.14. ()

03. Provision of Forms, Videos, Publications. All forms, videos and other required educational materials will be provided to personal watercraft liveries by the department at no charge to the livery. ()

~~2267. -- 249.~~ (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

325. APPLICATION AND CERTIFICATE OF REGISTRATION: CONTENTS.

01. Requirements. Except as allowed in Subsections 325.03 and 325.03 of this chapter, each application for a certificate of registration and each certificate of registration, referred to in Section 67-7008, Idaho Code, shall contain the following information: (1-1-94)

a. Number issued to the vessel; (7-1-93)

b. Expiration date of the certificate; (7-1-93)

c. State of principal use; (7-1-93)

d. Name of the owner; (7-1-93)

e. Address of owner, including ZIP code; (7-1-93)

f. Whether the vessel is used for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing or other use; (7-1-93)

g. Manufacturer's hull identification number (if any); (7-1-93)

- h. Make of vessel; (7-1-93)
- i. Year vessel was manufactured; (7-1-93)
- j. Overall length of vessel; (7-1-93)
- k. Whether the vessel is an open boat, cabin cruiser, houseboat, or other type; (7-1-93)
- l. Hull material; (7-1-93)
- m. Whether the propulsion is inboard, outboard, inboard-outdrive, or sail; (7-1-93)
- n. Whether the fuel is gasoline, diesel, or other; (7-1-93)
- o. The number previously issued by an issuing authority for the vessel, if any; (7-1-93)
- p. Whether the application is for a new registration, renewal of a registration, or transfer of ownership; (7-1-93)
- q. The signature of the owner. (7-1-93)

~~02. Hull Identification Number. A certificate of registration issued to a vessel that has a manufacturer's hull identification number assigned may omit the requirements of Subsections 325.01.h. through 325.01.n. of this chapter if the manufacturer's hull identification number is plainly marked on the certificate. (7-1-93)~~

~~032. Manufacturer or Dealer. A certificate of registration issued to a manufacturer or dealer to be used on a vessel for test or demonstration purposes may omit the requirements of Subsections 325.01.g. through 325.01.n. of this chapter if the word "manufacturer" or "dealer" is plainly marked on the certificate. (7-1-93)~~

~~043. Livery Vessels. A certificate of registration issued to a vessel that is to be rented or leased without propulsion machinery may omit the requirements of Subsections 325.01.m. and 325.01.n. of this chapter if the words "livery vessel" are plainly marked on the certificate. (7-1-93)~~

04. Proof of Ownership. Each applicant for a certificate of registration as prescribed in Section 67-7008, Idaho Code, shall submit one (1) of the following documents to the department or authorized vendor: ()

a. The bill of sale from the dealer or a bill of sale from the previous owner of the vessel: ()

b. If the vessel is home built, a sworn statement attesting to the identity of the builder, the location or place of construction, the source of the material used for construction and a description of the vessel. The statement must also be accompanied by any receipts received from the purchase or acquisition of the materials used in the construction of the vessel and a copy of the construction plans, if any: ()

c. If the vessel has been rebuilt, a sworn statement attesting to the identity of the builder, the location or place of rebuilding, the source of the material used for rebuilding and a description of the vessel. The statement must also be accompanied by any receipts received for the purchase or acquisition of the materials used in the rebuilding of the vessel and documentation indicating the source of the original hull and proof of ownership from the previous owner: ()

d. If none of the documents listed in Subsections 325.04.a. or 325.04.b. of this Section are available, the applicant must submit an affidavit of ownership to the department. ()

(BREAK IN CONTINUITY OF SECTIONS)

350. NUMBERING: EXEMPTIONS.

The following vessels are exempt from the numbering provisions of Title 67, Chapter 70, Idaho Code, pursuant to Section 67-7009(5), Idaho Code: (7-1-93)

01. Rowboats. Rowboats without motors; (7-1-93)
02. Canoes. Canoes without motors; (7-1-93)
03. Kayaks. Kayaks without motors; (7-1-93)
04. Inflatables. Inflatable vessels without motors; (7-1-93)
05. Paddle Vessels. Paddle vessels without motors; (7-1-93)
06. Sailboards. Sailboards without motors; (7-1-93)
07. Tenders. Tenders; (7-1-93)
08. Documented Vessels. Vessels properly documented with the U.S. Coast Guard, according to 46 CFR 66 through 69 U.S.C. 12101 et seq.; and (7-1-94)(____)
09. Government Vessels. Vessels exempted in Section 67-7009(3), Idaho Code include those vessels owned by the United States, another state or a political subdivision thereof, which are used principally for governmental purposes other than recreation, and which are clearly identifiable as a government-owned vessel. (7-1-93)

351. -- 37499. (RESERVED).

375. USE PERMIT: EXEMPTIONS.

The following vessels are exempt from the numbering and use permit provisions of Title 67, Chapter 70, Idaho Code, pursuant to Section 67-7011(9), Idaho Code:(7-1-93)

01. Rowboats. Rowboats without motors; (7-1-93)
02. Canoes. Canoes without motors; (7-1-93)
03. Kayaks. Kayaks without motors; (7-1-93)
04. Inflatables. Inflatable vessels without motors; (7-1-93)
05. Paddle Vessels. Paddle vessels without motors; (7-1-93)
06. Sailboards. Sailboards without motors; (7-1-93)
07. Lifeboats. Lifeboats; (7-1-93)
08. Tenders. Tenders; and (7-1-93)
09. Government Vessels. Vessels owned by the United States, another state or a political subdivision thereof, which are used principally for governmental purposes other than recreation, and which are clearly identifiable as a government-owned vessel. (7-1-93)

376. -- 399. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

425. HULL IDENTIFICATION NUMBERS: REQUIRED.

01. Obtaining A Hull Identification Number. A person who builds or imports a vessel for his own use and not for the purposes of sale shall request a hull identification number from the director and affix the number as instructed (Section 67-7004(2), Idaho Code). (1-1-94)

02. Displaying The Hull Identification Number. A person shall identify a vessel with the display of two (2) identical hull identification numbers, or as otherwise provided by 46 U.S.C. Section 2101 et seq. and Section 4301 et seq., and 33 CFR Section 181.21 et seq. (1-1-94)

03. Duplicate Numbers Prohibited. The same hull identification number may not be assigned to more than one (1) vessel. (7-1-93)

04. Proof of Ownership. Each applicant for a hull identification number as prescribed in Sections 67-7004(2) and 67-7004(4), Idaho Code, shall submit one (1) of the following documents to the department: ()

a. The bill of sale from the dealer or a bill of sale from the previous owner of the vessel: ()

b. If the vessel is home built, a sworn statement attesting to the identity of the builder, the location or place of construction, the source of the material used for construction and a description of the vessel. The statement must also be accompanied by any receipts received from the purchase or acquisition of the materials used in the construction of the vessel and a copy of the construction plans, if any: ()

c. If the vessel has been rebuilt, a sworn statement attesting to the identity of the builder, the location or place of rebuilding, the source of the material used for rebuilding and a description of the vessel. The statement must also be accompanied by any receipts received for the purchase or acquisition of the materials used in the rebuilding of the vessel and documentation indicating the source of the original hull and proof of ownership from the previous owner: ()

d. If none of the documents listed in Subsections 425.04.a. or 425.04.b. of this Section are available, the applicant must submit an affidavit of ownership to the department. ()

(BREAK IN CONTINUITY OF SECTIONS)

525. NEGLIGENT OPERATION.

Negligent operation, as used in Section 67-7017, Idaho Code, shall include, but not be limited to, the following: (1-1-94)

01. Airborne. Becoming airborne or completely leaving the water while crossing the wake of another vessel at an unsafe distance from the vessel creating the wake; or (1-1-94)()

02. Weaving. Weaving through congested traffic; or (1-1-94)()

03. Speed or Proximity. Operating at such a speed and proximity to another vessel, a person, or property of other persons so as to require the operator to swerve at the last moment to avoid collision. (1-1-94)()

IDAPA 27 - IDAHO BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY
DOCKET NO. 27-0101-9701
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 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rule-making will be held as follows:

Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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 (5) days' notice. For arrangements call the undersigned at (208) 334-2356.

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

Rule 141 will provide that persons ineligible for a license before the Board will be ineligible for any type of license the Board issues. Rule 158 will change the current allowance to specify the type of over-the-counter ephedrine drugs available. Rule 159 will set forth specific requirements for a prescription. Rule 160 will set guidelines for chain drug stores to use common electronic files to maintain prescription records. Rule 163 will provide guidelines for the electronic transmission of prescriptions from a practitioner to a pharmacist. Rule 165 will provide for collaborative agreements between practitioners of pharmacists regarding implementation and modification of drug therapy. Rule 178 will provide for clarification of air flow hoods that meet Class 100 environmental standards. Rule 184 will provide that administrative discipline in other states constitutes grounds for administrative discipline in Idaho. Rule 251 provides for a change in the duties of pharmacy support personnel. Rule 292 provides for the registration of durable medical equipment outlets and what prescription items those outlets are allowed to hold for sale. Rule 401 will specify that all fees charged by the Board are annual in nature and not prorated. Rule 403 will change the due date for annual controlled substance fees. Rule 404 will change the due date for non-pharmacy outlet fees and specify the fee for durable medical equipment outlets. Rule 406 will set the fee for registration of pharmacy support personnel. Rule 439 will change the word "triplicate" to "duplicate" to conform with the statutory change. Rule 445 will change the triplicate filing program to conform to the duplicate filing program. Rule 469 will change the reporting requirements for duplicate prescriptions in conformance with the change in the code.

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

This docket proposed a fee for the license issued to Durable Medical Equipment (DME) licenses. The designation is changing to DME from current "non-pharmacy" status. The actual fee is the same as the licensees are currently paying.

This docket also establishes a fee for the registration of pharmacy technicians to cover the Board's cost in creating and maintaining the registry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Richard Markuson at (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 October 22, 1997.

DATED this 19th day of August, 1997.

Richard K. "Mick" Markuson, Director
Idaho Board of Pharmacy
280 N. 8th St., Ste. 204
Boise, ID 83702

TEXT OF DOCKET NO. 27-0101-9701

141. LICENSE ELIGIBILITY.

Any person who is ineligible for any license, registration or certification granted by the Board by reason of Board discipline, unprofessional conduct, criminal activity, or the official actions of the courts or Pharmacy Board of another state is thereby ineligible for any and all other types of licenses, registrations or certifications granted by the Board.
()

~~141.~~ -- 150. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

158. PRESCRIPTION DRUGS.

01. Designated Drugs. In addition to those drugs designated as prescription or legend drugs as defined in Section 54-1705 (23), Idaho Code, the Idaho Board of Pharmacy includes preparations containing ephedrine or salts of ephedrine, as prescription drugs. (7-1-93)

~~02. Drugs Exempt from Designation. The following brand name products and their generic equivalents are exempt from designation as prescription drugs under Section 158.01. (7-1-93)~~

~~a. Bronkaid tablets. (8-4-94)~~

~~b. Pazo hemorrhoid ointment and suppositories. (8-4-94)~~

~~e. Primatene Dual Action tablets. (8-4-94)~~

02. Exempt Drugs. A product that meets all the criteria set forth in Subsection 158.01.a. is exempt from the designation as prescription drugs under Subsection 158.01 and exempt from inclusion as a Schedule II controlled substance under Idaho Code Section 37-2707, unless it is being used or possessed as an immediate precursory of another controlled substance. ()

a. Products containing a formula with a ratio of twelve and one half (12.5) milligrams ephedrine to two hundred (200) milligrams guaifenesin or twenty-five (25) milligrams ephedrine to four hundred (400) milligrams guaifenesin; and not exceeding a maximum of twenty-five (25) milligrams of ephedrine per tablet, capsule, or dose; and in addition to such formula, may include only inert or inactive ingredients or substance. ()

b. Provided, however, that hemorrhoidal ointments containing not more that two tenths percent (.2%) Ephedrine Sulfate and suppositories not exceeding four (4) milligrams Ephedrine Sulfate per suppository are also exempt pursuant to Subsection 158.01. ()

159. PRESCRIPTION REQUIREMENTS.

01. Prescription Requirements. All prescriptions shall at a minimum indicate the following: the name of the patient; the date written; the directions for use; the name, strength, and amount of the medication; the name of the prescriber; and, if written, the pre-printed, stamped or hand-printed name of the prescriber and the handwritten signature of the prescriber. No prescription is refillable unless specifically indicated by the prescriber. Further requirements for controlled substance prescriptions are contained in Subsection 433.10. ()

~~02. PRESCRIPTION LABELS~~ Labels. Any drug dispensed shall bear a label containing the following: the name, address and telephone number of the dispenser (person or business), the serial number and date of the prescription or its filling, the name of the prescriber and the name of the patient, the directions for use, name (generic or brand) of the medication (including manufacturer's name if a generic), and any cautionary

statements required to protect the consumer, including when advisable the manufacturer's original expiration date, the quantity of item dispensed and the initials of the person dispensing and the statement: "Warning: Federal or State law prohibits the transfer of this prescription to any person other than the person for whom it was prescribed." When appropriate, the prescriber may request "Do Not Label," in such cases the medication name will not appear.

(7-1-93)()

160. PRESCRIPTION TRANSFER.

A pharmacist may transfer prescription order information for the purpose of refilling a prescription only if the information is communicated directly by one pharmacist to another pharmacist. Such information can be communicated by an extern/intern under the direct supervision of a pharmacist to another pharmacist as long as one of the parties involved in the communication is a pharmacist and the order is not for a controlled substance. (7-1-93)

01. Controlled Substances. Prescriptions for controlled substances may be transferred only from the pharmacy where it was originally filled, and never from the pharmacy that received the transfer. (7-1-93)

a. In addition to the information required below, the pharmacist transferring the prescription shall record on the back of the original order, the DEA number and address of the pharmacy to which the transfer was made. (7-1-93)

b. The receiving pharmacist must record the DEA number and address of the pharmacy transferring the order. (7-1-93)

02. Transferring. The pharmacist (extern/intern) who transfers the prescription shall: (7-1-93)

a. Invalidate the original prescription by writing the word "void" across the face of the form. (7-1-93)

b. On the reverse side of the form shall record the following information: his name; name of the receiving individual; name of the receiving pharmacy; date of the transfer and the number of authorized refills available. (7-1-93)

03. Receiving. The pharmacist (extern/intern) who receives the transferred prescription shall: (7-1-93)

a. Reduce the transferred information to writing including a notation that the prescription is a "transfer" and include all information required by law or rule. (7-1-93)

b. On the reverse side of the form he shall record the following information: his name; the name of the transferring individual; the name of the transferring pharmacy; the date of the original dispensing and transfer and the number of refills authorized; the number of valid refills remaining and the date of the last refill; the serial number of the prescription transferred. (7-1-93)

04. Computer. Pharmacies that utilize a computer must follow all of the rule as stated above, including de-activation of the prescription in the transferring pharmacy computer. (7-1-93)

05. Refills. Prescriptions for non-controlled drugs may be transferred more than one time as long as there are refills remaining and all of the provisions as listed above are followed. (7-1-93)

06. Common Electronic Files. ()

a. For drugs other than controlled substances: Two (2) or more pharmacies may establish and use a common shared electronic prescription file to maintain required dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file. ()

b. For controlled substances: Pharmacies must satisfy all information requirements of a manual mode for prescription transferral. ()

c. All common electronic files must contain complete and accurate records of each prescription and

refill dispensed. Hard copies must be generated and treated as a new prescription by the receiving pharmacy. ()

161. FACSIMILE PRESCRIPTION TRANSMISSION.

The receipt of prescriptions through facsimile (FAX) transmission for dispensing purposes will be allowed from an authorized prescribing practitioner to a pharmacy only under the following provisions: ~~(6-30-95)~~()

01. Actual Transmittal. Actual transmittal of the signed prescription is done by the prescribing practitioner or the practitioner's authorized agent. (6-30-95)

02. Voice Verification. Practitioners or their authorized agents must provide voice verification upon request of the pharmacist receiving the medication order. If voice verification is refused, the prescription may not be filled. (6-30-95)

03. Supplying Facsimile Equipment. Pharmacies are precluded from supplying facsimile equipment to practitioners, hospitals, nursing homes, or any health care provider or facility. (6-30-95)

04. Use of Facsimile Machine by Pharmacy. The receiving facsimile machine must be located within the prescription department of the pharmacy. (6-30-95)

05. Facsimile Prescription. The facsimile prescription must be received as a non-fading document retaining legibility for a minimum of three (3) years. (6-30-95)

06. Schedule II Facsimile Prescriptions. Facsimile of Schedule II prescriptions will be allowed under the following conditions: (6-30-95)

a. A Schedule II prescription for infusion/intravenous (IV) pain therapy may be transmitted by facsimile to a home infusion pharmacy by a practitioner or the practitioner's agent. The facsimile copy of the prescription shall be retained as an original prescription, and it must contain all the information required by state and federal law. This rule does not extend to the dispensing by facsimile of oral dosage units of controlled substances. (6-30-95)

b. Schedule II prescriptions written for patients in Long Term Care Facilities (LTCF) may be sent by facsimile to the dispensing pharmacy by the practitioner or the practitioner's agent. The facsimile copy of the prescription shall be retained as an original prescription, and it must contain all the information required by state and federal law. (6-30-95)

c. Copies of Schedule II facsimile prescriptions will not be required to be sent to the Idaho Board of Pharmacy office. (6-30-95)

07. Facsimile Prescriptions of Schedules III, IV, and V. For drugs in Schedules III, IV, and V, a facsimile copy of a written, signed prescription transmitted directly by the prescribing practitioner to the pharmacy can serve as an original prescription. All federal and state laws and rules pertaining to written prescriptions for Schedule III, IV, and V drugs apply to facsimile transmitted prescriptions. (6-30-95)

08. Responsibility of Pharmacist. The pharmacist receiving a facsimile prescription will be responsible for the authenticity of the prescription and for ensuring that prescriptions for controlled substances have been issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice pursuant to 21 CFR 1306.04(a). Orders purporting to be prescriptions, which are not issued in the usual course of professional treatment, are not considered prescriptions within the meaning and intent of the Controlled Substances Act. A person who issues or fills such an order shall be subject to penalties provided by law. That responsibility applies equally to an order transmitted by facsimile. (6-30-95)

162. ELECTRONIC TRANSMISSION OF PRESCRIPTIONS.

The receipt of prescriptions through electronic transmission, other than facsimile transmissions as provided for in Section 161, for dispensing purposes from an authorized prescribing practitioner to a pharmacy is only allowed in conformance with these rules. ()

01. Actual Transmittal. Actual transmittal of the prescription is done by the prescribing practitioner or the practitioner's authorized agent. ()

02. Voice Verification. Practitioners or their authorized agents must provide voice verification upon request of the pharmacist receiving the order. If voice verification is refused, the prescription may not be filled. ()

03. Supplying Transmission Equipment. Pharmacies are precluded from supplying any type of electronic transmission equipment to practitioners, hospitals, nursing homes, or any health care provider or facility. ()

04. Use by Pharmacy Only. The receiving electronic transmission equipment must be located within the prescription department of the pharmacy. ()

05. Prescription Record. The prescription must be maintained as a prescription on file that meets all other requirements of pharmacy laws or Board rules. ()

06. Schedule Drug Prescriptions Prohibited. No prescriptions for Scheduled or controlled drugs will be allowed via electronic transmission under any circumstances. ()

07. System Requirements. Any electronic transmission system utilized in this state must meet the following requirements. ()

a. Patient and prescription confidentiality. ()

i. The content of the electronic prescription can never be accessed, viewed or released by any person or entity (including but not limited to the person or entity providing the electronic transmission service) other than the practitioner and the pharmacist. ()

ii. Information contained in the electronic transmission must remain confidential and may only be released as allowed by law. ()

iii. The person or entity providing the electronic transmission service is prohibited from maintaining any files, databases or other records of the content of, or any identifiable information from, the actual text of the electronic prescription. Such person or entity is prohibited from selling, or in any way releasing, any information relating to the actual prescriptions. ()

b. Patient freedom of choice. The patient's choice as to the selection of the pharmacy that will receive the electronic prescription transmission must be guaranteed. No agreement to the contrary may be executed by any pharmacist or pharmacy. ()

c. Content. The electronic prescription transmission must contain all information required of a written prescription, except that the signature of the prescriber may be typewritten. Any omissions render the prescription void. ()

08. Discipline. Any pharmacy or pharmacist who enters into an agreement for the electronic transmission of prescriptions that does not conform to these rules is guilty of unprofessional conduct and subject to discipline before the Board. No pharmacy or pharmacist shall, knowingly or unknowingly, intentionally or unintentionally, violate any of the rules governing the electronic transmission of prescriptions and doing so shall constitute unprofessional conduct and subject the licensee to discipline before the Board. ()

1623. PRESCRIPTION EXPIRATION.

All prescription orders that are legally refillable must have the refill instructions indicated on the face of the prescription order. All prescription orders expire one (1) year after date of issue. For long term medication orders a new prescription must be obtained and a new file number issued. (7-1-93)

1634. EMERGENCY PRESCRIPTION REFILL.

In an emergency a pharmacist may refill a prescription for a patient if the prescribing practitioner is not available for authorization and in the professional judgment of the pharmacist the prescription should be refilled. Only sufficient medication may be furnished for the emergency period and the practitioner must be contacted as soon as possible for further refill instructions. (7-1-93)

165. PHARMACOTHERAPY.

Collaborative practice between pharmacists and prescribing practitioners is allowed as provided in this rule. ()

01. Definitions. ()

a. Agreement. Means a written and signed agreement between a pharmacist or group of pharmacists and a prescribing practitioner or group of prescribing practitioner that provides for collaborative practice for the purpose of drug therapy management of patients. ()

b. Drug therapy management. Means to review the drug therapy regimen of patients by a pharmacist for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Drug therapy management" includes: ()

i. Implementing, modifying, and managing drug therapy according to the terms of the agreement; ()

ii. Collecting and reviewing patient drug histories; ()

iii. Conducting clinical assessments, including pulse, temperature, blood pressure, and respiration; and ()

iv. Ordering and evaluating the results of laboratory tests relating to drug therapy, including blood chemistries and cell counts; drug levels in blood, urine, tissue, or other body fluids; and culture and sensitivity tests when performed in accordance with approved protocols applicable to the practice setting. ()

c. Prescribing practitioner. Means a practitioner in active practice duly authorized or recognized by law in Idaho to prescribe legend drugs and controlled substances. ()

d. Pharmacist's scope of practice. Means those duties and limitations of duties placed upon a pharmacist by the collaborating practitioner, the Board, and applicable law, and includes the limitations implied by the specialty practiced by the collaborating practitioner. ()

02. Agreement. A pharmacist planning to engage in collaborative practice shall have on file at his or her place of practice a written agreement. The agreement may allow the pharmacist, within the pharmacist's scope of practice, to conduct a drug therapy management and must be approved by a prescribing practitioner. The collaboration that the prescribing practitioner agrees to conduct with the pharmacist must be within the scope of the prescribing practitioner's current practice. ()

03. Contents. The agreement shall include: ()

a. A statement identifying the prescribing practitioner and the pharmacist who is a party to the agreement; ()

b. A statement of the types of drug therapy management decisions that the pharmacist is allowed to make, which may include: ()

i. A detailed statement of the types of diseases, drugs, or drug categories involved, and the type of drug therapy management allowed in each case; and ()

ii. A detailed statement of the methods, procedures, decision criteria, and plan the pharmacist is to follow when conducting drug therapy management; ()

iii. A statement of the activities the pharmacist is to follow in the course of conducting drug therapy management, including documentation of decisions made and a plan or appropriate mechanism for communication, feedback, and reporting to the prescribing practitioner concerning specific decisions made. In addition to the agreement, documentation may occur on the prescription record, patient profile, patient medical chart, a separate log book, or in some other appropriate system; ()

c. A method for the prescribing practitioner to monitor compliance with the agreement and clinical outcomes where drug therapy management by the pharmacist has occurred and to intercede where necessary; and ()

d. A provision that allows the prescribing practitioner to override the agreement whenever he or she deems it necessary or appropriate. ()

e. The agreement, coupled with the specific orders given to apply such agreement as drug therapy management to any particular patient, must constitute a valid drug order or a valid prescription and contain all information necessary to conform to such requirements. ()

04. Review. At a minimum, the written agreement shall be reviewed and renewed, and if necessary, revised every year. ()

1646. -- 175. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

178. PHARMACIES, PARENTERAL ADMIXTURE.

01. Definition. Parenteral admixture is the preparation and labeling of sterile products intended for intravenous or intramuscular administration. (7-1-93)

02. General Requirements. (7-1-93)

a. The environment for this type of practice shall be set apart, designed and equipped to facilitate aseptic techniques and conditions. (7-1-93)

b. The Idaho Board of Pharmacy must be notified prior to construction of such pharmacies to allow approval of floor plans per Section 156. (7-1-93)

c. A permit separate from the regular pharmacy permit is required of all such pharmacies prior to opening after inspection by the Board. (7-1-93)

d. A policy and procedure manual must be available at the time of initial inspection and at the annual inspection that shows proper procedures and techniques for the protection of the employee and the safety of the patient. (7-1-93)

e. Such pharmacies shall be under the supervision and control of a licensed pharmacist. (7-1-93)

03. Equipment. (7-1-93)

a. Sink with hot and cold water in close proximity to the hood(s). (7-1-93)

b. ~~Laminar air flow hood.~~ Laminar airflow hood or other appropriate environmental control device capable of maintaining a compounding area environment equivalent to "Class 100 conditions" as described in the Federal Standard 209 Clean Room and Work Station Requirements. (7-1-93)()

- c. Refrigerator for proper storage of additives and finished parenteral products prior to delivery when necessary. (7-1-93)
- d. All library requirements in Section 154 plus the most recent copy of "Handbook of Injectable Drugs" by Trissel. (7-1-93)
- e. A separate vertical flow biohazard safety hood is required if hazardous materials are prepared. (7-1-93)
- f. All supplies necessary for handling biohazardous spills and disposal of wastes shall be available and maintained in the area at all times. (7-1-93)
- 04. Distribution and control. (7-1-93)
 - a. Proper prescription files with all required information shall be maintained. (7-1-93)
 - b. Labels shall contain, in addition to the requirements for other prescriptions, the name and amounts of additives and the diluent, storage requirements and an expiration date and time. (7-1-93)
- 05. Quality control. (7-1-93)
 - a. All equipment monitoring and maintenance must be documented. (7-1-93)
 - b. Hood(s) shall be certified as recommended by the manufacturer or annually at a minimum. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

184. CONDUCT, UNPROFESSIONAL.

The following acts or practices by a registered pharmacist or the owner of a pharmacy are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest: (7-1-93)

- 01. General. Manufacturing, compounding, selling, dispensing or permitting to be manufactured, compounded, sold or dispensed substandard drugs or preparations. (7-1-93)
- 02. Secret Formulas. Using secret formulas. (7-1-93)
- 03. Commission. Allowing a commission or rebate to a person writing or making or otherwise ordering a prescription, or providing consultant services at no charge to receive prescription business. (7-1-93)
- 04. Following Instructions. Failing to strictly follow the instructions of the person writing or making or ordering a prescription as to refilling, content or label, or giving a copy of a prescription to any person without marking said prescription across the face "Copy for Information Only. Not to Be Filled." (7-1-93)
- 05. Errors or Omissions. Failing to confer with the person writing, making or ordering a prescription, if there is an error or omission therein which should be questioned. (7-1-93)
- 06. Advertising. Advertising in a manner that is false, misleading or deceptive including material claims of professional superiority which cannot be substantiated. (7-1-93)
- 07. Addiction. Being addicted or habituated to the use of alcohol or controlled substances. (7-1-93)
- 08. Supplying. Supplying or diverting drugs, biological, medicines, substances or devices which are

legally sold in pharmacies, so that unqualified persons can circumvent laws pertaining to the legal sale of such articles.
(7-1-93)

09. Fraudulent Practice. Performing or in any way being a party to any fraudulent or deceitful practice or transaction. (7-1-93)

10. Competency. Performing any duties as a pharmacist or pharmacy owner in an incompetent, unskilled or negligent manner. (7-1-93)

11. Unprofessional Conduct. Exhibiting unprofessional conduct towards customers, employees, colleagues, inspectors or others. (7-1-93)

12. Orders. Failure to follow an order of the Board. (2-23-94)

13. Conduct. Any activity by a pharmacist which is inappropriate to the conduct of the profession of pharmacy. (2-23-94)

14. Discipline In Other States. Conduct which results in a suspension, revocation or other disciplinary proceeding or action with respect to a pharmacy or pharmacist license that the Idaho licensee holds in another state. ()

(BREAK IN CONTINUITY OF SECTIONS)

251. ~~SUPPORTIVE PERSONNEL~~ PHARMACY TECHNICIANS.

01. Definition. ~~Supportive Personnel~~ Pharmacy Technician means an individual who is registered with the Board of Pharmacy and trained according to the written standards of the employer to perform routine functions that do not require the use of professional judgment in connection with the preparing, compounding, distribution or dispensing of medications. Such written standards shall be available to the Board and its designated personnel for inspection and/or approval. (7-1-93)()

02. Responsibilities. Only a registered pharmacist may do any of the following: (7-1-93)

a. Receive a new prescription order verbally from a prescriber or other person authorized by law. (7-1-93)

b. Perform evaluations and interpretations of a prescription and any needed clarifications prior to filling. (7-1-93)

c. Consult with the prescriber concerning any necessary clarification regarding a patient and his prescription. (7-1-93)

d. Interpret any clinical data in a patient's medication record system (e.g., drug usage, refill frequency, drug interactions, etc.) (7-1-93)

e. Perform professional consultation with any prescriber, nurse or other health care professional. (7-1-93)

f. Supervise the packaging of drugs and check the completed procedure and product. (7-1-93)

g. Issue the new prescription to the patient or his agent with consultation. (7-1-93)

~~h. Affix the label to the finished Rx container (excluding parenteral products for institutions and home care providers).~~ (7-1-93)

ih. Be responsible for all activities of ~~supportive personnel~~ pharmacy technicians to insure that all such activities are performed completely, safely and without risk or harm to patients. (7-1-93)()

03. Supervision. Where a non-pharmacist performs one or more functions in the dispensing process, a pharmacist shall be responsible for the filled prescription including, but not limited to the following: (7-1-93)

a. Verifying drug selection, strength, dosage form and labeling against the prescription and the contents of stock container. (7-1-93)

b. Verifying selection of the proper prescription container. (7-1-93)

04. ~~Employee Ratio. The ratio of pharmacists to pharmacy~~ supportive personnel technicians shall be as follows: (7-1-93)()

a. Not less than one (1) pharmacist for each ~~support person~~ pharmacy technician in preparation of medication or other materials dispensed to persons not within a health care facility. (7-1-93)()

b. Not more than two (2) ~~support persons~~ pharmacy technicians for each pharmacist in preparation of medications or materials used by patients in a health care facility. (7-1-93)()

c. Not more than two (2) ~~support persons~~ pharmacy technicians for each pharmacist in any combination of situations as stated in Subsection 251.04.a. and Subsection 251.04.b. (7-1-93)()

05. Responsibility. (7-1-93)

a. The pharmacist-in-charge is responsible, legally and professionally, for the control of all drugs issued or dispensed in the pharmacy where he practices and the conduct of all ~~supportive personnel~~ pharmacy technicians. (7-1-93)()

b. The Board of Pharmacy may initiate criminal proceedings against ~~supportive personnel~~ pharmacy technicians who perform such tasks or functions that require the expertise and service of a pharmacist. Such persons may be charged with practicing pharmacy without a license in violation of Section 54-1726, Idaho Code. (7-1-93)()

c. A violation of the rules on ~~supportive personnel~~ pharmacy technicians by a pharmacist is unprofessional conduct, and is grounds for revocation or suspension of the pharmacist's license and/or the pharmacy registration issued under Sections 54-1722, 54-1723, 54-1724 or 54-1729, Idaho Code. (7-1-93)()

06. Registration. ()

a. All persons working as pharmacy technicians must be registered with the Board and pay a fee as set by the Board. Registration will be due annually by June 30 each year. ()

b. All pharmacy technicians working in community pharmacies and performing routine functions in connection with preparing, compounding, distribution or dispensing of medications must be identified by a name badge designating that person as a pharmacy technician. The name badge must measure no less than one (1) inch by three (3) inches and must contain the individual's printed name directly above the title of pharmacy technician. The identification badge must be clearly visible at all times. Pharmacy technicians working in an institutional setting may be exempt from the above requirement only if the institution requires a specific badge of identification to be worn by the pharmacy technician. ()

c. All pharmacy technicians must identify themselves as a pharmacy technician on any phone calls initiated or received by them while performing pharmacy functions. ()

d. Pharmacy technicians may be removed from the registry by any of the following: ()

- i. By the Board. ()
- ii. By the Board staff at the request of the employer of the pharmacy technician. ()
- iii. By the pharmacy technician. ()
- iv. By the failure of the pharmacy technician to inform the Board of the change of place of employment within thirty (30) days of such change. ()
- e. Removal shall only require, and be effective upon, written notice mailed to the pharmacy technician, via normal first class mail, mailed to the address provided to the Board by the pharmacy technician.()
- f. The registration provided by these rules does not constitute a property right whatsoever and no cause of action under the Administrative Procedure Act shall exist based on any action of the Board regarding the registry. ()

(BREAK IN CONTINUITY OF SECTIONS)

292. REGISTRATION, DRUG OUTLET.

- 01. Time. Annually each drug outlet shall renew its registration no later than July first on a form provided by the Board and accompanied by the required fee. (7-1-93)
 - a. Each facility may be inspected by an inspector of the Board of Pharmacy to ascertain that proper procedures are being carried out in regard to distribution of drugs. (7-1-93)
- 02. Retail Drug Outlet. (7-1-93)
 - a. Pharmacy drug outlet. Community pharmacy and any other pharmacy managed by an Idaho licensed pharmacist. (7-1-93)
 - b. Non-Pharmacy drug outlet. Grocery stores, bars, hotels, department stores, vending machines, etc. not registered as a pharmacy, holding for sale non-legend drugs, devices or medical supplies to be sold at retail. (7-1-93)
- 03. Registrations. For the issuing of registrations and renewals required by Section 54-1729, Idaho Code, the fee for each retail non-pharmacy drug outlet registration shall be determined as follows: (7-1-93)
 - a. "B" registration for those stocking not more than fifty (50) drug items. (8-4-94)
 - b. "A" registration for those stocking more than fifty (50) drug items. (7-1-93)
 - c. "V" registration for vending machines, annual fee of five dollars (\$5). (8-4-94)
 - d. Reinstatement of a non-pharmacy registration shall be a minimum of five dollars (\$5) or one-half (1/2) the annual fee. (7-1-93)
- 04. Institutional Pharmacy Outlet. A hospital pharmacy, nursing home pharmacy, state institution pharmacy and any other institutional outlet having a pharmacy within the facility. (7-1-93)
- 05. Institutional Non-pharmacy Drug Outlet. A hospital, nursing home, state institution, shelter home, convalescent home, extended care facility drug abuse treatment center, family planning clinic and any other outlet not having a pharmacy within the facility. (7-1-93)

06. Manufacturing Drug Outlet. A manufacturer manufacturing pharmaceuticals within the state, or manufacturer located outside the state but doing business within the state of Idaho. (7-1-93)

07. Wholesale Drug Outlet. A company located within the state or outside the state but doing business within the state of Idaho. (7-1-93)

08. Vending Machines. Machines used for non-prescription drugs not otherwise restricted for over-the-counter sale will be considered a separate drug outlet and must be registered with the Board of Pharmacy. (7-1-93)

a. Application for registration must be made on forms provided by the Board, accompanied by a reasonable registration fee for each machine which shall have a registration number issued by the Board. (7-1-93)

b. Registration must be renewed annually on or before June 30. (7-1-93)

c. Drugs and medical supplies stored in vending machines are subject to inspection by the Board on reasonable notice. (7-1-93)

09. Durable Medical Equipment (DME) Outlet. ()

a. All entities holding for sale legend or non-legend devices to be sold at retail or wholesale must be registered with the Board. Said legend devices may only be sold or delivered at retail upon the lawful order of a practitioner. DME outlets may hold non-legend drugs for sale. ()

b. Registered DME outlets may hold for sale at retail only upon the order of a practitioner, the following legend drugs: ()

i. Pure Oxygen for human application. ()

ii. Nitrous Oxide. ()

iii. Sterile Sodium Chloride. ()

iv. Sterile water for injection. ()

109. Registration. A registration will be issued to an applicant at a specific location, and is not transferable as to person or place. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

401. FEES.

Pursuant to 54-1720(5)(a), Idaho Code, the Board will collect fees, such fees to remain in effect until changed by the Board. All fees set by the Board shall be annual, or for any portion of the year, and shall not be prorated. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

403. DUE DECEMBER 31, ANNUALLY.

01. Controlled Substance Registration. Controlled substance registration -- fifty dollars (\$50). (12-7-94)

(BREAK IN CONTINUITY OF SECTIONS)

404. DUE JUNE ~~130~~, ANNUALLY -- TABLE.

01.	Pharmacist License.	(12-7-94)
a.	Active: seventy five dollars (\$75).	(12-7-94)
b.	Inactive: thirty five dollars (\$35).	(12-7-94)
02.	Pharmacy.	(6-1-94)
a.	Pharmacy License: one hundred dollars (\$100).	(12-7-94)
b.	Parenteral Admixture license: one hundred dollars (\$100).	(12-7-94)
03.	Out-of-State Mail Service.	(7-1-93)
a.	Pharmacy, initial license: five hundred dollars (\$500).	(12-7-94)
b.	Renewal license: two hundred fifty dollars (\$250).	(12-7-94)
04.	Clinics and Nursing Homes. Thirty dollars (\$30).	(12-7-94)
05.	Non-Pharmacy.	(11-1-93)
a.	"A": fifty dollars (\$50).	(12-7-94)
b.	"B": twenty dollars (\$20).	(12-7-94)
c.	"V" (Vending machines): five dollars (\$5).	(8-4-94)
d.	<u>"DME": fifty dollars (\$50).</u>	()
06.	Hospitals Without Pharmacy. Thirty dollars (\$30).	(12-7-94)
07.	*Wholesaler (Distributor). One hundred dollars (\$100).	(12-7-94)
08.	Controlled Substance. One hundred dollars (\$100).	(12-7-94)
09.	Researcher, Analytical Lab. Thirty five dollars (\$35).	(12-7-94)
10.	Veterinary Legend Drug Outlet.	(11-1-93)
11.	Retail or Retail/Wholesale.	(11-1-93)
12.	Combination, Up to Three (3) Trucks. One hundred dollars (\$100).	(12-7-94)
13.	Additional Trucks. Twenty five dollars (\$25).	(12-7-94)
14.	Veterinary Drug Technician. Thirty five dollars (\$35).	(12-7-94)

(BREAK IN CONTINUITY OF SECTIONS)

406. MISCELLANEOUS.

- 01. Grade Certification. Grade certification -- ten dollars (\$10). (12-24-93)
- 02. Hour Certification. Hour certification -- ten dollars (\$10). (12-24-93)
- 03. Controlled Substance Inventory. Controlled Substance Inventory -- ten dollars (\$10). (7-1-93)
- 04. Duplicate Pharmacist Certificate. Duplicate Pharmacist Certificate -- twenty-five dollars (\$25). (12-24-93)
- 05. Commercial Lists. (12-24-93)
 - a. Pharmacy list. Twenty-five dollars (\$25). (12-24-93)
 - b. Pharmacist List. Twenty-five dollars (\$25). (12-24-93)
 - c. CSA Practitioners. (12-24-93)
 - i. Complete list -- one hundred dollars (\$100). (12-24-93)
 - ii. Each Profession -- twenty-five dollars (\$25). (12-24-93)
- 06. Official Idaho Register. Official Idaho Register --ten dollars (\$10). (7-1-93)
- 07. Pharmacy Law. Pharmacy law, includes two (2) year updates -- thirty-five dollars (\$35). (7-1-93)
- 08. Reinstatement Fee. Reinstatement fee, all licenses -- fifty dollars (\$50). (7-1-93)
- 09. Transcript of Hearing. Transcript of hearing, per page -- one dollar and twenty-five cents (\$1.25). (7-1-93)
- 10. ~~TriPLICATE~~ Duplicate Prescription Forms. (~~7-1-93~~)()
 - a. Twenty-five (25) forms -- eight dollars (\$8). (7-1-93)
 - b. Fifty (50) forms -- twelve dollars (\$12). (7-1-93)
 - c. Seventy-five (75) forms -- sixteen dollars (\$16). (7-1-93)
 - d. One-hundred (100) forms -- twenty dollars (\$20). (7-1-93)
- 11. Pharmacy Technician registration -- thirty-five dollars (\$35). ()

(BREAK IN CONTINUITY OF SECTIONS)

439. DISPOSITION OF FEES.

All fees of any kind collected under the provisions of this act shall be deposited in the state treasury to the credit of a separate fund to be known as the "Pharmacy Fund" including fees collected under the "~~TriPLICATE~~ Duplicate Prescription Program" and all such money as may hereafter come into such fund is hereby appropriated to the Board of Pharmacy to carry out the purposes of the objectives of this act. Such moneys shall be paid out upon warrants drawn by the state auditor upon presentation of proper vouchers approved by the Board of Pharmacy and such claims and vouchers shall be examined by the State Board of Examiners as are other claims against the state. (~~7-1-93~~)()

(BREAK IN CONTINUITY OF SECTIONS)

445. FILING OF PRESCRIPTIONS.

01. Records. All written prescriptions and written records of emergency oral prescriptions shall be kept in accordance with requirements of Section 37-2720, Idaho Code. (7-1-93)

~~02. Copies. All triplicate copies of official Idaho Schedule II prescriptions shall be mailed to the Idaho Board of Pharmacy office not less than once monthly. (7-1-93)~~

~~03. Out-of-State Prescriptions. A copy of all bonafide Schedule II out-of-state prescriptions shall be mailed to the Idaho Board of Pharmacy office not less than once monthly. (7-1-93)~~

042. Emergency Room. A written record of every emergency room Schedule II drug administration will be submitted by the institutional pharmacy (pharmacist) to the Board of Pharmacy office monthly, such record will (at a minimum) include: date of use, name of patient, name and amount of Schedule II drug, name of practitioner and name of pharmacy. Reports will be mailed the first of each month and will contain records of administrations for the previous month. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

469. PRESCRIPTION REPORTING.

01. Reporting. All community and mail service pharmacies will report by the first of every month or more often as directed by the board, certain data, as required by the board, on all schedule II, III and IV controlled substance prescriptions filled. The data may be reported in the form of diskette, direct computer link, magnetic tape or other method as approved by the board. ()

02. Reporting Not Required. Prescriptions for controlled substances filled for patients in long term care facilities, are not required to be reported. ()

46970. -- 490. (RESERVED).

IDAPA 28 - IDAHO PERSONNEL COMMISSION
28.01.01 - RULES OF THE IDAHO PERSONNEL COMMISSION
DOCKET NO. 28-0101-9701

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1998, 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 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 67-5309, Idaho Code.

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

The amendments to the temporary rule are technical corrections and clarifications, not intended to alter the substance of the temporary and proposed rule. First, Rule 200 is amended to clarify that all involuntary transfers, whether disciplinary or nondisciplinary in nature, are covered by the Due Process Procedure. This change clarifies that the rule tracks the requirement in Section 67-5316(2) that all involuntary transfers be preceded by notice and an opportunity to respond. Second, language is eliminated which prevented promotional probationary employees from using the problem-solving procedure. This change brings the rule in line with Code. Third, language is added to permit the appointing authority or designee to make a final decision after the Due Process Procedure within three (3) working days, excluding days he or she is out of the office. This change is consistent with business necessity and long-standing past practice. Fourth, Rule 220 is amended to permit the appointing authority to designate a representative to inspect a transferring employee's service history record before the hiring decision is made. This change recognizes an appointing authority's right to designate certain authority to others in the department.

The proposed rules have been amended in response to public comment and to make typographical, transcriptional and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code. Rather than keep the temporary rules in place while the pending rules await legislative approval, the Idaho Personnel Commission amended the temporary rules with the same revisions which have been made to the proposed rules.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the Idaho Administrative Bulletin, June 4, 1997, Volume 97-6, pages 152 through 159.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Thorpe P. Orton, Deputy Attorney General, (208) 334-3596.

DATED this 20th day of August, 1997.

Richard J. Hutchison
State Personnel Director
Thorpe P. Orton
Deputy Attorney General
Idaho Personnel Commission
700 West State Street
P.O. Box 83720
Boise, Idaho 83720-0066
Phone: (208) 334-2263
Facsimile: (208) 334-3182

IDAPA 28
TITLE 01
Chapter 01

RULES OF THE IDAHO PERSONNEL COMMISSION

**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 97-6, June 4, 1997,
pages 152 through 159.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature
for final adoption.**

TEXT OF DOCKET NO. 28-0101-9701

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures. The problem-solving and due process procedures are different procedures. The problem-solving procedure deals with nondisciplinary matters. Nondisciplinary matters are job-related matters other than dismissals, suspensions without pay, demotions, and involuntary transfers. The problem-solving procedure is a chain-of-command procedure, generally requiring the employee to meet with the immediate supervisor, file for problem-solving, meet with up to two (2) additional levels of management, and receive a final decision from the department head. The due process procedure deals with the disciplinary matters set forth in Idaho Code Section 67-5315(2), dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the department. (7-1-97)T(7-1-97)T

02. Establishment of Departmental Problem-Solving and Due Process Procedures. Each participating department shall maintain written employee problem-solving and due process procedures, which have been approved by the state personnel director for conformity to law and this section. (7-1-97)T

03. Eligibility and Time for Filing Under Problem-Solving Procedure. Any classified employee with permanent, provisional or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee shall file under the problem-solving procedure in writing not later than five (5) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, it shall be considered timely if filed within five (5) working days after the last allegedly offensive

action. The time limit for filing shall be extended due to the employee's illness or other approved leave, up to five (5) days after return to the job. The department may accept a filing that is or appears to be filed late, though the employee waives any right of review by the Commission by not complying with the time limit for filing (ref. Section 67-5315(3), Idaho Code). Department policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. (7-1-97)T

04. Elements of the Problem-Solving Procedure. The procedure shall contain a statement from the department head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement shall also provide a means whereby department representatives can obtain timely authority, if needed, to resolve the matter. The procedure shall require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure shall provide for no more than two (2) steps with such additional levels of management as are appropriate in the department. The procedure shall also provide for the use of an impartial mediator upon agreement by the employee and department. Timelines shall not exceed five (5) working days between each step. The procedure shall also inform the employee that he or she is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative shall be expressly prohibited. This procedure shall not apply to unsatisfactory performance during entrance or promotional probation (ref. Sections 67-5309(j), 67-5315(1), Idaho Code; IDAPA 28.01.01.150 through 154). ~~(7-1-97)T~~(7-1-97)T

05. Filings Alleging Sexual Harassment or Other Illegal Discrimination. Each department's problem-solving procedure shall provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure shall expressly prohibit sexual harassment and discrimination. Employees shall be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure shall designate a specific person or persons to receive and investigate such filings, and shall require that the investigation and resolution of them be conducted with maximum regard for confidentiality. (7-1-97)T

06. Elements of Due Process Procedure. A department must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Idaho Code Section 67-5315(2). With respect to notice, a department must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice shall be provided to the employee and state personnel director concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond shall not occur later than ten (10) working days after the employee has received notice, unless both the employee and department agree otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, shall make and implement the department's decision not later than three (3) working days thereafter, excluding days the appointing authority, or designee, is out of the office. The procedure shall inform the employee of his or her right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure shall also provide for the use of an impartial mediator upon agreement by the employee and department. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (ref. Sections 67-5309(j), 67-5315(2), Idaho Code; IDAPA 28.01.01, Section 150 through Section 154). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision shall also be sent to the state personnel director concurrently. ~~(7-1-97)T~~(7-1-97)T

07. Notification. A copy of the approved problem-solving and due process procedures shall be furnished and explained to each employee with permanent, provisional or entrance probationary status in the department concerned. (7-1-97)T

08. Assistance to Departments. The state personnel director shall assist departments whenever requested in the development or revision of their departmental problem-solving and due process procedures. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Personnel Commission staff shall maintain a service record which shall include a copy of all personnel transactions pertinent to the employee's employment history. (4-5-85)

b. Service records or a microfilmed facsimile thereof for classified employees shall be maintained permanently by the state personnel director. (4-5-85)

c. Any employee may at all reasonable times during business hours review his or her service record maintained in the Idaho Personnel Commission in Boise or maintained in any department. Except for material used to screen and test for employment, all information maintained in an employee's service record shall be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. (12-10-90)

02. Administrative Records. The state personnel director shall permanently maintain a record or a microfilm facsimile of the proceedings of the Personnel Commission and a record of all hearings of appeals. (4-5-85)

03. Employee Personnel Action Documents. The appointing authority shall furnish each employee with a copy of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including performance evaluations. (4-5-85)

04. Transfers Between Departments. When an employee seeks a transfer between departments or agencies, the appointing authority of the hiring department or agency, or designee, shall be entitled to examine the employee's service record before the hiring decision is made. (~~7-1-97~~)F(7-1-97)T

IDAPA 33 -IDAHO REAL ESTATE COMMISSION
33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-9701

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rules become final and effective July 1, 1998, 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. Pending rules 101.04, 102.06 and 106.02, which would increase real estate license fees, shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature.

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 sections 54-2027, 54-2029, and 54-2036, 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, with one nonsubstantive change made to the text as follows:

The language "(effective January 1, 1993)", which pertained to the last fee increase only, was deleted from Rule Subsections 102.06 and 106.02 since it is inapplicable. No additional language replaces the stricken text other than the fee increase language contained in the Notice of Proposed Rules.

The original text of the proposed rules was published in the Idaho Administrative Bulletin, June 4, 1997, Volume 97-6, pages 160 through 164.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Nancy Matthews, Deputy Attorney General, at (208) 334-3285, TRS 1 800 377-3529.

DATED this 13th day of August, 1997.

Jeri Pyeatt, Executive Director
Idaho Real Estate Commission
PO Box 83720
Boise ID 83720-0077
(208)334-3285 FAX (208)334-2050
TRS 800 377-3529

IDAPA 33
TITLE 01
Chapter 01

RULES OF THE IDAHO REAL ESTATE COMMISSION

There are non-substantive changes that have been made to the pending rule from the proposed rule text.

These changes are of a non-substantive nature and are explained and included in the descriptive summary of this notice.

The complete original text was published in the Idaho Administrative Bulletin, Volume 97-6, June 4, 1997, pages 160 through 164.

This rule has been adopted as Final by the Agency and is now pending review by the 1998 Idaho State Legislature for final adoption.

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

RULE 105 - Adjustments to Taxable Income -- Additions Required of All Taxpayers. Rule 105 was promulgated to clarify the allocation of expenses between Idaho and non-Idaho municipal income when a taxpayer has both.

RULE 106 - Adjustments to Taxable Income -- Additions Required Only of Corporations. Rule 106 was amended to delete information regarding the interest expense offset related to tax-exempt interest that was added to new Rule 115 and to reference Rule 115.

RULE 115 - Interest Expense Offset Related to Tax-Exempt Interest. Rule 115 is a new rule that clarifies the calculation of the interest expense offset related to tax-exempt interest. It provides several definitions and clarifies how total income is calculated, clarifies the computation when a corporation owns an interest in a pass-through entity, and when the taxpayer is part of a unitary group.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the rule is of a general application rather than applicable to identifiable groups or interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th Day of August, 1997.

Janice Boyd, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36, Boise, ID 83722
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TEXT OF DOCKET NO. 35-0101-9702

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (Rule 105).

Section 63-3022, Idaho Code. (3-20-97)

01. Interest and Dividend Income Exempt from Federal Taxation. As provided in Section 63-3022(a), Idaho Code, add certain interest and dividend income that is exempt from federal income tax. For example, add interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code. (3-20-97)

a. Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. (3-20-97)

b. ~~Expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, that are related to the production of interest and dividend income required to be added to taxable income, shall offset the amount of the interest and dividend income. If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, shall be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.01.b.i. and 105.01.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income shall be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest and dividend income. An unused offset may not be carried back or carried over. A schedule showing the interest, dividends, and related offsets shall be attached to the return.~~ (3-20-97)()

i. Expenses prorated to Idaho state and municipal interest income shall be based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. ()

ii. Expenses prorated to non-Idaho state and municipal interest income shall be based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. ()

02. State Taxes. As provided in Section 63-3022(b), Idaho Code, add state income taxes deducted in computing taxable income. This includes taxes paid to states other than Idaho and amounts paid by a pass-through entity. (3-20-97)

03. Net Operating Loss Deduction. As provided in Section 63-3022(c), Idaho Code, add any net operating loss deduction included in taxable income. (3-20-97)

04. Capital Loss Carryover Deduction. As provided in Section 63-3022(k), Idaho Code: (3-20-97)

a. A corporation shall add a capital loss deducted in computing taxable income if the capital loss occurred during a taxable year when the corporation did not transact business in Idaho. (3-20-97)

b. An individual shall add a capital loss deducted in computing taxable income if the capital loss was incurred in a business activity not taxable by Idaho at the time it was incurred. (3-20-97)

106. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS (Rule 106).

Section 63-3022, Idaho Code. (3-20-97)

01. Dividends Received Deduction. As provided in Section 63-3022(e), Idaho Code, add the federal dividends received deduction subtracted in computing taxable income. (3-20-97)

02. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022(a)(1), Idaho Code, a corporation shall add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. ~~To calculate the addition or offset, the taxpayer shall multiply the total interest expense otherwise allowable by one of the following ratios:~~ (3-20-97)()

a. ~~The ratio of the taxpayer's average adjusted basis of the applicable obligations to the average adjusted basis of all assets; or~~ (3-20-97)

b. ~~The ratio of the taxpayer's interest income from the applicable obligations to the taxpayer's total income, including tax-exempt income, for the taxable year.~~ (3-20-97)

03. Interest Expense Attributable to Nonbusiness Activities. If dividends or interest income is determined to be nonbusiness income, a multistate corporation's interest expense may be nonbusiness interest expense. This nonbusiness interest expense shall be added to taxable income. Because this addition serves to offset nonbusiness dividends and interest income, it is often referred to as a nonbusiness interest expense offset. For purposes of this subsection, interest expense means the aggregate interest expense deductible in determining taxable income less reductions required by Section 63-3022(a)(1), Idaho Code. Dividends and interest income do not include income that is exempt from Idaho income tax pursuant to Section 63-3022(g), Idaho Code. See Section 63-3027, Idaho Code, and Rules 330 and 335 of these rules for the definitions of business income and nonbusiness income. This addition or offset of nonbusiness interest expense is the lesser of: (3-20-97)

a. The interest expense less the sum of business dividends and business interest income; or (3-20-97)

b. The sum of nonbusiness dividends and nonbusiness interest income. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

110. -- 1194. (RESERVED).

115. INTEREST EXPENSE OFFSET RELATED TO TAX-EXEMPT INTEREST INCOME (Rule 115).

Section 63-3022(a)(1), Idaho Code. ()

01. In General. The interest expense offset provided by Section 63-3022(a)(1), Idaho Code, is a separate and distinct adjustment from provisions in the Internal Revenue Code that disallow interest expense related to federal tax-exempt interest. ()

02. Definitions. For purposes of computing the interest expense offset attributable to tax-exempt interest income, terms are defined as follows: ()

a. Adjusted Basis. Adjusted basis shall mean adjusted basis as defined in the Internal Revenue Code. ()

b. Average Adjusted Basis. Average adjusted basis shall mean average adjusted basis as defined in Treasury Regulation Section 1.265-2 relating to certain financial institutions. Average adjusted basis of tax-exempt obligations is generally calculated on a monthly basis. ()

c. Average Adjusted Basis of All Assets. Average adjusted basis of all assets shall mean average total assets as computed in Treasury Regulation Section 1.265-2. Average total assets is generally the average of total assets determined at the beginning and end of the taxpayer's taxable year. ()

d. Aggregate Amount Allowable. The aggregate amount allowable determined without regard to this section to the taxpayer as a deduction for interest for the taxable year shall mean the taxpayer's total interest expense deducted in determining federal taxable income. It does not include interest expense not allowed pursuant to Sections 265 and 291, Internal Revenue Code. It does include interest disallowed pursuant to Section 63-3022, Idaho Code, interest expense from a pass-through entity, and interest expense of a foreign corporation included in a worldwide combined report. ()

e. Tax-Exempt Interest Income. Tax-exempt interest income shall mean interest on qualifying

obligations of the United States and interest on qualifying obligations of the state of Idaho, its cities, and political subdivisions.
()

i. If a taxpayer owns an interest in a pass-through entity, that entity's tax-exempt income shall also be included to the extent of the taxpayer's interest. ()

ii. Interest income that is only partially exempt for federal purposes is not included. Also, expenses related to tax-exempt interest income such as adjustments provided by Sections 265 and 291, Internal Revenue Code, are not included. ()

03. Total Income. For purposes of computing the interest expense offset, total income shall be computed as follows: ()

a. Corporations. ()

i. Total income shall equal the amount reported as total income on Form 1120, U.S. Corporation Income Tax Return, for domestic corporations, plus the amount reported as total income on Form 1120F, U.S. Income Tax Return of a Foreign Corporation, for foreign corporations engaged in a U.S. trade or business, and the amount reported as nonexempt foreign trade income on Schedule B of Form 1120-FSC, Income Tax Return of a Foreign Sales Corporation. ()

ii. If a taxpayer files a return using the worldwide combined reporting method, total income shall also include the amount reported as total income on Schedule C of Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, for each foreign corporation included in the combined report. ()

iii. If the corporation is a partner in a partnership, total income shall also include the corporation's distributive share of the partnership's total income as reported on page one (1) of Form 1065, U.S. Partnership Return of Income, to the extent this amount is not included in total income on Form 1120. ()

iv. Intercompany amounts shall be eliminated to the extent included in these amounts. ()

b. S Corporations. ()

i. Total income shall equal the amount reported as total income on Form 1120S, U.S. Income Tax Return for an S Corporation, plus the amounts reported as net income from rental real estate activities, net income from other rental activities, interest income, dividend income, royalty income, net short-term and long-term capital gains, other portfolio income, net gain under Section 1231, and other income as listed on Schedule K. ()

ii. If the S corporation is a partner in a partnership, total income shall also include the appropriate partnership amounts as provided in Subsection 115.03.a.iii. ()

04. Computation of Offset. To compute the interest expense offset, the taxpayer shall multiply the aggregate amount allowable by one of the following ratios: ()

a. The ratio of the taxpayer's average adjusted basis of the applicable obligations to the average adjusted basis of all assets; or ()

b. The ratio of the taxpayer's interest income from the applicable obligations to the taxpayer's total income, including tax-exempt income, for the taxable year. ()

05. Unitary Taxpayers. The interest expense offset shall be computed at the combined group level, not within each corporate entity. Total income, interest expense, and tax-exempt interest amounts from each member of the combined group are used in computing the interest expense offset. ()

116. -- 119. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-9703
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

RULE 325 - Definitions for Purposes of Multistate Rules. Rule 325 was amended to refer to Rule 600 for information on common ownership.

RULE 340 - Single Trade or Business of a Corporation or an Affiliated Group of Corporations -- Application of Definitions. Rule 340 was amended to clarify that a unitary determination is based on the activities and relationships of all affiliated corporations regardless of whether a water's edge election is made.

RULE 450 - Apportionment Formula. Rule 450 was amended to require a taxpayer to provide access to records that identify property, payroll, and sales by state when requested and that failure to do so may result in the negligence penalty being applied.

RULE 475 - Property Factor -- Numerator. Rule 475 was amended to clarify that the departure ratio will be used to determine the use of airplanes in Idaho for purposes of the property factor numerator.

RULE 600 - Entities Included in a Combined Report. Rule 600 was amended to address common ownership for purposes of determining whether a corporation is an affiliate.

RULE 646 - Water's Edge -- Domestic Disclosure Spreadsheet. Amended Rule 646 to correspond with the legislative change that the spreadsheet may be filed up to six months after the due date including extensions of the return.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997

DATED this 20th day of August, 1997.

Janice Boyd, Tax Policy Specialist
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(208) 334-7530, FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0101-9703

325. DEFINITIONS FOR PURPOSES OF MULTISTATE RULES (Rule 325).

Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: (3-20-97)

01. **Affiliated Corporation and Affiliated Group.** An affiliated corporation is a corporation that is a member of a commonly owned group of which the taxpayer is also a member. The commonly owned group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. For information on what constitutes common ownership, see Subsection 600.01 of these rules. (~~3-20-97~~)()

02. **Allocation.** Allocation refers to the assignment of nonbusiness income to a particular state. (3-20-97)

03. **Apportionment.** Apportionment refers to the division of business income between states in which the business is conducted by the use of a formula containing apportionment factors. (3-20-97)

04. **Business Activity.** Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer. (3-20-97)

05. **Combined Group.** Combined group means the group of corporations that comprise a unitary business and are includable in a combined report pursuant to Section 63-3027(t) or 63-3027B, Idaho Code, if the water's edge election is made. (3-20-97)

06. **Combined Report.** Combined report refers to the computational filing method to be used by a unitary business which is conducted by a group of corporations wherever incorporated rather than a single corporation. (3-20-97)

07. **Group Return.** A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. (3-20-97)

08. **MTC.** The Multistate Tax Commission. (3-20-97)

09. **Multistate Corporation.** A multistate corporation is a corporation that operates in more than one state. For purposes of this definition, state is defined in Section 63-3027(a)(6), Idaho Code. (3-20-97)

10. **Unitary Business.** Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. See Rule 340 of these rules. (~~3-20-97~~)()

(BREAK IN CONTINUITY OF SECTIONS)

340. SINGLE TRADE OR BUSINESS OF A CORPORATION OR AN AFFILIATED GROUP OF CORPORATIONS -- APPLICATION OF DEFINITIONS (Rule 340).

Section 63-3027, Idaho Code. (3-20-97)

01. **Apportionment.** All income of a trade or business shall be reported and apportioned even though only one (1), or less than all, of the corporation's business divisions or unitary group's affiliates operated in Idaho during the taxable year. The apportionment formula cannot be computed separately for each division, department, or affiliate of a single trade or business. (3-20-97)

02. Single Trade or Business. The determination of whether the activities of a corporation or an affiliated group constitute a single trade or business or more than one trade or business is based on the facts in each case. The activities of ~~the~~ a corporation or affiliated group are considered a single business if evidence indicates that the segments being considered are integrated with, depend on, or contribute to each other and the operations of the corporation or affiliated group as a whole. The following factors indicate a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the corporation or affiliated group constitute a single trade or business: ~~(3-20-97)~~(____)

a. Same Type of Business. A corporation or affiliated group is generally engaged in a single trade or business if all its activities are in the same general line. For example, a taxpayer operating a chain of retail grocery stores is almost always engaged in a single trade or business. (3-20-97)

b. Steps in a Vertical Process. A corporation or affiliated group is almost always engaged in a single trade or business if its various divisions or affiliates are engaged in different steps in a large, vertically structured enterprise. For example, a taxpayer that explores for and mines copper ores and fabricates the refined copper into consumer products is engaged in a single trade or business, regardless of the fact that the various steps in the process are operated substantially independent of each other with only general supervision from the enterprise's executive offices. (3-20-97)

c. Strong Centralized Management. A corporation or affiliated group is considered one trade or business if there is a strong central management, coupled with the existence of centralized departments for functions such as financing, advertising, research, or purchasing. For example, a corporation or affiliated group is considered one trade or business if the central executive officers are normally involved in the operations of the divisions or affiliates and centralized offices perform the normal matters for the divisions or affiliates that a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing. (3-20-97)

03. More Than One Trade or Business. A taxpayer may have more than one trade or business. In this case the taxpayer shall determine the business income attributable to each separate trade or business. The income of each business is apportioned taking into consideration the instate and outstate factors that relate to that trade or business. (3-20-97)

04. Unitary Relationship. The existence of a unitary business relationship shall be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates shall be considered even though a water's edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. (____)

(BREAK IN CONTINUITY OF SECTIONS)

450. APPORTIONMENT FORMULA (Rule 450).

Section 63-3027(i), Idaho Code.

(3-20-97)

01. Apportionment Factors. All of a taxpayer's business income shall be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(i), Idaho Code. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor. (3-20-97)

02. Intercompany Transactions. All intercompany transactions shall be eliminated when computing the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included

in the combined report. (3-20-97)

03. Rounding. The individual factors and the average apportionment factor shall be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped. (3-20-97)

04. Verification of Factors. The taxpayer shall make available the fifty-one (51) state apportionment factor detail when requested by the Tax Commission. Failure to do so may justify the imposition of the negligence penalty provided by Section 63-3046(a), Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

475. PROPERTY FACTOR -- NUMERATOR (Rule 475).

Section 63-3027(k), Idaho Code. (3-20-97)

01. In General. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Idaho during the taxable year in the regular course of the taxpayer's trade or business. (3-20-97)

02. Property in Transit. Property of the taxpayer that is in transit between locations shall be considered to be at the destination for purposes of the property factor. If property in transit between a buyer and seller is included by a taxpayer in the denominator of its property factor, it shall be included in the numerator according to the state of destination. (3-20-97)

03. Mobile or Movable Property. (3-20-97)

a. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment located within and without Idaho during the taxable year shall be determined on the basis of total time and use in Idaho as a percentage of total time and use everywhere. (3-20-97)

b. An automobile assigned to a traveling employee shall be included in the numerator of the state to which the employee's compensation is assigned for the payroll factor or in the numerator of the state in which the automobile is licensed. (3-20-97)

c. The value of aircraft used within and without Idaho during the taxable year shall be determined by multiplying the value of the aircraft by the ratio of departures from locations in Idaho to total departures. ()

(BREAK IN CONTINUITY OF SECTIONS)

600. ENTITIES INCLUDED IN A COMBINED REPORT (Rule 600).

Section 63-3027(t), Idaho Code. (3-20-97)

01. Common Ownership. For purposes of determining whether a corporation is an affiliate, common ownership may be established either by the taxpayer owning more than fifty percent (50%) of the voting stock of another corporation or having more than fifty percent (50%) of its voting stock owned by another entity. Common ownership is also established when another entity or individual owns more than fifty percent (50%) of the voting stock of two (2) or more entities. Ownership is determined on both a direct and indirect basis. It is not necessary that more than fifty percent (50%) of the voting stock of an entity be owned by another entity. It is sufficient if more than fifty percent (50%) of the voting stock of an entity is owned by a commonly controlled group of entities. However, common ownership is not established through a fifty percent (50%) or less owned entity's ownership of the stock of other entities. ()

a. Example. Corporation A owns sixty percent (60%) of Corporation B's voting stock and thirty percent (30%) of Corporation C's voting stock. Corporation B owns thirty percent (30%) of Corporation C's voting stock. Corporations A, B and C are affiliated. ()

b. Example. Corporation A owns forty percent (40%) of Corporation B's voting stock and thirty percent (30%) of Corporation C's voting stock. Corporation B owns sixty percent (60%) of Corporation C's voting stock. Corporation A is not affiliated with B or C, however, B and C are affiliated corporations. ()

042. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. (3-20-97)

023. Domestic International Sales Corporations. If an affiliated group corporation subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (3-20-97)()

034. Foreign Sales Corporations. If an affiliated group corporation subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (3-20-97)()

045. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. (3-20-97)

056. Insurance Companies. Pursuant to Section 41-405, Idaho Code, an insurance company subject to the premium tax may not be included in a combined group. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

646. WATER'S EDGE -- DOMESTIC DISCLOSURE SPREADSHEET (Rule 646). (3-20-97)
Section 63-3027E, Idaho Code.

01. Filing Requirements. The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed with each no later than six (6) months after filing the original return to satisfy Idaho's legal and procedural requirements, unless the taxpayer makes a declaration to forego the filing of the spreadsheet. The declaration is made on a year by year basis. (3-20-97)()

02. Spreadsheet Information. The filing of the spreadsheet information must be accomplished submitted using the forms contained in the Tax Commission's "Idaho Water's Edge Election Pamphlet," or on identically formatted forms that disclose the same information. (3-20-97)()

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-9704
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

RULE 025 - Taxable Year and Accounting Period. Amended Rule 025 to be consistent with the statutory definition of taxable year clarified in 1997 legislation.

RULE 030 - Resident. Amended Rule 030 to include a reference to Rule 040 which was modified to include information on place of abode and to correct a reference to Section 63-3013.

RULE 040 - Part-Year Resident. Amended Rule 040 to add information clarifying place of abode.

RULE 108 - Adjustments to Taxable Income--Additions Required Only of Individuals. Because for federal purposes an individual may now exclude amounts contributed to a federal medical savings account, Rule 108 was amended to distinguish that the Idaho addition for transactions related to a medical savings account are for those related to an Idaho medical savings account.

RULE 120 - Adjustments to Taxable Income -- Subtractions Available to All Taxpayers. Rule 120 was amended to correspond with legislative changes that made certain lottery winnings taxable. Amendments also clarify the fact that pass-through entities can not claim a net operating loss deduction.

RULE 121 - Adjustments to Taxable Income -- Subtractions Available Only to Individuals. Because for federal purposes an individual may now exclude amounts contributed to a federal medical savings account, Rule 121 was amended to distinguish that the Idaho subtractions for transactions related to a medical savings account are for those related to an Idaho medical savings account.

RULE 130 - Deduction of Certain Retirement Benefits. Amended Rule 130 to clearly state that individuals who file married filing separate are not entitled to the deduction for certain retirement benefits as provided in 1997 legislation.

RULE 171 - Idaho Capital Gains Deduction -- Qualified Property. Rule 171 was amended to clarify that the holding period of property does not include the time the taxpayer held other property that would not have qualified for the capital gains deduction as provided in 1997 legislation.

RULE 190 - Medical Savings Accounts. Because for federal purposes an individual may now exclude amounts contributed to a federal medical savings account, Rule 190 was amended to distinguish that the Idaho additions and subtractions for transactions related to a medical savings account are for those related to an Idaho medical savings account.

RULE 253 - Nonresident and Part-Year Resident Individuals -- Additions Required in Computing Idaho Adjusted Income. Because for federal purposes an individual may now exclude amounts contributed to a federal medical savings account, Rule 253 was amended to distinguish that the Idaho additions required for ineligible withdrawals are for those withdrawals from an Idaho medical savings account. Information was also added to clarify that interest and dividend income not taxable by the Internal Revenue Code that is reportable by a nonresident from a pass-through entity must be added to compute Idaho adjusted income to the extent it was apportioned or allocated as Idaho income.

RULE 254 - Nonresident and Part-Year Resident Individuals -- Subtractions Allowed in Computing Idaho Adjusted

Income. Amended Rule 254 to correspond with 1997 legislative changes that made certain lottery winnings taxable. Minor changes were made to the format of several subsections. The rule was also amended to add the word Idaho to references to medical savings accounts to distinguish between Idaho and federal provisions.

RULE 810 - Time for Filing Income Tax Returns. Rule 810 was amended to reflect the new filing date for farmer's cooperatives as provided in 1997 legislation and to correct a reference to the Idaho code section that addresses timely filing through the mail.

RULE 820 - Corporate Estimated Payments -- In General. Rule 820 was amended to clarify that the calculation of estimated tax does not include nonincome tax credits which may have been claimed on the previous year's tax return or that are claimed on the current year's corporate income tax return.

RULE 830 - Information Returns. Rule 830 was amended to clarify that Form MSA-1 relates to Idaho medical savings accounts. It was also amended to add the requirement to file Form W-2G if the gambling took place in Idaho as provided in 1997 legislation that requires withholding on certain lottery winnings.

RULE 880 - Credits and Refunds. Rule 880 was amended to address the filing of a protective claim when the statute of limitations is close to expiring on an Idaho income tax return.

RULE 895 - Period of Limitation on Assessment and Collection of Tax. Rule 895 was amended to delete information moved to new Rule 896.

RULE 896 - Request for Prompt Action by the Tax Commission. Rule 896 was promulgated to address a request for prompt action on behalf of a decedent. It addresses the requirements for a valid request, the fact that the request does not apply to the estate tax, and the fact a request does not apply to a return that has not been filed.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

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TEXT OF DOCKET NO. 35-0101-9704

025. TAXABLE YEAR AND ACCOUNTING PERIOD (Rule 025).

Section 63-3010, Idaho Code.

(3-20-97)

01. In General. A taxpayer shall file his Idaho return for the same taxable year as filed for federal income tax purposes. ~~If a federal return is not filed, the taxable year shall be the taxable year required by the Internal Revenue Code, any other period that may be required by law, or the calendar year. Taxable year is the fixed period used for purposes of computing income. It generally corresponds to the taxpayer's annual accounting period unless a short-period return is required.~~ (3-20-97)(____)

02. Change of Accounting Period.

(3-20-97)

a. If a taxpayer changes his accounting period for federal income tax purposes, he shall make the same change for the same period for Idaho income tax purposes. If prior approval of the Commissioner of the Internal Revenue Service is required, a copy of that approval shall accompany the Idaho short-period return. (3-20-97)

b. If a change does not require prior approval of the Commissioner of the Internal Revenue Service, the change shall be noted on the Idaho short-period return, along with a statement that no prior approval was required and the authority cited. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

030. RESIDENT (Rule 030).

Section 63-3013, Idaho Code.

(3-20-97)

01. Resident. The term resident applies to individuals, estates, and trusts.

(3-20-97)

a. An individual is a resident if he meets either of the tests set forth in Section 63-3013, Idaho Code. For the rules relating to the residency status of aliens, see Rule 031 of these rules. For the rules relating to the residency status of members of the Armed Forces, see Rule 032 of these rules. For the rules relating to Native Americans, see Rule 033 of these rules. (3-20-97)

b. For the rules relating to the residency status of estates, see Rule 034 of these rules.

(3-20-97)

c. For the rules relating to the residency status of trusts, see Rule 035 of these rules.

(3-20-97)

02. Domicile. The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time.

(3-20-97)

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

(3-20-97)

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(e2), Idaho Code. (3-20-97)(____)

c. An individual meeting the safe harbor exception set forth in Section 63-3013(e2), Idaho Code, is not considered a resident of Idaho. Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. (3-20-97)(____)

03. Place of Abode. See Rule 040 of these rules for information as to what constitutes a place of abode. ()

(BREAK IN CONTINUITY OF SECTIONS)

040. PART-YEAR RESIDENT (Rule 040).

Section 63-3013A, Idaho Code. (3-20-97)

01. In General. A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. (3-20-97)

a. An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. (3-20-97)

b. For the rules relating to the determination of an individual's domicile, see Subsection 030.02 of these rules. (~~3-20-97~~)()

02. Temporary or Transitory Purpose. For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. (3-20-97)

a. The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho. (3-20-97)

b. An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. (3-20-97)

c. Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. (3-20-97)

03. Place of Abode. An individual who owns a home in Idaho will not be treated as having a place of abode at that residence if the individual does not have the right to immediately occupy that residence. ()

a. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is leased to a third party for the entire taxable year. Since the individual does not have the right to immediately occupy the home, it is not treated as that individual's abode for purposes of determining his residency status. ()

b. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is offered for rent. For the first three (3) months of the taxable year the home is not rented and remains vacant. During the final nine (9) months of the taxable year the home is leased to a third party. The individual will be treated as having a place of abode in Idaho during the first three (3) months of the taxable year since the individual had the right to immediately occupy the home. If the individual is present in Idaho during the first three (3) months of the taxable year for other than a temporary or transitory purpose, that individual will be deemed to reside in Idaho. ()

(BREAK IN CONTINUITY OF SECTIONS)

108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (Rule 108).

Section 63-3022, Idaho Code. (3-20-97)

01. Lump Sum Distributions. As provided in Section 63-3022(n), Idaho Code, add the taxable amount of a lump sum distribution deducted pursuant to Section 402(d)(3), Internal Revenue Code. (3-20-97)

02. Withdrawals from an Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. ~~(3-20-97)()~~

(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (Rule 120).

Section 63-3022, Idaho Code. (3-20-97)

01. State Income Tax Refund. Subtract from taxable income a state income tax refund included in taxable income, unless the refund has already been subtracted pursuant to Section 63-3022(b), Idaho Code. (3-20-97)

02. Idaho Net Operating Loss. As provided in Section 63-3022(d), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 and 201 of these rules. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. ~~(3-20-97)()~~

03. Income Not Taxable by Idaho. As provided in Section 63-3022(g), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (3-20-97)

a. Interest income from obligations issued by the United States. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset applicable to corporations, see Rule 106 of these rules. (3-20-97)

b. Idaho lottery winnings exempt by Section 67-7439, Idaho Code. For lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize less than six hundred dollars (\$600). ~~(3-20-97)()~~

04. Federal Alcohol Fuels Credit. As provided by Section 63-3022(m), Idaho Code, subtract the federal alcohol fuels tax credit included in taxable income pursuant to Section 87, Internal Revenue Code. (3-20-97)

05. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the value of technological equipment donated to qualifying institutions. (3-20-97)

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (Rule 121).

Section 63-3022, Idaho Code. (3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(g), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (3-20-97)

a. Certain income earned by Native Americans. See Rule 033 of these rules. (3-20-97)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal

on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(j), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-20-97)

03. Standard or Itemized Deduction. As provided in Section 63-3022(l), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If state income taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. See Subsection 105.02 of these rules. (3-20-97)

a. Additional deductions allowed if claiming the standard or itemized deduction. The deductions provided in Subsections 121.03.a.i. and 121.03.a.ii. are allowed in addition to claiming the standard or itemized deduction. (3-20-97)

i. An additional deduction is allowed by Section 63-3022(l), Idaho Code, for contributions to the state of Idaho for credit to the medical assistance account if the contributions have not been previously deducted in computing Idaho taxable income. (3-20-97)

ii. An additional deduction is allowed by Section 63-3022(l), Idaho Code, for certain expenditures incurred in providing a qualified family member with personal care services if the expenditures have not been previously deducted in computing Idaho taxable income. (3-20-97)

b. Additional deductions allowed if claiming itemized deductions. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (3-20-97)

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(o), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. The term railroad retirement benefits means Tier I, Tier II, and supplemental benefits paid by the Railroad Retirement Board. Supplemental benefits, for purposes of this rule, include railroad unemployment and sickness benefits. (3-20-97)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(p), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-20-97)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Participation in a Residential Conservation or Weatherization Program. As provided in Section 63-3022F, Idaho Code, a deduction is allowed for amounts included in taxable income as a result of the taxpayer's participation in a qualified residential conservation or weatherization program. (3-20-97)

12. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

13. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified property. (3-20-97)

14. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

15. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to an Idaho medical savings account. (~~3-20-97~~)()

(BREAK IN CONTINUITY OF SECTIONS)

130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (Rule 130).
Section 63-3022A, Idaho Code. (3-20-97)

01. Qualified Benefits. Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

a. Civil service retirement annuities paid by the United States Government. (3-20-97)

b. Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

c. Retirement benefits paid as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967 or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

d. Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

02. Unremarried Widow. An unremarried widow of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death.

(3-20-97)

03. Disabled Individual. For purposes of this deduction, an individual is classified as disabled if he is retired and receives qualified benefits pursuant to a disability provision of the retirement fund. (3-20-97)

04. Married Individuals Filing Separate Returns. Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. ()

045. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income shall be published each year in the instructions for preparing Idaho individual income tax returns. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (Rule 171).
Section 63-3022H, Idaho Code. (3-20-97)

01. Timber. As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

a. Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

b. Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

02. Holding Periods. (3-20-97)

a. In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow the definitions provided by Section 1223, Internal Revenue Code. ~~(3-20-97)~~()

b. Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. Nonqualifying property includes: ()

i. Real or tangible personal property not having an Idaho situs at the time of the exchange; and ()

ii. Tangible personal property not used by a revenue-producing enterprise. ()

c. Examples of Nonqualifying Property. ()

i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for four (4) years until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for five (5) years, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. ()

ii. Assume the same facts as in the example in Subsection 171.02.c.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the

second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least five (5) years, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. ()

03. Holding Periods of S Corporation and Partnership ~~Interests~~ Property. (3-20-97)()

a. Property Distributed by an S Corporation to a Shareholder or a Partnership to a Partner. The holding period of property received from an S corporation or partnership includes the S corporation's or partnership's holding period, limited to the length of time the shareholder or partner held his interest in the income of the S corporation or partnership. See Subsection 173.02 of these rules. (3-20-97)

b. Property Contributed by a Shareholder to an S Corporation or a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The ~~non-contributing~~ noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period, limited to the length of time the shareholder or partner has held his interest in the S corporation or partnership. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

190. IDAHO MEDICAL SAVINGS ACCOUNTS (Rule 190).

Section 63-3022K, Idaho Code.

(3-20-97)()

01. Submitting Information Returns. Information returns reporting Idaho medical savings account information shall be submitted to the Tax Commission by the depository on Idaho Form MSA-1, or on magnetic media if filing two hundred fifty (250) or more returns. Depositories reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-20-97)()

02. Withdrawal to Pay Eligible Medical Expenses. (3-20-97)

a. A withdrawal from an Idaho medical savings account to reimburse the taxpayer for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. (3-20-97)()

b. Example. A taxpayer's Idaho medical savings account had a balance of three hundred dollars (\$300) on March 1. On that day, he paid a medical expense costing four hundred dollars (\$400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars (\$200) into his medical savings account. On March 11 he withdrew four hundred dollars (\$400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars (\$300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars (\$200) for the contribution to the account. However, he must include one hundred dollars (\$100) in Idaho taxable income in addition to paying a penalty of ten dollars (\$10). (3-20-97)()

03. Pretax Contributions. Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN

COMPUTING IDAHO ADJUSTED INCOME (Rule 253).

Section 63-3026A(6), Idaho Code. (3-20-97)

01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code. (3-20-97)

a. Part-Year Residents. Add interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho. However, do not include interest received from obligations of the state of Idaho or any political subdivision of Idaho. This interest is exempt from Idaho income tax. (3-20-97)()

b. Nonresidents. Add interest and dividend income reportable from a pass-through entity that was transacting business in Idaho to the extent the income was apportioned or allocated as Idaho income. See Rule 263 of these rules for multistate apportionment rules. ()

02. Net Operating Loss Deduction. Add any net operating loss deduction included in Idaho gross income. (3-20-97)

03. Capital Loss. Add capital losses included in Idaho gross income if the loss was incurred while not residing in and not domiciled in Idaho, or if the loss relates to an activity not taxable by Idaho at the time the loss was incurred. (3-20-97)

04. Lump Sum Distributions. Add the taxable amount of a lump sum distribution, deducted from gross income pursuant to Section 402(d), Internal Revenue Code, received while residing in or domiciled in Idaho. This includes both the ordinary income portion and the amount eligible for the capital gain election. (3-20-97)

05. Idaho Medical Savings Account. Add the amount withdrawn from an Idaho medical savings account to the extent the withdrawal is treated as income by Idaho law. (3-20-97)()

254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (Rule 254).

Section 63-3026A(6), Idaho Code. (3-20-97)

01. Net Operating Loss Carryover. Subtract the net operating loss carryover allowed by Section 63-3022(d), Idaho Code, to the extent the loss was incurred while residing in or domiciled in Idaho or to the extent the loss was from business activity taking place in Idaho. A net operating loss incurred from a business activity not taxable by Idaho may not be subtracted. (3-20-97)

02. State Income Tax Refund. Subtract state income tax refunds included in Idaho gross income. (3-20-97)

03. Income Not Taxable by Idaho. Subtract income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States, if that income is included in Idaho gross income and has not been previously subtracted. Income not taxable by Idaho includes: (3-20-97)

a. Interest ~~income~~ from obligations of the United States Government. Subtract interest received from securities issued by the United States Government to the extent the interest is included in Idaho gross income. (3-20-97)()

b. ~~Idaho Lottery Winnings exempt by Section 67-7439, Idaho Code. Idaho lottery winnings exempt pursuant to Section 67-7439, Idaho Code.~~ For lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize less than six hundred dollars (\$600). (3-20-97)()

c. Certain income earned by Native Americans. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxable on income derived ~~from~~ within the reservation. See Rule 033 of these rules. (3-20-97)()

d. ~~Transportation Employees.~~ Certain income earned by transportation employees covered by Title 49,

Section 11504, United States Code, and air carrier employees covered by Title 49, Section 40116(f), United States Code. See Rule 045 of these rules. ~~(3-20-97)~~(____)

04. Military Pay. Subtract qualified military pay included in Idaho gross income earned for military service performed outside Idaho. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not report his military pay as Idaho gross income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. (3-20-97)

05. Social Security and Railroad Retirement Benefits. Subtract social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, to the extent the benefits are included in Idaho gross income. (3-20-97)

06. Household and Dependent Care Expenses. Subtract the allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, calculate a percentage by dividing Idaho earned income by total earned income. Multiply the qualified expenses by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (3-20-97)

07. Insulation and Alternative Energy Device Expenses. Subtract expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code. (3-20-97)

08. Deduction for Dependents Sixty-five (65) or Older or With Developmental Disabilities. Subtract one thousand dollars (\$1,000) for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (3-20-97)

09. Adoption Expenses. Subtract the allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code. To determine the allowable portion, calculate a percentage by dividing Idaho gross income by total gross income. Multiply the deduction allowable pursuant to Section 63-3022I, Idaho Code, by the percentage. (3-20-97)

10. Capital Gains Deduction. Subtract the Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code. (3-20-97)

11. Idaho Medical Savings Account. ~~(3-20-97)~~(____)

a. Subtract contributions to an Idaho medical savings account that meet the requirements of Section 63-3022K, Idaho Code. ~~(3-20-97)~~(____)

b. Subtract interest earned on an Idaho medical savings account to the extent included in Idaho gross income. ~~(3-20-97)~~(____)

12. Contributions to a Medical Assistance Account. Subtract contributions to the state of Idaho for credit to the medical assistance account. (3-20-97)

13. Expenditures for Personal Care Services. Subtract expenses incurred for personal care services that meet the requirements of Section 63-3022(l)(1)(b) or 63-3022(l)(2)(c), Idaho Code. The deduction is limited to one thousand dollars (\$1,000) for each qualified individual for expenses that have not been reimbursed or previously subtracted in computing Idaho taxable income. (3-20-97)

14. Technological Equipment Donation. Subtract donations of technological equipment allowed by

Section 63-3022J, Idaho Code. See Rule 180 of these rules. (3-20-97)

15. Federal Alcohol Fuels Credit. As allowed by Section 63-3022(m), Idaho Code, subtract the amount included in Idaho gross income for the federal alcohol fuels credit. (3-20-97)

16. Worker's Compensation Insurance. As allowed by Section 63-3022(p), Idaho Code, a self-employed individual may subtract the cost of premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

810. TIME FOR FILING INCOME TAX RETURNS (Rule 810).

Section 63-3032, Idaho Code. (3-20-97)

01. ~~Requirement to File-~~ Due Date of Returns. (3-20-97)()

a. All taxpayers except farmer's cooperatives. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year, as defined by the Internal Revenue Code. (3-20-97)()

b. Farmer's cooperatives. Each farmers' cooperative taxable pursuant to Section 63-3025B, Idaho Code, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the ninth month following the close of the taxable year. ()

02. Timely Filing Defined. If the last day for filing a return falls on a Saturday, Sunday or legal holiday, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor. (3-20-97)

03. Mail. Section 63-~~2221~~217(1), Idaho Code, specifies that an income tax return sent through the mail is filed timely if it is postmarked on or before the due date of the return. (3-20-97)()

04. Fifty-Two Fifty-Three (52-53) Week Years. A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

820. CORPORATE ESTIMATED PAYMENTS -- IN GENERAL (Rule 820).

Section 63-3036A, Idaho Code. (3-20-97)

01. Estimated Tax. The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho investment tax credit, less the sum of any income tax credits. Estimated payments and non-income tax credits are not included as a credit. (3-20-97)()

02. Computation of Estimated Payments. (3-20-97)

a. Estimated tax is paid in four (4) payments. Each estimated payment shall be twenty-five percent (25%) of the lesser of the tax required to be reported on the taxpayer's return filed for the preceding taxable year or ninety percent (90%) of the tax required to be paid on the current year's return. (3-20-97)

b. The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars (\$20), plus the permanent building fund tax, plus the recapture of investment tax credit, less income tax credits excluding estimated payments. (~~3-20-97~~)()

c. An estimated payment is not required if an Idaho return was not required for the previous taxable year. (3-20-97)

03. Revised Income Estimate. If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it shall recompute its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. (3-20-97)

04. Net Operating Loss Carryover. The allowable net operating loss carryover shall be deducted from income for the period before the estimated tax is computed. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

830. INFORMATION RETURNS (Rule 830).

Section 63-3037, Idaho Code.

(3-20-97)

01. In General. Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

a. Form 1099-MISC, Miscellaneous Income, if it is issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (3-20-97)

b. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax is withheld. (3-20-97)

c. Form 1099-S, Proceeds From Real Estate Transactions, if it is issued for transactions related to property located in Idaho. (3-20-97)

d. Form MSA-1, Idaho Medical Savings Accounts. (~~3-20-97~~)()

e. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. ()

02. Submitting Returns. Information returns shall be submitted to the Tax Commission on federal Form 1099 or magnetic media. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-20-97)

03. Due Date of Information Returns. Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

880. CREDITS AND REFUNDS (Rule 880).

Section 63-3072, Idaho Code.

(3-20-97)

01. Overpayment. The term overpayment includes: (3-20-97)
- a. A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)
 - b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)
 - c. All amounts erroneously or illegally assessed or collected. (3-20-97)
 - d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)
02. Timely Claim Required for Refund. (3-20-97)
- a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)
 - b. The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (3-20-97)
 - c. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (3-20-97)
03. Amended Returns as Refund Claims. A properly signed amended tax return shall constitute a claim for refund. The taxpayer must clearly set forth the amount claimed and explain why and how the original return is amended. Individuals use Form 40X, Amended Idaho Individual Income Tax Return. Corporations, partnerships, and fiduciaries use Form 41X, Amended Business Income Tax Return. (3-20-97)
04. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)
05. Limitations on Refunds of Withholding and Estimated Payments. The Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. See Section 63-3035(e), Idaho Code. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. (3-20-97)
06. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)
07. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. (3-20-97)()
08. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho

period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (Rule 895).
Section 63-3068, Idaho Code. (3-20-97)

01. Federal Determination. The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. (3-20-97)

02. Protest of a Notice of Deficiency. If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. (3-20-97)

~~03. Requests on Behalf of a Decedent for Prompt Action by the Tax Commission. After a return has been filed, the personal representative, executor, administrator, or other fiduciary representing the estate of a decedent may file a written request for prompt action pursuant to Section 63-3068(e), Idaho Code. The request: (3-20-97)~~

- ~~a. Must be filed separately from any other document; (3-20-97)~~
- ~~b. Must identify the period for which the prompt action is requested; (3-20-97)~~
- ~~e. Must clearly say that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code; (3-20-97)~~
- ~~d. Does not apply to any return filed after the date of the request; and (3-20-97)~~
- ~~e. Applies only to returns reflecting income earned during the lifetime of a decedent, as defined for federal income tax purposes. (3-20-97)~~

~~043. Waiver of the Period of Limitation. If a taxpayer executes a waiver to extend the period of limitation, the waiver shall state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver shall apply to each corporation included in the combined group. (3-20-97)~~

896. REQUEST FOR PROMPT ACTION BY THE TAX COMMISSION (Rule 896).
Section 63-3068(e), Idaho Code. ()

01. In General. A request for prompt action may be made pursuant to Section 63-3068(e), Idaho Code, for an income tax return that is required to be filed for a decedent or an estate of a decedent. The request does not apply to the estate tax imposed by Chapter 4, Title 14, Idaho Code. ()

02. Requirements of a Valid Request for Prompt Action. The personal representative, executor, administrator, or other fiduciary representing the estate of a decedent shall file the request for prompt action in writing with the Tax Commission. The request must meet the following qualifications: ()

- a. It must be filed after the applicable return has been filed; ()
- b. It must be filed separately from any other document; ()
- c. It must identify the taxpayer by name and identification number and the taxable periods for which the prompt action is requested; and ()

() d. It must clearly state that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code.

03. Applicable Returns. A request for prompt action does not apply to any return filed after the request has been filed. The request applies only to returns reflecting income earned or other activities and transactions occurring during the lifetime of the decedent or by his estate during the period of administration. ()

8967. -- 899. (RESERVED).

IDAPA 35- STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-9705
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

RULE 700 - Credit for Taxes Paid Another State or Territory. Rule 700 was promulgated to clarify which taxes qualify for the credit for taxes paid another state and how the credit is calculated.

RULE 713 - Idaho Investment Tax Credit -- Credit Earned on Property Used Both In and Outside Idaho in Taxable Years Beginning After December 31, 1991, But Before January 1, 1995. Rule 713 was amended to state that the departure ratio will be used to determine the use of aircraft in Idaho for purposes of calculating the Idaho investment credit.

RULE 714 - Idaho Investment Tax Credit -- Credit Earned on Property Used Both In and Outside Idaho in Taxable Years Beginning On or After January 1, 1995. Rule 714 was amended to state that the departure ratio will be used to determine the use of aircraft in Idaho for purposes of calculating the Idaho investment credit.

RULE 717 - Idaho Investment Tax Credit -- Replacement Property. Rule 717 was amended to clarify the fact that replacement property is property that performs the same or similar functions as the property being replaced.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:
No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the rules are of a general application rather than applicable to identifiable groups or interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Janice Boyd, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0101-9705

647. -- ~~703~~699. (RESERVED).

700. CREDIT FOR TAXES PAID ANOTHER STATE OR TERRITORY (Rule 700).

Section 63-3029, Idaho Code.

()

01. Excise Tax or Franchise Tax Measured by Income Defined. For purposes of computing the credit for taxes paid another state or territory, an excise tax or franchise tax is measured by income only if the statute imposing the excise tax or franchise tax provides that the base of the tax:

()

a. Includes revenue from sales, revenue from services rendered, and income from investments; and

()

b. Permits a deduction for the cost of goods sold and the cost of services rendered.

()

02. Taxes Not Eligible for the Credit. Any tax or portion thereof imposed on capital stock, retained earnings, stock values, or a basis other than income is not eligible for the credit.

()

03. Credit Calculated on a State-by-State Basis. The credit and credit limitations shall be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations.

()

04. Income Tax Payable to Another State. The income tax payable to another state shall be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed.

()

701. -- 703. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

713. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1991, BUT BEFORE JANUARY 1, 1995 (Rule 713).

Section 63-3029B, Idaho Code.

(3-20-97)

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. Carryovers of investment tax credit earned on property that first qualified for the credit in taxable years beginning prior to January 1, 1992, are subject to the provisions of this rule.

(3-20-97)

02. Election of Methods. The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the Idaho property factor method. The credit for all property used both in and outside Idaho must be computed using the method elected.

(3-20-97)

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures.

(3-20-97)()

b. If the Idaho property factor method is elected, the total basis of all assets used in and outside Idaho that otherwise qualify for the credit is multiplied by the Idaho property factor of the taxpayer.

(3-20-97)

03. Unitary Taxpayers. The property factor of a corporation that is a member of a combined group is computed using its Idaho property as the numerator and the combined group's everywhere property as the denominator. (3-20-97)

04. Examples. (3-20-97)

a. Idaho Percentage-of-Use Method. In January, 1992, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 1992. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450). (3-20-97)

b. Idaho Property Factor Method. Assume the same facts as in Subsection 713.04.a., except that in addition to the road grader the taxpayer also purchased an asphalt layer and a dump truck. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is twenty percent (20%). The road grader cost fifty thousand dollars (\$50,000), the dump truck cost seventy-five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 1992. (3-20-97)

714. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (Rule 714).
Section 63-3029B, Idaho Code. (3-20-97)

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. (3-20-97)

02. Election of Methods. The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. (3-20-97)

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures. See Subsection 713.04.a. of these rules for an example of the percentage-of-use method. (3-20-97)(____)

b. If the property factor numerator option is elected, the qualified investment is the basis of the asset included in the numerator of the Idaho property factor for the year the credit is earned. For example, if a taxpayer is in the freight transportation business and thirty percent (30%) of his trucks' fleet miles were logged in Idaho during the year, thirty percent (30%) of the cost of a truck acquired that year would be included in the Idaho property factor numerator. If one of the trucks acquired that year traveled in Idaho, and cost one hundred thousand dollars (\$100,000), the amount included in the Idaho property factor numerator would be thirty thousand dollars (\$30,000). The qualified investment in this truck would also be thirty thousand dollars (\$30,000) resulting in a credit of nine hundred dollars (\$900). (3-20-97)(____)

(BREAK IN CONTINUITY OF SECTIONS)

717. IDAHO INVESTMENT TAX CREDIT -- REPLACEMENT PROPERTY (Rule 717).

Section 63-3029B, Idaho Code.

(3-20-97)

01. In General. The replacement property provisions apply to property acquired prior to January 1, 1995.
(3-20-97)

02. Replacement Property Defined. Replacement property means property that: ()

a. ~~is~~ newly acquired, constructed, reconstructed, erected or placed into service; and ()

b. ~~that performs functions that are the same as or similar to functions as the property being replaced.~~
~~performed by other property used in a taxpayer's trade or business.~~ (3-20-97)()

03. Technical Obsolescence. Replacement property is presumed to have been acquired, constructed, reconstructed, erected or placed into service for reasons other than technical obsolescence. The taxpayer claiming the credit for replacement property shall have the burden of proving that the replacement property was acquired, constructed, reconstructed, erected, or placed into service only for reasons of technical obsolescence of existing property or property previously used in the taxpayer's trade or business. If any other reason for purchasing an asset exists, such as the need to replace worn out equipment, normal replacement cycles, relocations, etc., the property does not qualify. (3-20-97)

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-9706
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

RULE 740 - Natural Resource Conservation Credit -- In General.

RULE 741 - Natural Resource Conservation Credit -- Qualifying Expenditures. Rules 740 and 741 were promulgated to address the credit provided for in Section 63-3024B, Idaho Code, enacted during the 1997 legislative session.

RULE 760 - Priority Order of Credits. Rule 760 was amended to add the new credit provided in Section 63-3024B, Idaho Code, to the list of priority of credits.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the rules are of a general application rather than applicable to identifiable groups or interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Janice Boyd, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0101-9706

739. --759. (RESERVED).

740. NATURAL RESOURCE CONSERVATION CREDIT -- IN GENERAL (Rule 740).

Section 63-3024B, Idaho Code. ()

01. Definitions. As used in this rule and Rule 741 of these rules: ()

a. Best Management Practices (BMPs). Best management practices include the following practices for the type of land indicated: ()

i. Agricultural Lands. A component practice or combination of component practices determined to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. ()

ii. Forest Lands. A practice or combination of practices determined to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. This is determined by the State Board of Land Commissioners in consultation with the Department of Lands and the Forest Practices Act Advisory Committee. Best management practices for forest lands include management practices listed in IDAPA 20.02.01, which relates to the Idaho Forest Practices Act. ()

iii. Mining Lands. Practices found in "Best Management Practices for Mining In Idaho," published November 16, 1992, by the Idaho Department of Lands, Bureau of Minerals, 1215 West State Street, Boise, Idaho, 83720. ()

b. Total Maximum Daily Load (TMDL). A plan for attaining state water quality standards where traditional technology based approaches or other legally required controls have proved inadequate. ()

i. Traditional technology based approaches include effluent limitation and discharge permits. ()

ii. Other legally required controls include enforceable best management practices. ()

02. Eligible Taxpayers. To be eligible for the income tax credit authorized by Section 63-3024B, Idaho Code, a land owner must incur expenses during the taxable year to address one or more of the following: ()

a. A TMDL process or equivalent process on a Clean Water Act 303(d) listed stream segment; ()

b. A threatened or endangered species as listed under the Endangered Species Act of 1973, a candidate species for listing under the Endangered Species Act, or a species recognized as a sensitive species by the appropriate agency; or ()

c. A fencing plan that will improve streams or riparian areas or both. ()

741. NATURAL RESOURCE CONSERVATION CREDIT -- QUALIFYING EXPENDITURES (Rule 741).

Section 63-3024B, Idaho Code. ()

01. In General. If a land owner is eligible for the credit pursuant to Section 63-3024B, Idaho Code, and Subsection 740.02 of these rules, expenditures incurred with respect to the following actions qualify for consideration for the credit: ()

a. Conservation actions included in a plan approved by the United States Fish and Wildlife Service or other appropriate federal or state agency. Conservation actions include any practices contained in the plan that are deemed necessary for the protection and improvement of habitat for a species listed as endangered or threatened, a species considered candidate species for listing as endangered or threatened, or a species recognized as a sensitive species by appropriate agencies. ()

b. Best management practices included in a plan, approved by an appropriate designated agency as defined in Title 39, Chapter 36, Idaho Code. The objectives of the conservation plan must be directed towards one or more of the following: ()

- i. Meeting a TMDL or equivalent process as set forth in Title 39, Chapter 36, Idaho Code; ()
- ii. Improving riparian areas; ()
- iii. Protecting or improving aquatic habitat; or ()
- iv. Protecting or enhancing designated beneficial uses. ()
- c. Riparian fencing plans developed for riparian improvement and approved by the appropriate Soil Conservation District. Facilitating practices such as water developments, hardened crossing, or others deemed necessary and appropriate for the success of the fencing plan are also qualifying expenditures. ()
- d. Measures approved by appropriate federal or state agencies to remove fish barriers to allow fish migration upstream and downstream or to install devices that prevent fish from entering diversions that decrease the survivability of fish entering those diversions. ()
- 02. Labor Costs of Land Owners. Qualifying expenditures may not include an amount for the labor of the land owner. ()
- 03. Governmental Financial Assistance. If the land owner receives financial assistance through a cost-share from federal, state, or other governmental units, the amount of qualifying expenditures shall be reduced by the financial assistance received. ()
- 04. Applying For the Credit. To be considered for the credit, each eligible taxpayer with qualifying expenditures must complete an application. Once completed, the application must be received by the designated agency by the due date set by the agency. Information included on or attached to the application must indicate the following: ()
 - a. A description of the action taken by the taxpayer that qualifies for the credit. The description must clearly indicate that the taxpayer's action qualifies as one (1) of the three (3) required actions listed in Subsection 740.02 of these rules. ()
 - b. A schedule of qualifying expenditures. The schedule must include the amount of the expenditure, the payee, the date the expenditure was made, and the amount of any financial assistance or cost-share received for the project, if applicable. A copy of all receipts verifying the amount of each expenditure listed must be attached. ()
- 05. Customary and Reasonable Amounts. To qualify for consideration, all expenditures must be customary and reasonable for the application of conservation measures. ()
- 06. Designated Agency. For purposes of Section 63-3024B, Idaho Code, and Rules 740 and 741 of these rules, designated agency means: ()
 - a. The Department of Lands for timber harvest activities, for oil and gas exploration and development, and for mining activities; ()
 - b. The Soil Conservation Commission for grazing activities and for agricultural activities; ()
 - c. The Transportation Department for public road construction; ()
 - d. The Department of Agriculture for aquaculture; and ()
 - e. The Department of Health and Welfare's Division of Environmental Quality for all other activities. ()

742. -- 759. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

760. PRIORITY ORDER OF CREDITS (Rule 760).

Section 63-3029H, Idaho Code. (3-20-97)

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

b. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)

c. Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)

d. Credit for contributions to Idaho youth and rehabilitation facilities as authorized by Section 63-3029C, Idaho Code; (3-20-97)

e. New jobs tax credit as authorized by Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996; ~~and~~ (3-20-97)()

f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; ~~and~~ (3-20-97)()

g. Natural resource conservation credit as authorized by Section 63-3024B, Idaho Code. ()

IDAPA 35 - STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

Rule 051 - Discounts, Coupons, Rebates and Gift Certificates, amended to state that sales of coupon books are exempt from sales tax to comply with a declaratory opinion issued by the State Tax Commission, to state that the donor is the consumer of donated goods, to clarify that sales of discount memberships are only taxable when the seller of the membership is also the seller of the discounted goods, and that manufacturer's discount coupons do not reduce the price subject to sales as required by Section 63-3613, Idaho Code.

Rule 057 - Dry Cleaners, Laundries, Laundromats, and Linen Suppliers, amended to state that purchasers of dry-to-dry transfer systems are exempt from sales tax as of July 1, 1997 and that sales of repair parts for such systems are subject to sales tax, as well as other nonsubstantive changes.

Rule 084 - Containers - Returnable - Non-returnable, amended to delete the statement that sales of storage tanks are always taxable, other nonsubstantive changes.

Rule 099 - Occasional Sales, amended to correct typographical errors.

Rule 109 - Amusement devices, amended to state that amusement device permits are transferrable after written notice is received and acknowledged by the State Tax Commission.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV

P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0102-9701

000. LEGAL AUTHORITY (Rule 000).

In accordance with Sections 63-~~543105~~, 63-3624, 63-3635, and 63-3039, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Sales Tax Act. They are the State Tax Commission's official statement of policy relating to interpretations and applications of the Idaho Sales Tax Act. (~~7-1-93~~)()

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS (Rule 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter ~~43~~, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-307~~56~~ or 9-340, Idaho Code. (~~7-1-93~~)()

(BREAK IN CONTINUITY OF SECTIONS)

051. DISCOUNTS, COUPONS, REBATES, AND GIFT CERTIFICATES (Rule 051).

01. Adjustments That Apply After Tax Calculation. Tax must be charged BEFORE deducting the following:
(7-1-93)

a. Cash discounts. Sales tax must be computed on the full amount of the purchase price before the cash discount is subtracted. When an invoice or other billing document states that a discount will be allowed if payment is made before a certain date, then the discount is presumed to be a cash discount. Discounts allowed on payments received after the stated date are presumed to be cash discounts unless proven to the contrary by clear and convincing evidence. (7-1-93)

b. Manufacturer's rebates. Except as provided by Subsection 051.02 of this rule, sales tax must be computed on the full amount of the purchase price without regard to the manufacturer's rebate. Any rebate received by the purchaser from the manufacturer, distributor, or any person other than the retailer will not reduce the retail sales price subject to tax. (7-1-93)

c. Manufacturer's discount coupons. Sales tax must be computed on the full amount of the purchase price before subtracting ~~of~~ the coupon amount. This includes coupons issued by a manufacturer allowing the purchaser to buy one item and get a second item free if the retailer will be reimbursed by the manufacturer.
(~~7-1-93~~)()

d. Food Stamps and WIC. Beginning October 1, 1987, food purchased Purchases of food with coupons issued under the ~~f~~Federal ~~f~~Food ~~s~~Stamp ~~p~~Program or food checks issued by the ~~f~~Federal ~~s~~Special ~~s~~Supplemental ~~f~~Food ~~p~~Program for ~~w~~Women, ~~i~~Infants, and ~~e~~Children, (WIC), ~~is~~are exempt from sales or use tax. When a purchaser uses manufacturer's discount coupons along with food stamps or WIC checks to purchase food items that qualify under these programs, the discount value of the coupon is subject to sales tax. For example, a food stamp recipient purchases fifteen dollars (\$15) worth of eligible food, surrenders manufacturer's discount coupons

valued at two dollars (\$2), and pays with thirteen dollars (\$13) in food stamps. Sales tax is due on the two dollar (\$2) discounted amount. The purchaser may not use food stamps or WIC checks to pay sales tax due. ~~(7-1-93)~~(____)

02. Adjustments That Apply Before Tax Calculation. Tax is charged AFTER the deduction of the following:
(7-1-93)

a. Trade discounts. A trade discount is a reduction from the posted or listed price offered by a retailer which is not an inducement for prompt payment and which, when applied to the posted or listed price, establishes the true selling price to be paid by the purchaser. (7-1-93)

b. Retailer's rebates. A retailer's rebate is an amount of money or property paid by a retailer to a purchaser which is conditioned upon the recipient making a purchase from the retailer. (7-1-93)

c. Retailer discount coupons. Retailer discount coupons are coupons issued by a retailer which entitle the holder to purchase the issuing retailer's products at less than the posted or listed retail price. (7-1-93)

d. Manufacturer's motor vehicle rebates. Effective July 1, 1990, a manufacturer's rebate offered to a purchaser of a motor vehicle may be deducted from the purchase price of the vehicle before computing the tax IF the rebate is used to reduce the retail sales price of the vehicle, or is used as a down payment on the purchase. The dealer's customer invoice must show the manufacturer rebate as a deduction to, or down payment on, the purchase price of the vehicle. Only manufacturer rebates offered on motor vehicles qualify for the exclusion from tax. Manufacturer rebates offered on trailers, off-highway equipment, and other property will be treated as discussed in Subsection 051.01.b. of this rule. (7-1-96)

~~03. Free Merchandise Coupons. When a customer presents a coupon entitling him to free merchandise, no sale has occurred and he is not required to pay a sales tax. However, if the merchandise given away was purchased by the retailer tax free, a use tax liability on the property accrues to the retailer measured by his cost. (7-1-93)~~

~~04.3. Coupon Books. A coupon book is a set of two (2) or more coupons sold to a purchaser who may use the coupons as all or part of the purchase price of tangible personal property subject to sales taxes. The sale of coupon books is not subject to sales tax. When the a retailer discount coupon from a coupon book is used to purchase merchandise, the discount allowed by the coupon is not included in the purchase price subject to tax. Sales tax applies to the amount paid by the purchaser to the retailer after allowance of the discount permitted by the coupon. (7-1-93)(____)~~

~~04. Donated Goods. The donor is the consumer of donated goods and must pay sales or use tax on the purchase price of the goods. (____)~~

05. Gift Certificates. A gift certificate purchased from a vendor entitles a recipient to tangible personal property or services when presented to the vendor. The purchase of a gift certificate is not a taxable transaction. When the gift certificate is presented for redemption a sale is consummated. If the sale is a transfer of tangible personal property, the vendor must collect sales tax at the time of sale. Tax applies to the purchase price of the tangible personal property, irrespective of any cash refunded on any difference between the face value of the gift certificate and the purchase price. If the sale is for services not subject to tax under the Sales Tax Act, the vendor will not collect sales tax. (7-1-93)

06. Discount Purchasing Memberships and Cards. The purchase of a card or membership which entitles the holder to purchase tangible personal property at a discounted price is a sale subject to sales tax, if the seller of the membership is the same as the seller of the merchandise. Examples of taxable fees include membership fees to rent or purchase from video rental stores, discount lumber retail outlets, and discount dry goods outlets. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

057. DRY CLEANERS, LAUNDRIES, LAUNDROMATS, AND LINEN SUPPLIERS (Rule 057).

01. Dry Cleaners and Laundries. ~~Persons receiving property to be dry cleaned or laundered Dry cleaners perform are performing~~ a service and are not required to collect tax ~~from their customers. Dry cleaners must pay sales or use tax on purchases of~~ cleaning supplies, hangers, plastic bags solvents, bleaches, soaps, equipment and any other materials supplies used in the performance of this service ~~will be taxed by the retailers at the time of sale to the dry cleaning establishment or laundry. As of July 1, 1997, purchases of dry-to-dry transfer systems by dry cleaners are exempt from sales and use tax. This exemption applies only to the purchase of entire systems and does not apply to purchases of repair parts for such systems.~~ (7-1-93)(____)

02. Linen Suppliers. (7-1-93)

a. Linen supply firms or laundries which furnish such items as sheets, pillowslips, towels, uniforms, diapers, etc., must collect and remit sales tax based on the rental charge. The sales tax will also apply to the rental of shop towels, floor mats for building entrances, dust mops, room deodorizers and any other tangible personal property rented or leased for building maintenance or service. The entire price charged for such rentals is taxable unless a reasonable charge for cleaning is separately stated. If the allocation between rental and cleaning fees is unreasonable, the State Tax Commission may deem the entire fee, or any portion thereof, to be taxable. (7-1-93)(____)

b. Items acquired by these firms which are purchased for resale, rental or lease in the ordinary course of business, may be purchased exempt from sales tax if a properly executed resale certificate is provided to the seller, in accordance with ~~ISTC~~ Idaho Sales Tax Administrative Rule 071. (7-1-93)(____)

03. Laundromats. (7-1-93)

a. Receipts from coin-operated washers and dryers are not subject to the sales tax. ~~Receipts from coin-operated vending machines, such as machines vending~~ Sales of cleaning supplies such as soap or bleach through coin operated vending machines, are subject to the tax as provided by ISTC Idaho Sales Tax Administrative Rule 058. (7-1-93)(____)

b. Persons engaged in the laundromat business must pay sales or use tax when purchasing washers, dryers, and other tangible personal property for the operation of their business. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

084. CONTAINERS RETURNABLE NONRETURNABLE (Rule 084).

01. Container. A container encloses or will enclose tangible personal property which is sold at wholesale or retail. A container may be comprised of one or more components. Items used as shipping supplies which do not enclose the product are not considered to be containers. Example: Cartons of canned goods are placed on a pallet. Shrink wrap is used to bind the cartons to the pallet. A shipping address label is affixed to the shrink wrap. The container includes the cans in which the goods are enclosed; the cartons in which the canned goods are placed; and the shrink wrap and pallet which enclose the cartons. The address label is not part of the container. (7-1-93)

02. Containers Exempt From Tax. The following containers are exempt from sales or use tax: (7-1-93)

a. Nonreturnable containers purchased by a retailer or wholesaler who places the contents in the container and sells the contents with the container at retail or wholesale, including cans, barrels, boxes, cartons, ~~and crates lumber wrap and banding used to secure pieces of lumber together;~~ grocery sacks, into which the grocer encloses merchandise purchased by patrons; chicken buckets, disposable soft drink cups and lids, and other to-go fast food containers; and gift wrap and gift boxes, but only when the gift wrapping of merchandise is offered as a regular service to all purchasers of merchandise at no additional charge. (7-1-93)(____)

b. Returnable containers when the container, along with the contents, is sold at retail if the fee for the

container is separately stated, including ~~returnable pop bottles and other returnable beverage containers~~, returnable beer kegs, returnable barrels, and returnable pallets, ~~but only when sold back to retailers or manufacturers for refilling.~~ (7-1-93)()

- c. Returnable containers when sold back to retailers or manufacturers for refilling. (7-1-93)
- d. Returnable or nonreturnable containers when sold with contents that are exempted from the tax, regardless of whether or not the container is separately billed, including containers for prescription drugs, and oxygen or acetylene cylinders, when the use of the gases qualifies for the production exemption. (7-1-93)
- 03. Taxable Containers. Containers subject to sales and use tax include: (7-1-93)
 - ~~a. Containers used by persons who are providing a service rather than selling a product, such as plastic clothing bags purchased by dry cleaners. (7-1-93)()~~
 - ~~b. Storage tanks, such as fuel and oil tanks. (7-1-93)~~
- 04. Supplies. Shipping, Selling, or distribution supplies are not considered to be containers and are subject to the tax when purchased by the shipper, seller, or distributor, such as: (7-1-93)
 - a. Shipping pallets ~~and lumber stickers~~ when not banded or shrink wrapped to the product to be sold, thereby NOT becoming a part of the container. (7-1-93)()
 - b. Gift wrap and boxes when not regularly offered to all purchasers of merchandise or when a fee is charged for the service of gift wrapping. (7-1-93)
 - c. Banding or binders used to secure goods to transportation equipment. (7-1-93)
 - ~~d. Shipping or mailing paper, tape, string, and address labels. (7-1-93)~~
 - ~~e. Price stickers and address labels affixed to containers that do not provide any product information such as weight, quantity, nutritional value, or other necessary product description. See ~~ISTC~~ Idaho Sales Tax Administrative Rule 042. (7-1-93)()~~
 - ~~f. Example: Plywood is wrapped with lumber wrap. The bundles are rested on pallets for shipping. In this example the lumber wrap is the only container. As the bundles are not enclosed onto the pallet, the pallet is not a container and is instead a shipping supply subject to the tax. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

099. OCCASIONAL SALES (Rule 099).

- 01. Occasional Seller. Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-97)
 - a. If the sale does not qualify as an occasional sale, the seller becomes a retailer, is required to register for an Idaho seller's permit, and must collect and remit sales tax. See Section 63-3610, Idaho Code. (7-1-93)()
 - b. Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108BT to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one

(1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax.

(7-1-93)()

c. Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See Idaho Sales Tax Administrative Rule 020. (7-1-97)

02. Change in the Form of Doing Business. A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion of the corporation's stock as they owned in the partnership interest as partners. (7-1-93)

03. Bulk Sale - Sale of an On-going Business. The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment of a business qualifies for the occasional sale exemption if: (7-1-93)()

a. The purchaser continues the same type of business operation; and (7-1-93)

b. Prior to the sale the income and expenses attributable to the separate division, branch, or identifiable segment can be determined from the accounting records and books. (7-1-93)

c. Example: Corporation X sells its entire wood products division to Corporation Y, which continues to operate it in substantially the same form. The transaction qualifies for an occasional sale exemption. (7-1-93)

04. Sale of a Motor Vehicle Between Family Members. Sales of motor vehicles between family members related within the second degree of consanguinity, blood relationship, qualify for the occasional sale exemption but only if the seller paid a sales or use tax when the motor vehicle was acquired. (7-1-93)

a. Example 1: A brother sells his automobile to his sister. The brother purchased the car from an Idaho dealer and paid Idaho sales tax on the original purchase. No tax applies to the sale of the vehicle to the sister. (7-1-93)

b. Example 2: A mother sells her automobile to her son for five thousand dollars (\$5,000). The mother is an Oregon resident and did not pay a sales or use tax when she purchased the automobile. The son, who is a resident of Idaho, must pay Idaho use tax on the five thousand dollar (\$5,000) purchase price of the automobile. (7-1-93)

05. Transfers Between Related Parties. Effective July 1, 1990, the transfer of capital assets between related parties qualifies for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders, stockholders, when the transfer is made ONLY in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made ONLY in exchange for stock or securities. (7-1-93)

a. Example: Two (2) individuals form a partnership. Each contributes a car in exchange for a percentage of ownership in the business. If each partner paid sales tax when he purchased his vehicle, no sales tax applies to the transfer of the vehicle into the partnership. (7-1-97)

b. Example: Three (3) individuals are equal partners in a construction business. They dissolve the partnership, and each person takes one-third (1/3) of the capital assets as his share of the equity in the business. If tax was paid on the assets when they were purchased by the partnership, sales tax does not apply to the transfer of the assets from the partnership to the co-owners. (7-1-93)

c. Example: A corporation-owned car is given to a shareholder as a bonus for special accomplishments. There is no change in the recipient's shareholdings. The shareholder must pay tax on the bonus based on the value of the car, regardless of whether the corporation paid tax when the car was purchased. The exemption does not apply because the transfer of the car did not change the shareholder's equity. (7-1-93)

06. Sales and Rentals to Related Parties. The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. Effective January 1, 1996, rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. If the initial purchaser does not pay sales or use tax upon the purchase of a capital asset and then leases the asset to a related party, the lessor must collect and remit sales tax on the lease payments. The lease payments must also represent a reasonable rental value for the asset. Exempt transactions between related parties include sales, rentals, and leases of capital assets other than aircraft, boats and vessels, snowmobiles, off-highway motorbikes, and recreational vehicles, as defined by Section, 63-3622HH, Idaho Code, such as the following: (7-1-97)

a. Sales to family members, but only if ALL parties to the sale are related within the second degree of consanguinity, relationship by blood, or affinity, relationship by marriage, i.e., spouses, children, parents, brothers, sisters, or grandparents. Example: A father and son are the stockholders of Corporation A. This corporation sells a business asset to Proprietorship B, which is owned by the son's grandfather. This sale is exempt as long as Corporation A paid sales tax when the asset was acquired. (7-1-97)(____)

b. Sales in which the new owners are identical to the prior owners. Example: Corporation B owns one hundred percent (100%) of Corporation A. If the initial purchaser paid tax when it acquired an asset, it may sell the asset to the other without tax. Example: John Doe owns one hundred percent (100%) of a corporation. He buys a truck and pays sales tax. He later sells the truck to his corporation. No tax applies to the sale of the truck to the corporation. Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments. (7-1-97)

07. Motor Vehicles. Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, written clearance must be obtained from the State Tax Commission prior to applying for an Idaho motor vehicle title. See Idaho Sales Tax Administrative Rule 107 regarding sales of licensed motor vehicles that do not qualify as occasional sales. (7-1-97)(____)

08. Sales of Business Assets. Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. (7-1-93)

09. Taxable Sales of Aircraft, Boats, and Recreation Related Vehicles. The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

a. Snowmobiles, including those required to be numbered as provided by Section 67-7102, Idaho Code. (7-1-97)

b. Off-highway motorbikes and dual purpose motorcycles. A dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be legally operated on public roadways and highways. (7-1-93)

c. All-terrain vehicles, ATV's, but not including tractors. A tractor is a motorized vehicle designed and

used primarily as a farm implement for drawing plows, mowing machines, and other farm implements. (7-1-93)

d. Portable truck campers designed for temporary living quarters, but not including pickup shells or canopies that do not have a floor. (7-1-93)

e. Camping, park, travel, and fifth-wheel travel-type trailers which are designed to provide temporary living quarters. (7-1-93)

f. Motor homes. (7-1-93)

g. Buses and van-type vehicles when converted to recreational use as temporary living quarters and providing at least four of the following facilities: cooking; refrigeration or icebox; self-contained toilet; heating or air conditioning; a portable water supply system including a faucet and sink; and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

h. Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See Idaho Sales Tax Administrative Rule 037 regarding other exemption provided for aircraft. (7-1-97)

i. Boats or vessels, meaning every description of watercraft used or capable of being used as a means of transportation on water. Example: A nonretailer sells a boat and boat trailer to an Idaho resident. The sale of the boat does not qualify for the occasional sale exemption and is subject to the tax. The sale of the boat trailer may qualify for the occasional sale exemption if the sales price of the boat trailer is separately stated on the bill of sale and an occasional sale affidavit is provided by the seller. (7-1-93)

10. Exempt Sales of Aircraft, Boats, and Recreation-Related Vehicles. Sales of aircraft, boats, or recreation-related vehicles under the provisions of Subsections 04099.02 or 04099.03 of this rule are exempted from the tax. Transfers of aircraft, boats, or recreation-related vehicles under the provision of Subsection 099.05 of this rule are exempted from the tax. The provisions of Subsection 099.04 of this rule apply to the sale of motorized, on-highway recreation-related vehicles. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

109. AMUSEMENT DEVICES.

01. Currency Operated Amusement Devices. "Amusement device" means all currency or token operated machines and devices used for amusement or entertainment. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or noncurrency operated machines or games described in Subsection 109.03 of this rule. (6-30-95)

02. Requirement to Obtain Permit. The owner or operator of amusement devices is required to obtain a seller's permit if he is making retail sales other than the use of currency or token operated amusement devices. If the owner or operator is not making such other retail sales, he need not obtain a seller's permit, but must obtain an amusement device permit for each device in service. (6-30-95)

a. On or after July 1, 1995, owners or operators of amusement devices are required to pay a fee of thirty five dollars (\$35) per machine in service or use. Upon receiving payment, the Tax Commission will issue to the owner or operator of one or more amusement devices, a permit for each such device in service. A separate permit on each device in service is required. The permit shall be affixed near the currency slot of the machine in such a manner that it is easily visible. Permits are ~~not~~ transferable from one person to another, ~~except as part of certain occasional sales as described in Idaho Code 63-3623 B after written notice of the transfer is received and acknowledged by the Tax Commission.~~ Permits may be transferred from a machine that is no longer in service to another machine owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the

owner or operator is typed or printed in black ink on the face of the permit.

(~~7-1-97~~)()

b. Video amusement devices may have more than one monitor and be designed to be operated independently by more than one person. In such cases a separate permit is required for each monitor. (6-30-95)

c. Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require a full-year, thirty five dollar (\$35) permit. (7-1-97)

03. Noncoin Operated Amusement Machines or Games. Charges for the use of amusement machines or games which are not currency or token operated are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of noncurrency or nontoken operated amusement machines or games is required to obtain a seller's permit if he is charging for the use of such machines. (6-30-95)

04. Cross-reference. See Idaho Sales Tax Administrative Rule 095 regarding purchases of Money-Operated Dispensing Equipment. (6-23-94)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9706
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9706

000. LEGAL AUTHORITY.

In accordance with Section ~~63-543~~105 and 63-105A, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Statutes relating to the ~~income ad valorem~~ property tax laws and related statutes, Chapters 1 through 22 and Chapters 28 and 35, Title 63, Idaho Code. Rules relating to the market value of recreational vehicles are authorized by Section 49-445, Idaho Code. Rules relating to taxation of newly constructed improvements are authorized by Section ~~63-3942~~105A, Idaho Code. ~~(7-1-93)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 13, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075~~6~~ or 9-340, Idaho Code. (~~7-1-93~~)(_____)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9707
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 127 - Remediated Land Exemption. This rule was developed to implement procedures and to define terminology of the application process for the remediated land exemption.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a general application and the Tax Commission is unable to identify representatives of affected interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

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(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9707

127. PARTIAL EXEMPTION FOR REMEDIATED LAND.

01. Definitions. For the purpose of implementing the partial exemption for remediated land the following terms are defined. ()

a. Application for Partial Exemption. The "application for partial exemption" is the form, provided by

the State Tax Commission, available from the State Tax Commission or the county assessor and used to apply for the exemption provided by Section 63-602BB, Idaho Code. ()

b. Certificate of Completion. The “certificate of completion” is the document issued by the Department of Health and Welfare after the successful completion of a voluntary remediation work plan pursuant to Section 39-7207(1), Idaho Code. The person receiving the “certificate of completion” shall record a copy of the “certificate of completion” with the deed for the “site” on which the remediation took place pursuant to Section 39-7207(2), Idaho Code. ()

c. Covenant Not to Sue. The “covenant not to sue” is the document issued by the Department of Health and Welfare pursuant to Section 39-7207(4), Idaho Code, upon request from a person receiving the “certificate of completion.” ()

d. Qualifying Owner. The “qualifying owner” is the entity identified as the owner on the deed to the property at the time the “certificate of completion” is issued by the Department of Health and Welfare. ()

e. Remediated Land. The “remediated land” is the “site” on which the remediation, as defined in Section 39-7203(7), Idaho Code, has been completed. ()

f. Remediated Land Value. The “remediated land value” is the market value for assessment purposes of the land on January 1 of the year following the issuance of the “certification of completion” (after remediation) less the market value for assessment purposes of the land on January 1 prior to the issuance of the “certification of completion” (before remediation). ()

g. Site. As defined in Section 39-7203(8), Idaho Code, a “site” is a parcel of real estate for which an application has been submitted under Section 39-7204, Idaho Code. The “site” shall be that parcel identified on the application as described in IDAPA 16.01.18, Subsection 020.02.c., “Idaho Land Remediation Rules,” including the assessor’s parcel numbers(s) and on the voluntary remediation work plan as described in IDAPA 16.01.18, Section 022. ()

02. Procedures to Qualify for the Exemption. The “qualifying owner,” or agent thereof, must complete the following procedures for the “site” to qualify for the exemption. ()

a. Obtain and complete the “application for partial exemption.” ()

b. Submit the “application for partial exemption” and copies of the “certificate of completion” and the “covenant not to sue” to the county assessor of the county in which the “site” is located. If the legal description of the “site” and a map identifying the location and size of facilities and relevant features is included in the information supporting the voluntary remediation work plan, pursuant to IDAPA 16.01.18, Subsection 022.03.a.i., “Idaho Land Remediation Rules,” a copy of this information shall be included with the “application for partial exemption.” ()

c. File the “application for partial exemption” with the county assessor on or before March 15 of the year for which the exemption is claimed. The “application for partial exemption” must be filed only once, during the first year of seven (7) year exemption period. ()

03. Calculation of the Exemption. The exemption is fifty percent (50%) of the “remediated land value.” This exempt value is constant throughout the term of the exemption. The amount of the exemption shall never exceed the current market value of the land. For example:

<u>Land Value on January 1 (after remediation) =</u>	<u>\$200,000</u>
<u>Land Value on January 1 (before remediation) =</u>	<u>-\$125,000</u>
<u>Remediated Land Value</u>	<u>\$ 75,000</u>
<u>Exemption Ratio =</u>	<u>x 50%</u>
<u>Exempt Value =</u>	<u>\$ 32,500</u>

For the example cited, the value of thirty two thousand five hundred dollars (\$32,500) would be the exempted value for all seven (7) years. ()

04. Exempt Value Subject to Taxation. For any property eligible for the exemption provided by Section 63-602BB, Idaho Code, the exempt value will immediately be subject to taxation when any of the following events occur. ()

a. If during any year the exemption is in effect and the "covenant not to sue" is rescinded, the exempt value will immediately be subject to taxation for the entire year. Pursuant to IDAPA 16.01.18, Subsection 025.02, the Department of Health and Welfare shall notify the assessor of the county in which the "site" is located that the "covenant not to sue" is rescinded. ()

b. If the "site" is transferred to a new owner during any year in which the exemption is in effect, the exempt value will immediately be subject to taxation for the entire year. ()

c. The exempt value will immediately be subject to taxation after the seven (7) year exemption period. ()

d. No "site" shall be granted the exemption provided in this section if said "site" had been previously granted this exemption regardless of whether the entire seven (7) years of the exemption had been used. ()

1278. -- 133. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9708
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 135 - This rule is being amended to clarify that the Tax Commission can release residency information from income tax returns to assessors to assist them in determining residency status for the homeowner's exemption.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9708

135. PROPERTY EXEMPT FROM TAXATION RESIDENTIAL IMPROVEMENTS.

01. Homeowner's Exemption. This exemption shall also be known as the homeowners exemption.
(3-23-94)

02. Residential Improvements. Primary dwelling place means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his

true, fixed, and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and: (3-23-94)

- a. At least six (6) months during the prior year; or (3-23-94)
- b. The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or (3-23-94)
- c. The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year. (3-23-94)

03. Requirements. If these requirements are not met, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in Section 39-1301, Idaho Code, or a facility as defined in Section 39-3302(15), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection, and security. (3-23-94)

04. Owner. "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate. "Owner" shall also include any person who as grantor created a revocable trust and named himself as beneficiary of that trust. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. (3-23-94)

05. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption, however, the amount of the exemption shall be reduced to a proportion commensurate with the proportion of partial ownership. Partial ownership, for purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. (3-23-94)

06. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county board of equalization for the sole purpose of providing one indicator of eligibility for the homeowner's exemption. According to Section 63-3077(d), Idaho Code, this information is confidential and is not subject to public disclosure. ()

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9709
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 171 - This rule is being amended to eliminate language regarding determining household income when one or both spouses reside in a nursing home or similar facility. The language conflicted with current statutory language and current practice.

Rule 175 - The rule is being amended to eliminate statutorily provided requirements for proving non-household member status.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9709

171. DEFINITIONS OF INCOME, FATHERLESS CHILD, MOTHERLESS CHILD, AND PARTIAL OWNERSHIP.

01. Community Income When Spouse Resides in Medical Care Facility. Where community property is

held by spouses either of whom reside in a medical care facility household income includes ~~the following: all income received by both spouses. Both spouses non-reimbursed medical expenses as defined in Section 213(d) of the Internal Revenue Code are deductible from household income.~~ (7-1-93)(____)

a. ~~When an applicant's spouse resides in a medical care facility, household income includes one-half (1/2) of the community income plus all separate income of the applicant. One-half (1/2) of medical care expenses shall not be included in household income.~~ (7-1-93)

b. ~~When an otherwise qualifying applicant resides in a medical care facility and the applicant's spouse resides in the primary dwelling place, household income includes the community income and separate income of the applicant and the applicant's spouse. Medical care expenses shall not be included in household income.~~ (7-1-93)

e. ~~Household income under subsections 01a. and b. includes income of non-spouse household members.~~ (7-1-93)

02. Community Income When Spouse Does Not Reside in Medical Care Facility. In all cases where community property is held by a household member except Subsection 171.01, ~~above~~, one-half (1/2) of both community income and medical care expenses shall be credited to each spouse. Each spouse's separate income, if any, and share of community income shall be included in household income if the spouse is a household member. (7-1-93)(____)

03. Primary Dwelling Place Terms. For purposes of Section ~~63-117(h)~~ 63-701(9), Idaho Code, the following definitions apply: (7-1-93)(____)

a. The terms "his home" and "claimant's home" mean primary dwelling place; (7-1-93)(____)

b. The terms "a home" and "the home" mean dwelling. (7-1-93)(____)

04. Fatherless Child. Fatherless child for purposes of Section ~~63-117(f)~~ 63-701(1), Idaho Code, means a child judicially determined to be abandoned as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male parent or a child whose male parent has had his parental rights terminated pursuant to court order or is deceased. (7-1-93)(____)

05. Motherless Child. Motherless child for purposes of Section ~~63-177(f)~~ 63-701(1), Idaho Code, means a child judicially determined to be abandoned as defined by Sections 16-1602 or 16-2005, Idaho Code, or a child whose female parent has had her parental rights terminated pursuant to a court order or is deceased. (7-1-93)(____)

06. Burden of Proof. The claimant has the burden of proof to establish claimant's eligibility for tax reduction benefits. (7-1-93)(____)

07. Ownership Interest. Partial ownership interest for purposes of Section ~~63-117(g)~~ 63-701(8), Idaho Code, means property owned by more than one person. A community property interest shall be a single property interest. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

175. ~~NONHOUSEHOLD MEMBERS DEFINED.~~ PHYSICIAN DEFINED FOR PROPERTY TAX REDUCTION CLAIMS.

~~To prove nonhousehold member status, a nonhousehold member verification form, as prescribed by the Commission, must be attached to the application for property tax reduction and submitted to the Commission. For the purpose of this section, p~~Physician shall mean a licensed physician, as defined in Section 54-1803(3), Idaho Code. (7-1-93)(____)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9710
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 215 - This new rule has been developed to clarify provisions of Section 63-1302, Idaho Code, permitting county commissioners to cancel taxes in cases of erroneous assessment. The new rule stresses that "excessive valuation" does not make an assessment illegal.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9710

215. CANCELLATION OF TAXES BY BOARD OF COUNTY COMMISSIONERS.

Section 63-1302, Idaho Code authorizes boards of county commissioners to cancel property taxes that for any lawful reason should not be collected. The board may cancel taxes for double payment of taxes or the double or erroneous assessment of any property for the same year or other errors. Additionally, when the canceled taxes have been paid, the board may refund the taxes. The authority to cancel taxes under Section 63-1302, Idaho Code, extends neither to hardship situations nor to cancellation of tax resulting from unequal or excessive valuation by the assessor. Mere

unequal or excessive valuation by the assessor does not make the assessment illegal, nor constitute any lawful reason that the taxes should not be collected. A taxpayer who believes the value placed on his property is excessive must file his appeal with the county board of equalization within the time prescribed by law. A taxpayer seeking relief due to hardship must apply pursuant to Section 63-602AA, Idaho Code. ()

2156. -- 217. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9711
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 562 - This rule is being amended to provide a procedure for determining the value of operating property in annexed areas.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9711

562. LIMITATION ON BUDGET REQUESTS, SECTIONS ~~63-2220A~~ 63-802 AND 63-221, IDAHO CODE.

01. Budget Requested Documents. Each Board of County Commissioners shall submit a budget request for each taxing district in the county that certifies a budget request to finance the ad valorem portion of its annual budget to the State Tax Commission and shall not submit other documents unless requested to do so by the State Tax Commission. Documents not to be submitted to the State Tax Commission unless requested include

newspaper advertisements, school district budget books, entire budget documents, other than the budget request, and similar documents. (7-1-97)(____)

02. Classification of Land Use Change. "Change of land use classification" shall mean any change in land use resulting in a category change and in an increase in taxable land value to be reflected on the current assessment roll. Beginning with the assessment roll prepared to reflect value as of January 1, 1997, the increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (7-1-97)

03. New Construction Roll Listing. "Listing" shall mean a summary report of the net taxable value of property listed on the new construction roll. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (7-1-97)

04. Corrected New Construction Roll. The values shown on the listing required in ~~Section 562.02~~ IDAPA 35.01.03, Subsection 562.03 shall be subject to the adjustment if net taxable value for any property included on the new construction roll is changed by the county board of equalization meeting pursuant to Section 63-501, Idaho Code. Each county assessor must certify the corrected values to the appropriate county auditor. Each county auditor must report the corrected values to the ~~State Tax Commission~~ and to each taxing district prior to the first Monday of August on the notification required pursuant to Section 63-510(1), Idaho Code. (7-1-97)(____)

05. Manufactured Housing. "Installation" of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

06. Partial New Construction Values. The net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Any increase in a parcel's taxable value, due to new construction, shall be computed by subtracting the previous year's or years' partial taxable value(s) from the current taxable value. (7-1-97)

07. Nonresidential Structure. Nonresidential Structure shall mean any structure listed by the assessor in any category not described as residential, manufactured homes, or improvements to manufactured homes pursuant to IDAPA 35.01.03, Section 327. (7-1-97)

08. Annexation Values for Operating Properties. Pursuant to Section 63-802, Idaho Code, the State Tax Commission shall certify the current year's taxable values of operating properties within annexations made during the previous calendar year. This certification will be a list summarizing the values of said operating properties for each applicable taxing district or unit. The State Tax Commission shall send this list to the "appropriate county auditor" on or before the third Monday in July. The State Tax Commission shall calculate these values based on the best available information. (____)

09. Corrected Annexation Values for Operating Properties. If any annexation values reported pursuant to IDAPA 35.01.03, Subsection 562.08 require correction, the State Tax Commission shall report such corrected annexation values for operating properties on or before the first Monday of September. The State Tax Commission shall send these values to the "appropriate county auditor." (____)

10. County Auditor to Notify Taxing Districts or Units. As soon as possible, but not later than fourteen (14) days after receipt of the list pursuant to IDAPA 35.01.03, Subsection 562.08 or the corrected values pursuant to IDAPA 35.01.03 Subsection 562.09, the "appropriate county auditor" shall send these values to the affected taxing districts or units. (____)

11. "Appropriate County Auditor" Defined. For IDAPA 35.01.03, Subsections 562.08, 562.09, and 562.10, the "appropriate county auditor" is each county auditor of each county within which any annexed areas are located. (____)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9712
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

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

October 29, 1997, at 10:00 a.m.
Conference Room 1CR5, at the Idaho State Tax Commission,
800 Park Blvd. Plaza IV, Boise, Idaho.

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 address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 408 - This rule is being amended to provide accurate procedures for allocation of railcar value.

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

No fee is applicable.

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the effected interests have been involved in developing the proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact (include the appropriate name and phone number).

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 344-7530 FAX (208) 344-7844

TEXT OF DOCKET NO. 35-0103-9712

408. ~~MANNER OF ASSESSMENT.~~ SPECIAL PROVISIONS FOR PRIVATE RAILCAR FLEETS.

~~01. Type Valuation Data. Private car companies have little fixed property in the state. Their properties are largely railroad cars which are by nature very mobile. But generally the same evidences of value in estimating market value for assessment purposes can be used on private car companies as on operating property, namely:~~

~~replacement/reproduction cost new less depreciation, original cost less depreciation, capitalized income, stock and debt method, and sales.~~ (7-1-93)

01. Railcar Valuation, Allocation and Apportionment. For tax year 1998 and for each year thereafter, the State Tax Commission will appraise the system value of private railcar fleets and allocate a portion of the system value to Idaho to obtain the Idaho taxable value as set forth below. The Idaho taxable value will then be apportioned to various counties in the state pursuant to statute. ()

a. System value is the value of the entire private railcar fleet regardless of the location of its various components. ()

b. Idaho taxable value is that portion of the system value that reflects the value of that part of the private railcar fleet located in Idaho during all or part of a tax year. ()

~~02. Special Rule. Any car company having one thousand (1,000) or less miles of total wheelage, and/or a car located within the state fifteen (15) days or less, in case of repairs, idle products, storage use or otherwise, during the prior calendar year ending December 31, may be considered as not being sufficient to economically justify the assessment and collection of the property tax effective January 1 of the current year. However, this rule may be exercised ONLY by the Commission and in no case shall be reason for not filing the required annual reports with the Commission. Car companies having one thousand one (1,001) or more miles of total wheelage and/or a car located within the state sixteen (16) days or more shall be considered as having sufficient property to justify the cost of assessment and collection of the tax.~~ (7-1-93)

02. Allocation. System value is to be allocated using the "miles to miles" method of allocation. ()

~~03. Allocation of Number of Cars, Value, to the State. Based upon available data and statistics, the Commission will develop the quantity of cars assignable to the state on the basis of the average number of cars within its boundaries for the twelve (12) month period prior to the assessment date rather than attempting to ascertain the number of cars actually in the state on the assessment date.~~ (7-1-93)

03. "Miles to Miles" Method of Allocation. The State Tax Commission will divide Idaho miles by system miles and multiply the quotient by five-tenths (0.5). The product of this calculation will be multiplied by the system value to determine Idaho taxable value. ()

a. System miles are the total number of miles traveled by all cars in the private railcar fleet during the calendar year immediately preceding the current tax year. ()

b. Idaho miles are the total number of miles traveled in Idaho by all cars in the private railcar fleet during the calendar year immediately preceding the current tax year. ()

~~04. Situs Count Method/Approach. Consideration will be given to a car quantity which is divided into two counts, one titled standing count and the other running count. The standing count utilizes the daily yard checks made by railroad companies as of 7:00 A.M. each work day. This count includes all cars on industrial spurs, side tracks, yard tracks and storage tracks. It does not include cars that are made up into trains. A sampling of approximately twenty six (26) staggered days across the calendar will be used. The total count is averaged and assumed to be equivalent to the average annual count of standing cars in the state. The running count is intended to be the average number of cars in the state necessary to generate the car miles that are reported traveled in the state. From railroad company data the average speed of a train in through mainline service is estimated. Currently, four hundred (400) miles per car per day is applicable. Therefore, when the total car miles traveled in Idaho are divided by a factor composed of four hundred (400) miles per day multiplied by three hundred sixty five (365) days in a year, one hundred forty six thousand (146,000) miles the average number of running cars per year necessary to generate the state's car miles is estimated. By adding the standing count of cars and the running count of cars, the total number of cars for the state is estimated by the situs count approach.~~ (7-1-93)

~~05. Prorate/Wheelage Method. Another approach to developing car quantity is allocation by prorate or wheelage method.~~ (7-1-93)

a. ~~Several sources of data and computable steps are required to produce a reliable estimate of the number of cars allocable to Idaho.~~ (7-1-93)

b. ~~One such type of data required is the total miles within the United States traveled by all cars owned or leased by the car company for the previous year. This data is available from the car company and is required by the Commission to be furnished prior to April 30th each year, on forms provided by the Commission. Again, the reported total miles traveled is for the prior year for the calendar months of January through December. Example: Car company report due April 30 covers the total car miles traveled by all cars owned or leased during the preceding months of January through December.~~ (7-1-93)

e. ~~Another required statistic is the total car miles of all owned or leased cars that traveled within the state and is to be furnished by the car company. The various companies are also required by the Commission to compile car mileage for each car company and submit to the Commission. If there is a difference between the two sources of data, the two must be reconciled.~~ (7-1-93)

d. ~~With the above information in hand, i.e., total car miles traveled within the prior year by car company and total car miles traveled within the state, an average percentage of the company fleet of cars within Idaho during the year is obtainable by dividing the total miles traveled by all cars within the U.S. into the total miles traveled within Idaho. The percentage thus developed is applied to the in-service owned and leased cars of the company. The result is an average of the number of cars within the fleet allocable to Idaho by the prorate or wheelage method.~~ (7-1-93)

06. ~~Correlation of Methods. The arithmetic or weighted average of the situs count and prorate methods will be utilized to estimate the number of cars allocable to the state. The average number of cars thus developed will be converted to estimated market value for assessment purposes through multiplying the average estimated value per car. Example:~~

Average Value of Car	\$ 10,000
Average No. of Cars Allocable to Idaho	-10
Estimated Market Value, for Assessment Purposes	\$100,000

See ISTC 412

(7-1-93)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9713
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 328 - Amended Rule 328 to make it consistent with definitions of property categories as shown in Rule 250 which relates to school district ratios.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the effected interests are not likely to reach a consensus.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9713

328. USE OF RATIO STUDY IN EQUALIZATION.

01. Annual Ratio Study. Each year, beginning in 1996, the State Tax Commission shall conduct a ratio study to assist in the equalization of assessments of property within and among the categories of property established in ~~Idaho Administrative Rule 327~~ IDAPA 35.01.03, Section 327. The ratio study shall be conducted in accordance with the "Standard on Ratio Studies" published in 1990 by the International Association of Assessing Officers. The annual ratio study shall test assessments as of January 1 of each year. The study shall be based on sales occurring

between October 1 preceding the January 1st assessment date through September 30 following the January 1st assessment date. The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be determined as follows: (4-5-95)(_____)

a. Given a normal distribution, the probability that the true mean level of assessment is between ninety percent (90%) and one hundred ten percent (110%) must be at least five percent (5%) or the mean based ninety five percent (95%) (one tailed) confidence interval must include some part of the range between ninety percent (90%) and one hundred percent (110%); or (4-5-95)

b. Given a nonnormal distribution, the median based ninety percent (90%) (two tailed) confidence interval must include some part of the range between ninety percent (90%) and one hundred ten percent (110%). (4-5-95)

02. Tested for Equalization. Categories which will be tested for equalization purposes will include the following, provided that adequate samples can be obtained: (4-5-95)

a. Improved Urban Residential: Abstract Items 20 and 41; (4-5-95)

b. Unimproved Urban Residential: Abstract Item 20; (4-5-95)

c. Improved Rural Residential: Subcategory 1 (tracts): Abstract Items 12, 18, 34, and 40; Subcategory 2 (subdivisions): Abstract Items 15 and 37; (4-5-95)

d. Unimproved Rural Residential: Subcategory 1 (tracts): Abstract Items 12 and 18; Subcategory 2 (subdivisions): Abstract Item 15; (4-5-95)

e. Commercial: Abstract Items 11, 13, 16, 21, 27, 33, 35, 38, and 42. (Urban and rural categories and land and improved categories will be analyzed separately, if adequate samples are available. (4-5-95)

f. Condominiums: Abstract items 26; and 27, which may be analyzed separately, if adequate samples are available. (4-5-95)(_____)

g. Manufactured Housing: Abstract Items 46, 47, 48 and 65. (4-5-95)

03. Separate Analyzations. Categories 18 and 40 may be analyzed separately from Categories 12 and 34 if adequate samples are available. If these categories (18 and 40) are not used for residential property, they should not be included in the 12/34 study. (4-5-95)(_____)

04. Follow Up Ratio Study. When the annual ratio study provided in IDAPA 35.01.03, Subsections 328.01 and 328.02 ~~of this rule~~, discloses that assessments in any category of property in a county are out of compliance with the equalization standards of IDAPA 35.01.03, Subsection 328.03 ~~of this rule~~, the State Tax Commission shall conduct a follow up ratio study. The follow up ratio study shall test the assessments for January 1 of the year following the year tested by the annual ratio study and shall be based on property sales occurring during the calendar year immediately preceding that date. The State Tax Commission shall notify the county assessor of the results of the follow up ratio study. The notice shall indicate whether any adjustments will be considered by the State Tax Commission at its next equalization meeting in August based on either the annual or any follow-up ratio study and the reason for the proposed adjustments. (4-5-95)(_____)

05. Use of Ratio Study Results. The results of the annual ratio study or any follow-up ratio study shall be one source of information upon which the State Tax Commission may rely when equalizing assessments of property by category under Section 63-605, Idaho Code. When the results of any ratio study show, with reasonable statistical certainty, that the appropriate measure of level of a category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in the category in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property in that category. (4-5-95)(_____)

06. Use of Alternate Ratio Study. When the follow-up ratio study required by IDAPA 35.01.03, Subsection 328.04 of this rule does not measure the true assessment level, the State Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the State Tax Commission has reason to question the representativeness of the sample used in an annual or follow up ratio study conducted on any category of property, the State Tax Commission may delay implementation of any order to adjust property values until two successive years' ratio studies fail to produce an appropriate ratio study measure of level between ninety percent (90%) and one hundred ten percent (110%). ~~(4-5-95)~~(____)

07. Submission of Additional Information. Any party may petition the State Tax Commission to consider any information or studies relevant to equalization. The petition shall include a description of the information to be presented and the petitioner's conclusions drawn from the information. (4-5-95)

IDAPA 35 - STATE TAX COMMISSION
35.01.04 - IDAHO ESTATE AND TRANSFER TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0104-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0104-9701

000. LEGAL AUTHORITY.

In accordance with Sections 63-~~543~~105 and 14-539, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Estate and Transfer Tax Reform Act of 1988. (~~7-1-93~~)()

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 13, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075~~6~~ or 9-340, Idaho Code. (~~7-1-93~~)(_____)

IDAPA 35 - STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s), 63-105 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

On January 1, 1996 the State Tax Commission implemented a new motor fuels tax reporting system that combined the gasoline tax report and the special fuels dealer's report into a single report called the distributor's fuel tax report. The separate rules governing the reporting, deductions, and documentation for both types of tax reports are being combined into one set of rules for the distributor's fuel tax report.

Rule 110 is being deleted because H.B.87 amended Section 63-2403, Idaho Code, to clarify the definition of "receipt" making this rule no longer necessary.

Delete current rules 140, 150, 180, 220, and 240 for gasoline tax and special fuel tax reporting so all the requirements for the distributor's fuel tax report can be combined into one set of rules for all fuel types.

Add new rules 130, 140, 150, 170, 180 to govern the reporting, deductions, documentation, information, and refund claims for the distributor's fuel tax report.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:
No fees are applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the new rules do not change the reporting requirements for the distributor's fuel tax report but only combine the reporting requirements for gasoline tax and special fuels tax into single set of rules for simplicity.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy Nilson at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997

Randy Nilson, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
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Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0105-9701

101. -- ~~109~~10. (RESERVED).

110. ~~RECEIPTS OF FUEL (Rule 110).~~

01. In General. Receipt of gasoline or aircraft engine fuel in Idaho occurs in the following situations: (6-23-94)
- a. ~~When gasoline or aircraft engine fuel is removed or withdrawn from a refinery or a pipeline terminal in this state and is delivered to a person other than a licensed distributor, the fuel is received by the person removing or withdrawing same except as provided in Subsection 110.01.c. of this rule. (6-23-94)~~
 - b. ~~When gasoline or aircraft engine fuel is removed or withdrawn from a refinery or pipeline terminal in this state and delivered to a licensed distributor, the fuel is received by the licensed distributor to whom the fuel is delivered. (6-23-94)~~
 - e. ~~When gasoline or aircraft engine fuel is removed or withdrawn from a refinery or pipeline terminal in this state and delivered to a person not licensed as a distributor for the account of a licensed distributor, the fuel is received by the licensed distributor removing or withdrawing the fuel. (6-23-94)~~
 - d. ~~When gasoline or aircraft engine fuel is imported into this state by a licensed distributor in this state and subsequently sold or distributed to another licensed distributor in this state, the fuel is received by the licensed distributor who imported the fuel unless the imported fuel is placed in storage at a refinery or pipeline terminal before it is delivered. (6-23-94)~~
 - e. ~~When gasoline or aircraft engine fuel is imported into this state by a licensed distributor, which fuel is shipped or delivered directly to a person not licensed as a distributor, then the fuel is received by the licensed distributor who imported the fuel. (6-23-94)~~
 - f. ~~There is no receipt of gasoline or aircraft engine fuel in this state when the fuel is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal. (6-23-94)~~
02. ~~Illustrative Examples. The foregoing examples are only illustrations, and are not inclusive. (6-23-94)~~

(BREAK IN CONTINUITY OF SECTIONS)

121. -- ~~129~~29. (RESERVED).

130. DISTRIBUTOR'S FUEL TAX REPORTS (Rule 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels to the distributor during the month and the number of gallons supplied by each supplier, on a load by load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information

together with such other information as the State Tax Commission may require: ()

- a. The beginning inventory of motor fuels and other petroleum products on the first day of the month: ()
- b. The total quantity of motor fuels and other petroleum products received during the month: ()
- c. The total quantity of motor fuels and other petroleum products disbursed to licensed distributors tax not collected or exported, and gasoline and aircraft engine fuel sold to the Idaho National Guard during the month: ()
- d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one fuel type to another: ()
- e. The casualty loss documented with satisfactory written explanation of proof of loss: ()
- f. The ending inventory of motor fuels and other petroleum products on the last day of the month: ()
- g. The gross taxable gallons of motor fuels and other petroleum products: ()
- h. The tax-paid purchases: ()
- i. The net taxable gallons: ()
- j. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. See Subsections 140.02 and 140.03 of these rules: ()
- k. The tax computation: ()
- l. The bad debt amounts, refer to Rule 140 of these rules: ()
- m. The gaseous fuels permit fees: ()
- n. The net tax due: ()

02. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, penalty or interest due. See Motor Fuels Tax Administrative Rule, Subsection 010.04 relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. ()

03. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. ()

04. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth (10th) day of the month following the month in which a report from which shipments were omitted was due. ()

05. Timely Reporting. Any petroleum product shipments that are: ()

- a. Not reported on a timely monthly report shall be subject to interest and may be subject to penalty; and
()
- b. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty.
()

06. Motor Fuels-Receipts. All gasoline, gasohol, aircraft engine fuel, and undyed diesel fuel received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other non-propulsion petroleum products are not subject to the special fuels tax but are subject to the transfer fee. The special fuels tax is not imposed on gaseous special fuels when the fuels are received. Refer to Subsections 140.06 and 140.07 of these rules for the taxation of gaseous special fuels used in motor vehicles.
()

131. -- 139. (RESERVED).

140. ~~DISTRIBUTORS' REPORTS. (Rule 140.)~~

~~01. In General. Every distributor shall file a monthly Gasoline Tax Report on the forms prescribed by the Commission on or before the last calendar day of the month following the end of the period to which the return relates. Supporting detail schedules required by the Commission are to accompany the report, together with all documentation and the payment to cover the amount of gasoline tax due. See Rule 010 of these rules, relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (6-23-94)~~

~~02. Machine Tabulated Data. Machine tabulated data will be accepted instead of detailed schedules on Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the Commission with a copy of the format to be used. Authorization must be granted before the format may be used (6-23-94)~~

~~03. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving late shipments of gasoline to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be penalized if reported in the supplemental report. If a supplemental report is filed, the Commission will assess interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth (10th) day of the month following the month in which a report from which shipments were omitted was due. (6-23-94)~~

~~04. Timely Reporting. Any shipments that are not reported in a timely monthly report or timely supplemental report shall be subject to interest and may be subject to penalty. (6-23-94)~~

140. DEDUCTIONS (Rule 140.)

01. Motor Fuels and Petroleum Products Presumed to Be Distributed. Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and/or transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products.
()

02. Distributor's and Retail Dealer's Allowances for Gasoline and/or Aircraft Engine Fuels. The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrinkage, evaporation, spillage or handling losses for gasoline and aircraft engine fuel. The State Tax Commission shall then allow the additional one percent (1%) deduction unless a retail dealer claims that he did not receive the credit allowance. If such claim is made, the State Tax Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. In the case of sales of gasoline and/or aircraft engine fuel to retail dealers, to establish that the allowance

of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: ()

a. That the amount of the allowance has been passed on; or ()

b. A statement that the allowance has been deducted in determining the price. ()

03. Distributor's Allowance for Special Fuels. The distributor who reports and pays the special fuels tax retains all of the two percent (2%) allowance and is not required to pass down a portion of the allowance to the retail dealer. ()

04. Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: ()

a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and ()

b. Common carrier shipping documents, bills of lading, manifests, and cost billings; or ()

c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or ()

d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. ()

e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. ()

05. Bad Debt Write-Off. A tax credit may be taken on the distributor's fuel tax report for fuel taxes paid on sales made after July 1, 1995. The credit is claimed when the debt has been written off for income tax purposes in the business records of the distributor. The credit may be claimed on distributor's fuel tax report each month or at the end of the distributor's tax year after a debt has been written off. ()

a. First-in/first-out method for partial payments. When partial payments are received on a specific account that includes taxable fuel sales, non-taxable fuel sales, and/or other sales, the distributor must apply the payments to the unpaid sales on a first-in/first-out basis before claiming a bad debt credit. ()

b. Proration of partial payments. When partial payments are received on a specific account, before and/or after a bad debt credit has been claimed on the distributor's fuel tax report, the distributor must prorate the taxable fuel sales, nontaxable fuel sales, and/or other sales which occurred on the same day or on the same invoice for each such account. ()

06. Gaseous Special Fuels. Propane or natural gas will be presumed to be tax-exempt unless delivered into the supply tank of a licensed, or required to be licensed, motor vehicle. ()

07. Sales of Gaseous Special Fuels. Gaseous special fuels delivered into the fuel supply tank of a licensed, or required to be licensed, motor vehicle are taxable except for: ()

a. Government. Gaseous special fuels used by vehicles owned or leased, and operated by the federal government, or by an instrumentality of the state of Idaho, including all of its political subdivisions, are exempt from the special fuels tax on gaseous fuels. In this case, the licensed distributor must record on the document of sale, the name of the governmental entity, the license or identification number, and the type of vehicle. ()

b. Gaseous special fuels permits. Special fuels dispensed into the fuel supply tank of a motor vehicle displaying a valid Gaseous Special Fuels Decal are exempt from tax. For the exempt status to be valid, sales documentation must have the purchaser's name, address, vehicle license number, and the words "gaseous fuels decal."

()

(BREAK IN CONTINUITY OF SECTIONS)

~~150. DOCUMENTATION OF DEDUCTIONS. (Rule 150).~~

~~01. Fuel Presumed to be Distributed. Unless the contrary is established, it shall be presumed that all gasoline or aircraft engine fuel imported into this state by a distributor, which is no longer in the possession of that distributor, has been distributed. If the licensed distributor has returned to the refinery or pipeline terminal gasoline on which the tax has been paid or has had an accidental loss, the licensed distributor has the burden of showing the returns so made or the accidental loss. (6-23-94)~~

~~02. Retail Dealer Allowance. The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrink age, evaporation, spillage or handling losses. The Commission shall then allow the additional one percent (1%) deduction unless an aggrieved retail dealer claims that he did not receive the credit allowance. If such claim is made, the Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. (6-23-94)~~

~~03. Retail Sale Invoice. Any distributor who sells and delivers gasoline in this state must issue an original invoice to the purchaser; provided, however, that when sales are accounted for monthly, invoices may be issued to the purchaser at the time of billing. All invoices shall contain the following: (6-23-94)~~

~~a. A pre-printed serial number, except when invoices are automatically assigned a consecutive serial number by a computer or similar machine when issued; (6-23-94)~~

~~b. Name and address of the distributor; (6-23-94)~~

~~e. Name and address of the purchaser; (6-23-94)~~

~~d. Date of delivery; (6-23-94)~~

~~e. Type of fuel; (6-23-94)~~

~~f. Gallons invoiced reported as required in Rule 120 of these rules; (6-23-94)~~

~~g. Origin; (6-23-94)~~

~~h. Destination; (6-23-94)~~

~~i. Price per gallon and total amount charged. At least one of the following to establish that tax has been charged: The amount of Idaho state fuels tax; the rate of Idaho state fuels tax; or a statement that the Idaho state fuels tax is included in the price. (6-23-94)~~

~~j. In the case of sales to retail dealers, to establish that the allowance of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: That the amount of the allowance has been passed on; or a statement that the allowance has been deducted in determining the price. (6-23-94)~~

~~k. The invoice shall contain double-faced carbons on the original of the first copy, unless invoices are automatically prepared by a computer or similar machine when issued. (6-23-94)~~

~~04. Correcting Invoice Errors. When an original invoice is issued in error, it may be canceled by a credit invoice and cross referenced to all copies of the invoice covering the transaction being corrected. If a second invoice~~

is issued, it shall show the date and serial number of the original invoice and that the second invoice is in replacement or correction thereof. Where a licensed distributor makes delivery to another licensed distributor's account, the invoicing requirements as provided for above will be waived and the monthly reconciliation of exchange balances will be accepted instead of the invoice requirements. (6-23-94)

05. ~~Exported Fuel. Gasoline or aircraft engine fuel claimed as exported from Idaho must be supported by records. Records required must include the following:~~ (6-23-94)

~~a. Tax reports or other evidence that will verify that the exported fuel was reported to and any tax due was paid to the state into which the fuel was claimed to have been exported and;~~ (6-23-94)

~~b. Common carrier shipping documents, bills of lading, manifests, and cost billings or;~~ (6-23-94)

~~e. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product or;~~ (6-23-94)

~~d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product.~~ (6-23-94)

~~e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other states, evidence such as product inventory and transfer records, must be verified to prove the transfer of product out of Idaho.~~ (6-23-94)

06. ~~Bad Debt Write-off. A tax credit may be taken on distributor returns for fuel taxes paid on sales made after July 1, 1995. The credit is claimed when the debt has been written off for income tax purposes in the business records of the distributor. The credit may be claimed on fuel tax returns each month or at the end of the distributor's tax year after a debt has been written off.~~ (7-1-96)

07. ~~First-in-First-out method for Partial Payments. When partial payments are received on accounts that have taxable fuel sales, non-taxable fuel sales, and other sales the distributor must apply the payments to the unpaid sales on a first-in-first-out basis before claiming a bad debt credit.~~ (7-1-96)

08. ~~Proration of Partial Payments. Partial payments received before and/or after a bad debt credit is claimed on the distributor's fuel tax return must be prorated for taxable fuel sales, nontaxable fuel sales, and other sales which occur on the same day or on the same invoice.~~ (7-1-96)

150. DOCUMENTATION REQUIRED. (Rule 150.)

01. Retail Sales Invoices for Delivered, Bulk Plant, and Station Sales. Any distributor who sells motor fuels and other petroleum products in this state must issue an original invoice to the purchaser; provided, however, that when sales are accounted for on a monthly basis the invoices may be issued to the purchaser at the time of billing. All sales invoices for motor fuels and other petroleum products sold at retail stations, bulk plants, or delivered to the customer's location must contain the following: ()

a. A pre-printed serial number, except when invoices are automatically assigned a consecutive serial number by a computer or similar machine when issued; ()

b. Name and address of the distributor; ()

c. Name of the purchaser; ()

d. Date of sale or delivery; ()

e. Type of fuel; ()

f. Gallons invoiced - reported as required in Section 120 of these rules; ()

g. Price per gallon and total amount charged. When taxable motor fuels products are sold, at least one (1) of the following must be used to establish that the Idaho state fuel tax has been charged: The amount of Idaho state fuels tax; the rate of Idaho state fuels tax; or a statement that the Idaho state fuels tax is included in the price. ()

h. Delivered sales invoices must also contain the purchaser's address along with the Origin and Destination of the motor fuels and other petroleum products. ()

i. The sales invoice shall contain double-faced carbons on the original of the first copy, unless invoices are automatically prepared by a computer or similar machine when issued. ()

02. Correcting Sales Invoice Errors. When an original invoice is issued containing incorrect information, it may be canceled by a credit invoice and cross-referenced to all copies of the invoice covering the transaction being corrected. If a second sales invoice is issued, it shall show the date and serial number of the original invoice and that the second invoice is in replacement or correction thereof. ()

03. Documentation Is Required. Failure to include all the above documentation will result in an invalid sales invoice for a tax-paid fuel claim by the distributor's customer. ()

04. Documentation Requirements for Dyed Diesel Fuel. The state of Idaho is following the Internal Revenue Service requirements for sales of dyed diesel fuel. The Internal Revenue Code requires that a notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be: ()

a. Provided by the terminal operator to any person who receives dyed diesel fuel at a terminal rack of that operator, and ()

b. Provided by any seller of dyed diesel fuel to the buyer if the fuel is located outside the bulk transfer/terminal system and is not sold from a posted retail pump, and ()

c. Posted by a seller on any retail pump where the dyed diesel fuel is sold for use by the buyer. ()

d. The documentation notice found in this rule must be provided at the time of removal or sale and must appear on shipping papers, bills of lading, and sales invoices accompanying the sale or removal of the fuel. Any person who fails to provide or post the required notice is presumed to know that the fuel will be used for a taxable use and is subject to penalties imposed by the Internal Revenue Service. ()

(BREAK IN CONTINUITY OF SECTIONS)

161. -- 1769. (RESERVED).

170. ADDITIONAL INFORMATION (Rule 170.)

01. Undyed Diesel Fuel Used for Heating Purposes. The consumer must apply directly to the State Tax Commission for a refund of the special fuels taxes paid on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: ()

a. Properly documenting information on the sales invoice, and; ()

b. Providing the customer with a Form 75-HF "Heating Fuel Only." ()

02. Red-dyed High-sulfur Fuel. It is illegal to use red-dyed high-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state. ()

03. Red-dyed Low-sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the federal government, state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur diesel fuel may be used: ()

a. By state and local governments (political subdivisions of the state) for their exclusive use: ()

b. In the engine of a train: ()

c. In a school bus while the bus is engaged in the transportation of students and school employees: ()

d. By a qualified local bus while the bus is engaged in furnishing intracity passenger land transportation for compensation, if the bus is available to the general public, operates along scheduled, regular routes, has a seating capacity of at least twenty (20) adults (not including the driver), and is under contract with, or receiving more than a nominal subsidy from, any state or local government to furnish such transportation; and ()

e. By an intercity bus to furnish, for some level of compensation, passenger transportation that is available to the general public, and the transportation is scheduled and follows regular routes, or the seating capacity of the bus is at least twenty (20) adults (not including the driver). ()

f. The buses identified in Subsections 170.03.d. and 170.03.e. above are available to the general public if the buses are available for hire to more than a limited number of persons, groups, or organizations. ()

04. Motor Fuels Exemption from Sales Tax. Any sale of motor fuels by any fuel distributor which is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If fuel, including dyed diesel fuel, is sold without the motor fuels tax, the sale is subject to Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of fuel delivered into bulk storage tanks, where the motor fuels tax is not charged, are exempt from Idaho sales tax only if the distributor has taken from the purchaser a sales tax exemption certificate in the manner required by Sales Tax Administrative Rule 75. However, if the fuel delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. ()

171. -- 179. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~180. REFUND CLAIMS - DOCUMENTATION REQUIRED. (Rule 180.)~~

01. ~~Refunds to Consumers.~~ Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records, an original seller's invoice showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or double-faced carbon shall be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. In addition to the requirements outlined above, each invoice must contain or show the following: (6-23-94)

a. ~~A pre-printed serial number;~~ (6-23-94)

b. ~~Name and address of seller;~~ (6-23-94)

e. ~~Name of purchaser;~~ (6-23-94)

d. ~~Date of delivery;~~ (6-23-94)

e. ~~Type of motor fuel;~~ (6-23-94)

- f. Gallons invoiced; (6-23-94)
- g. Price per gallon; (6-23-94)
- h. At least one of the following to establish that tax has been charged: The amount of Idaho state fuels tax; the rate of Idaho state fuels tax; or a statement that the Idaho state fuels tax is included in the price. (6-23-94)
- ~~02. Corrected Invoices. No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided and retained by the seller for at least three (3) years from the date issued. (6-23-94)~~
- ~~03. Invoice Retention. The original invoices required by subsection 01 of this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the Commission or by voluntary action of the taxpayer. (6-23-94)~~
- ~~04. Monthly Refund Claims. Any taxpayer entitled to a refund of motor fuels tax may file a refund claim monthly. Any refund due will be first applied to any liability due under any law administered by the Commission, including liabilities under IFTA, which is due and unpaid at the time the claim is filed. In addition, no refund will be paid if the claimant has failed to file any tax return required to be filed with the Commission. (3-4-96)~~
- ~~05. Refund Applied to Taxes Due. Refunds of motor fuels taxes shall be claimed on the Idaho Income Tax Return filed by the person who was the final purchaser and consumer of motor fuels upon which the tax has been paid and for which a refund may be claimed. If any taxes are due under the Idaho Income Tax Act, including any Permanent Building Fund Tax, the refund will be first applied to the taxes due. Any balance of refund exceeding any taxes due shall be paid as a refund to the entity filing the return. In the case of all partnerships and any corporations filing Idaho Form 41S, relating to S Corporations, any refund of motor fuels taxes paid by the partnership or S Corporation must be claimed by the partnership or corporation. The refund may not be applied to the individual returns filed by partners or share holders. (6-23-94)~~
- ~~06. Refunds to Distributors. Refund claims filed under Section 63-2410(4), Idaho Code, by licensed distributors shall be filed in the manner provided in Section 240 of these rules relating to refunds by special fuels dealers and such claims shall be subject to the provisions of that rule. (6-23-94)~~
- ~~07. Refund Documents. For refund claims under section 63-2410(5)(e), Idaho Code, an original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (6-23-94)~~
- ~~08. Records Required for Motor Fuels Tax Refunds. Each claimant shall maintain records that are sufficient to prove the accuracy of the claim. Such records shall reflect all motor fuels receipts, the gallons of fuel used in each type of equipment, both refundable and nonrefundable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination, is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (6-23-94)~~
- ~~a. Use of Fuel from a Single Storage Tank. Fuel (other than fuel purchased by persons who are licensed under IFTA or permitted under Idaho Code § 63-2438) purchased and delivered into bulk storage and withdrawn for both non-taxable and taxable uses, must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty-five percent (25%) of all taxed gasoline delivered into bulk storage shall be presumed to be for exempt uses unless another amount is requested by the taxpayer and authorized by the Commission. The request shall itemize anticipated uses by type of equipment based on previously experienced use. The Commission will refund taxes paid on the percentage of taxed fuel presumed to be exempt. If refunds are claimed based on records of actual use, the records must be made available upon request. In either case, invoices showing the total fuel~~

~~purchased on which tax was paid must be retained to support each refund claim.~~

~~(3-14-96)L~~

~~b. Use of Fuel from Multiple Storage Tanks. When separate bulk storage tanks are maintained for both exempt and taxable uses, the seller must mark the invoices at the time of delivery identifying the storage tanks into which the fuel was delivered. Detailed withdrawal records will only be required if fuel is used by permitted motor vehicles that are subject to special fuels use tax reporting. Purchases must be reported and all invoices must be retained. Exempt fuel may not be used in motor vehicles licensed or required to be licensed.~~

~~(6-23-94)~~

~~e. Use of Fuel for Other than Bulk Storage. Fuel dispensed into the supply tank, or small containers for use in, stationary engines, equipment, commercial motor boats, or vehicles, other than motor vehicles, must be identified on the purchase invoice. No other records will be required.~~

~~(6-23-94)~~

~~d. Exempt Uses of Gasoline. The exempt uses are operating stationary engines, commercial motor boats, and propelling equipment or vehicles, other than motor vehicles.~~

~~(6-23-94)~~

~~e. Exempt Uses of Special Fuels. In general, any use of special fuels is exempt, except propelling or operating a motor vehicle on a highway.~~

~~(6-23-94)~~

180. REFUNDS TO LICENSED FUEL DISTRIBUTORS (Rule 180.)

01. Refund Claim. Any licensed fuel distributor believing that he has paid motor fuels taxes or transfer fees in any amount more than that properly imposed may file a written claim with the State Tax Commission for a refund of such excess fuel taxes or transfer fee on forms prescribed by the State Tax Commission. The claim for refund must conform with the requirements of this rule.

()

02. Refund Claim Documentation. The claim must be in writing and must include the full name and address of the claimant and his fuel distributor's license number. The claim must include a detailed statement of the reason the claimant believes a refund is due. The statement should include a description of the transactions, if any, to which the tax relates and must state the period for which the claimed excess tax or transfer fee amount was paid. The claim for refund must include a statement that the amount refunded to the licensed fuel distributor has been, or will be, refunded by the fuel distributor to the purchaser, or that such fuel taxes or transfer fees have never been collected from the purchaser.

()

03. Refund as a Credit. A claimant may claim a refund as a credit against motor fuels taxes or transfer fee due. The credit may be taken against the distributor's fuel tax report but the report must be preceded by a claim for refund in the manner required by Subsection 180.02 of this rule.

()

04. Statute of Limitation. No claim for refund will be allowed by the State Tax Commission if it is filed more than three (3) years from the time the payment of the claimed excess taxes or transfer fee was made. The time the payment was made is the date upon which the distributor's fuel tax report relating to the payment was filed or was required to be filed, whichever occurred first.

()

05. Appeal Procedures. No claim for refund may be filed relating to any motor fuels taxes or transfer fees that have been asserted by a Notice of Deficiency Determination. A taxpayer contending that fuels taxes or transfer fees have been erroneously or illegally collected by the State Tax Commission pursuant to a Notice of Deficiency Determination must seek a redetermination by using the appeal procedures required by law.

()

06. Notice of Denial. All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or any part of the claim should not be allowed to the claimant, notice of denial of the claim shall be mailed to the claimant by certified mail. The notice shall include a statement of the reasons for the denial. When seeking an appeal or redetermination of a denial of a claimed refund or credit, the notice of denial shall be the equivalent of a Notice of Deficiency Determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must do so by filing a petition for redetermination in the manner prescribed in Idaho Administration and Enforcement Rule 300, as incorporated herein by Rule 330 of these rules. Such a petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to, or served upon, the claimant.

()

(BREAK IN CONTINUITY OF SECTIONS)

201. -- ~~2129.~~ (RESERVED).

~~220. DISTRIBUTORS' RETURNS--RECORDS REQUIRED FOR SPECIAL FUELS APPLICATION OF SALES TAXES. (Rule 220.)~~

~~01. Monthly Returns. Each licensed distributor shall file with the Commission a monthly tax return on forms prescribed by the Commission. The return shall be due on or before the last day of the month following the month to which the return relates. Such returns shall contain a declaration by the person filing the return that the statements contained therein are true and are made under penalties of perjury. The return shall include the following information together with such other information as the Commission may require: (7-1-96)~~

- ~~a. The beginning inventory of special fuels on the first day of the month; (7-1-96)~~
- ~~b. The total quantity of special fuels received during the month; (7-1-96)~~
- ~~c. The total quantity of special fuels disbursed to licensed distributors tax not collected, to state and local government, and exported during the month; (7-1-96)~~
- ~~d. The total quantity of special fuels transferred or relabeled from one fuel type to another; (7-1-96)~~
- ~~e. Casualty loss only; (7-1-96)~~
- ~~f. The ending inventory of special fuels on the last day of the month; (7-1-96)~~
- ~~g. The gross taxable gallons of special fuels; (7-1-96)~~
- ~~h. Tax-paid purchases; (7-1-96)~~
- ~~i. Net taxable gallons; (7-1-96)~~
- ~~j. Gallons after deduction for two percent (2%) allowance; (7-1-96)~~
- ~~k. Tax computation; (7-1-96)~~
- ~~l. Bad debt amounts, refer to Rule 150 of these rules; (7-1-96)~~
- ~~m. Gaseous permit fee; (7-1-96)~~
- ~~n. Net tax due; (7-1-96)~~
- ~~o. With respect to the quantity of special fuels received during the month, the distributor shall include a listing of each person supplying special fuels to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis; (7-1-96)~~
- ~~p. All reports requiring reporting the number of gallons of special fuels shall be stated in gross gallons. (7-1-96)~~

~~02. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on Commission provided forms but only if the data is in the same format as shown on the required schedules. If any other format is to be used, the licensee must make his request in writing to the Commission with a copy of the format to be used before authorization will be granted. (7-1-96)~~

- ~~03. Inventory Records. The distributor shall keep detailed inventory records. (7-1-96)~~
- ~~04. Payment of Tax, Penalty, and Interest. Payment of any tax, penalty or interest due shall accompany the return. See Motor Fuels Tax Administrative Rule 10 relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (7-1-96)~~
- ~~05. Receipts of Special Fuels. All undyed diesel fuels received by a distributor shall be taxable. All receipts of dyed diesel fuel are not subject to the special fuels tax. The special fuels tax is not imposed on gaseous special fuels when the fuels are received. (7-1-96)~~
- ~~06. Undyed Diesel Fuel For Heating. The consumer must apply directly to the Tax Commission for a refund of the special fuels taxes paid on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer by: (7-1-96)~~
- ~~a. Documenting information on the sale invoice to allow the consumer to submit the sale invoice as a refund claim to the Tax Commission; or (7-1-96)~~
- ~~b. Providing a Form 75 "Heating Oil Only" to allow the consumer to submit this form for refund claim to the Tax Commission. (7-1-96)~~
- ~~07. Sales of Gaseous Special Fuels. Gaseous special fuels delivered into the fuel supply tank of a licensed or required to be licensed motor vehicle, are taxable except for: (7-1-96)~~
- ~~a. Government. Gaseous special fuels used by vehicles owned or leased and operated by the federal government, and vehicles over sixteen thousand (16,000) pounds gross vehicle weight owned or leased and operated by an instrumentality of the state of Idaho, including all of its political subdivisions, are exempt from the special fuels tax on gaseous fuels. In this case, the licensed distributor must record on the document of sale, the name of the governmental entity, the license or identification number, and the type of vehicle. (7-1-96)~~
- ~~b. Gaseous Special Fuels Permits. Special fuels dispensed into the fuel supply tank of a motor vehicle displaying a valid Gaseous Special Fuels Decal are exempt from tax. For the exempt status to be valid, sales documentation must have the purchaser's name, address, vehicle license number and the words, "gaseous fuels decal." (7-1-96)~~
- ~~08. Gaseous Special Fuels. Propane or natural gas sold at retail will be presumed to be exempt unless delivered into the supply tank of a motor vehicle. (7-1-96)~~
- ~~09. Documentation is Required. Failure to include all the above documentation for exempt sales will result in a taxable sale. (7-1-96)~~
- ~~10. Documentation Requirements for Dyed diesel Fuel. The state is following the Internal Revenue Service requirements for sales of dyed diesel fuel. The Internal Revenue Code requires that a notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be: (7-1-96)~~
- ~~a. Provided by the terminal operator to any person who receives dyed diesel fuel at a terminal rack of that operator; (7-1-96)~~
- ~~b. Provided by any seller of dyed diesel fuel to the buyer if the fuel is located outside the bulk transfer/terminal system and is not sold from a posted retail pump, and (7-1-96)~~
- ~~c. Posted by a seller on any retail pump where the dyed diesel fuel is sold for use by the buyer. (7-1-96)~~
- ~~d. The notice under item (a) or (b) must be provided at the time of removal or sale and must appear on shipping papers, bills of lading, and invoices accompanying the sale or removal of the fuel. Any person who fails to provide or post the required notice is presumed to know that the fuel will be used for a taxable use and is subject to~~

penalties imposed by the Internal Revenue Service. (7-1-96)

11. ~~Red-dyed High-sulfur Fuel. It is illegal to use red-dyed high-sulfur fuel in the supply tank of a licensed or required-to-be-licensed motor vehicle in this state.~~ (7-1-96)

12. ~~Red-dyed Low-sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur diesel fuel for use in their motor vehicles. The untaxed diesel fuel used in these motor vehicles may be subject to Idaho's special fuels tax. The red-dyed low-sulfur diesel fuel may be used:~~ (7-1-96)

a. ~~By state and local governments (political subdivisions of the state) for their exclusive use;~~ (7-1-96)

b. ~~In the engine of a train;~~ (7-1-96)

e. ~~In a school bus while the bus is engaged in the transportation of students and school employees;~~ (7-1-96)

d. ~~By a qualified local bus while the bus is engaged in furnishing intracity passenger land transportation for compensation, if the bus: is available to the general public, operates along scheduled, regular routes, has a seating capacity of at least twenty (20) adults (not including the driver), and is under contract with, or receiving more than a nominal subsidy from, any state or local government to furnish such transportation;~~ (7-1-96)

e. ~~By an intercity bus to furnish (for compensation) passenger transportation that is available to the general public, and the transportation is scheduled and along regular routes, or the seating capacity of the bus is at least twenty (20) adults (not including the driver).~~ (7-1-96)

f. ~~NOTE: A bus is available to the general public if it is available for hire to more than a limited number of persons, groups, or organizations.~~ (7-1-96)

13. ~~Special Fuels Exemption from Sales Tax. Any sale of special fuels by a licensed distributor subject to special fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If fuel is sold without special fuels tax, the sale is subject to Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of fuel to a bulk storage tank are exempt from Idaho sales tax only if the distributor has taken from the purchaser, a sales tax exemption certificate in the manner required by Sales Tax Administrative Rule 75. However, if the fuel delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required.~~ (7-1-96)

14. ~~Retail Sale Invoice. Any distributor who sells special fuels in this state must issue an invoice to the purchaser; provided, however, that when sales are accounted for monthly, invoices may be issued to the purchaser at the time of billing. All invoices shall contain the following:~~ (7-1-96)

a. ~~A pre-printed serial number, except when invoices are automatically assigned a consecutive serial number by a computer or similar machine when issued;~~ (7-1-96)

b. ~~Name and address of the distributor;~~ (7-1-96)

e. ~~Name of the purchaser;~~ (7-1-96)

d. ~~Date of sale;~~ (7-1-96)

e. ~~Type of fuel;~~ (7-1-96)

f. ~~Gallons invoiced;~~ (7-1-96)

g. ~~Price per gallon and total amount charged. At least one of the following to establish that tax has been charged: The amount of Idaho state fuels tax; the rate of Idaho state fuels tax; or a statement that the Idaho state fuels tax is included in the price.~~ (7-1-96)

~~221. -- 229. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

~~231. -- 2349. (RESERVED).~~

~~**240. REFUNDS TO LICENSED SPECIAL FUELS DEALERS. (Rule 240.)**~~

~~01. Refund Claim. Any licensed special fuels dealer believing that he has paid special fuels taxes in any amount more than that properly imposed may file a written claim with the Commission for a refund of such excess taxes. The claim for refund must conform with the requirements of this rule. (6-23-94)~~

~~02. Refund Claim Documentation. No particular form for claiming a refund is prescribed, but the claim must be in writing. The claim must include the full name and address of the claimant and his special fuels dealer's license number. The claim must include a detailed statement of the reason the claimant believes a refund is due. The statement should include a description of the transactions, if any, to which the tax relates and must state the date on which the claimed excess taxes were paid. The claim for refund must include a statement that the amount refunded to the special fuels dealer has been or will be refunded by the dealer to the purchaser, or that such taxes have never been collected from the purchaser. (6-23-94)~~

~~03. Refund as a Credit. A claimant may claim a refund as a credit against special fuels taxes due. The credit may be claimed on a special fuels tax return but the return must be accompanied by a claim for refund substantially in the manner required by Subsection 230.02 of this rule. (6-23-94)~~

~~04. Statute of Limitation. No claim for refund will be allowed by the Commission if it is filed more than three (3) years from the time the payment of the claimed excess taxes was made. The time the payment was made is the date upon which the special fuels tax return relating to the payment was filed or was required to be filed, whichever occurred first. (6-23-94)~~

~~05. Appeal Procedures. No claim for refund may be filed relating to any special fuels taxes that have been asserted by a Notice of Deficiency Determination. A taxpayer contending that taxes have been erroneously or illegally collected by the Commission pursuant to a Notice of Deficiency Determination must seek a redetermination by using the appeal procedures required by law. (6-23-94)~~

~~06. Notice of Denial. All claims for refund or credit will be reviewed by the Commission's staff. In the event that the staff concludes that all or any part of the claim should not be allowed to the claimant, notice of denial of the claim shall be mailed to the claimant by certified mail. The notice shall include a statement of the reasons for the denial. For seeking an appeal or redetermination of a denial of a claimed refund or credit, the notice of denial shall be the equivalent of a Notice of Deficiency Determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must do so by filing a petition for redetermination in the manner prescribed in Idaho Administration and Enforcement Rule 300, as incorporated herein by Rule 330 of these rules. Such a petition for redetermination must be filed no later than sixty three (63) days from the date upon which the notice of denial is mailed to or served upon the claimant. (7-1-97)~~

~~241. -- 249. (RESERVED).~~

IDAPA 35 - STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s), 63-105 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

The 1997 Legislature passed H.B. 88 that amends existing law to repeal the reporting and permitting requirements for special fuels tax permit holders who operate intrastate motor vehicles that are over 26,000 pounds gross vehicle weight (GVW) and use special fuel on Idaho highways.

Delete current rules 250 and 400 so that a single set of rules can be created to deal with refunds to consumers for all types of motor fuels.

Add new rules 250, 270, 280, and 290 to govern the reporting, documentation, and nontaxable uses for all motor fuels tax refund claims made by consumers. Intrastate special fuels carriers who are claiming special fuels tax refunds for nontaxable miles and/or fuel used to operate power-take-off (PTO) equipment will be moved into this set of rules.

Add new rule 400 to define what motor vehicles over 26,000 GVW that use special fuels on Idaho highways are now required to be permitted in Idaho.

Add new rule 420 which denotes the mileage and fuel record keeping requirements for IFTA carriers and special fuels users claiming nontaxable uses of special fuels in motor vehicles.

Amend rules 200, 230, 320 to remove cross-references to special fuels permits which were repealed.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fees are applicable.

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the new rules do not change the requirements for refunds of motor fuels taxes by consumers but only combine the reporting requirements into single set of rules for simplicity.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy Nilson at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997

Randy Nilson, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36, Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0105-9702

200. USE TAX ON SPECIAL FUELS (Rule 200).

01. ~~In General.~~ The tax imposed by Section 63-2417~~6~~, Idaho Code, is a use tax complementary to the principal tax imposed by ~~that Section 63-2416, Idaho Code.~~ In the case of special fuels used to operate or propel motor vehicles, which do not display ~~an Idaho special fuels tax permit decal, a ninety-six (96) hour trip permit issued by the Idaho Transportation Department; or are not licensed registered under IFTA, or to operate non-commercial motor boats within Idaho,~~ and on which the Idaho special fuels tax was not paid at the time of purchase, the special fuels tax must be paid in the manner provided in Section 63-2421, Idaho Code, and Rule 230 of these rules. Motor ~~V~~vehicles which ~~do display an Idaho decal or a ninety-six (96) hour trip permit shall pay the special fuels tax in the manner provided in Section 63-2439, Idaho Code, and Rule 400 of these rules.~~ Motor ~~V~~vehicles licensed registered under IFTA shall pay the fuels tax in the manner provided in that agreement. (6-23-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

230. SPECIAL FUELS SUBJECT TO USE TAX--REPORTING (Rule 230).

01. In General. Any person who has purchased tax-exempt special fuels ~~tax-exempt~~ and subsequently uses the special fuels in a licensed motor vehicle, not subject to Rule 400 of these rules, upon highways in Idaho, shall annually report to the State Tax Commission the amount of special fuels tax due. (6-23-94)(____)

a. Reporting. A person who wishes to pay their fuel taxes due more frequently may file Form 75 for any time period that is not less than one (1) month. The report shall be made on forms prescribed by the State Tax Commission and may ~~must~~ be made together with the claimant's Idaho income tax return, if such a return is required. The amount of fuels tax due on special fuels may be off-set against any refund due from other motor fuels taxes ~~on gasoline~~ or income taxes. In the case of persons not required to file an income tax return, the amount of special fuels tax due or any refund claim shall be filed for a time period of not less than one (1) month on forms provided by the State Tax Commission for that purpose. See Rule 250 of these rules. (6-23-94)(____)

~~02b.~~ Lack of records to compute fuel consumption rate. In the event that the special fuels consumer fails to keep sufficiently detailed records to determine special fuels consumed, by its motor vehicles, the consumption rates found in Subsection 290.01.c. of these rules shall be presumed to be correct, that not less than one gallon of special fuels was consumed for every: (6-23-94)(____)

a. ~~Four (4) miles traveled by vehicles over forty thousand (40,000) pounds gross registered vehicle weight, or~~ (6-23-94)

b. ~~Five and one half (5 1/2) miles traveled by vehicles from twenty-six thousand and one (26,001) to forty thousand (40,000) pounds gross registered vehicle weight, or~~ (6-23-94)

c. ~~Seven miles (7) traveled by vehicles from twelve thousand and one (12,001) to twenty-six thousand (26,000) pounds gross registered vehicle weight, or~~ (6-23-94)

d. ~~Ten (10) miles traveled by vehicles from six thousand and one (6,001) to twelve thousand (12,000) pounds gross registered vehicle weight, or~~ (6-23-94)

e. ~~Sixteen (16) miles traveled by vehicles six thousand (6,000) pounds or less gross registered vehicle weight.~~ (6-23-94)

c. Fuel records. If the special fuels consumer fails to keep sufficiently detailed records to determine taxable gallons, all tax-exempt special fuels purchased will be subject to the fuels tax unless the number of such gallons placed into the supply tank of the licensed or required to be licensed motor vehicle can be determined. (____)

250. REFUNDS OF SPECIAL FUELS TAX TO CONSUMERS. (Rule 250.)

01. Refund Claim. Consumers claiming refunds of special fuels tax must file the claim together with their Idaho income tax return in the manner required for gasoline tax refunds, under Section 63-2410, Idaho Code, and Rule 180 of these rules, or in the case of claimants not required to file an income tax return, in the manner required by Section 63-2410(5)(b), Idaho Code. See Rule 230 of these rules. (6-23-94)

02. Nonhighway Use of Special Fuels. Operation of a motor vehicle that uses special fuels on a road that is not a highway, as defined in Section 63-2401(9), Idaho Code, or on a construction site is not a use on the highways of this state. See Rule 220 of these rules regarding application of Idaho Sales and Use Taxes. (6-23-94)

03. Off-loading Allowance Refunds for IFTA Licensees. IFTA licensees claiming refunds of Idaho fuels tax resulting from Idaho off-loading allowances, must file the claim on an Idaho fuels use report, Form 75. (6-23-94)

a. To compute the Idaho taxable gallons, the IFTA licensee must recompute the total fuel consumed in all states, which is the net figure of gallons consumed, after deduction of the gallons allowed for the off-loading allowance. Using the new net gallons consumed, recompute the fleet miles per gallon. Apply the new fleet miles per gallon to calculate the corrected Idaho taxable gallons. To figure the Idaho nontaxable gallons, the licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. (6-23-94)

b. Additionally, a copy of the IFTA tax return for the period subject to the refund claim, and a statement showing how the off-loading allowance was calculated, from the calculation chart in Rule 400 of these rules, must be included as an attachment to the Form 75, or by filling out the description area of the Form 75. All refund claims are subject to audit, therefore, adequate documentation must be retained by the licensee. (6-23-94)

250. REFUND CLAIMS--REPORTING (Rule 250).

01. Refund Claim. Consumers claiming refunds of motor fuels taxes may file the claim together with their Idaho income tax return in the manner required for gasoline tax refunds, under Section 63-2410, Idaho Code, or in the case of claimants not required to file an income tax return, in the manner required by Section 63-2410(5)(b), Idaho Code. ()

02. Minimum Filing Period for Refund Claims. Any taxpayer entitled to a refund of motor fuels taxes may file a refund claim which covers a time period of not less than one (1) month. ()

03. Refund May Be Claimed Only by Final Consumer. Refunds of motor fuels taxes may be claimed on Form 75 by the person who purchased and used the motor fuels upon which the tax has been paid and for which a refund may be claimed. In the case of all partnerships and any corporations filing Idaho Form 41S, relating to S Corporations, any refund of motor fuels taxes paid by the partnership or S Corporation must be claimed by the partnership or corporation. The refund may not be applied to the individual returns filed by partners or shareholders. ()

04. Refund May Be Filed Separately. Refunds of motor fuels taxes are claimed using Form 75 and must be filed by the final purchaser and user of the motor fuels in conjunction with that person's Idaho income tax return or separately as a stand-alone refund claim. ()

05. Refund Applied to Taxes Due. Any refund due to a consumer will be applied first to any liability due under any law administered by the State Tax Commission, including any liability under IFTA, which is due and unpaid at the time the claim is filed. In addition, no refund will be paid if the claimant has failed to file any tax return required to be filed with the State Tax Commission. Any balance of the refund exceeding taxes due shall be paid as a refund to the entity filing the return. ()

(BREAK IN CONTINUITY OF SECTIONS)

262. -- 29969. (RESERVED).

270. REFUND CLAIMS--DOCUMENTATION (Rule 270).

01. Refunds to Consumers. Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. In addition to the requirements outlined above, each invoice must contain or show the following: ()

- a. A pre-printed serial number: ()
- b. Name and address of seller: ()
- c. Name of purchaser: ()
- d. Date of delivery: ()
- e. Type of motor fuel: ()
- f. Gallons invoiced: ()
- g. Price per gallon: ()

h. At least one (1) of the following to establish that tax has been charged: The amount of Idaho state fuels tax; the rate of Idaho state fuels tax; or a statement that the Idaho state fuels tax is included in the price. ()

02. Corrected Invoices. No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided and retained by the seller for at least three (3) years from the date issued. ()

03. Invoice Retention. The original invoices required by Subsection 270.01 of this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. ()

04. Refund Documents. For refund claims under Section 63-2410(5)(c), Idaho Code, an original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. ()

05. Records Required for Motor Fuels Tax Refunds. Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both refundable and nonrefundable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. ()

a. Use of fuel from a single storage tank. Tax-paid fuel (other than fuel purchased by persons who operate motor vehicles that are over twenty-six thousand (26,000) pounds maximum gross weight) purchased and delivered into a single bulk storage tank and withdrawn for both nontaxable and taxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty-five percent (25%) of all taxed gasoline

delivered into bulk storage shall be presumed to be for exempt uses unless another percentage is requested by the taxpayer and authorized by the State Tax Commission. The request shall itemize anticipated uses by type of equipment based on previously experienced use. The State Tax Commission will refund taxes paid on the percentage of taxed fuel presumed to be exempt. If refunds are claimed based on records of actual use, the records must be made available upon request. In either case, invoices showing the fuel purchases on which tax was paid must be retained to support each refund claim. ()

b. Use of fuel from multiple storage tanks. When separate bulk storage tanks are maintained for both exempt and taxable uses, the seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Detailed withdrawal records will only be required if fuel is used by motor vehicles licensed under IFTA. All fuel invoices must be retained as required by Subsection 270.03 of this rule. Exempt fuel may not be used in motor vehicles licensed or required to be licensed. ()

c. Use of fuel for other than bulk storage. Fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motor boats, or vehicles other than licensed motor vehicles, must be identified on the purchase invoice. No other records will be required. ()

(BREAK IN CONTINUITY OF SECTIONS)

271. -- 279. (RESERVED).

280. NONTAXABLE USES OF MOTOR FUELS (Rule 280).

01. Refunds for Nontaxable Uses of Motor Fuels Must Be Claimed on Form 75. The Idaho Form 75 must be used to claim a fuels tax refund for all nontaxable uses of Idaho tax-paid motor fuels, except for refunds claimed by IFTA carriers for nontaxable miles. ()

02. Exempt Uses of Gasoline. The exempt uses of gasoline include operating stationary engines, commercial motor boats, equipment and vehicles other than motor vehicles. ()

03. Exempt Uses of Special Fuels. In general, any use of special fuels is exempt, except propelling or operating a motor vehicle on a highway. ()

(BREAK IN CONTINUITY OF SECTIONS)

281. -- 289. (RESERVED).

290. NONTAXABLE SPECIAL FUELS USED IN MOTOR VEHICLES (Rule 290).

01. Required Reporting. Reporting required for claims of nontaxable uses by special fuels motor vehicle users, except IFTA carriers. Refund claims for nontaxable uses of special fuels used in motor vehicles must be submitted on Form 75 with the relevant supplemental worksheet. The records required to document a refund request are as follows: ()

a. Total miles. The total miles traveled should be included for motor vehicles which have nontaxable uses of special fuels. Special fuel carriers who qualify to use one of the "Standard MPG's" found in Subsection 290.02.g. of these rules need only record and report Idaho taxable miles. ()

b. Total fuel. The total number of gallons of fuel delivered into the supply tanks of the motor vehicles should be included for motor vehicles which have nontaxable uses of special fuels. The total miles figure and the total fuel figure must be for the same vehicles. ()

c. Miles per gallon. The miles per gallon shall be computed by dividing gallons reported according to Subsection 290.01.b. of this rule into the number of miles reported according to Subsection 290.01.a. of this rule. Round the miles per gallon to the nearest hundredth (0.00). The computation of fleet miles per gallon should be carried to three (3) decimal places and rounded to two (2) decimal places. Example: $4.514 = 4.51$ and $4.515 = 4.52$. In the event that the claimant fails to keep sufficiently detailed records showing the number of miles actually operated per gallon of special fuel consumed, it shall be presumed that not less than one (1) gallon of special fuel was consumed for every: ()

i. Four (4) miles traveled by vehicles over forty thousand (40,000) pounds gross registered vehicle weight; or ()

ii. Five and one-half (5 1/2) miles traveled by vehicles from twenty-six thousand and one (26,001) to forty thousand (40,000) pounds gross registered vehicle weight; or ()

iii. Seven (7) miles traveled by vehicles from twelve thousand and one (12,001) to twenty-six thousand (26,000) pounds gross registered vehicle weight; or ()

iv. Ten (10) miles traveled by vehicles from six thousand and one (6,001) to twelve thousand (12,000) pounds gross registered vehicle weight; or ()

v. Sixteen (16) miles traveled by vehicles six thousand (6,000) pounds or less gross registered vehicle weight. ()

d. The total taxable miles traveled in Idaho. Only taxable miles traveled in Idaho by the motor vehicles which have nontaxable uses of special fuels should be included. Taxable miles are miles driven on any road that is open to the use of the public and maintained by a governmental entity. Such roads may be constructed using concrete, asphalt, gravel, composition, dirt, or other surfaces. ()

e. The number of gallons of special fuels consumed in Idaho. The gallons consumed in Idaho shall be computed by dividing the miles per gallon determined according to Subsection 290.01.c. of this rule into the total taxable miles in Idaho according to Subsection 290.01.d. of this rule. ()

02. Nontaxable Uses of Special Fuels in Motor Vehicles. Records must be kept to show the actual number of gallons of tax-paid special fuel placed into the supply tank of the motor vehicle to receive a refund of the special fuels tax for nontaxable uses of special fuels. Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power-take-off (PTO) equipment. ()

a. Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property owner, or defined in Subsection 290.02.b. of this rule. Miles driven on a construction site would also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 130 of these rules regarding application of Idaho Sales and Use Taxes. ()

b. Special fuels users may exclude from total taxable miles traveled in Idaho the miles traveled on roadways, as defined in Section 63-2401(10), Idaho Code and described in this subsection, when computing their special fuels tax liability or refund if: ()

i. The cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them; and ()

ii. They operate motor vehicles that weigh over twenty-six thousand (26,000) pounds maximum gross weight on that roadway. ()

iii. If the special fuels user is not using the "standard MPG" for its industry found in Subsection 290.02.g. of this rule, the special fuels user must maintain records documenting nontaxable miles traveled that qualify for exclusion under this provision. The roadways referred to in this subsection are those constructed and maintained

by: The United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. ()

c. Off-loading allowances. Total gallons of fuel may be reduced when special fuels are used for purposes other than to operate or propel a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for off-loading allowances are turning a vehicle-mounted cement mixer or off-loading product. The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: ()

- i. Gasoline/fuel oil: One and one half (1.5) gallons per ten thousand (10,000) gallons pumped; ()
- ii. Bulk cement: Four (4) gallons per twenty-two and one half (22.5) tons pumped; ()
- iii. Lime: Three and fourteen one hundredths (3.14) gallons per hour; ()
- iv. Calcium crystals: Four and thirteen one hundredths (4.13) gallons per hour; ()
- v. Concrete: One (1) gallon per five (5) cubic yards; ()
- vi. Refrigeration Unit (Reefer): Three fourths (.75) gallon per hour; ()
- vii. Grain (dairy pellets): Thirteen one hundredths (.13) gallon per ton; ()
- viii. Grain meal (mash): Two hundred twenty-five thousandths (.225) gallon per ton; ()
- ix. Pulp: Fifty-three hundredths (.53) gallon/cord; one and eighty-nine hundredths (1.89) cords/gallon; four and seventy-three hundredths (4.73) gallons/hour; ()
- x. Tree length pulp: Five hundred three ten thousandths (.0503) gallon/ton; nineteen and eighty-eight hundredths (19.88) tons/gallon; three and forty-six hundredths (3.46) gallons/hour. ()

d. The gallons of fuel reported shall be the total number of gallons, as defined in Subsection 290.01.b. of this rule, consumed after deduction of the gallons allowed for the off-loading allowance. ()

e. An off-loading allowance which is not listed in Subsection 290.02.c. of this rule must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed off-loading allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. Taxpayers must send requests for approval to: ()

FUELS TAX POLICY SPECIALIST
TAX POLICY SECTION
IDAHO TAX COMMISSION
P. O. BOX 36
BOISE, ID 83722
(208) 334-7530

f. Off-loading allowances listed in Subsection 290.02.c. of this rule may be granted for IFTA accounts by recomputing the total gallons of fuel consumed in all jurisdictions but must be applied for separately from the IFTA quarterly or annual reports. IFTA licensees claiming refunds of Idaho fuels tax resulting from the off-loading allowances established in Subsections 290.02.c. and 290.02.e. of this rule, must file the claim on an Idaho Fuels Use Report, Form 75. ()

i. The IFTA licensee must recompute the total fuel consumed in all jurisdictions by deducting the gallons allowed for the off-loading allowance from the total number of gallons of fuel consumed that was reported on the IFTA report. Using the new net gallons consumed, recompute the fleet miles per gallon. Apply the new fleet miles per gallon to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho

nontaxable gallons available for refund, the licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. ()

ii. Additionally, a copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how the off-loading allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to audit, therefore, adequate documentation must be retained by the licensee. ()

g. A special rule may be applied for motor vehicles, except IFTA carriers, that use special fuels and accrue both taxable and nontaxable miles. These operators of motor vehicles that use special fuels, except those licensed under IFTA, may, instead of using the computations provided in Subsection 290.01.c., of this rule, presume that when engaged in operations in the following industries and accruing taxable miles in Idaho, that such motor vehicles consume fuel at the following rates:

<u>Logging</u>	<u>4.3 MPG</u>
<u>Agricultural</u>	<u>4.5 MPG</u>
<u>Sand, gravel & rock hauling</u>	<u>4.0 MPG</u>
<u>Construction</u>	<u>4.4 MPG</u>

()

h. If an operator has reason to believe the standard on-road miles per gallon (MPG) in Subsection 290.02.g. is not an accurate reflection of his specific operation, the operator can calculate an actual MPG using the computations provided in Subsection 290.01.c. of this rule. ()

291. -- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

320. RECORDS RETENTION REQUIREMENTS (Rule 320).

01. Records Required. Any person importing, manufacturing, refining, dealing in, transporting, storing or selling any motor fuels in this state shall keep such records, receipts and invoices as will show all purchases, sales, receipts, or deliveries of motor fuels in this state. Such records shall be maintained for at least three (3) years. (6-23-94)

02. Motor Special Fuels Subject to Use Tax. Any person who has purchased tax-exempt motor special fuels, ~~tax exempt,~~ and subsequently uses the special fuels to operate or propel a licensed motor vehicle upon the public roads is liable for the special fuels tax upon the special fuel so used, in a manner that is subject to a motor fuel use tax. Such persons shall maintain records sufficient to establish the quantity of motor special fuels subject to tax. (6-23-94)()

03. Original Invoice Retention. The original invoices required by Rule ~~480~~ 270 of these rules, relating to refunds of gasoline and special fuels tax paid on certain fuel used off-road, shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (6-23-94)()

04. Additional Record Keeping. See also Rule 220 of these rules, relating to records required by special fuels dealers, and Rule 400 of these rules, relating to records required by holders of special fuels permits. (6-23-94)

(BREAK IN CONTINUITY OF SECTIONS)

~~400. SPECIAL FUELS PERMITS FOR MOTOR VEHICLES OVER 26,000 POUNDS GROSS MAXIMUM WEIGHT. (Rule 400.)~~

The following rules relate to the special fuels tax permit system provided in Sections 63-2438 through 63-2440, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA. (6-23-94)

01. ~~In General. After January 1, 1989, it is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels as defined in Section 63-2401(16), Idaho Code, on the highways of this state without having obtained either:~~ (6-23-94)

a. ~~A special fuels permit from the Commission.~~ (6-23-94)

b. ~~A ninety-six (96) hour trip permit from the Idaho Transportation Department.~~ (6-23-94)

c. ~~An IFTA license.~~ (6-23-94)

d. ~~In the case of vehicles powered by gaseous fuels, a gaseous fuel decal as provided by Section 63-2424, Idaho Code.~~ (6-23-94)

e. ~~Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumental ties or political subdivisions are exempt from these requirements.~~ (6-23-94)

02. ~~Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting under this rule if the state in which it is owned grants a reciprocal privilege to Idaho and its agencies and subdivisions.~~ (6-23-94)

03. ~~Application for Special Fuels Permits. All persons operating or intending to operate motor vehicles over twenty-six thousand (26,000) pounds maximum registered gross weight that use special fuels on the highways of this state and are not base registered in another IFTA jurisdiction may apply to the Commission for a special fuels permit. The application must be made upon the form prescribed by the Commission for that purpose and must include all information requested on the application form. The application must include a fee as specified on the application form.~~ (6-23-94)

04. ~~Special Fuels Permits, Decals. With each special fuels permit issued by the Commission, a unique decal number will be assigned. Two (2) decals bearing that decal number must be requested for each motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight to be operated in this state. The decal evidences issuance of a special fuels permit to the owner or operator to whom the number is assigned. The Commission will issue the number of decals requested by the applicant in the application. A decal shall be firmly affixed to each side of the cab or in the case of a tractor trailer, on the power unit of each motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight to be operated in Idaho in such a manner as to be clearly visible by a person observing the motor vehicle from either side. In the case of buses, only one decal is required for each bus. It shall be affixed to the left side of the bus near the front in such a manner as to be clearly visible to a person observing the bus from the left side. The owner or operator shall be responsible for ensuring that each decal is clearly visible at all times when the motor vehicle is operating in Idaho. A decal that is damaged or obscured to the point that it is illegible is invalid. Duplicate decals may be obtained from the Commission upon payment of the fee set by the Commission. The decal shall not be affixed to any plate, plaque or part that may be readily removed from the motor vehicle except in the case of motor vehicle dealers transporting vehicles for sale.~~ (6-23-94)

05. ~~Permits and Decals Not Transferable. Neither the permit nor the decal is transferable. If a motor vehicle displays a special fuels permit decal, the person to whom the related special fuels permit has been issued is responsible for reporting all mileage of the permitted motor vehicle and paying all special fuels tax resulting from the operation of the permitted motor vehicle in Idaho. Upon sale, lease or other transfer of a motor vehicle, the permit holder to whom a decal was issued remains responsible for the tax on fuel used by the permitted motor vehicle until the decal is destroyed or obliterated.~~ (6-23-94)

06. ~~Special Fuels Tax Returns. Holders of special fuels permits will be required to file monthly, quarterly, semi annually or annual special fuels tax returns with the Commission. The return is due on the last day of the month following the end of the period to which the return relates. The return form will require that the taxpayer report:~~ (6-23-94)

a. ~~Fleet Miles. The total miles traveled both within and without Idaho by permitted vehicles during the reporting period. As used in this rule, the term Idaho permitted vehicle means a motor vehicle which displays, or is required to display, a valid Idaho special fuels decal.~~ (6-23-94)

b. ~~Fleet Fuel. The total number of gallons of fuel delivered into the supply tanks of all Idaho permitted vehicles during the reporting period.~~ (6-23-94)

e. ~~The Fleet Miles per Gallon. The fleet miles per gallon shall be computed by dividing gallons reported according to subsection 06.b. of this rule into the number of miles reported according to subsection 06.a. of this rule. Round the fleet miles per gallon to the nearest hundredth (0.00). The computation of fleet miles per gallon should be carried to three (3) decimal places and rounded to two (2) decimal places. Example: $4.514 = 4.51$ and $4.515 = 4.52$. In the event that the permit holder fails to keep sufficiently detailed records showing the number of miles actually operated per gallon of special fuel consumed, it shall be presumed that not less than one (1) gallon of special fuel was consumed for every: Four (4) miles traveled by vehicles over forty thousand (40,000) pounds gross registered vehicle weight, or five and one half (5 1/2) miles traveled by vehicles from twenty six thousand one (26,001) to forty thousand (40,000) pounds gross registered vehicle weight.~~ (6-23-94)

d. ~~The Total Miles Traveled in Idaho. Only miles traveled on Idaho highways by Idaho permitted vehicles must be reported pursuant to this subsection. Miles traveled on the roadways described in this subsection may be excluded from total highway miles traveled in Idaho if, and only if, the operator of the specific vehicle is required to bear the cost of constructing or maintaining the roadway for the use of the roadway pursuant to a contract or permit. To claim the exclusion permitted by this subsection, the special fuels permit holder must maintain records documenting roadway miles traveled that are qualified for exclusion under this provision. The roadways referred to in this subsection are those constructed and maintained by: The United States Forest Service; the United States Bureau of Land Management; the Idaho Department of Lands; or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code.~~ (6-23-94)

e. ~~The Number of Gallons of Special Fuels Consumed in Idaho. The gallons consumed in Idaho shall be computed by dividing the fleet miles per gallon determined according to subsection 06.c. of this rule into the total Idaho miles reported according to subsection 06.d. of this rule.~~ (6-23-94)

f. ~~Off-loading Allowance. When special fuel from the main supply tank of a motor vehicle subject to this rule is used for purposes other than to operate or propel the motor vehicle, such as fuel used to turn a vehicle mounted cement mixer or to off-load product, the number of gallons of fuel actually delivered into the fuel tank of the vehicle can be reduced by the following allowances:~~ (6-23-94)

- i. ~~Gasoline/fuel oil: 1.5 gallons per 10,000 gallons pumped;~~ (6-23-94)
- ii. ~~Bulk cement: 4 gallons per 22.5 tons pumped;~~ (6-23-94)
- iii. ~~Lime: 3.14 gallons per hour;~~ (6-23-94)
- iv. ~~Calcium crystals: 4.13 gallons per hour;~~ (6-23-94)
- v. ~~Concrete: 1 gallon per 5 cubic yards;~~ (6-23-94)
- vi. ~~Refrigeration Unit (Reefer): .75 gallon per hour;~~ (6-23-94)
- vii. ~~Grain (dairy pellets): .13 gallon per ton;~~ (6-23-94)
- viii. ~~Grain meal (mash): .225 gallon per ton;~~ (6-23-94)

- ix. Pulp: .53 gallon/cord; 1.89 cords/gallon; 4.73 gallons/hour; (6-23-94)
- x. Tree-length pulp: .0503 gallon/ton; 19.88 tons/gallon; 3.46 gallons/hour. (6-23-94)
- g. The amount of fuel reported shall be the net figure of gallons, as defined in subsection 06.b. of this rule, consumed after deduction of the gallons allowed for the off-loading allowance. (6-23-94)

h. Off-loading allowances listed above may be granted for IFTA accounts but must be applied for separately from the IFTA quarterly reports. Allowances must be claimed according to the procedure found in Rule 250 of these rules. (6-23-94)

i. An off-loading allowance, which is not listed in this rule shown above, must be submitted by the taxpayer to the Tax Commission for approval before being used. Taxpayers must request approval of the off-loading allowance in writing along with a copy of the calculations used to compute the allowance. Taxpayers must send requests for approval to:

FUELS TAX POLICY SPECIALIST
LEGAL SECTION
IDAHO TAX COMMISSION
P. O. BOX 36
BOISE, ID 83722
(208) 334-7530

(6-23-94)

j. The amount of tax due shall be computed by multiplying the gallons computed according to subsection 06.c. of this rule by the tax rate established by Section 63-2405, Idaho Code. (6-23-94)

k. Additional amounts of penalty and interest as may be required by law. (6-23-94)

l. Special rule for trucks used both on and off public highways. Operators of trucks permitted under Idaho Code section 63-2438 (but not under IFTA) may, in making the computations provided in paragraph 06.e of this rule presume that when operating the following trucks on roads that are public highways, such trucks consume fuel at the following rate:

Logging trucks	4.3 MPG
Agriculture uses	4.5 MPG
Sand, gravel and rock hauling	4.0 MPG
Construction	4.4 MPG

(3-8-96)L

m. If an operator has reason to believe the standard for on-road miles per gallon in paragraph 06.1 is not an accurate reflection of his specific operation, the operator can calculate an actual MPG using the computations provided in paragraph 06.c of this rule. (3-8-96)L

07. Records Required for Idaho Permitted Special Fuels Users. For verifying the accuracy of any special fuels tax returns filed with the Commission or for determining tax when no return was filed, the taxpayer shall retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to mileage of motor vehicles displaying, or required to display, an Idaho special fuels permit, an IFTA license, or a ninety-six (96) hour trip permit. (6-23-94)

08. Fuel Records. In order for the special fuels user to obtain credit for tax paid purchases, a receipt or

~~invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the special fuels user showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax paid purchases taken as credit must include, but not be limited to, the following:~~ (6-23-94)

- ~~a. The date of each receipt of fuel; (6-23-94)~~
- ~~b. The name and address of the person from whom purchased or received; (6-23-94)~~
- ~~c. The number of gallons received; (6-23-94)~~
- ~~d. Both taxable and nontaxable usage of fuel; (6-23-94)~~
- ~~e. The type of fuel; (6-23-94)~~
- ~~f. The specific vehicle or equipment into which the fuel was placed; (6-23-94)~~
- ~~g. Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records; (6-23-94)~~
- ~~h. Documents necessary to substantiate volume, time or weight for off-loading allowances described in subsection 06.e. (6-23-94)~~

~~09. Mileage Records. All special fuels users shall maintain detailed mileage records, such as trip logs or trip sheets, on an individual vehicle basis. Such records shall contain, but not be limited to:~~ (6-23-94)

- ~~a. Total trip miles, including vicinity miles; (6-23-94)~~
- ~~b. Miles traveled for taxable and nontaxable use; (6-23-94)~~
- ~~c. Mileage recaps for each vehicle for each state or jurisdiction in which the vehicle operated; (6-23-94)~~
- ~~d. Starting and ending dates of trips; (6-23-94)~~
- ~~e. Trip origin and destination; (6-23-94)~~
- ~~f. Hubometer or odometer readings from the beginning and ending of each trip and at the crossing of each state border. Local delivery services that do not cross state borders need only record daily hubometer or odometer readings; (6-23-94)~~
- ~~g. Complete routes of travel, including pick up and delivery locations; (6-23-94)~~
- ~~h. Vehicle license number or unit number; (6-23-94)~~
- ~~i. Driver's name; (6-23-94)~~

~~10. Additional Records Requirements. If necessary, other records may be required such as bills of lading or manifest documents; vehicle dispatch ledgers; accounts payable and receivable; lease agreements; quarterly mileage returns filed with the Idaho Transportation Department; driver pay records; driver logs; fuel use trip permits; and other worksheets used in preparing fuel tax reports. (6-23-94)~~

~~11. Trip Summaries. Individual trips shall be accumulated into monthly and quarterly summaries. These summaries shall be used as the basis for the miles submitted on the monthly or quarterly reports. (6-23-94)~~

~~12. Computer Printout Support. Summary computer printouts must be supported by trip sheets or logs verifying mileage traveled. (6-23-94)~~

~~13. Mileage Information. Information recorded on trip sheets must be legible and reflect actual miles traveled. Mile age records must include all movement of the vehicle including loaded, empty, and tractor only, "bobtail," miles. (6-23-94)~~

~~14. Records Retention. The records shall be retained for at least three (3) years for Idaho permit holders and four (4) years for IFTA license holders. (6-23-94)~~

~~15. U.S./Metric Conversion. The following conversion factors must be used, when necessary, to convert fuel and mileage records to U.S. or metric measurement:~~

~~One (1) Liter = .2642 gallons~~

~~One (1) Gallon = 3.785 liters~~

~~One (1) Mile = 1.6093 kilometers~~

~~One (1) Kilometer = .62137 miles (6-23-94)~~

~~16. Failure of the Taxpayer to Maintain or Disclose Complete and Adequate Records. Upon failure by the taxpayer, without reasonable cause, to comply substantially with the requirements of this rule, the Commission may revoke or suspend a special fuels permit or IFTA license according to Idaho Code Chapter 24, Title 63. (6-23-94)~~

~~17. Cross Reference. Revocation or Suspension of Special Fuels Permits. See subsection 400.21., below. (6-23-94)~~

~~18. Mileage Disputes. Whenever a mileage dispute arises between the taxpayer and the Commission, the official mileage map distributed by the highway department in each state, will be used to resolve the point to point mileage differences. (6-23-94)~~

~~19. Trip Permits. Any motor vehicle over twenty six thousand (26,000) pounds maximum registered gross weight operating on the highways of this state that does not display special fuels decals required by this rule or that is not IFTA licensed, shall secure a ninety six (96) hour temporary trip permit from the Idaho Transportation Department in the manner provided and required by that department. (6-23-94)~~

~~20. Failure to Obtain a Special Fuels Permit, IFTA License, or Temporary Trip Permit. Operation of a motor vehicle over twenty six thousand (26,000) pounds maximum registered gross weight on the highways of this state without a special fuels permit, IFTA license, or an Idaho ninety six (96) hour trip permit is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Rule 300 of these rules, may issue a jeopardy assessment under the authority of Sections 63-2434 and 63-3065, Idaho Code. Such deputy is authorized to institute immediate collection procedures including issuance of a tax war rant and distraint of the motor vehicle required to display but failing to display either special fuels decals, IFTA license, or a ninety six (96) hour trip permit. (6-23-94)~~

~~21. Revocation or Suspension of Special Fuels Permits. A Special Fuels Permit or IFTA license may be either revoked or suspended by the Commission when the permit holder neglects or refuses to comply with the provisions of Chapter 24, Title 63, Idaho Code, or with these rules; or when, on investigation or after request for cancellation or suspension, the Commission finds the permit holder is no longer engaged in activities requiring a permit. Unless the cancellation or suspension is at the request of the permit holder, the Commission shall before revocation or suspension give the permit holder at least thirty (30) days notice of such intended action and afford the permit holder the opportunity to show cause, in writing, why the permit should not be revoked or suspended. If a special fuels permit becomes canceled, suspended, or revoked by the Commission, operations of vehicles leased to the canceled, suspended or revoked permit holder will be limited to those for which a temporary trip permit has been purchased from the Idaho Transportation Department or its agents. The owner of a leased vehicle displaying the canceled, suspended or revoked permit may apply for his own special fuels permit issued by the Commission and become responsible for the tax. (6-23-94)~~

~~22. Annual Tax Reports. Permit holders who travel more than 50% of their miles in Idaho and whose annual tax liability, not including tax paid at the time of purchase, totals less than two hundred fifty dollars (\$250) in a calendar year may make application to the Commission for permission to report annually. Application must be made on forms provided by the Commission and must include all requested information. To qualify for annual filing, an applicant must provide evidence that its total tax liability, not including tax paid at the time of purchase, for the four (4) preceding calendar quarters was not more than two hundred fifty dollars (\$250). If a permit holder who has been granted permission to report annually, subsequently accrues a total tax liability, not including tax paid at the time of purchase, of more than two hundred fifty dollars (\$250), its annual reporting privilege may be revoked by the Commission. (6-23-94)~~

400. IFTA LICENSING AND SPECIAL FUELS PERMITTING REQUIREMENTS FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND (26,000) POUNDS MAXIMUM GROSS WEIGHT. (Rule 400.)

The following rules relate to the special fuels tax licensing system provided in Sections 63-2438 through 63-2440, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA. ()

01. In General. It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels as defined in Section 63-2401(20), Idaho Code, on the highways of this state without having obtained one (1) of the following: ()

a. A registration to operate the motor vehicle solely within this state under section 49-434, Idaho Code. ()

b. A ninety-six (96) hour trip permit from the Idaho Transportation Department. ()

c. An IFTA license. ()

d. In the case of vehicles powered by gaseous fuels, a gaseous fuel permit as provided by Section 63-2424, Idaho Code. ()

e. Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. ()

02. Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. ()

03. Trip Permits. Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code or IFTA licensed, shall secure a ninety-six (96) hour temporary trip permit from the Idaho Transportation Department in the manner provided and required by that department. ()

04. Failure to Obtain an IFTA License or a Temporary Trip Permit. Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under section 49-434, Idaho Code, an IFTA license or an Idaho ninety-six (96) hour trip permit is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections 63-2434 and 63-3065, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a ninety-six (96) hour trip permit. ()

(BREAK IN CONTINUITY OF SECTIONS)

411. -- ~~499~~19. (RESERVED).

420. DOCUMENTATION FOR IFTA CARRIER REPORTING AND SPECIAL FUELS USERS CLAIMING NONTAXABLE USE OF SPECIAL FUEL IN A MOTOR VEHICLE (Rule 420).

01. Records Required for Idaho IFTA Carriers and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle. Records are required to verify the accuracy of any tax report or worksheet filed with the State Tax Commission. The taxpayer displaying, or required to display, an IFTA decal or a ninety-six (96) hour trip permit, or a special fuels user claiming nontaxable use of tax-paid special fuels in a motor vehicle using a Form 75, shall retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to the mileage of the motor vehicles. ()

02. Fuel Records. In order for the IFTA carrier or other special fuels user seeking a refund for the nontaxable use of special fuels in its motor vehicle to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the special fuels user showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax-paid purchases taken as credit must include, but not be limited to, the following: ()

- a. The date of each receipt of fuel; ()
- b. The name and address of the person from whom purchased or received; ()
- c. The number of gallons received; ()
- d. Both taxable and nontaxable usage of fuel; ()
- e. The type of fuel; ()
- f. The specific vehicle or equipment into which the fuel was placed; ()
- g. Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records; ()
- h. Documents necessary to substantiate volume, time or weight for off-loading allowances described in Subsection 290.02.c. of these rules. ()

03. Mileage Records. Non-IFTA carriers who qualify to use one of the "Standard MPG's" found in Subsection 290.02.g. of these rules need only record and report Idaho taxable miles. All IFTA carriers and all other special fuels users seeking a fuels tax refund for nontaxable special fuels used in a motor vehicle shall maintain detailed mileage records, such as trip logs or trip sheets, on an individual-vehicle basis. Such records shall contain, but not be limited to: ()

- a. Total trip miles, including vicinity miles, except for non-IFTA motor vehicle(s) using one (1) of the "standard miles per gallon" (MPG) found in Subsection 290.02.g. of these rules; ()
- b. Miles traveled for taxable and nontaxable use. Only taxable miles traveled are required for non-IFTA motor vehicles using one (1) of the "standard miles per gallon" found in Subsection 290.02.g. of these rules; ()
- c. Mileage recaps for each vehicle. IFTA carriers are required to keep mileage recaps for each state or jurisdiction in which the IFTA vehicle operated; ()
- d. Starting and ending dates of trips; ()

e. Trip origin, interim stops and destination: ()

f. Hubometer or odometer readings from the beginning and ending of each trip and at the crossing of each jurisdiction's border. Interstate motor vehicles that, for certain time periods, do not cross jurisdiction borders need only record daily hubometer or odometer readings for those time periods: ()

g. Complete routes of travel, including pick up and delivery locations: ()

h. Vehicle license number or unit number: ()

i. Driver's name. ()

04. Additional Records Requirements. Other records may be required such as bills of lading or manifest documents; vehicle dispatch ledgers; accounts payable and receivable; lease agreements; quarterly mileage returns filed with the Idaho Transportation Department; driver pay records; driver logs; fuel use trip permits; and other documents used in preparing fuel tax reports. ()

05. Trip Summaries. Individual trips shall be accumulated into monthly, quarterly, or annual summaries. These summaries shall be used as the basis for the miles submitted on the IFTA quarterly or annual reports, and on the worksheet submitted with the Form 75. ()

06. Computer Printout Support. Hard copies of summary computer printouts must be supported by trip sheets or logs verifying mileage traveled. ()

07. Mileage Information. Information recorded on trip sheets must be legible and reflect actual miles traveled. Mileage records must include all movement of the vehicle including loaded, empty, and tractor-only (bobtail) miles. Non-IFTA carriers who qualify to use a "Standard MPG" need only record and report taxable miles in Idaho. ()

08. Records Retention. The records required in this rule shall be retained for the greater of three (3) years for Idaho special fuels users or the time during which the taxpayer's income tax return is subject to adjustment by either the State Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return. Records shall be retained for four (4) years for IFTA license holders. ()

09. U.S./Metric Conversion. The following conversion factors must be used, when necessary, to convert fuel and mileage records to U.S. or metric measurement:

<u>One (1) Liter</u>	<u>≡</u>	<u>.2642 gallons</u>
<u>One (1) Gallon</u>	<u>≡</u>	<u>3.785 liters</u>
<u>One (1) Mile</u>	<u>≡</u>	<u>1.6093 kilometers</u>
<u>One (1) Kilometer</u>	<u>≡</u>	<u>.62137 miles</u>

()

10. Mileage Disputes. Whenever a mileage dispute arises between the taxpayer and the State Tax Commission, the official mileage map distributed by the appropriate authority in each jurisdiction will be used to resolve the point to point mileage differences. ()

421. -- 499. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.06 - HOTEL/MOTEL ROOM AND CAMPGROUND
SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0106-9701

000. LEGAL AUTHORITY.

In accordance with Sections ~~63-513~~63-105, 67-4718, and 67-4917B, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Code relating to hotel/motel room charges. These rules do not apply to sales taxes imposed by resort cities, unless such taxes are administered by the State Tax Commission.

(7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 43, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-30756 or 9-340, Idaho Code. (~~7-1-93~~)(_____)

IDAPA 35 - STATE TAX COMMISSION
35.01.07 - IDAHO KILOWATT HOUR TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0107-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-2701, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 003 - Administrative Appeals. Due to 1997 legislation that incorporated by reference the administration and enforcement provisions of the Income Tax Act, Section 003 was amended to identify where the chapter provides for administrative relief.

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

No fee applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Janice Boyd, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0107-9701

003. ~~(RESERVED).~~

003. ADMINISTRATIVE APPEALS (Rule 003).

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code.
()

IDAPA 35 - STATE TAX COMMISSION
35.01.09 - IDAHO COUNTY OPTION KITCHEN AND
TABLE WINE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0109-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

Rule 014 - Security for Tax Required rule is being amended to make the bonding amount consistent with other taxes and to be sure the rule conforms with the Statute.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0109-9701

000. LEGAL AUTHORITY.

In accordance with Section 63-~~513~~105 and 23-1323, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho County Option Kitchen and Table Wine Tax Act. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 43, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075~~6~~ or 9-340, Idaho Code. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

014. SECURITY FOR TAX REQUIRED.

01. Security for Payment of Tax. Each person liable for payment of the taxes provided by Chapter 13, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest. (7-1-93)()

02. Amount of Security. The amount of the security shall be three (3) times the amount of the tax due on an average monthly wine tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-93)()

03. Security Requirement Excused. A distributor or winery having an average wine tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax will not be required to furnish security. (7-1-93)

04. Security for a New Distributor. When a new distributor or winery applies for a reporting permit number as required by ~~ISTC~~ Idaho Wine Tax Administrative Rule 15, security will be required. (7-1-93)()

a. If a wine tax reporting history is available from a previous ownership, the security required will be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no wine tax reporting history available from a previous ownership of the business, the new distributor or winery shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (7-1-93)()

05. Types of Security. A person required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the security required: (7-1-93)()

a. Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-93)()

b. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-93)()

c. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a

savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-93)()

d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-93)()

e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-93)()

06. Petition to Waive Security Deposit. Other than as provided in Subsection 014.03 of this rule, a security shall be required in all instances, unless the State Tax Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-93)()

07. Taxpayer Petition for Release from Security Requirement. (7-1-93)

a. The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all wine tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all wine tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-93)()

b. Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefor. (7-1-93)()

c. If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 014.07.a. of this rule, the State Tax Commission ~~will~~ may make immediate demand that a security be posted with the State Tax Commission. (7-1-93)()

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-93)()

e. Failure to post security upon demand, notwithstanding Subsection 014.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and ~~shall~~ may be immediately reported to the Director of Law Enforcement, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (7-1-93)()

IDAPA 35 - STATE TAX COMMISSION
35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0110-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

Rule 017 - Security for Tax Required rule is being amended to make the bonding amount consistent with other taxes and to be sure the rule conforms with the Statute.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36,
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0110-9701

000. LEGAL AUTHORITY.

In accordance with Sections ~~63-543~~105, 63-2501, and 63-2553, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Cigarette and Tobacco Tax Products Act. ~~(7-1-93)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 43, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-30756 or 9-340, Idaho Code. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

017. SECURITY FOR TAX REQUIRED.

01. Security for Payment of Taxes. Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler shall be liable, including any penalty and interest. (7-1-93)(____)

a. The amount of the security shall be at least two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base, but in no case shall be less than one thousand dollars (\$1,000), nor greater than two hundred thousand dollars (\$200,000). (7-1-93)

b. If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by ~~ISTC~~ Idaho Cigarette Tax Administrative Rule 15, the wholesaler must increase the amount of the security on file with the State Tax Commission accordingly, or pay a deposit to the State Tax Commission for future taxes due which exceed the limitations. (7-1-93)(____)

c. Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the State Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the State Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the State Tax Commission. (7-1-93)(____)

02. Reviewing Security on File. The State Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability. (7-1-93)(____)

03. New Wholesaler Application. When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows: (7-1-93)

a. If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler shall furnish security based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler shall furnish security in the amount of an estimated two (2) month tax liability of the new firm, or one thousand dollars (\$1,000), whichever is greater. The estimate shall be prepared by the new wholesaler and shall be subject to review and approval by the State Tax Commission. (7-1-93)(____)

04. Types of Security. A wholesaler required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following equivalent to the amount of the security required. (7-1-93)(____)

a. Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-93)(____)

b. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-93)(____)

c. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state, and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment from whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-93)(____)

d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-93)(____)

e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-93)(____)

05. Taxpayer Petition for Release from Security Requirements. A security shall be required in all instances unless the State Tax Commission, upon petition by the taxpayer, determines that a security is not required. (7-1-93)(____)

a. The following conditions must be met before the State Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months. (7-1-93)(____)

b. Upon written petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine his books and records within sixty (60) days. The State Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the taxpayer's petition. (7-1-93)(____)

c. If a petition for release of security is denied, notice shall be mailed to the taxpayer by certified mail. The notice shall include the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, he must file a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant. (7-1-93)(____)

06 Failure to File Timely After Release from Security. If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the State Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted. (7-1-93)(____)

a. The demand shall be in writing and shall be personally served on the taxpayer or mailed to him by certified mail. (7-1-93)

b. If the taxpayer wishes to petition for redetermination of the demand, he must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. (7-1-93)

c. Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions shall be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. (7-1-93)

IDAPA 35 - STATE TAX COMMISSION
35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES
DOCKET NO. 35-0111-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

Rule 005 - Unclaimed Expenses and Checks - Amended rule to clarify that payroll includes all monetary payments from an employer to employee. Also amended to state that a confirmation letter from the payee stating that a debt is no longer due because the debt was satisfied will be sufficient to relieve the holder from liability as required by H.B. 321.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed changes are of a simple nature, or required by legislative amendments to the Unclaimed Property Act.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0111-9701

000. LEGAL AUTHORITY.

In accordance with Sections 63-513~~105~~ and 14-539, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Unclaimed Property Act. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 43, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075~~6~~ or 9-340, Idaho Code. (7-1-93)()

005. UNCLAIMED EXPENSES AND CHECKS.

Intangible property required to be reported and delivered to the state includes outstanding or unclaimed expense and vendor checks, payroll checks, claim checks or drafts or other miscellaneous checks and drafts. The term "check" also includes items referred to as "warrants." The term "payroll" includes commissions and any other form of monetary payment to an employee in exchange for services. (8-24-94)()

01. Confirmation. A confirmation letter by the payee which claims that the amount is due and owing to the payee should be accompanied by a facsimile instrument issued by the holder in payment of the amount due and owing before the account will be considered not abandoned. (8-24-94)

02. Clearance. A confirmation letter signed by the payee which states that the amount is not due and owing to the payee ~~because the debt was satisfied~~ will be deemed as ~~lost in the clearing cycle and consequently payable to an unknown owner or holder in due course unless the holder of the property can produce a stop payment order or verify that the entry was an accounting error. It is the obligation of the holder to provide the Tax Commission with proof that the amount owed the payee was, in fact, paid and that the instrument used to pay the account has cleared all banks. Items that are found to be payable to an unknown owner in due course will be recorded as such on the unclaimed property role instead of for the benefit of the original payee.~~ sufficient to relieve the holder of the liability even if the check with which the holder paid the liability has not yet cleared the holder's bank. (8-24-94)()

IDAPA 35 - STATE TAX COMMISSION
35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES
DOCKET NO. 35-0111-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 011 - Property Presumed Abandoned, General Rule. Amended rule to state that return of a notice as undeliverable creates a presumption of abandonment and that the notice must be retained in the holder's records for seven years to comply with H.B. 321.

Rule 012 - General Rules for Taking Custody of Unclaimed Property. Amended rule to explain that holders in Idaho may remit unclaimed property to Idaho for states with which Idaho has reciprocity agreements and to clarify that businesses incorporated in Idaho owing money to a person whose last known address was in Idaho are the only ones able to use the new exemptions created by H.B. 321.

Rule 015 - Report of Abandoned Property. Amended rule to state that a report must meet the requirements of Administration and Enforcement Rule 150 and that it is not a validly filed report unless it is complete. The rule was also amended to state that the value of stock will be added to cumulative dividends for the purposes of the \$50 Idaho exemption.

Rule 016 - Filing a Claim with Administrator. Amended rule to state that utilities must retain records of unclaimed deposits for a period of seven years.

Rule 017 - Additions and Penalties. Amended the rule to clarify that interest is to be computed from the original due date of the report when the administrator grants an extension. Also that a late-filing penalty will apply when the report is filed after the approved extension date, although this penalty is discretionary.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed changes are of a simple nature, or required by legislative amendments to the Unclaimed Property Act.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission

800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0111-9702

011. PROPERTY PRESUMED ABANDONED GENERAL RULE.

An owner's interest may be converted only with the owner's consent or by operation of law. (7-1-93)

01. Books of Holder. Property presumed abandoned includes items that have been converted to income, reversed back to the account upon which the check or draft was drawn or any other method used to convert the unclaimed property to an asset of the holder. The books and records of the holder shall provide presumptive evidence of the existence of such intangible property. Evidence which may rebut any presumption arising from the books and records of the holder may include stop payment orders or items that can be verified as accounting errors or which establish that the original check or draft was issued in error or reissued to the original payee. (8-24-94)

02. Holding Period Determined by Type of Liability. The allowable holding period shall be determined by the type of liability, or property payable, not the method of payment. For example, an uncleared cashier's check that paid wages would be reportable after one year. (8-24-94)

03. Notice. ()

a. A notice must be mailed by a holder pursuant to Section 14-517, Idaho Code, to an owner at the last known address, according to the records of the holder. ()

b. Return of the notice by the Postal Service or other delivery service for any reason will create a presumption of abandonment. To overcome the presumption, the apparent owner must provide to the holder a statement that meets the requirements of Section 14-517, Idaho Code. ()

c. A notice that has been signed by the apparent owner and returned to the holder shall be retained by the holder for seven (7) years after the year in which the property would have become reportable. ()

012. GENERAL RULES FOR TAKING CUSTODY OF UNCLAIMED PROPERTY.

01. In General. ~~Any holder located in Idaho may report and remit property reportable to a reciprocity state to the Commission instead of filing with the reciprocity state. Under the rule established by the United States Supreme Court in Texas v. New Jersey, 379 U.S. 674 (1965), a holder of unclaimed property must report and remit that property to the state of the owner's last known address as shown in the holder's books and records. If the holder does not have a last known address for the owner, then the holder must report and remit the property to the state where the holder is incorporated. The unclaimed property laws of the state where the property is reportable govern the holding period and what is reportable.~~ (7-1-93)()

02. Reciprocity Agreements. ~~Property payable to another state may be paid to that state or delivered to the Commission pursuant to Section 14-503(3)(b), Idaho Code. If the property is not paid to the other state, the property must be reported and delivered to the Commission, which will transfer the property in accordance with its reciprocity agreements. A holder located in Idaho may report and remit property reportable to another state to the administrator of the Idaho Unclaimed Property Act if the administrator has entered into a reciprocity agreement with the other state. A list of those states that the administrator has entered into reciprocity agreements with can be obtained from the Idaho State Tax Commission. If property reportable to another state is reported and remitted to the administrator, that property will be transferred to the other state in accordance with the reciprocity agreement.~~ (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

015. REPORT OF ABANDONED PROPERTY.

The report, or an attachment to the report, shall show the interest rate as of the report date on all interest bearing items. (7-1-93)

01. Incomplete Report. A report filed with the State Tax Commission must meet the requirements of a valid tax return as set out in Administrative and Enforcement Rule 150. A report that does not meet the requirements of a valid tax return may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code. ()

02. Voluntary Payments of Unclaimed Property. A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of less than fifty dollars (\$50) to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code. The administrator will remit the funds to the appropriate state. ()

03. Underlying Shares and Cumulative Dividends. The holder must report and remit total cumulative dividends to date, together with the stock certificate, when the certificate is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is fifty dollars (\$50) or more. ()

016. FILING A CLAIM WITH ADMINISTRATOR.

01. Interest. Interest on interest bearing items will accrue from March 31, 1980, or date received, whichever is later, for a maximum of ten (10) years. No interest will be paid on items that are reported as interest bearing, unless the holder reports the rate of interest. (7-1-93)()

02. Payment of Claims - Claims Process. (8-24-94)
- a. Warrants will be authorized and payment made: (8-24-94)
 - i. In the name of, and mailed to, the established owner; or (8-24-94)
 - ii. To the court appointed estate administrator, administratrix, executor, executrix, or personal representative; or (8-24-94)
 - iii. To the court appointed guardian; or (8-24-94)
 - iv. In accordance with a court decree of distribution; or (8-24-94)
 - v. To an heir for distribution to other heirs; if any. (8-24-94)
 - b. Owner, Cashier's Checks: (8-24-94)
 - i. The owner of a cashier's check is presumed to be the payee unless the remitter has in his possession the cashiers check. (8-24-94)
 - ii. A payee is presumed to have received payment for a cashier's check or other instrument, and the payee must establish that the check was not cashed and that the owner is not, in fact, a holder in due course. (8-24-94)
 - c. It shall be the responsibility of the payee to disburse any funds or property in accordance with any

existing contract or agreement.

(8-24-94)

d. When one (1) claimant, who has proven that he has an interest in the unclaimed property, has been paid the full amount of unclaimed property held by the State Tax Commission, there is no requirement that the State Tax Commission pay other subsequent claimants. The State Tax Commission is not required to locate all heirs of owners of unclaimed property. (8-24-94)()

e. If there are two (2) or more owners of unclaimed property, or the reported account is in the name of the tenants in common, or the holder report does not specify the percentage or share of co-owners, the State Tax Commission shall pay each owner an equal share of the account. (8-24-94)()

f. Before payment of a claim for lost stock or bond certificates, a surety bond may be required of the owner/claimant which bond shall indemnify the State Tax Commission against claims by third parties. (8-24-94)()

g. Approved utility deposit claim forms and proof of payment to the claimant shall be retained by the utility company for a period of seven (7) years from the date the claim is paid. ()

017. ADDITIONS AND PENALTIES.

Penalties and interest may be applied on all delinquent amounts reported or resulting from an audit. These additions and penalties are applicable, even though the delinquent account may be remitted directly from the holder to the owner. Interest is to be computed from the original due date of the report regardless of any extension of time to file granted by the administrator under Section 14-517(4), Idaho Code. A penalty may be imposed if the report is filed after the approved extension date. In the appropriate circumstances, the State Tax Commission may waive penalties imposed. (7-1-93)()

IDAPA 35 - STATE TAX COMMISSION
35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES
DOCKET NO. 35-0111-9703
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 020 - Welfare and Pension Plans Covered Under ERISA. This rule is being added to the Unclaimed Property Administrative Rules as a result of a statutory change made to Section 14-512(2), Idaho Code by H.B. 321. Rule 020 sets out the general rule for when an obligation to pay a benefit will arise, and sets out a specific example of when unclaimed benefits will not be subject to Idaho's Unclaimed Property Laws.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed changes are of a simple nature, or required by legislative amendments to the Unclaimed Property Act.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0111-9703

019. —999. (RESERVED).

020. WELFARE AND PENSION PLANS COVERED UNDER ERISA.

01. In General. An obligation to pay a benefit under a welfare benefit plan normally does not arise until a demand is made by the participant (or beneficiary) which is honored (or required to be honored) by the plan administrator. With respect to pension benefit plans, an obligation to pay a benefit normally does not become fixed and certain until payment of the benefit is required under ERISA or under the plan, whichever is earlier. ()

02. Special Rule Relating to Unclaimed Pension Benefits. Account balances otherwise payable to a participant or beneficiary under a qualified retirement plan are not required to be reported to or paid over to the state of Idaho if the participant or beneficiary cannot be located and the plan document provides for the treatment of the unclaimed account balance. For example, an ERISA covered pension benefit plan or trust subject to, and in compliance with, the anti-forfeiture provisions of Section 411(a), Internal Revenue Code, is not required to report or pay over to Idaho any accrued benefit that is not payable to the participant or beneficiary under a plan provision that qualifies as a "permitted forfeiture" under Section 411(a)(3), Internal Revenue Code, and Treasury Regulation Section 1.411(a)-4(b). ()

021. -- 999. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0112-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 000 - Legal Authority and Rule 004 - Public Records rules are being amended to correct references of the Idaho Code that are in error.

Rule 013 - Security for Tax Required rule is being amended to make the bonding amount consistent with other taxes and to be sure the rule conforms with the Statute.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

James Husted, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0112-9701

000. LEGAL AUTHORITY.

In accordance with Section 63-~~543~~105 and 23-1051, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Beer Tax Products Act. ~~(7-1-93)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 43, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-30756 or 9-340, Idaho Code. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

013. SECURITY FOR TAX REQUIRED.

01. Security for Payment of Tax. Each person liable for payment of the taxes provided by Chapter 10, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on beer by this state for which such person shall be liable, including any penalty and interest. (7-1-93)(____)

02. Amount of Security. The amount of the security shall be three (3) times the amount of the tax due on an average monthly beer tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-93)

03. Security Requirement Excused. A wholesaler or brewery having an average beer tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax will not be required to furnish security. (7-1-93)

04. Security for a New Wholesaler or Brewery. When a new wholesaler or brewery applies for a reporting permit number as required by ~~ISTC~~ Idaho Beer Tax Administrative Rule 016, security will be required. (7-1-93)(____)

a. If a beer tax reporting history is available from a previous ownership, the security required shall be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no beer tax reporting history available from a previous ownership of the business, the new wholesaler or brewer shall furnish security in the amount of ~~two one~~ one thousand dollars (\$~~21~~1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (7-1-93)(____)

05. Types of Security. A person required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the security required: (7-1-93)(____)

a. Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-93)(____)

b. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-93)(____)

c. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a

savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-93)()

d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penal ties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-93)()

e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-93)()

06. Petition to Waive Security Deposit. Other than as provided in Subsection 013.03 of this rule, a security shall be required in all instances, unless the State Tax Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-93)()

07. Taxpayer Petition for Release from Security Requirement. (7-1-93)

a. The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all beer tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all beer tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-93)()

b. Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefor. (7-1-93)()

c. If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 013.07.a. above, the State Tax Commission ~~will~~ may make immediate demand that a security be posted with the State Tax Commission. (7-1-93)()

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-93)()

e. Failure to post security upon demand, notwithstanding Subsection 013.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and shall be immediately reported to the Director of Law Enforcement, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (7-1-93)()

IDAPA 35 - STATE TAX COMMISSION
35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES
DOCKET NO. 35-0201-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

RULE 410 - Negligence Penalties. Rule 410 was amended to include as examples that justify the negligence penalty the instance when a taxpayer fails to make available when requested the fifty-one state apportionment factor detail and to correct a reference.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 20th day of August, 1997.

Janice Boyd, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0201-9701

410. NEGLIGENCE PENALTIES (Rule 410).
Section 63-3046(a), Idaho Code.

(3-20-97)

01. Negligence Defined. Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. (3-20-97)

02. Imposition of Penalty. A five percent (5%) negligence penalty shall be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations. Examples of situations that justify the penalty include the following: (3-20-97)

a. Taxpayer continues to make errors in reporting income, sales or assets, or claims erroneous deductions, exemptions, or credits even though these mistakes have been called to his attention in previous audit reports. (3-20-97)

b. Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. (3-20-97)

c. Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. (3-20-97)

d. Taxpayer fails to offer any explanation for understating taxes. (3-20-97)

e. Unreported taxable income is a material amount as compared with the reported income. (3-20-97)

f. Taxpayer exhibits a careless disregard of his tax obligations. (3-20-97)

g. For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. (3-20-97)

h. Failure to make the required estimated payment when requesting an extension of time for filing a return. (3-20-97)

i. Taxpayer fails to provide the Tax Commission with a copy of a final federal determination within sixty (60) days of the date of the determination. See Rule 890 of the Income Tax Administrative Rules. (3-20-97)

j. Taxpayer fails to file an Idaho amended return within sixty (60) days after filing a federal amended return. (3-20-97)

k. Taxpayer fails to respond to requests to produce records substantiating items shown on the return. (3-20-97)

l. Taxpayer fails to make available the fifty-one (51) state apportionment factor detail when requested. ()

03. Negligence Penalty for Sales and Use Tax Deficiencies. For sales tax purposes, pertinent computations relating to substantial errors in Subsection 410.04~~2.a.b.~~ or material amount in Subsection 410.04~~2.e.~~, might include the following: (3-20-97)()

a. The ratio of untaxed sales that should have been taxed to total taxable sales; (3-20-97)

b. The ratio of untaxed sales that should have been taxed to total sales; (3-20-97)

c. The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; or (3-20-97)

d. Other computations bearing on negligence. (3-20-97)

04. Waiver of Negligence Penalty. (3-20-97)

a. The Tax Commission may waive the penalty if the taxpayer can show reasonable cause for the failure that resulted in the deficiency. (3-20-97)

b. The Tax Commission shall consider all factors when determining whether to waive a negligence

penalty. One factor is the taxpayer's record for filing and paying state taxes. A good record for filing and paying tax on returns filed annually is not by itself a sufficient reason to waive the penalty. (3-20-97)

05. Circumstances Precluding Waiver of Penalty. The following circumstances do not constitute sufficient cause to waive the penalty: (3-20-97)

- a. An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; (3-20-97)
- b. An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or (3-20-97)
- c. Inability to pay the tax. (3-20-97)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION
38.04.04 - RULES GOVERNING CAPITOL MALL PARKING
DOCKET NO. 38-0404-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 67-5708.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: The purpose of this proposed rule-making is to repeal the existing rules governing the administration of the Capitol Mall Parking Program. The rules are being rewritten to accommodate changes in facilities location, level of use, demand for parking spaces, and to allow for the use of technology that will aid in the administration of the parking program. The new rules are being published under Docket No. 38-0404-9702 in this volume of the Bulletin following this notice.

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

NEGOTIATED RULEMAKING: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, Department of Administration, 334-3388.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 18th day of August, 1997.

Joanna L. Guilfooy
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, ID 83720-0003
Ph: (208) 334-3388
Fx: (208) 334-2307

THIS RULE IS BEING REPEALED IN ITS ENTIRETY

IDAPA 38 - DEPARTMENT OF ADMINISTRATION
38.04.04 - RULES GOVERNING CAPITOL MALL PARKING
DOCKET NO. 38-0404-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 67-5708.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: The purpose of this proposed rule-making is to update the administration of the Capitol Mall Parking Program to accommodate changes in facilities location, level of use, demand for parking spaces, and to allow for the use of technology that will aid in the administration of the parking program. This will replace the current parking rules now in effect.

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

The charge for a parking permit shall be established by the Department of Administration. The monthly assigned parking fee will not exceed fifty dollars (\$50); general parking fees shall not exceed fifty percent (50%) of the assigned fee. The fee will not be changed more often than annually. Legislators and attaches who register for a parking space shall pay the general space fee for every month that the Legislature is in session. Vehicles belonging to state agencies leasing office space from the Department of Administration in the Capitol Mall shall receive general state vehicle parking permits for a general space monthly fee. The governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, superintendent of public instruction, president pro-tem of the senate and speaker of the house shall be provided assigned parking at no fee.

NEGOTIATED RULEMAKING: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, Department of Administration, 334-3388.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 18th day of August, 1997.

Joanna L. Guilfooy
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, ID 83720-0003
Ph: (208) 334-3388
Fx: (208) 334-2307

TEXT OF DOCKET NO. 38-0404-9702

IDAPA 38
TITLE 04
Chapter 04

38.04.04 - RULES GOVERNING CAPITOL MALL PARKING

000. LEGAL AUTHORITY.

The following Rules are promulgated pursuant to the authority of Section 67-5708, Idaho Code, and Senate Concurrent Resolution No. 135 (1976). ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.04, "Rules Governing Capitol Mall Parking," IDAPA 38, Title 04, Chapter 04. ()

02. Scope. These rules govern parking in the Capitol Mall. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, an agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost in the office of the agency. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative appeals of the procedures set forth in this chapter. ()

004. CITATION.

The official citation of this chapter is IDAPA 38.04.04.000 et seq. For example, this section's citation is IDAPA 38.04.04.004. ()

005. DEFINITIONS.

01. Assigned Parking. A parking space assigned to a particular person, vehicle, or agency. ()

02. Facilities Services Bureau of Facilities Services, Division of Public Works, Department of Administration. ()

03. Capitol Mall Employee. A state employee who receives a state-issued paycheck from a tenant agency. ()

04. Employee with a Disability. An employee with a disability as defined in Section 49-117(7)(b), Idaho Code. ()

05. General Parking. A parking space used for all Capitol Mall employees registered for general parking. ()

06. Legislative Attaché. A Capitol Mall employee who works for the legislative branch during the legislative session. ()

07. Temporary Contract Employee. An employee of a temporary service company working temporarily at the Capitol Mall to provide services in place of a full-time Capitol Mall employee on leave or vacation. ()

08. Tenant Agency. An agency occupying a building located in Boise and controlled and operated by Facilities Services, specifically excluding the State Insurance Fund and all agencies located at the building at Third and Main Streets in Boise. ()

09. Visitor. Anyone visiting the Capitol Mall to carry out state business or attend a state sponsored event.
()

006. -- 009. (RESERVED).

010. ADMINISTRATION.

The administration of Capitol Mall parking shall be under the direction of: ()

01. Address. Chief, Bureau of Facilities Services, Division of Public Works, Department of Administration.
()

02. Inquiries. All inquiries relating to Capitol Mall parking should be directed to the above office.
()

03. Hours. These rules are in effect Monday through Friday and during normal hours of operation. Parking will not be monitored during off hours except for unauthorized non-state parking. All parking lots and garages are open only to state employees and visitors. All lots and garages will be posted for state use only. ()

011. -- 099. (RESERVED).

100. PARKING LOT LOCATIONS.

All lots managed by Facilities Services located in the area bounded by Hays Street on the north, Thirteenth Street on the west, Grove Street on the south and First Street on the east and that are posted with green Capitol Mall parking signs.
()

101. -- 199. (RESERVED).

200. SPACE ALLOCATION.

01. Assigned Parking. ()

a. Assigned parking will be allotted and assigned by Facilities Services to: elected state officials; directors of executive departments; employees with a disability; individuals upon application and payment for an assigned parking space; state employee carpool vehicles; during the legislative session, legislators; and tenant agencies demonstrating, to the satisfaction of Facilities Services, an unusual circumstance or a compelling need for assigned parking for state vehicles. ()

b. Assigned Parking Spaces. In no event shall more than eighteen percent (18%) of total parking spaces be used for assigned parking. The following spaces shall be marked and set aside for assigned parking. Vehicles parking in these spaces shall display parking permits that are appropriate for assigned parking and shall park in the space assigned to that parking permit. The assigned parking spaces are the first floor of the State Parking Garage and those parking spaces clearly marked as assigned by a stenciled name or numbered block or such other place for assigned parking as designated by Facilities Services. ()

02. Legislative Parking. ()

a. Legislature in Session. When the Legislature is in session, Legislators shall receive, upon request and payment as provided for herein, assigned parking spaces and shall receive a "Legislator"-imprinted parking permit. During a Legislative session, vehicles parking in areas designated for Legislative parking must display permits imprinted "Legislator." During the time period that the Legislature is not in session, a vehicle displaying a "Legislator"-imprinted parking permit may park in any general parking space within the Capitol Mall. ()

b. Only during a regular or special session of the Legislature, the following areas shall be assigned for Legislative parking: those parking spaces on the third level of the State Parking Garage that are marked with gold parking blocks and those spaces in other lots that are marked with gold parking blocks or clearly marked for legislative use. During any time that the Legislature is not in session, these parking spaces will be used for general parking.
()

c. Violations. When the Legislature is in session, it shall be a violation of these rules to park in a parking space marked for Legislative use unless the vehicle has a parking permit imprinted with "Legislator." ()

03. Capitol Mall Disabled Employee Parking. ()

a. Long Term Disability. Employees with a permanent or long term disability (i.e., six (6) months or more) shall, upon payment of a general space monthly fee, be issued a parking permit imprinted "person with a disability" which shall allow unlimited parking in an assigned space in the Capitol Mall as close as possible to said employee's work station. ()

b. Short Term Disability. Employees with a short term disability (i.e., six (6) months or less) shall, upon payment of a general space monthly fee, be issued a "Special" parking permit which will allow unlimited parking in an assigned parking space in the Capitol Mall. Said special permit shall be limited in duration to the term of the disability. ()

c. An employee claiming a disability shall be required to submit a statement from a physician stating the duration and extent of the disability or a "person with a disability" parking permit from the Idaho Transportation Department. ()

04. Carpools. Sufficient space in Capitol Mall lots shall be assigned and marked for state employee carpool vehicles. "State employee carpool vehicle" is defined as any vehicle that carries, on a daily basis, three (3) or more Capitol Mall employees. Upon application, spaces shall be assigned at no cost, and an appropriate permit issued, for carpool vehicles. Upon the absence from work of a carpool employee, the carpool vehicle may park in its assigned space but under no circumstances may a carpool vehicle park in a carpool space when carrying less than two (2) employees. ()

05. State Vehicles. Parking for tenant agencies state vehicles will be on the top level of the State Parking Garage or in other Capitol Mall lots marked with green parking blocks or clearly marked for state vehicles only. State vehicles using these areas for permanent parking must have a properly displayed permit. An employee may park a private vehicle in a state vehicle space when removing a state vehicle and may use the state vehicle permit in the private vehicle. Non-Capitol Mall visiting state vehicles may park in these spots with no permit until 4:00 p.m. each weekday. ()

06. General Parking. All Capitol Mall employees will be eligible for general parking permits through a payroll deduction plan or automatic fee collection system. Capitol Mall employees participating in this plan will be issued employee general parking permits. Employee general parking permits shall be valid in any general space in any Capitol Mall parking lot or garage. ()

07. Visitor Parking. Short term daily parking areas for visitors will be available in various Capitol Mall parking lots on a no-charge basis, for at least the first hour. Visitor spaces shall be clearly marked with a sign with the words "Capitol Mall Visitor Parking Only. No Capitol Mall Employees." Visitor parking shall be limited as posted. Non-Capitol Mall state vehicles qualify for visitor parking. It shall be a violation of these rules for a state employee working in the Capitol Mall to park in a visitor parking space for any period of time between 8:00 a.m. and 5:00 p.m., Monday through Friday. ()

08. Special Visitor Permits. Facilities Services may issue "Special Visitor" parking permits. Vehicles displaying a valid "Special Visitor" parking permit attached as directed may park in a general parking space or as stamped on the Special Visitor parking permit. Special Visitor permits may be issued to contractors working in the Capitol Mall to allow a contractor to park a work vehicle in a visitor or general parking space. Upon application and proof of payment of the general parking fee, Facilities Services may issue a Special Visitor parking permit and allow general parking privileges to temporary contract employees and to employees of companies that provide a service to Capitol Mall employees, including but not limited to employees of the credit union and employees of vendors of the Commission for the Blind and Visually Impaired. ()

201. -- 299. (RESERVED).

300. SPACE CHARGES.

01. Charges. The charge for a parking permit shall be established by the Department of Administration. The monthly assigned parking fee will not exceed fifty dollars (\$50); general parking fees shall not exceed fifty percent (50%) of the assigned fee. The fee will not be changed more often than annually. Capitol Mall employees shall be charged on a payroll deduction basis or on an automatic deduction system. ()

02. Elected Officials. The governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, superintendent of public instruction, president pro-tem of the senate and speaker of the house shall be provided assigned parking at no fee. ()

03. Legislators. Legislators and attaches who register for a parking space shall pay the general space fee for every month that the Legislature is in session. ()

04. State Tenant Agency Vehicles. Vehicles belonging to state agencies leasing office space from the Department of Administration in the Capitol Mall shall receive general state vehicle parking permits for a general space monthly fee. ()

301. -- 399. (RESERVED).

400. PARKING PERMITS.

Any Capitol Mall employee may be issued a maximum of two (2) parking permits and will be charged the appropriate parking fee for each permit. Only one (1) such permit may be used at a time. In the event that a permit is lost or destroyed, an employee must sign a statement to that effect prior to a new permit being issued. A replacement charge, not to exceed the monthly general parking fee, shall be charged for a new permit. It shall be a violation of these rules to: use an invalid parking permit; use a parking permit reported lost or stolen; fail to properly display a valid Capitol Mall parking permit; or transfer a general employee permit to a non-registered vehicle. ()

401. -- 499. (RESERVED).

500. TERMINATION.

01. Delinquent Permits. Facilities Services may terminate any delinquent parking permit. A parking permit will become delinquent if the monthly parking fee is not paid by the 20th of each month for which the charge is due. ()

02. Parking Privileges Suspension. Facilities Services may terminate parking privileges for up to six (6) months for a violation of these rules, except that a termination of a delinquent permit shall be effective only until the permit is reactivated as provided for herein. In addition, any employee observed repeatedly by Capitol Mall security to be driving above posted speed limits or driving against posted directional arrows may have his permit suspended for a period of up to six (6) months, after receiving notice of the violations. Any employee subscriber who has been cited for three (3) violations of these rules and paid a penalty may have his parking privileges revoked for a period of up to six (6) months. ()

03. Impound and Towing. Any vehicle that does not have a valid Capitol Mall parking permit may be impounded if it has been cited for three (3) or more violations of these rules, and the citation has not been contested. There will be a service fee, not to exceed forty-five dollars (\$45), for releasing all impounded vehicles. Impounding a vehicle means attaching a device to the vehicle so that the vehicle cannot be moved. Any vehicle parking in an unauthorized space or in a no parking area may be towed or impounded. Any expenses for towing or impound fees are the responsibility of the owner. ()

04. Reactivating Permit. A terminated parking permit may be reactivated, after any applicable termination period, by reapplication for the deduction plan through the Bureau of Facilities Services and payment of any delinquent parking fees. ()

05. Parking Permit Termination Procedure. If a Capitol Mall employee wishes to terminate parking privileges, that employee must submit a request for termination to Facilities Services and surrender all parking

permit(s). Facilities Services will issue an authorization for termination to the employee's payroll clerk to effect a cessation of the monthly parking fee deduction. All payroll clerks shall obtain an authorization for termination from Facilities Services prior to terminating the parking fee from the employee's payroll deduction schedule. No refund will occur after a monthly payroll deduction has been made. ()

501. -- 599. (RESERVED).

600. LOADING ZONE PARKING SPACES.

A limited number of spaces in the Capitol Mall shall be designated and marked for short-term pick-up and delivery parking. It shall be a violation of these rules to park in these spaces for an unauthorized purpose or for longer than the designated time allowed which time shall be clearly marked. ()

601. -- 699. (RESERVED).

700. PARKING IN MARKED SPACES ONLY.

It shall be a violation of these rules to park a motor vehicle, including a motorcycle, in a location that is not marked as a parking space within the Capitol Mall. This shall include, but not be limited to, parking in or on a driveway, sidewalk or common driving area of any parking lot, or parking one (1) vehicle in more than one (1) space. ()

701. -- 799. (RESERVED).

800. ENFORCEMENT.

Facilities Services shall leave notice at or on any vehicle parked in violation of these rules. This notice may be in the form of a warning or violation notice and shall bear the date and hour of leaving the same at or upon the vehicle. A warning may be used only for those infractions that do not cause the loss of a parking space and do not cause a safety hazard. If a vehicle has been issued two (2) warnings in any one (1) year period, upon a subsequent violation, a violation notice shall be issued. All violation notices issued by Facilities Services shall be forwarded to the City of Boise for collection or prosecution. The authority of Facilities Services to issue warnings or violation notices is in addition to, and not in limitation of, the authority of Facilities Services to terminate parking privileges as provided for in these rules. ()

801. -- 899. (RESERVED).

900. WAIVER OF RULES.

Pursuant to Idaho Code Section 67-5708, the Administrator for the Division of Public Works may waive any or all of the provisions of these rules if the Administrator determines that application could result in discrimination among employees or that application of the rules would cause hardship or an unintended result. ()

901. -- 999. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.71 - RULES GOVERNING DRIVERS LICENSE VIOLATION POINT COUNT SYSTEM

DOCKET NO. 39-0271-9701

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment by 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) 49-326, 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, May 7, 1997, Volume No. 97-5, pages 142 through 145.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jane Caviness at 208-334-8700.

DATED this 19th day of August, 1997.

Linda L. Emry, Administrative Secretary
Office of Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
P. O. Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-334-8195

**IDAPA 39
TITLE 02
Chapter 71**

RULES GOVERNING DRIVERS LICENSE VIOLATION POINT COUNT SYSTEM

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 97-5, May 7, 1997,
pages 142 through 145.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.17 - RULES GOVERNING OVERSIZE PERMITS FOR MANUFACTURED
HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS

DOCKET NO. 39-0317-9701

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment by 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) 40-312 and 49-1004, 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, February 5, 1997, Volume No. 97-2, pages 13 through 15.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Regina Phipps at 208-334-8418.

DATED this 19th day of August, 1997.

Linda L. Emry, Administrative Secretary
Office of Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
P. O. Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-334-8195

IDAPA 39
TITLE 03
Chapter 17

RULES GOVERNING OVERSIZE PERMITS FOR MANUFACTURED
HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 97-2, February 5, 1997,
pages 13 through 15.

This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.04.08 - RULES GOVERNING OPERATIONS AT STATE AIRPORTS

DOCKET NO. 39-0408-9701

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment by 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) 21-111, 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, May 7, 1997, Volume No. 97-5, pages 150 and 151.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mark Young at 208-334-8893.

DATED this 19th day of August, 1997.

Linda L. Emry, Administrative Secretary
Office of Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
P. O. Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-334-8195

IDAPA 39
TITLE 04
Chapter 08

RULES GOVERNING OPERATIONS AT STATE AIRPORTS

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 97-5, May 7, 1997,
pages 150 and 151.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 41 - PUBLIC HEALTH DISTRICTS
41.08. 01 - RULES GOVERNING APPEAL FROM ADMINISTRATIVE
DECISION AND REQUEST FOR HEARING

DOCKET NO. 41-0801-9701

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 become final and effective July 1, 1998, 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 Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) Title 39, Chapter 4 and Title 39, Chapter 36, 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 any change.

Public Health Districts 2, 3, 4, 5, 6, and 7 perceive a need for a process to be used by citizens of the districts and by Public Health Districts 2, 3, 4, 5, 6, and 7 to address citizen grievances regarding administrative decisions made by Public Health Districts 2, 3, 4, 5, 6, and 7.

The proposed rules have been amended in response to public comment and the entire rule is being reprinted to make typographical, transcriptional and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Tom Turco at (208) 327-8520.

Dated this 19th day of August, 1997.

Kathy Holley
Director
Central District Health Department
707 N. Armstrong Place
Boise, ID 83704
Phone: 208-327-8501
Fax: 208-327-8500

IDAPA 41
TITLE 08
Chapter 01

41.08.01 - RULES GOVERNING APPEAL FROM
ADMINISTRATIVE DECISION AN REQUEST FOR HEARING

There are substantive changes
from the proposed rule text.

The entire docket is being reprinted in this
Bulletin following this notice.

The complete original text was published in the
Idaho Administrative Bulletin, Volume 97-7, May 7, 1997,
pages 152 through 155.

This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature
for final adoption.

TEXT OF DOCKET NO. 41-0801-9701

000. LEGAL AUTHORITY.

Title 39, Chapter 4 and Title 39, Chapter 36, Idaho Code, grants authority to Public Health Districts to adopt rules, regulations and standards to protect the environment and health of the Public Health Districts. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be known as Public Health District, "Appeal from Administrative Decision and Request for Hearing." ()

02. Scope. The provisions of these rules establish the procedure for appeal from administrative decision and request for hearing. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter. ()

003. DEFINITIONS.

01. Board of Health. Means the Board of Health for Public Health Districts 2, 3, 4, 5, 6, and 7. ()

02. District Director. Means the District Director of Public Health Districts 2, 3, 4, 5, 6, and 7. ()

03. District Health Department. Means the jurisdictional public health district as defined in Section 39-408, Idaho Code. ()

04. Division Director. Means any of the Division Directors for Public Health Districts 2, 3, 4, 5, 6, and 7. ()

05. Record. Means the Hearing Record as cited in IDAPA 16, Title 05, Chapter 03, Subsection 100.08. The Board, Director, or Hearing Officer and the Hearing Coordinator must arrange for a record to be made of the contested case hearing. The record must be a verbatim record and it shall be magnetically recorded by two (2) recording devices, unless a Party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record shall be transcribed at the expense of the Party requesting a transcription and prepayment or guarantee of payment may be required. Once a transcription is requested, any Party may obtain a copy at the Party's own expense. The recorded proceedings will be provided to the Hearings Coordinator for inclusion into the record. The Department shall maintain an official record of each contested case for a period of

not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. The record shall include all notices of proceedings, pleadings, motions, briefs, petitions and intermediate rulings, evidence received or considered, any oral or written statements allowed by the hearing officer, statement of matters officially noticed, offers of proof and objections and rulings thereon, the recording of the proceedings or any transcript of all or part of the proceedings, staff memoranda or data submitted to the hearing authority in connection with the proceedings, and any recommended order, preliminary order, final order or order on reconsideration. ()

06. Staff Member. Means any of the staff members of Public Health Districts 2, 3, 4, 5, 6, and 7. ()

07. Supervisor. Means any of the supervisors of Public Health Districts 2, 3, 4, 5, 6, and 7. ()

004. APPLICABILITY.

These rules are applicable to the citizens and district health departments of Public Health Districts 2, 3, 4, 5, 6, and 7. ()

005.-- 010. (RESERVED).

011. APPEAL OF STAFF MEMBER DECISION.

01. Citizen Appeal. Any citizen aggrieved by a decision made by a staff member of the District Health Department may submit an administrative appeal to the District Health Department supervisor for review. ()

02. Limitation of Time Periods. The individual program rules for time limitations within which certain actions must be taken or documents filed shall be followed. In the event there is no provision in the Idaho Code or other specific rule, a party shall have thirty-five (35) days from the receipt of an adverse order or notice of decision to file an appeal of any adverse order or notice of decision. ()

03. Format for Appeal. All administrative appeals shall be made in writing, and shall contain the following information: ()

a. The nature of the decision upon which the appeal is brought, including the code, ordinance, rule, or policy cited by the Staff Member to support the decision. ()

b. The ruling or decision desired by the appellant. ()

c. A statement identifying the code, ordinance, rule, or policy which supports the citizen's position. ()

d. The reason(s) why the citizen believes the code, ordinance, rule or policy has been misapplied. ()

012. BASIS FOR APPEAL OF STAFF MEMBER DECISION.

01. Supervisor or Division Director Role. Each appeal request shall be submitted to a supervisor or Division Director who shall determine whether the issue raised is tied to application of a statute, policy, or rule administered by the District Health Department, or whether the issue involves the substance of any statute, policy or rule. ()

02. Criteria for Appeal. An appeal is appropriate only in the instance of alleged misapplication of a state or health district statute, rule or policy. ()

013. PROCEDURE FOR APPEAL OF STAFF MEMBER DECISION.

01. Hearing Schedule. Within five (5) days of receipt of an administrative appeal, the staff member whose decision is being appealed shall assist the citizen to schedule a hearing before the supervisor or Division

Director as soon as the appeal can be accommodated. ()

02. Fee. No fee shall be charged to any appeal applicant whose case shall be brought before the supervisor or Division Director. ()

03. Staff Member Representation. The staff member whose decision has been challenged shall be present. ()

04. Length of Presentations. Presentations shall be limited to ten (10) minutes for each citizen and ten (10) minutes for the staff member, unless extraordinary circumstances require otherwise as determined by the supervisor or Division Director. ()

05. Reports. The staff member or citizen may submit a written explanation for the supervisor's or Division Director's consideration prior to the start of the hearing. A copy of any staff member explanation shall be provided to the citizen at the time it is prepared for presentation to the supervisor or Division Director. ()

014. REVIEW BY THE SUPERVISOR OR DIVISION DIRECTOR.

01. Decision. Within five (5) days after hearing the request of a citizen, the supervisor or Division Director shall affirm the staff member's decision, reverse the decision, or affirm the decision conditionally. ()

02. Format. The decision in any such appeal shall be made in writing and shall set forth the reasons thereof. ()

015. APPEAL OF THE SUPERVISOR'S OR DIVISION DIRECTOR'S DECISION.

01. District Director Role. An appeal of the supervisor's or Division Director's decision may be taken to the District Director of the District Health Department, solely upon the record compiled in accordance with this procedure. ()

02. Format. Said appeal may be accompanied by a written explanation of the basis for appeal, not exceeding two (2) typewritten pages. ()

03. Options. The District Director may request more information or may schedule oral presentations, if desired. ()

016. REVIEW BY THE DISTRICT DIRECTOR.

01. Decision. Within five (5) days after reviewing the request of a citizen, the District Director shall affirm the supervisor's or Division Director's decision, reverse the decision, or affirm the decision conditionally. ()

02. Format. The District Director's decision in any such appeal shall be made in writing and shall set forth the reasons thereof. ()

017. APPEAL OF THE DISTRICT DIRECTOR'S DECISION.

01. Board of Health Role. An appeal of the District Director's decision may be taken to the Board of Health of the District Health Department, solely upon the record compiled in accordance with this procedure. ()

02. Format. Said appeal may be accompanied by a written explanation of the basis for appeal, not exceeding two (2) typewritten pages. ()

03. Options. The Board may request more information or may schedule oral presentations, if desired. ()

04. Final Agency Appeal. The Board of Health's decision shall be final in matters subject to the appeal

procedure outlined herein. ()

018. REVIEW BY THE BOARD OF HEALTH.

01. Board of Health Decision. After reviewing the request of a citizen at the next scheduled board meeting after the request is received, within five (5) days the Board of Health shall affirm the District Director's decision, reverse the decision, or affirm the decision conditionally. ()

02. Format. The Board of Health decision in any such appeal shall be made in writing and shall set forth the reasons thereof. ()

03. Further Appeal. Further appeal outside the agency may be authorized by provisions of Idaho code and IDAPA. ()

019. -- 999. (RESERVED).

IDAPA 48 - DEPARTMENT OF COMMERCE
48.01.01 - RULES GOVERNING IDAHO COMMUNITY DEVELOPMENT
BLOCK GRANT (ICDBG) PROGRAM

DOCKET NO. 48-0101-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) of the Housing and Community Development Acts of 1974, as amended, (42 USC, Sec. 5301) and Department of Housing and Urban Development Rules 24 CFR, Part 570, Subpart I.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making: The department proposes to take community center applications from the public facility category and set aside and include them in the senior citizen center set aside to compete only with senior center applications which are similar in type and function. This will provide opportunities for community centers to be competitive in the grant application and award process without having to compete with other health and safety related public facility applications.

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

There is no fee related to rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed rule change is to create a benefit for communities with community center projects. The proposed change is not controversial but creates an added opportunity for ICDBG applicants.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Gloria Mabbutt, Program Manager, Idaho Department of Commerce, P. O. Box 83720, Boise, ID 83720-0093, (208) 334-2470.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 22, 1997.

DATED this 18th day of August 1997

Gloria Mabbutt, Program Manager
Idaho Department of Commerce
700 West State Street
P. O. Box 83720
Boise, ID 83720-0093
(208) 334-2470

TEXT OF DOCKET NO. 48-0101-9701

011. GRANT PROGRAM.

01. Grant Types. The following ~~five (5)~~ six (6) types of grants are available under the Idaho Community Development Block Grant program: Public Facility or Housing (PFH); Economic Development (ED); Community Center (CC) or Senior Citizen Center (SR); and Imminent Threat (IT). ~~(3-20-97)~~()

02. General Descriptions. In any project, eligibility must meet two (2) tests. First, the project must be described by one (1) or more eligible activities (Section 022) and second, the project must qualify in a national objective (Section 015). (7-6-94)

03. Public Facility or Housing Grants. (7-6-94)

a. Public facility projects are those that construct or improve facilities including, but not limited to, sewer or water systems, streets, curbs, gutters, and sidewalks, fire stations, public medical and health facilities, ~~community centers~~, libraries, group homes, publicly owned commercial or industrial property. Some public facilities such as city halls, courthouses, police stations, jails, and schools are by definition ineligible (Section 052) or have extreme difficulty meeting a national objective. Other public facilities such as solid waste disposal, parks, maintenance shops are sometimes eligible only in very narrow circumstances. (7-6-94)()

b. Housing projects are those that improve or construct housing units for low and moderate income families. Projects include, but are not limited to, rehabilitation of public housing, rental rehabilitation, owner-occupied housing rehabilitation, acquisition of real property for rental rehabilitation, acquisition of land and site development for new rental housing, replacement housing, rehabilitation of school buildings into housing, acquisition of sites, site development and acquisition of manufactured housing for manufactured home parks. (7-6-94)

04. Economic Development Grants. There are two (2) types of Economic Development projects. (7-6-94)

a. The first is the provision of infrastructure, usually sewer, water, or street, to a specific business expansion or new location. Manufacturing or processing companies are the more competitive projects. The grant funds assist with the public costs of extending services in exchange for a commitment from the business to create jobs for low and moderate income persons. (7-6-94)

b. The second grant is to assist with downtown revitalization. The downtown merchants and landowners must organize themselves and develop a plan of specific improvement actions. The downtown area must meet the slum and blight national objective. (7-6-94)

05. Center Grants. ()

a. Community Center Grants. Community Center projects are a specific type of public facility project. Funds are set aside for these facilities only. Community centers must be owned or operated for the benefit of all project area or neighborhood residents. ()

b. Senior Citizen Center Grants. Senior Citizen Center projects are a specific type of public facility project. Funds are set aside for these facilities only, and community centers only. The center must be owned or operated for the benefit of senior citizens. All other uses are incidental to Senior Citizen activities and programs. (7-6-94)()

06. Imminent Threat Grants. Imminent Threat projects are those which correct or eliminate a recent threat to human health or safety (see Section 021 and Section 108). (7-6-94)

07. Grant Award System. Since demand for grants far exceeds available funds, a competitive system is used to select grants, except for the imminent threat and technical assistance grants. Grant applications shall be submitted, rated and selected for funding according to the criteria and procedures established by these rules. (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

013. QUALIFICATION OF APPLICANTS.

Applicants shall only apply for a grant for a project which lies within their jurisdictional or impact area boundary. The project must address the needs of the residents of their jurisdiction or impact area. Applications shall not be submitted in behalf of other jurisdictions solely for administrative convenience (see Section 014). Counties may apply in behalf of more than one (1) unincorporated community or unincorporated urbanized area. However, counties may apply for only one (1) grant which has county-wide benefit. Counties or cities may apply on behalf of senior citizen groups for a senior citizen facility grant. Applying for a PFH grant does not disqualify an applicant from applying for a CS or SR grant. A county or a city shall not be eligible to apply for a grant if it has unresolved audit findings, any unresolved disallowed costs, or any unresolved prior performance problems from any previous grants in any category.

(7-6-94)()

(BREAK IN CONTINUITY OF SECTIONS)

099. COMMUNITY CENTER AND SENIOR CITIZEN CENTER GRANTS.

01. ~~Senior Citizen Center (SR) Community Center Grants. Community Center Grants, which address the need for community centers for senior citizen groups, are part of a competitive application process which is separate from the PFH project grants in the annual grant selection process. They are only for Senior Citizen Community Centers, not for other facilities such as shelter homes, nursing homes, and senior housing and other geriatric facilities. Only cities or counties may apply. SRCC grants will be funded to a maximum of one hundred thousand dollars (\$100,000). For construction of a new Senior Community Center and on case-by-case basis; the staff may recommend for the EAC's consideration additional funding above the one hundred thousand dollar (\$100,000) grant limit, but not to exceed a total grant of one hundred fifty thousand dollars (\$150,000). Consideration of additional funds will be based upon whether the existing center is a designated meal site serving three or more meals per week; has kitchen facilities and the new facility will serve other significant community needs or groups; architectural plans and cost estimates are reasonable and well planned to suit the documented needs of the seniors community or neighborhood residents, and with the supporting advice of the regional office on aging. See Section 107 entitled Award Process, for details on the award process.~~

(3-20-97)()

02. ~~Senior Citizen Center Grants. Senior Citizen Center Grants, which address the need for community centers for senior citizen groups, are part of a competitive application process which is separate from the PFH project grants in the annual grant selection process. They are only for Senior Citizen Centers, not for other facilities such as shelter homes, nursing homes, senior housing and other geriatric facilities. Only cities or counties may apply. SR grants will be funded to a maximum of one hundred thousand dollars (\$100,000). For construction of a new Senior Center and on a case by case basis; the staff may recommend EAC's consideration of additional funding above the one hundred thousand dollar (\$100,000) grant limit, but not to exceed a total grant of one hundred fifty thousand dollars (\$150,000). Consideration of additional funds will be based upon whether the existing center is a designated meal site serving three (3) or more meals per week, the new facility will serve other significant community needs or groups; architectural plans and cost estimates are reasonable and well planned to suit the documented needs of the senior and with the supporting advice of the regional office on aging. See Section 107 entitled Award Process, for details on the award process.~~

()

043. Eligible Uses. The following are eligible uses of Community Center or Senior Citizen Center Grants: construction of facilities; purchase of facilities; rehabilitation of facilities; purchase of essential fixtures (a fixture is defined as equipment that is permanently attached to the building); and removal of architectural barriers for the handicapped.

(7-6-94)()

024. Local Match Committed to the Project. Match can be in the form of dollars, land, building materials and fixtures, volunteer labor, and waived fees. In the case of new construction or purchase and rehabilitation, the appraised or assessed value of donated real estate can be part of the match. Value of an existing ~~senior citizen~~ facility

cannot be used as match when the grant is for rehabilitation and/or expansion of the facility. Firm commitments of donated money, material and/or real estate must accompany the Application. (7-6-94)(____)

035. Priorities in Funding. (7-6-94)

a. For Community Centers, the first priority for funding will be remodeling existing facilities to meet Title III Standards, to meet building codes, to provide adequate handicapped access and facilities and to provide adequate kitchen facilities for serving community or neighborhood residents. The second priority for funding will be construction of a new facility to replace an existing center. This will be considered only when the applicant demonstrates that the existing facility cannot be restored to adequate facility standards or that the cost of rehabilitation exceeds the cost of new construction, or that the facility is too small for the number of persons who presently use the facility and expansion costs of the existing structure exceed new construction costs; or the construction of a community center facility is in a community where no facility now exists; but only where other Community Center facilities are not available, and if adequate local operating funds are committed. (____)

b. For Senior Citizen Centers, the first priority for funding will be remodeling existing facilities to meet Title III Standards, to meet building codes, to provide adequate handicapped access and facilities and to provide adequate kitchen facilities for serving the current senior citizen membership. The second priority for funding will be: construction of a new facility to replace an existing center. This will be considered only when the applicant demonstrates that the existing facility cannot be restored to adequate facility standards or that the cost of rehabilitation exceeds the cost of new construction, or that the facility is too small for the number of Seniors who presently use the facility and expansion costs of the existing structure exceed new construction costs; or the construction of a Senior Center facility in a community where no facility now exists; but only where: other Senior Center facilities are not available; and if adequate local operating funds are committed. (7-6-94)(____)

100. APPLICATION.

The Application shall identify the eligible components of the physical plant of the center and define which items are critical, necessary, or nice to have for the health and safety of the seniors persons using the facility. The projects with the highest needs and the greatest preparedness to proceed would be recommended for funding. (7-6-94)(____)

01. Notice of Intent. (See Section 061) (7-6-94)

02. Deadline. CC and SR Applications will be due on the first Friday of March each year. The Application shall be submitted according to Section 062. The EAC will review the Applications and make funding recommendations at the April Council meeting. (3-20-97)(____)

03. Information to Be Included. The Application shall contain the information required by Section 074. The general project description (Subsection 074.06) shall contain the additional information described below. The Application shall be on the forms provided by the Department and according to the format described in Sections 072 and 073. The Application shall also address the center's geographic service area, the number of seniors beneficiaries in the service area, other demographic data including minority and handicapped status, and the needs and impact of the project upon the lives of the residents, neighborhood, or senior citizens. (7-6-94)(____)

04. Restrictions. An applicant is not qualified to apply for a CS or SR grant if it has a currently funded community center or senior citizen facility grant, the funds of which are not eighty percent (80%) drawn down as shown on the Department's records as of the last date for accepting Applications. (7-6-94)(____)

05. The General Project Description Shall Address the Following Information. (7-6-94)

a. Health services. If the center is a designated meal site, provide information of the number of meal days weekly and the number of meals served weekly, monthly, and annually. This information should include the Meals on Wheels Program any outreach services. Other health services provided to seniors at the center should be described. Also, the average number of social education activities scheduled per month should be included. Any provision or plans to provide adult day care should be described. (7-6-94)(____)

b. Building information. The Application shall describe the building's physical condition including the square footage of the building, roof condition, exterior conditions, foundation conditions, parking and floor and

other structural conditions. (7-6-94)

c. Interior building. The conditions of the interior of the center should be described, including electrical and plumbing conditions, handicapped access to building and interior spaces, handicapped bathrooms, heating and air conditioning equipment conditions, energy efficiency and weatherization of building, kitchen and food storage conditions and fire safety conditions. (7-6-94)

d. Match committed. The amount of local funds and in-kind match that the center can commit to the project should be described and documented. (7-6-94)

e. Planning of the project. The planning efforts for the ~~senior center project~~ should be described. This may include the efforts to determine the needs of the center, and the solicitation of community and local government support. Items such as Health and Safety inspections, architectural or engineering designs, Area Agency inspections and recommendations, schedules of project construction and cost estimates may be included. (7-6-94)(____)

06. Presentation. Following selection of the Application by the Department staff. According to Section 065. (7-6-94)

101. REVIEW AND RANKING PROCESS.

The Application shall be reviewed according to the following point categories and shall be based upon the information submitted and any additional information requested by the Department. (one thousand (1,000) points possible). (7-6-94)

01. Physical Conditions (three hundred fifty (350) points). Points will be assigned to the needs of the center based upon the number of needs and the urgency of the needs. Department staff shall, upon review of the documentation and descriptions in the application, determine a rating from ~~zero (0)~~ one (1) to three (3) based upon the criticalness and urgency of each of the following problems. The ratings will be totaled and ranked. Those Applications ranking the highest will receive the most points. (The number of Applications divided into three hundred fifty (350) points equals the points per rank.)

TABLE 5 --"CRITICALNESS AND URGENCY OF PROBLEMS"					
		Problem or Need Rating			
		<u>Violation of Laws/ Bldg. Codes/Health and Safety Concerns</u>	<u>Health and Safety Problems</u>	<u>No Violations or Health and Safety Concerns</u>	
<u>Identified in Project Description Narrative</u>	<u>Identification of Problem</u>	<u>Critical 1</u>	<u>Urgent 2</u>	<u>Nice to Have 3</u>	<u>None 0</u>
	Physical Conditions: Structural Problems				
	Roof				
	Walls				
	Foundation				
	Floors				
	Weatherization				
	Expansion for adult day <u>care</u>				
	Care facility <u>Other</u>				

TABLE 5 --"CRITICALNESS AND URGENCY OF PROBLEMS"					
		Problem or Need Rating			
		<u>Violation of Laws/ Bldg. Codes/Health and Safety Concerns</u>	<u>Health and Safety Problems</u>	<u>No Violations or Health and Safety Concerns</u>	
<u>Identified in Project Description Narrative</u>	<u>Identification of Problem</u>	Critical 1	Urgent 2	Nice to Have 3	None 0
	Interior Problems:				
	Bathrooms				
	Handicapped Access				
	Electrical/plumbing/lighting				
	Heating/air conditioning				
	Fire safety				
	<u>Unusable space</u>				
	<u>Other</u>				
	Kitchen and Food Storage:				
	Health inspection				
	<u>Capacity of dry storage</u>				
	<u>Capacity of cold storage</u>				
	<u>Equipment</u>				
	<u>Other</u>				
	<u>Handicapped Accessibility</u>				
	<u>Parking</u>				
	<u>Entry</u>				
	<u>Bathrooms</u>				
	<u>Other</u>				
	TOTALS:				
		<u>ASSIGNED RANKING</u>			

(7-6-94)()

02. Planning and Schedule (two hundred (200) points). Points will be assigned according to the apparent effort made to determine the needs of the center, the nature of the problems, the solutions, and the costs of the project and a realistic schedule for implementing the project. (7-6-94)

a. Pre-planning (fifty (50) points). This is a measure of the effort made to quantify the problems through building code inspections, health inspections, and architectural and engineering review. (7-6-94)

b. Project planning (fifty (50) points). This is a measure of the effort made to coordinate all of the

various agencies that may be involved in funding and planning the project. Also included is all relevant information that all grant responsibilities and requirements have been included in the planning. (7-6-94)

c. Schedule (fifty (50) points). This is a measure of the effort to schedule all the project activities, including the different grant requirements and contractors that may be involved. (7-6-94)

d. Costs (fifty (50) points). This is a measure of the effort to determine reasonable cost estimates for the various elements of the project. (7-6-94)

03. **Beneficiaries Benefits** (one hundred fifty (150) points). (7-6-94)

a. ~~Population and Activities (fifty (50) points). A Senior Center is presumed to meet the national objective of benefiting low and moderate income persons (unless there is evidence to the contrary). However, it is important to measure how well a center is attracting and serving its potential senior members. The ratios of all seniors in the center's service area and those using the center are ranked from the highest to the least to compare the Applications against each other. The rankings will be divided into quartiles and assigned points as indicated.~~(7-6-94)

b. ~~Activities Provided (fifty (50) one hundred (100) points). This is also a measure of how well the center is meeting the needs of its members, neighborhood, or community. It is based upon the number and quality of activities and services the center is providing to seniors. Activities can include health, recreational, social, educational, and transportation services. Quartile points will be assigned to this area.~~

Highest Quartile	fifty (50) <u>One hundred (100)</u> points
Second Quartile	thirty (30) <u>Sixty (60)</u> points
Third Quartile	fifteen (15) <u>Thirty (30)</u> points
Lowest <u>Fourth</u> Quartile	zero (0) points

(7-6-94)()

e. ~~Meals Provided (twenty-five (25) points). This is a measure of how well the center is serving the nutritional needs of the seniors.~~ (7-6-94)

~~fb.~~ Low and moderate income and mMinority outreach activities (~~twenty-five (25)~~ fifty (50) points). This is a measure of ~~the existing or proposed~~ efforts made to include low and moderate income and minority participation in the center's activities. (7-6-94)()

04. Match (one hundred (100) points). Cash and in-kind donations which are committed to the project shall receive points according to the percentage committed up to the total points in the category of match. The sixty (60) points for cash match shall be multiplied by the percentage resulting from the cash match divided by total project cost. The forty (40) points for in-kind match shall be multiplied by the percentage resulting from the in-kind match divided by the total project costs. (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

152. GRANT AWARD.

01. Funding Allocations. Each year the Department will receive an allocation from the Department of Housing and Urban Development. This allocation is derived from the formula contained in 42 USC, Sec. 5301, the Housing and Community Development Act of 1974, as amended. The allocation shall be generally divided in the following manner: first, one hundred thousand dollars (\$100,000) plus two percent (2%) of the total shall be reserved for the Department's administrative costs; second, one percent (1%) of the total shall be reserved for Technical Assistance Grants; third, five percent (5%) or three hundred thousand dollars (\$300,000), whichever is less, of the

total allocation shall be set aside for Imminent Threat (IT) grants; fourth, six percent (6%) or six hundred thousand dollars (\$600,000) whichever is less, of the total allocation, shall be set aside for Community Center (CS) or Senior Citizen Center (SR) grants; fifth, any program income, recaptured funds, or carryover funds from the previous fiscal years shall be added to the remainder; and finally, of the remainder, fifty percent (50%) shall be reserved for Public Facilities or Housing (PFH) grants and fifty percent (50%) for Economic Development (ED) grants. (~~3-20-97~~)()

02. Shifting of Funds. The above allocation divisions are to establish target amounts for decision making by the Economic Advisory Council (EAC). This division shall be made for the January EAC meeting. These targets may be modified by the Department Director with the advice of the EAC. The allocation system shall be updated quarterly before each quarterly EAC meeting to include any additional recaptured funds, program income, or carryover funds. Of the allocation for ED grants, one quarter of the amount shall be set aside for funding full-applications during the quarter following each EAC meeting. The quarterly set-aside amount may be modified at the discretion of the Department Director upon the advice of the Council. Any funds not awarded in the PFH category shall be shifted to the first quarter ED category. If in any quarter there are surplus funds in the ED category, the Department Director, with the advice of the EAC, may shift funds back to the PFH or CC and SR category to fund standby projects. Otherwise, surplus funds not awarded to ED projects in a quarter shall be carried into the succeeding quarter ED set-aside. (~~3-20-97~~)()

03. Standby Applications. At its quarterly meeting in April of each year, the Economic Advisory Council (EAC) may recommend PFH or CC and SR Applications for funding even though not enough funds are available to fund the project(s). These Applications become "standby projects." Standby projects shall be eligible for funding should additional funds become available or surplus funds exist in the ED category. At any subsequent quarterly meeting, the Advisory Council may review and recommend a standby project to the Governor for funding. Standby status shall continue through the fourth quarterly meeting. Any standby projects not funded shall automatically be invited to submit an Addendum for the next Fiscal Year, thus bypassing the Application stage of the application process. However, the Application must remain eligible and must continue to meet all requirements of the program regulations. The standby applicant shall update its Application during the Addendum process. (~~3-20-97~~)()

04. Termination of Project Selection for Funding. (7-6-94)

a. If, during the period between the award of a grant and signing of a grant contract, a project loses its viability, its status of being selected for funding may be terminated by the Department. The Department shall, by letter, notify the applicant that in the judgment of the Department, the applicant's project is no longer viable and that the applicant has a clearly stated period of time no less than fourteen (14) days to demonstrate the project's viability. If viability cannot be demonstrated within the stated period of time the award of the grant status shall be considered terminated and the funds be made available for the next standby project. (7-6-94)

b. After a grant contract has been executed, the Department shall periodically evaluate the progress of the project. If, at any time, the project loses viability and/or cannot be completed as described in the Application, the Department shall, by letter, notify the grantee that the grant contract shall be terminated within a clearly stated period of time of no less than fourteen (14) days from the date of the letter. The grantee may, within the stated period of time, demonstrate substantial progress on the project and request the Department revoke the termination. If viability cannot be demonstrated within the specified amount of time, the grant shall be considered terminated. (7-6-94)

c. Loss of viability will be defined to include: the inability to secure the other project financing; the lack of due diligence to pursue the implementation of project requirements; the lack of local coordination with all funding and regulatory agencies; the inability to develop agreements necessary to manage the cash flow and ownership of the project where several different entities are involved in the project; and the inability to complete a project of the same general size and benefits as presented in the application. (7-6-94)

05. Excessive Funds. In the event a project can be completed for less than the grant amount, the difference between actual project costs and the grant amount shall be reserved by the Department for standby projects, or added to the total of the next fiscal year allocation for distribution. The Department shall amend the grant contract to reflect the reduced costs. In extraordinary circumstances the excess funds may be used for an eligible activity which further enhances the project as described in the Application. Before the Department decides to allow the additional activity, the grantee must demonstrate the activity will provide an equal or greater benefit than the

original project; it will increase the benefits to low and moderate income persons, it will be completed within the original time frame, and the additional activity will be completed with the excess funds. The grantee must also show completion of the original project, its objectives and benefits. (7-6-94)

06. Amendment of Project. A funded project as described in the Application shall not be changed without prior approval from the Department Director. Any amendment of the project shall be reviewed to determine if the project will retain its competitive ranking in the Application review and ranking system. Any amendment shall provide equal or greater benefits than the original project. In unusual circumstances, the Department Director may approve a grant amendment increasing the grant amount, provided unobligated funds are available. In unusual circumstances the Department Director may waive the ten percent (10%) limitation on administrative costs when, in the opinion of the Department, the complexity of the project warrants an increase. (7-6-94)

07. Allowable Costs. Once an applicant has been invited to submit an Addendum and prior to the effective date of a grant contract an applicant submitting an Addendum may obligate and spend out of local funds for the purpose below. If awarded a grant and after the effective date of the grant contract, the grantee may be reimbursed for these costs provided such locally funded activities are undertaken in compliance with the program requirements (including but not limited to procurement, financial, acquisition, environmental and the ten percent (10%) limitation on administrative costs). Other project costs shall not be incurred until the Special Terms and Conditions of the contract are completed by the grantee and the funds released by the Department. (See Section 080.) (7-6-94)

a. Planning, Design and Administration. Procure and proceed with administrative and architectural or engineering services, adopting the Fair Housing Resolution and the Anti-Displacement Plan, and having public hearings. (7-6-94)

b. Project Costs, such as: preliminary and final Engineering Design, preliminary and final Architectural Design, conducting the Environmental Assessment, and completing procedural requirements for acquisition, but not the cost of the property. (7-6-94)

08. Audit Requirements. All ICDBG projects shall be audited annually or biannually in accordance with Sections 50-1010 and 31-1701, Idaho Code, the Single Audit Act of 1984, the implementing regulations in OMB Circular A-128, and all applicable federal audit standards, and other applicable state laws. Audits shall include any management letters associated with the audit. The audit shall be submitted to the Legislative Auditors Office within thirty (30) days of completion. Grantees shall require sub-grantees to provide audits conducted according to applicable federal and state laws, regulations and standards. The grantee shall have these audits reviewed as part of the grantee's audit. This review shall be commented and noted in the audit report. This review shall opine that sub-grantees are in compliance with the applicable program laws, regulations, contracts, and standards. (7-6-94)

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE
50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE
DOCKET NO. 50-0101-9601
NOTICE OF PENDING RULES

EFFECTIVE DATE: These rules have been adopted by the Commission of Pardons and Parole and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rules become final and effective upon adjournment of the legislature, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 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 67-5221(1), Idaho Code, And Section 67- 5226, Idaho Code, notice is hereby given that this agency adopted pending rules. The action is authorized pursuant to Section 20-223, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of reasons for adopting the pending 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.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, November 6, 1996, Volume 96-11, page 187.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rules, contact Barbara McIntosh, Commission of Pardons and Parole, P.O. Box 83720, Boise, ID 83720, 208-334-2520.

Dated this 20th day of August 1997.

Olivia Craven, Executive Director
Commission of Pardons and Parole
P.O. Box 83720
Boise, ID 83720-1807
208-334-2520 (phone)
208-334-3501 (fax)

IDAPA 50
TITLE 01
Chapter 01

RULES OF THE COMMISSION OF PARDONS AND PAROLE

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

**The original text was published in the Idaho Administrative Bulletin,
Volume 96-11, November 6, 1996, page 187.**

**This rule has been adopted as Final by the Agency and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE
50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE
DOCKET NO. 50-0101-9602
NOTICE OF PENDING RULES

EFFECTIVE DATE: These rules have been adopted by the Commission of Pardons and Parole and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rules become final and effective upon adjournment of the legislature, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 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.

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