

IDAHO ADMINISTRATIVE BULLETIN

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September 1, 1999

Volume 99-9

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rulemaking activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 98-1 refers to the first Bulletin issued in calendar year 1998, Bulletin 99-1 refers to the first Bulletin issued in calendar year 1999, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 1999 is cited as Volume 99-1. The December 1998 Bulletin is cited as Volume 98-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rulemaking**, printed in each Bulletin.*

TYPES OF RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rulemaking. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULE

Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rulemaking to the temporary and/or proposed rule stage.

PROPOSED RULE

A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULE

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.

A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

In cases where the text of the temporary rule is the same as that of the proposed rule, the rulemaking can be done concurrently as a temporary/proposed rule. State law requires that the text of a proposed or temporary rule be published in the Administrative Bulletin. Combining the rulemaking allows for a single publication of the text.

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.

PENDING RULE

A pending rule is a rule that has been adopted by an agency under the regular rulemaking process and

remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:

- a) the reasons for adopting the rule;
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;
- c) the date the pending rule will become final and effective; and
- d) an identification of any portion of the rule imposing or increasing a fee or charge.

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.

FINAL RULE

A final rule is a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone

(208) 332-1820.

The Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

Individual Rule Chapters and Individual Rulemaking Dockets, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address:

<http://www.state.id.us/> - from Idaho Home Page select the Administrative Rules link.

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.060.02.c.ii.

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Subsection 060.02.c.

"ii." refers to Subsection 060.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-9901). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 38-0501-9901"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).

"9901" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 1999.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

"(BREAK IN CONTINUITY OF SECTIONS)"

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

"...in accordance with IDAPA 38.05.01.201."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"

BULLETIN PUBLICATION SCHEDULE FOR 1999

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
99-1	January, 1999	November 18, 1998	January 6, 1999
99-2	February, 1999	December 23, 1998	February 3, 1999
99-3	March, 1999	January 20, 1999	March 3, 1999
99-4	April, 1999	February 24, 1999	April 7, 1999
99-5	May, 1999	March 24, 1999	May 5, 1999
99-6	June, 1999	April 21, 1999	June 2, 1999
99-7	July, 1999	May 26, 1999	July 7, 1999
99-8	August, 1999	June 23, 1999	August 4, 1999
99-9	September, 1999	July 21, 1999	September 1, 1999
99-10	October, 1999	August 25, 1999	October 6, 1999
99-11	November, 1999	September 22, 1999	November 3, 1999
99-12	December, 1999	October 20, 1999	December 1, 1999

BULLETIN PUBLICATION SCHEDULE FOR 2000

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
00-1	January, 2000	November 17, 1999	January 5, 2000
00-2	February, 2000	December 22, 1999	February 2, 2000
00-3	March, 2000	January 19, 2000	March 1, 2000
00-4	April, 2000	February 23, 2000	April 5, 2000
00-5	May, 2000	March 22, 2000	May 3, 2000
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00-11	November, 2000	September 20, 2000	November 1, 2000
00-12	December, 2000	October 25, 2000	December 6, 2000

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IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.06.31 - IDAHO DEPARTMENT OF AGRICULTURE NOXIOUS WEED FREE FORAGE
AND STRAW CERTIFICATION RULES

DOCKET NO. 02-0631-9901

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1999.

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 22-2403, 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 September 16, 1999.

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: The amendments rename the rules to include noxious weed free, delete obsolete provisions relative to the certification of forage pellets, clarify rules relative to the certification of baled and cubed forage or straw, delete provision for "transit load tags" which is an unnecessary burden, clarify existing language, and establish a schedule of fees that may be charged by the certifying agent.

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

To be in compliance with deadlines in amendments to state law.

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

House Bill No. 244, which became effective July 1, 1999, provides authority for fees to be charged by a certifying agency as set forth in rules of the department. The fees may be used for expenses in connection with the inspection and certification of crops, plants, plant parts, and products thereof, and improvement of inspection and certification services.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact Taylor Cox, Range Management Specialist or Glen Secrist, Chief, Vegetation Management Bureau at (208) 332-8560.

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 September 23, 1999.

DATED this 21st day of July, 1999.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 0790
Boise, Idaho 83701-0790
(208) 332-8500 / (208) 334-4623 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0631-9901

IDAPA 02
TITLE 06
Chapter 31

**02.06.31 - IDAHO DEPARTMENT OF AGRICULTURE NOXIOUS WEED FREE FORAGE
AND STRAW CERTIFICATION RULES**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-101(3), ~~and 22-2403, 22-2411, 22-2412, and 22-2413,~~ Idaho Code. ~~(7-1-94)(7-1-99)T~~

001. TITLE AND SCOPE.

The title of this chapter is the "Idaho Department of Agriculture Noxious Weed Free Forage and Straw Certification Rules". This chapter has the following scope: these rules shall govern the inspection and certification of noxious weed free forage and straw to allow for the transportation and sale of forage and straw into and through states where regulations and restrictions are placed on such commodities. The official citation of this chapter is IDAPA 02.06.31.000 et seq. For example, the citation for this section is IDAPA 02.06.31.001. ~~(7-1-94)(7-1-99)T~~

(BREAK IN CONTINUITY OF SECTIONS)

004. DEFINITIONS.

The definitions found in Section 22-2402, Idaho Code, apply to this chapter. In addition, as used in this chapter: ~~(7-1-94)~~

01. Agent. Means any instrumentality or entity authorized by the director of the department, and acting on behalf of the department, to administer the provisions of this rule. Any designated agent shall act in an official capacity for the department and under the supervision of the director of the department. The principal purpose of the agent is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of forage and straw crops to determine if such crops are noxious weed free. ~~(7-1-99)T~~

042. Certification Approved Inspector. Means ~~the state weed coordinator and any department trained county weed superintendent or other~~ an individual who has been accredited by the department or by the department's agent in the noxious weed free forage and straw certification program. ~~(7-1-94)(7-1-99)T~~

043. Bale. Means a mechanically compressed package of forage or straw bound by string or wire. ~~(7-1-94)~~

024. Bale Certification Inspection. Means inspection of forage or straw which has been baled prior to inspection. ~~(7-1-94)(7-1-99)T~~

05. Bale Tag. Means a tag or label which is attached to the string or wire of a bale of certified forage or straw, and identifies the bale as being certified noxious weed free. ~~(7-1-99)T~~

036. Certificate Of Inspection. Means ~~a document on a form prescribed by the director, indicating that, based on a reasonable and prudent inspection, the record of inspection issued by an approved inspector that states the results of a field or commodity inspection, is~~ The certificate shall document that the inspected field or commodity is state noxious weed free from, regional noxious weed free, or that the field or commodity contains noxious weeds. ~~(7-1-94)(7-1-99)T~~

07. Certification. Means the process whereby an approved inspector conducts field or commodity inspections to determine that the field or commodity is noxious weed free. (7-1-99)T

058. Department. Means the Idaho Department of Agriculture. (7-1-94)

062. Field. Means the land on which ~~the a forage or straw crop to be inspected~~ is grown and is not divided by streams, public roads, other crops, or other barriers. (7-1-94)(7-1-99)T

0710. Field Certification Inspection. Means an on-site inspection of forage or straw in the field of origin, and areas adjacent to the field, for the presence of noxious weeds. The inspection shall be conducted prior to cutting or harvesting. (7-1-94)(7-1-99)T

0811. Forage. Means alfalfa hay, grain hay, and grass hay, and/or combinations of alfalfa, grain, or grass hay; the term "forage" includes forage pellets and forage cubes. (7-1-94)(7-1-99)T

12. Forage Cubes. Means forage that is mechanically compacted into wafers or cubes. (7-1-99)T

13. Noxious Weed Free. Means no noxious weeds were found during inspection procedures. (7-1-99)T

0914. Official Sample. Means a sample taken by an certified approved inspector. (7-1-94)(7-1-99)T

105. State Noxious Weed Free. Means forage and straw inspected for free of any weeds designated by the director as noxious as defined in Section 22-2402(9), Idaho Code, and determined to be free of such weeds. (7-1-94)(7-1-99)T

146. Regional Noxious Weed Free. Means forage and straw inspected for, and determined to be free of, any weeds designated as noxious by the departments of agriculture, or other designated government entities states participating in a regional noxious weed free forage and straw certification program, including but not limited to the following states: Colorado, Idaho, Montana, Utah, and Wyoming. (7-1-94)(7-1-99)T

127. Straw. Means the dried stalks or stems remaining after grain is harvested. (7-1-94)

18. Transit Certificate. Means a document completed by an approved inspector to authorize the movement of noxious weed free certified forage or straw into or through areas which require noxious weed free forage and straw certification. The transit certificate must be in the possession of the transporter. If individual bales are tagged with an approved bale tag, a transit certificate is not required. (7-1-99)T

005. --009. (RESERVED) FINDINGS.

The amendments are in compliance with House Bill No. 244 of the 1999 Legislature and confer a benefit by deleting obsolete provisions relative to the certification of forage pellets, deleting the requirement for transit load tags, clarifying rules relative to the certification of baled and cubed forage or straw, clarifying existing language, and establishing a schedule of fees that may be charged by the certifying agent. (7-1-99)T

006. PUBLIC RECORDS.

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code. (7-1-99)T

007. -- 009. (RESERVED).

010. VOLUNTARY NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION PROGRAM.

01. Purpose. The purpose of the program is to provide a voluntary noxious weed free forage and straw certification program to designate inspected crops is a voluntary program, the purpose of which is to provide a means for the inspection and certification of forage and straw as being free from noxious weeds free. The program will be managed by the department and may be implemented through the county weed superintendents an agent of the

department. The program will allow for the transportation and sale of forage and straw into and through states ~~where~~ which place regulations and restrictions ~~are placed~~ on such commodities. The program ~~will help~~ is intended to reduce the exportation, importation, growth, and spread of noxious weeds. (7-1-94)(7-1-99)T

02. Certifying Authority. ~~Certificates of inspection may be issued by certification inspectors~~ The department or its agent is the certifying authority. The certifying authority shall appoint, as needed, approved inspectors throughout the state, who may issue certificates of inspection. (7-1-94)(7-1-99)T

03. Certification Training ~~And Program.~~ (7-1-94)
a. ~~The state weed coordinator department will provide~~ shall determine minimum training ~~to the county weed superintendents and accreditation standards for certification approved inspectors. Training will be provided by the department or its agent. Certification Approved inspectors must be re-accredited annually.~~ (7-1-94)(7-1-99)T

- 04. Certification Program.** (7-1-99)T
- ba. ~~A county weed superintendent~~ The department or its agent shall: (7-1-94)(7-1-99)T
- i. ~~Coordinate all~~ forage and straw inspections within the ~~county~~ state; (7-1-94)(7-1-99)T
 - ii. ~~Select, train, and supervise persons who serve as certification approved inspectors;~~ (7-1-94)(7-1-99)T
 - iii. ~~Issue certificates of inspection, transit certificates, transit load tags, and bale tags to qualifying participants;~~ (7-1-94)(7-1-99)T
 - iv. ~~Maintain a record of inspections performed and certificates and tags issued;~~ (7-1-94)
 - v. ~~Provide the department with a copy of certificates of inspections issued in the county; and~~ (7-1-94)
 - vi. ~~Provide the department with a current list of certified inspectors in the county.~~ (7-1-94)
- eb. ~~With the approval of the county weed superintendent, Under the direction of the department or its agent an certification approved inspector may perform inspections and issue certificates of inspection, transit certificates, transit load tags, and bale tags; within that county the state.~~ (7-1-94)(7-1-99)T
- d. ~~In the event that a county does not participate in the program, the state weed coordinator may appoint certification inspectors to fulfill the duties listed above.~~ (7-1-94)

- 045. Application For Certification.** (7-1-94)
- a. ~~Application for certification inspection must shall be made on forms approved by the department; the application forms will be available from a county's designated representatives, and from the department; or its agent and submitted to the department or its agent.~~ (7-1-94)(7-1-99)T
- b. ~~Applications for field certification inspections must be submitted to the county weed superintendent in the county in which the field is located no later than ten (10) working days prior to the beginning of harvest for each field and cutting to be certified.~~ (7-1-94)
- eb. ~~Applications for bale certification inspections or for the official sampling and certification of cubed forage, in cases wherein forage or straw has not been field inspected prior to being baled or cubed, must be submitted to the county weed superintendent in the county in which the bales are located department or its agent no later than ten (10) working days prior to the date on which the producer would like the desired inspection to be performed date.~~ (7-1-94)(7-1-99)T
- d. ~~Applications for official sampling and certification of pelleted and cubed feeds must be submitted to the county weed superintendent in the county in which the commodity to be certified is located no later than ten~~

~~(10) working days prior to the date on which the producer would like the inspection to be performed. (7-1-94)~~

ec. An applicant's signature on the application for certification is verification of the accuracy of the information submitted, and signifies the ~~producer~~ applicant's intent to comply with the post-certification and distribution requirements. ~~(7-1-94)(7-1-99)T~~

056. Field Inspection Procedures. (7-1-94)

a. Forage or straw shall be inspected in the field of origin prior to the beginning of harvest for each field and cutting to be certified. (7-1-94)

b. Each field inspected shall be identified by the name of the owner and ~~the a field name or number.~~ The certification inspection ~~can~~ may be performed on an entire field or a portion of a field, if the portion is plainly marked and identified prior to inspection. ~~(7-1-94)(7-1-99)T~~

c. Field inspections must take place prior to any cultural operation that will limit the inspector's ability to properly inspect and certify the field. ~~(7-1-94)(7-1-99)T~~

d. When performing field certification inspections, the ~~certification approved~~ inspector will shall inspect the field in a manner which ~~substantially~~ complies with procedures established by the department or its agent. ~~(7-1-94)(7-1-99)T~~

067. Bale Inspection Procedures. When performing bale certification inspections, for forage or straw that was not field inspected, the ~~certification approved~~ inspector will shall inspect the bales in a manner which ~~substantially~~ complies with procedures established by the department or its agent. When performing bale certification inspections, the ~~certification approved~~ inspector will shall: ~~(7-1-94)(7-1-99)T~~

a. Inspect not less than one (1) bale for each twenty-five (25) bales ~~submitted for which certification is requested.~~ ~~(7-1-94)(7-1-99)T~~

b. ~~Independently select r~~Randomly samples select bales for inspection. ~~(7-1-94)(7-1-99)T~~

078. Pelleted And Cubed Forage Inspection Procedures. ~~Pelleted and e~~Cubed forage that has not been field inspected will may be certified ~~for weed seed viability based on the official testing results of tests performed by the Idaho State Seed Laboratory or other laboratories approved by the department. The pelleted or cubed forage shall be officially sampled.~~ under the following conditions: ~~(7-1-94)(7-1-99)T~~

a. The cubed forage shall be officially sampled. ~~(7-1-99)T~~

b. A minimum official sample shall be taken of five (5) pounds up to one (1) ton, and five (5) pounds per ton thereafter. ~~(7-1-99)T~~

c. The official sample shall be sent to the Idaho State Seed Laboratory or other Association of Official Seed Analysts laboratories, as approved by the department or its agent. ~~(7-1-99)T~~

d. A germination test shall be performed on the official sample, and found to contain no viable noxious weed seeds. ~~(7-1-99)T~~

089. Certification Standards. After completing an inspection, ~~an~~ the approved inspector shall complete a certificate of inspection. ~~(7-1-94)(7-1-99)T~~

a. If the field or commodity inspected ~~contains no~~ is certified as regional noxious weeds ~~or parts thereof free,~~ the inspector shall issue a certificate of inspection for that harvest or cutting, ~~which will be valid for one (1) or more of the following categories as requested in the.~~ If the field or commodity contains regional noxious weeds, but does not contain state noxious weeds, it may be certified as state noxious weed free, and such certification shall be noted on the certificate of inspection application. ~~(7-1-94)(7-1-99)T~~

- i. ~~State noxious weed free.~~ (7-1-94)
- ii. ~~Regional noxious weed free.~~ (7-1-94)
- b. If the field or commodity inspected ~~contains no~~ is certified as noxious weeds free, the inspector may also issue, upon request, any of the following documents: (7-1-94)(7-1-99)T
 - i. Transit certificates. (7-1-94)
 - ii. ~~Transit load tags.~~ (7-1-94)
 - iii. Bale tags. (7-1-94)
- c. Certificates of inspection, transit certificates, ~~transit load tags,~~ and bale tags, will shall be on forms prescribed by the ~~director and distributed to the counties~~ department or its agent. (7-1-94)(7-1-99)T
- d. Certification forms, including of inspection, transit certificates, ~~transit load tags,~~ and bale tags, will be available from a ~~county's designated representatives~~ the department or its agent. (7-1-94)(7-1-99)T

10. Copy Of Inspections And A List Of Approved Inspectors. Upon request, the agent shall provide the department with a copy of certificates of inspections issued and a current list of approved inspectors. (7-1-99)T

0911. Reciprocity. Forage or straw certified under a reciprocal agreement between the department and another state, and ~~identified~~ certified as regional noxious weed free according to the other state's approved certification standards, ~~to may~~ be shipped into the state, of Idaho and shall be considered to meet the requirements of the Idaho program. (7-1-94)(7-1-99)T

102. Foreign Exports. Certification under these rules does not qualify a commodity for ~~foreign~~ export from the United States. Applications for certification for ~~foreign~~ export should be made directly to the Division of Plant Industries within the department. (7-1-94)(7-1-99)T

143. Voluntary Posting. After certification, a producer may post signs, or other forms of notification, on the certified commodity indicating that the commodity is ~~free from~~ certified as noxious weeds free. (7-1-94)(7-1-99)T

124. Post-Certification And Distribution Requirements. After a producer's commodity has been inspected and certified, the producer, distributor, or other responsible party- shall: (7-1-94)(7-1-99)T

- a. Take reasonable and prudent steps to protect the certified commodity from contamination; (7-1-94)
- b. ~~Take reasonable and prudent steps to k~~Keep the certified commodity separated from all uncertified commodity; (7-1-94)(7-1-99)T
- e. ~~Complete all tagging before the commodity leaves the stockyard, bin, or place of inspection, by attaching transit load tags or bale tags.~~ (7-1-94)
- dc. Attach bale tags to every unit, including each bale and each sack of cubed or pelleted certified forage; or straw which is intended for individual sale as noxious weed free forage or straw; and (7-1-94)(7-1-99)T
- ed. Provide the shipper, trucker, or transporter with the appropriate number of transit certificates ~~and transit load tags;~~ (7-1-94)(7-1-99)T

135. Cancellation For Failure To Comply. Any person who provides false information on an application for inspection or who fails to comply with the post-certification and distribution requirements may, upon order of the director, be suspended for a period of up to two (2) years from participating in the forage and straw certification program. (7-1-94)

14. Enforcement And Cancellation. Harvested lots of forage or straw from ~~inspected~~ certified fields may be checked at any time by a certification inspector. Evidence that forage or straw is not from an inspected field or that any lot has not been protected from contamination shall be cause for cancellation of certification.

~~(7-1-94)~~(7-1-99)T

17. Certification Fees. A minimum of thirty dollars (\$30) per inspection shall be charged for up to ten (10) acres, and three dollars (\$3) per acre thereafter. The agent is authorized to assess a general fee of thirty dollars (\$30) per year to recover overhead costs. The agent may waive the general fee if the applicant has already been assessed a similar fee for other types of crop inspections.

(7-1-99)T

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND
PROFESSIONAL LAND SURVEYORS**

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1208, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

Changes the title of Executive Secretary to Executive Director whenever it appears, sets forth the equivalency of graduation from an approved engineering curriculum, sets forth the requirements to be considered "exceptional" under statute to qualify for waiver of the fundamentals of engineering examination, sets forth the requirement for evaluation of foreign engineering degrees.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 334-3860.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this June 28th, 1999.

David L. Curtis, Executive Secretary
Board of Registration of Professional Engineers
and Professional Land Surveyors
600 S. Orchard, Suite A
Boise, Idaho 83705-1242
Telephone (208) 334-3860
Fax (208) 334-2008

THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0101-9901

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as the Idaho Board of Registration of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.01, "Rules of Procedure". (7-1-93)

02. Scope. These rules include procedures of the Board on matters relating to written interpretations.

the office of the Board, filing of documents, rulemaking, contested cases, meetings, organization order of business, officers and committees, fees, reissuance of certificates, publications, seals, certificates, applications, examinations, reexaminations, registrants or certificate holders of other states and boards, and board quorum, right to publish disciplinary actions, requirements to be considered "exceptional" under Section 54-1223B, Idaho Code. Administrative appeals, public records act compliance, inclusive gender, and severability. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. FILING OF DOCUMENTS--NUMBER OF COPIES.

All documents in rulemaking or contested cases must be filed with the Executive ~~Secretary~~ Director of the Board. Unless otherwise specifically required, only the original document must be filed. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

008. MEETINGS.

The annual meeting of the Board shall be held in June. Other regular meetings shall be held at such times and places as the Board may designate. The Chairman may call special meetings when deemed necessary and shall call special meetings upon the written request of three (3) members of the Board. The Executive ~~Secretary~~ Director shall notify members in writing, at least ten (10) days in advance of the date, time and place of each meeting, and shall also provide appropriate public notice of each meeting. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. OFFICERS AND COMMITTEES.

01. Duties Of Chairman. The Chairman shall be the executive head of the Board and shall: preside at meetings; appoint committees; perform all duties pertaining to the office of the Chairman. (7-1-93)

02. Duties Of Vice Chairman. The Vice Chairman shall, in the absence or incapacity of the Chairman, exercise the duties and possess all the powers of the Chairman. (7-1-93)

03. Duties Of Secretary. The Secretary shall, with the assistance of the Executive ~~Secretary~~ Director and staff, and under the direction of the Board, perform the following functions and duties: (7-1-93)(____)

- a. Keep correct minutes of the Board; (7-1-93)
- b. Furnish a copy of all minutes to each member of the Board; (7-1-93)
- c. Send written notice of regular and special meetings of the Board to each Board member not less than ten (10) days in advance thereof, as well as provide appropriate public notice; (7-1-93)
- d. Review each application for registration or certification for essential data prior to consideration thereof by the Board; (7-1-93)
- e. Verify qualifications, experience and character of the applicants; (7-1-93)
- f. Make arrangements for examinations, interviews and hearings; (7-1-93)
- g. Report to the Board members the results of every examination and other evidence of qualifications,

with recommendations to the Board; (7-1-93)

- h. Assist in the investigations of complaints and charges and arrange for hearings by the Board; (7-1-93)
- i. Prepare and present the required annual report and roster as the Board may direct; (7-1-93)
- j. Keep all records, including minutes, register of applicants for registration and the roster of registrants; (7-1-93)
- k. Attend to all official correspondence of the Board; (7-1-93)
- l. Perform all other duties prescribed by the Act as directed by the Board; and (7-1-93)
- m. Otherwise perform all the duties normally pertaining to the Office of Secretary. (7-1-93)

04. Duties And Qualifications Of Executive Secretary Director. The Executive Secretary Director of the Board of Professional Engineers and Professional Land Surveyors shall: (~~7-1-93~~)()

- a. Not be a member of the Board. (7-1-93)
- b. Be a registered professional engineer or professional land surveyor in the state of Idaho and possess other qualifications required for members of the Board. (7-1-93)
- c. Hold office at the pleasure of the Board. (7-1-93)
- d. Receive such compensation as the Board may determine. (7-1-93)
- e. Perform such other duties as may from time to time be assigned by the Board. (7-1-93)

05. Surety Bond. To comply with the requirements of Section 41-3502, Idaho Code, state officials and state employees are covered by blanket bond with the premium prorated to the several departments and agencies. The portion of cost prorated to the Board of Professional Engineers and Professional Land Surveyors shall be paid from the "Professional Engineers and Land Surveyors" Fund. (7-1-93)

06. Committees. Regular and special committees of the Board shall perform the duties assigned to them and shall present reports to the Board at the time specified or at the earliest regular or special meeting of the Board. A special voluntary committee from the public, which may include members of the Board, may be formed to render special services as the Board may assign to them. (7-1-93)

011. FEES.

01. Applications And Renewals. All fees shall be set by the Board ~~annually~~ in the following categories and shall in no event be more than the amount specified in Sections 54-1213, 54-1214, 54-1216, 54-1219 and 54-1223, Idaho Code. Fees are not refundable. (~~7-1-93~~)()

- a. Registration as a professional engineer or professional land surveyor by examination. (7-1-93)
- b. Certification as an engineer-in-training or land surveyor-in-training by examination. (7-1-93)
- c. Certification for a corporation applying for a certificate of authorization to practice or offer to practice engineering or land surveying. (7-1-93)
- d. Applications for reexamination in professional engineering, professional land surveying, engineer-in-training or land surveyor-in-training. (7-1-93)
- e. Renewals for professional engineers, professional land surveyors, engineers-in-training, land

surveyors-in-training and corporations. (7-1-93)

f. Registration for professional engineers or professional land surveyors by comity registration. (7-1-93)

g. Temporary permits to practice engineering. (7-1-93)

h. Listing in the Retired section of the biennial roster. (7-1-93)

02. Late Or Denied Renewals. Failure on the part of any registrant or corporation to renew their fees prior to their expiration shall not deprive such persons or corporation of the right of renewal, but the fees to be paid for renewal after their expiration shall be increased as prescribed in Section 54-1216, Idaho Code. Registrants whose renewal fees are received at the Board's office after October 31 of any year will not be listed in the biennial roster for that biennium. The Board, on review of a registrant's activity, may deny renewal for cause. (7-1-93)

03. Reexaminations. Separate fees will be assessed for each examination and such fees shall accompany all applications for examination for professional engineers, professional land surveyors, engineers-in-training, and land surveyors-in-training. (7-1-93)

04. Schedule Of Fees. The schedule of fees as determined by the Board shall be furnished to applicants with application forms. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

016. APPLICATION FOR REGISTRATION OR CERTIFICATION.

01. Forms. Application forms for registration as a professional engineer, or professional land surveyor, certification as an engineer-in-training, land surveyor-in-training or certificates of authorization to practice or offer to practice engineering or land surveying by a corporation may be obtained from the office of the Executive ~~Secretary~~ Director of the Board of Professional Engineers and Professional Land Surveyors. (~~7-1-93~~)()

02. Completion Of Application. Applications shall be made on such forms as may be prescribed by the Board. An application which is not fully completed by the applicant need not be considered or acted upon by the Board. The application by a corporation for a certificate of authorization to practice or offer to practice engineering or land surveying must set forth their ~~Idaho mailing~~ address, and name and address of the individual, or individuals, duly registered to practice engineering or land surveying in this state, who will be in responsible charge of engineering or land surveying services offered or rendered by the corporation in this state. (~~7-1-93~~)()

03. Dates Of Submittal. Applications for the Spring and Fall examination, respectively, must be received by the Executive ~~Secretary~~ Director or postmarked by January 1 or August 1 of any year. In order for the Board to be able to verify experience, only experience up to the date of submittal of the application will be considered as valid. Experience anticipated between the date of the application submittal and the date of the examination or issuance of registration will not be considered. For students, the application filing date for the Fundamentals of Engineering examination shall conform to the administrative rules of the University of Idaho, Boise State University, and Idaho State University. Except for military personnel stationed in Idaho, only Idaho residents and students at Idaho universities will be assigned to examinations, unless otherwise approved by the Board. (~~4-22-94~~)()

04. Confidentiality Of References. All information received from references named by the applicant shall be held in confidence by the Board. Neither members of the Board nor relatives of the applicant by blood or marriage shall be named or accepted as references. (7-1-93)

05. Minimum Standards - References. An applicant may not be admitted to the examination until satisfactory replies have been received from a minimum of five (5) of his references for professional engineers or land surveyors and three (3) references for engineers-in-training and land surveyors-in-training. A majority of the

references should be professional engineers or professional land surveyors as applicable. It shall be the responsibility of each applicant to furnish their references with the forms prescribed by the Board. (7-1-93)

017. EXAMINATIONS.

01. Semiannually Or Annually; Special Or Oral Examination. Examinations for professional engineer, professional land surveyor, engineer-in-training and land surveyor-in-training will be held annually or semi-annually, the exact time and place to be determined by the Board. Special oral or written examinations during the year may be given by the Board. (7-1-93)

02. Eligibility For Examinations; Educational Requirements. The application for registration for professional engineer, professional land surveyor or certification of engineer-in-training or land surveyor-in-training, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before admittance to any examination. (7-1-93)

a. In regard to educational requirements, the Board will consider as unconditionally approved only those engineering curricula which are accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). Non-ABET accredited engineering curricula will be considered by the Board on their specific merits. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. An approved four-year (4) Bachelor of Technology (B.T.) engineering curriculum is not considered equal to an approved Bachelor of Science engineering curriculum. The Board will require additional experience for applicants with B.T. degrees. (7-1-93)

b. An applicant who has completed a four (4) year bachelor degree program in a major other than engineering ~~but has attained a graduate engineering degree or who is in the last or second to last semester of a graduate engineering degree curriculum~~ must have completed a minimum of twelve (12) semester credits of Engineering Science at a Junior and Senior level, 6 semester credits of Engineering Design related courses at a Senior level, six (6) semester credits of Mathematics through Differential Equations, six (6) semester credits of calculus-based Physics and two (2) semester credits of Engineering Economics before the Board will consider ~~their education to be equivalent to graduation from an approved engineering curriculum of four (4) years or more~~ them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(~~ab~~), Idaho Code, for assignment to the examination for certification as an Engineer-in-Training. (4-22-94)()

ei. Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to insure that the above requirements are met. (7-1-93)

¶ii. Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering. (7-1-93)

ec. In addition to the minimum requirements set forth in Section 54-1212, Idaho Code, a person who desires to be qualified by examination in the field of structural engineering shall meet the following requirements: (4-22-94)

i. Be a registered professional engineer in Idaho. (7-1-93)

ii. Have two (2) years of work experience in the field of structural engineering after being registered as a professional engineer. The Principles and Practice of Engineering examination for Structural Engineering will cover the practice of structural engineering to test the applicant's fitness to assume responsibility for engineering work affecting the public health, safety and welfare. The examination shall be sixteen (16) hours. (7-1-93)

d. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board

and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has received a master's degree from an U.S. institution which has a bachelor degree program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology in the discipline of the applicant's master's degree, and, in addition, has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. ()

03. Notification To Applicant By Board. Notification of ~~acceptance~~ assignment or non-~~acceptance~~ assignment to the examination will be furnished to the applicant at least thirty (30) days prior to the date of the examination. (4-22-94)()

04. Notification To Board By Applicant. The applicant shall, at least fifteen (15) days before an examination, notify the Executive ~~Secretary~~ Director of the Board whether or not he will appear for the examination. Examinations will be given only to those who have so notified the Board. (4-22-94)()

05. Excused Non-Attendance At Exam. In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant and there may be a fee for rescheduling an examination. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (7-1-93)()

06. Two (2) Examinations For Engineering Registration. The complete examining procedure for registration as a professional engineer consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer-in-training certification, and the second is the Principles and Practice of Engineering for professional engineer registration. Each examination shall be eight (8) hours in length. Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering curriculum. A certificate as an Engineer-in-Training will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by experience. (4-22-94)

07. Fundamentals Of Engineering. The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination ~~is the same for all applicants~~ may also cover subject matters that are specific to the engineering discipline of the applicants education. (7-1-93)()

08. Principles And Practice of Engineering - Disciplines. The Principles and Practice of Engineering examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of examinations in disciplines other than those for which examinations may be available from NCEES. (4-22-94)

09. Two Examinations For Land Surveying Registration. The complete examining procedure for registration as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Land Surveying examination for land surveyors-in-training certification, and the second is the Principles and Practice of Land Surveying registration. Each examination will be a total of eight (8) hours in length. Having passed the Fundamentals of Land Surveying examination, applicants will be required to take the Principles and Practice of Land Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of Land Surveying examination may consist of separate modules, each of which must be passed. (7-1-93)()

10. Oral Or Unassembled Examinations. An oral examination or unassembled written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

11. Special Examinations. A special examination, written or oral or both, may be required in certain instances where the applicant is seeking registration through comity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or registration in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (7-1-93)

12. Grading. Each land surveyor-in-training, engineer-in-training and professional engineer applicant must normally attain a grade scaled score of seventy percent (70%) or above on the entire eight (8) hour examination before being awarded certification or registration. Examinees on the Principles and Practice of Land Surveying examination must normally attain a grade scaled score of seventy percent (70%) or above on each section of the examination. (7-1-93)()

13. Use Of NCEES Examinations. Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineers-in-training, professional land surveyors, and land surveyors-in-training may be used by the Board. The examination for the field of structural engineering shall be the sixteen (16) hour examination as determined by the Board. (7-1-93)

14. Review Of Examination By Examinee. Examinees who fail an examination shall be allowed to review their examination at the Board office. Examinees will only be allowed to review those questions attempted during the examinee's last taking of the examination. Examinees shall be allowed a review time equal to one-half (1/2) the time originally allowed to take the examination. The review shall be monitored by a Board member or Board representative. Paper will be provided by the Board and may not be taken away from the review site. A hand-held calculator not having word processing capabilities may be used by the applicant during the review. Examinees in the Principles and Practice of Engineering examination may submit a rescoring request on the "free-response" or "essay" type problems attempted. Examinees who submit a rescoring request may use their own reference materials to complete the rescoring request. (4-22-94)

15. Disposal Of Used Examination Pamphlets And Answer Sheets. The Executive ~~Secretary~~ Director of the Board is authorized by the Board to dispose of used examination solution pamphlets and answer sheets on the third year anniversary date after the examination was given. (7-1-93)()

018. REEXAMINATIONS.

01. Allowing Reexamination Upon Failure. An applicant failing any portion of the Principles and Practice of Land Surveying examination, and having applied for reexamination as permitted by law, may at the discretion of the Board, be required to take only the portion of the examination for which a failing grade was received. (7-1-93)

02. Application For Reexamination. An applicant who has failed any examination, as previously described, may be assigned by the Board to reexamination upon written request and payment of fees at least sixty (60) days prior to any scheduled examination date. (7-1-93)

03. Failure Of Reexamination. An applicant who fails on reexamination, must appear before the Board or a member of the Board before being admitted to examination, and must present evidence satisfactory to the Board to warrant an additional examination as set forth in Section 54-1214, Idaho Code. (7-1-93)()

019. REGISTRANTS OR CERTIFICATE HOLDERS OF OTHER STATES AND BOARDS.

01. Interstate Registration Evaluation. Each application for Idaho professional engineer license; or professional land surveyor license ~~or engineer-in-training or land surveyor-in-training certificate~~ submitted by an

applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, ~~or certified as an engineer-in-training or land surveyor-in-training~~, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated with respect to the requirements of the Idaho law. (7-1-93)()

a. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is not pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. ()

b. An applicant who has completed a four (4) year bachelor degree program in a major other than engineering must have completed a minimum of twelve (12) semester credits of Engineering Science at a Junior and Senior level, six (6) semester credits of Engineering Design related courses at a Senior level, six (6) semester credits of Mathematics through Differential Equations, six (6) semester credits of calculus-based Physics and two (2) semester credits of Engineering Economics before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. ()

02. Denials Or Special Examinations. An application from a registrant of another state, territory or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. If the applicant is assigned to examination no additional fee shall be required. (7-1-93)

03. Corporate Requirements. No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a corporation authorized to practice professional engineering or professional land surveying or both in one (1) or more states, territories or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly registered to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the corporation in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

021. RIGHT TO PUBLISH DISCIPLINARY ACTIONS.

The Board office ~~shall not~~ may disclose the filing of a complaint, and the nature of a complaint, ~~nor~~ but may not disclose the details of an investigation. Final, formal enforcement, including, but not limited to actions such as fines, assessment of expenses, revocations or suspensions shall be public information. Probations and conditions may be subject to public disclosure whenever the Board believes it is in the public interest. Following a hearing or the entry of a consent agreement, the Board may publish a summary of any order issued by it, in a newsletter or newspaper of general circulation. The Board may also advise anyone requesting such information of the contents of any order issued by it. (7-1-93)()

022. ~~994. (RESERVED) REQUIREMENTS TO BE CONSIDERED "EXCEPTIONAL" UNDER SECTION 54-1223B, IDAHO CODE.~~

01. Waiver Of The Fundamentals Of Engineering Examination. In order to be considered "exceptional" under Section 54-1223B, Idaho Code, an applicant for registration as a professional engineer, either by examination or by comity, who seeks waiver of the fundamentals of engineering examination, must have a record of

service and contributions beyond the ordinary in two (2) of the following three (3) areas: ()

- a. Professional or technical: ()
- b. Business or industry; and ()
- c. Community or cultural. ()

02. Activities Which The Board Believes Are Exceptional. Examples of activities which the Board believes are exceptional are: ()

- a. Serving as an officer or committee chair: ()
- b. Originating projects or initiatives; ()
- c. Investing time or energy into the community; ()
- d. Authoring significant publications; and ()
- e. Receiving significant awards. ()

03. Activities Which The Board Believes Are Ordinary. Examples of activities which the Board believes are only ordinary are: ()

- a. Completing routine job assignments; ()
- b. Holding membership in professional and technical societies; ()
- c. Contributing money to causes; ()
- d. Attending community events; and ()
- e. Owning a business. ()

04. Written Request For Exceptional Designation. An applicant who seeks waiver of the fundamentals of engineering examination shall submit a written request for the exceptional designation accompanied by two (2) written references supporting and explaining the applicants contributions that are beyond the ordinary. ()

023. -- 994. (RESERVED).

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND
PROFESSIONAL LAND SURVEYORS**

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1208, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

Changes the title of Executive Secretary to Executive Director.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 334-3860.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this June 28, 1999.

David L. Curtis, Executive Secretary
Board of Registration of Professional Engineers
and Professional Land Surveyors
600 S. Orchard, Suite A
Boise, Idaho 83705-1242
Telephone (208) 334-3860 / Fax (208) 334-2008

THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0102-9901

011. RULE INFRACTIONS.

01. Affidavits For Rule Infractions. Any person who believes that a Registrant or Certificate Holder by his actions, or failure to properly act, is guilty of fraud, deceit, negligence, incompetency, misconduct, or violation of these Rules may file a written affidavit with the Executive ~~Secretary~~ Director of the Board which shall be sworn to or affirmed under penalty of perjury, signed and in which the alleged rule infractions shall be clearly set forth and that the applicable Registrant or Certificate Holder, or both, should be considered for the appropriate disciplinary action by the Board. Following the receipt of such affidavit, the Board shall investigate, hold hearings and adjudicate the charges, in accordance with the provisions of the statutes. Proceedings under these rules shall be exempt from all statutes of limitations. (7-1-98)()

02. Investigation Of Rule Infractions. The Board may, at its own discretion, initiate investigation of alleged or possible rule infractions that have come to its attention. (7-1-93)

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.04.02 - RULES GOVERNING SIMULCASTING - IDAHO RACING COMMISSION
DOCKET NO. 11-0402-9901
NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 1999.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2506, 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 September 15, 1999.

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

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

Implementation of regulations governing the health and welfare of racing greyhounds in jurisdictions whose races are transmitted to Idaho facilities for pari-mutuel wagering.

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 rule confers a benefit to the public and state agencies.

FEE SUMMARY: There is no fee or charge imposed by this rule.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is merely clarifying and defining terms used within the present rules.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 16th day of July, 1999.

Eugene "Jack" Baker
Executive Director
Idaho State Racing Commission
PO Box 700
Meridian, Idaho 83680-0700
Telephone: (208) 884-7080
Fax: (208) 884-7098

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-9901

000. --003. (RESERVED) LEGAL AUTHORITY.

The Idaho State Racing Commission has authority to make rules to implement and enforce the state racing law pursuant to Title 54, Chapter 25, of the Idaho Code. (7-1-99)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.04.02, "Rules Governing Simulcasting," of the Idaho State Racing Commission. (7-1-99)T

02. Scope. All aspects of simulcasting are addressed in these rules. (7-1-99)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying, at cost, at the Idaho State Racing Commission, 700 South Stratford Drive, P.O. Box 700, Meridian, Idaho 83680-0700. (7-1-99)T

003. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

005. GENERAL JURISDICTION.

01. Simulcasting Of Horse Races Within The State. The Idaho State Racing Commission shall have general jurisdiction over the simulcasting of horse and greyhound races within the state, and the Commission may issue rules and regulations in accordance with the provisions of this article as provided for in Idaho Statutes. (7-1-98)(7-1-99)T

(BREAK IN CONTINUITY OF SECTIONS)

037. --039. (RESERVED) PROHIBITION OF SIMULCAST SIGNAL.

Pertaining to the simulcasting of greyhound racing, should substantial, competent evidence of cruelty to, or misconduct in the treatment of, greyhounds occur at a site under the jurisdiction of another state regulatory agency, the Commission shall prohibit the retransmission of any and all simulcast signals until appropriate action has been taken by the other state regulatory agency. (7-1-99)T

038. -- 039. (RESERVED).

IDAPA 15 - OFFICE OF THE GOVERNOR - IDAHO COMMISSION ON AGING

15.01.01 - RULES GOVERNING SENIOR SERVICES PROGRAMS

DOCKET NO. 15-0101-9901

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1999.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

- Clarifies that an area agency on aging is a separate organizational unit within a multipurpose organization;
- Adds a "Certified Care Manager" as one of the qualifying credentials to be a case manager;
- Broadens the definition of chore services to include minor household maintenance;
- Adds statements of work, program reviews, and processes for termination to the definition of "Performance-Based Agreement";
- Changes the definition of "Respite" to make part-time care-givers eligible;
- Removes caregiver from the general eligibility requirements for senior services and add them to the eligibility requirements for Respite only;
- Clarifies the requirement for client assessments by listing the services for which the UAI is required;
- Clarifies that the Department of Health and Welfare determines eligibility for PCS services;
- Eliminates the pre-screening component of the UAI;
- Changes references from "care coordination" to "case management".

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:

For the protection of the public health, safety or welfare.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is being imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, an informal negotiated rulemaking process was used because the changes proposed in these rules are not considered controversial. The proposed changes were reviewed and discussed in a meeting with the six (6) directors of the area agencies on aging on May 17, 1999. They were also reviewed at the June 3, 1999 Commission meeting. The Commissioners recommended at that meeting that we not go through the expense and staff time of a formal negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ken Wilkes at 208/334-2219.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this July 20, 1999.

Lupe Wissel, Director
Idaho Commission on Aging
3380 Americana Terrace, Suite 120
PO Box 83720
Boise, ID 83720-0007
Phone: 208/334-3833
Fax: 208/334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0101-9901

010. DEFINITIONS.

- 01. Act.** The Idaho Senior Services Act. Programs and services established in Idaho Code, Section 67-5001, et. seq., Idaho Code. (7-1-98)
- 02. Activities Of Daily Living (ADL).** Bathing, dressing, toileting, transferring, eating, walking. (7-1-98)
- 03. Adult Day Care.** A structured day program which provides individually planned care, supervision, social interaction, and supportive services for frail older persons in a protective group setting, and provides relief and support for caregivers. (7-1-98)
- 04. Aging Network.** The ICOA, it's AAAs and providers. (7-1-98)
- 05. Advance Directive.** A Living Will or Durable Power of Attorney for healthcare executed under the Natural Death Act, 39-4501, Idaho Code. (7-1-98)
- 06. Area Agency On Aging (AAA).** ~~Local agency designated by the Idaho Commission on Aging, pursuant to the OAA (OAA) of 1965, as amended; Separate organizational unit within a multipurpose agency which functions only for purposes of serving as the area agency on aging that plans, develops, and implements services for older persons within a specified geographic area.~~ (7-1-98)(7-1-99)T
- 07. Area Plan.** Plan for aging programs and services which an AAA is required to submit to the Idaho Commission on Aging, in accordance with the OAA, in order to receive OAA funding. (7-1-98)
- 08. ~~Care Coordinator~~ Case Manager.** A licensed social worker, ~~or~~ licensed professional nurse (RN), ~~or Certified Case Manager,~~ or an individual with a BA or BS in a human services field and at least one (1) year's experience in service delivery to the service population. (7-1-98)(7-1-99)T
- 09. ~~Care Coordination~~ Case Management.** ~~Case management assistance in circumstances where the older person, their caregivers, or both, are experiencing diminished functioning capacities, personal conditions, or other characteristics which require the provision of services by formal service providers is a service provided to an older individual, at the direction of the older individual or a family member of the individual, to assess the needs of the older person and to arrange, coordinate, and monitor an optimum package of services to meet those needs. Activities of care coordination case management include assessing needs, developing care plans, authorizing services among providers, follow up and reassessment, as required; comprehensive assessment of the older individual; development and implementation of a service plan with the older individual to mobilize formal and informal resources and services; coordination and monitoring of formal and informal service delivery; periodic reassessment and revision of the status of the older individual.~~ (7-1-98)(7-1-99)T
- 10. ~~Care Coordination~~ Case Management Supervisor.** An individual who has at least a BA or BS

degree and is a licensed social worker, psychologist or licensed professional nurse (registered nurse/RN) with at least two (2) years' experience in service delivery to the service population. (7-1-98)(7-1-99)T

11. Chore Services. Providing assistance with normal yard work, sidewalk maintenance, heavy cleaning, or minor household maintenance to persons having difficulty with one or more of the following instrumental activities of daily living: heavy housework, yard work or sidewalk maintenance who have functional limitations that prohibit them from performing these tasks. (7-1-98)(7-1-99)T

12. Client. Person who has met program eligibility requirements for services addressed in this chapter. (7-1-98)

13. Cognitive Impairment. A disability or condition due to mental impairment. (7-1-98)

14. Congregate Meals. Meals that meet the requirements of the OAA, as amended, served in a group setting. (7-1-98)

15. Department. Department of Health and Welfare. (7-1-98)

16. Direct Costs. Costs incurred from the provision of direct services. These costs include, but are not limited to, salaries, fringe benefits, travel, equipment, and supplies directly involved in the provision of services. Salaries of program coordinators and first line supervisors are considered direct costs. (7-1-98)

17. Eligible Clients. Residents of the state of Idaho who are sixty (60) years or older and their spouses. (7-1-98)

18. Fee For Services. An established payment required from individuals receiving services under the Act. The fee varies according to client's current annual household income. (7-1-98)

19. Fiscal Effectiveness. A financial record of the cost of all formal services provided to insure that maintenance of an individual at home is more cost effective than placement of that individual in an institutional long-term care setting. (7-1-98)

20. Formal Services. Services provided to clients by a formally organized entity. (7-1-98)

21. Functional Impairment. A condition that limits an individual's ability to perform ADLs and IADLs. (7-1-98)

22. Home-Delivered Meals. Meals delivered to eligible clients in private homes. These meals shall meet the requirements of the OAA. (7-1-98)

23. Homemaker. A person who has successfully completed a basic prescribed training, who, with additional supervision, provides homemaker services. (7-1-98)

24. Homemaker Service. Assistance with housekeeping, meal planning and preparation, essential shopping and personal errands, banking and bill paying, medication management, and, with restrictions, bathing and washing hair. (7-1-98)

25. Household. For sliding fee purposes, a "household" includes a client and any other person(s) permanently resident in the same dwelling who share accommodations and expenses with the client. (7-1-98)

26. Idaho Commission On Aging (ICOA). Commission designated by the Governor to plan, set priorities, coordinate, develop policy, and evaluate state activities relative to the objectives of the OAA. (7-1-98)

27. Informal Supports. Those supports provided by church, family, friends, and neighbors, usually at no cost to the client. (7-1-98)

28. Instrumental Activities Of Daily Living (IADL). Meal preparation, money management,

transportation, shopping, using the telephone, medication management, heavy housework, light housework. (7-1-98)

29. Legal Representative. A person who carries a Durable Power of Attorney or who is appointed Guardian or Conservator with legal authority to speak for a client. (7-1-98)

30. National Aging Program Information System. (NAPIS) Standardized Nationwide reporting system that tracks: (7-1-98)

a. Service levels by individual service, identifies client characteristics, State and ~~area agency~~ AAA staffing profiles, and identifies major program accomplishments; and ~~(7-1-98)~~(7-1-99)T

b. Complaints received against long term care facilities and family members or complaints related to rights, benefits and entitlements. (7-1-98)

31. Non-Institutional. Living arrangements which do not provide medical oversight or organized supervision of residents' activities of daily living. Non-institutional residences include congregate housing units, board and room facilities, private residential houses, apartments, condominiums, duplexes and multiplexes, hotel/motel rooms, and group homes in which residents are typically unrelated to individuals. Non-institutional does not include skilled nursing homes, residential care facilities, homes providing adult foster care, hospitals, or residential schools/hospitals for the severely developmentally disabled or the chronically mentally ill. (7-1-98)

32. Older Americans Act (OAA). Federal law which authorizes funding to states to provide supportive and nutrition services for the elderly. (7-1-98)

33. Ombudsman. An individual or program providing a mechanism to receive, investigate, and resolve complaints made by, or on behalf of, residents of long-term care facilities, or persons aged sixty (60) and older living in the community. (7-1-98)

34. Performance-Based Agreements. A written agreement between the ICOA and ~~area agencies~~ AAAs which establishes statements of work for services to be performed by the AAA, including output and outcome measures projections, program review and process for contract termination. ~~(7-1-98)~~(7-1-99)T

35. Personal Care Services (PCS). Services which include personal and medically-oriented procedures required to meet the physical needs of a patient convalescing at home or to provide for a long-term care client's on-going maintenance/support, in accordance with Section 39-5602 (f), Idaho Code. (7-1-98)

36. Program. The Idaho Senior Services Program. (7-1-98)

37. Planning And Service Area (PSA). Substate geographical area designated by the ICOA for which an ~~area agency~~ AAA is responsible. ~~(7-1-98)~~(7-1-99)T

38. Provider. An AAA that provides services directly or another entity under contract with the AAA to provide a specific service(s). (7-1-98)

39. Respite. Short-term, intermittent relief provided to ~~full-time~~ caregivers (individuals or families) of a functionally-impaired relative or custodial charge. ~~(7-1-98)~~(7-1-99)T

40. Shopping Assistance. Accompaniment and provision of assistance to an elderly individual for the purpose of purchasing food, medicine and other necessities for an elderly individual who is disabled or homebound. (7-1-98)

41. Sliding Fee Scale. A fee scale ranging from zero percent (0%) to one hundred percent (100%) of the cost of services. Cost of services shall be based on the contractor's or provider's actual unit costs. A client's percentage (payment) shall be determined by ranking the client's annual household income against the federally determined poverty guidelines for that year. (3-19-99)

42. Supportive Service Plan (SSP). An individual support plan outlining an array of services or the

components of an individual service required to maintain a client at home. For Adult Protection purposes the SSP shall address the available remedial, social, legal, medical, educational, mental health, or other services available to reduce risks and meet the care needs of a vulnerable adult. (7-1-98)

43. Supportive Services Technician. AAA employee who is a paraprofessional working under the supervision of a licensed social worker or ~~care coordinator~~ case manager assisting in the performance of specified tasks associated with investigation of Adult Protection reports or development and initiation of a SSP. The employee shall have a degree in a related field or a high school diploma and at least two (2) years' experience working with elderly or at-risk populations. ~~(7-1-98)~~(7-1-99)T

44. Transportation Services. Services designed to transport eligible clients to and from community facilities/resources for the purposes of applying for and receiving services, reducing isolation, or otherwise promoting independence. (7-1-98)

45. Uniform Assessment Instrument (UAI). A comprehensive assessment instrument utilizing uniform criteria. The ICOA mandates use of a UAI in determining an applicant's need for care and services. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

021. ELIGIBILITY.

Persons eligible to receive services under the Act shall be sixty (60) years of age or older and residents of the state of Idaho. Functionally- or cognitively-impaired adults under age sixty (60) living in the home of a caregiver who is age sixty (60) or older are exempted from this requirement. In those instances the caregiver is considered to be the client. ~~(7-1-98)~~(7-1-99)T

022. CLIENT ASSESSMENT.

~~All~~Applicants for services under this chapter, where multiple needs are being addressed and in other cases where adult protection or case management personnel determine it necessary, shall be assessed utilizing the ICOA/DHW standardized UAI. ~~(7-1-98)~~(7-1-99)T

(BREAK IN CONTINUITY OF SECTIONS)

041. HOMEMAKER.

01. Policy. Homemaker service is designed to provide assistance required to compensate for functional or cognitive limitations. Homemaker services provide assistance to eligible individuals in their own homes, or, based on an adult protection referral, in a caregivers home; to restore, enhance, or maintain their capabilities for self-care and independent living. Available family shall be involved in developing a supportive services plan for the client to ensure the formal services provided shall enhance any available informal supports provided. A client or legal representative shall have the right to accept or refuse services at any time. Homemaker providers shall reserve funds to support the expenditure of up to a maximum of ten percent (10%) of their annual Act funding to support emergency service requests and response to adult protection referrals. (7-1-98)

02. Service Eligibility. Individuals are eligible for homemaker services if they meet any of the following requirements: (7-1-98)

a. They have been assessed to have ADL deficits, IADL deficits, or both, which prohibit their ability to maintain a clean and safe home environment. (7-1-98)

b. Clients over age sixty (60), who have been assessed to need homemaker service, may be living in the household of a family member (of any age) who is the primary caregiver. (7-1-98)

c. They are Adult Protection referrals for whom homemaker service is being requested as a component of a SSP to remediate or resolve an adult protection complaint. (7-1-98)

d. Vulnerable adults under age sixty (60), who have been assessed to need homemaker service are eligible to receive the service a maximum of three (3) consecutive months within a program year. (7-1-98)

e. They are home health service clients who may be eligible for emergency homemaker service. (7-1-98)

03. PCS. ~~When clients are determined by the Department to be eligible to receive for PCS through the Department, they are not longer eligible for homemaker services unless the services are determined to be needed on an interim, emergency basis until PCS is initiated. Interim emergency services shall not exceed two (2) months' duration.~~ (7-1-98)(7-1-99)T

04. Purpose Of Service. (7-1-98)

a. Maintain Independence And Dignity. To secure and maintain in a home environment the independence and dignity of clients who are capable of self-care with appropriate supportive services. (7-1-98)

b. Prevent Institutionalization. To avoid or delay placement into long-term care institutions. (7-1-98)

c. Remedy Harmful Living Arrangements. To promote the health and safety of the client. (7-1-98)

d. Crisis Intervention. To assist the client through a crisis situation, if the homemaker service(s) required meet the client's needs and can be provided within the guidelines set forth in these rules. (7-1-98)

05. Exclusions. (7-1-98)

a. Meal Preparation. Homemakers shall not prepare meals for a client if home-delivered meals are available. (7-1-98)

b. Transportation. Homemakers shall not transport a client unless the provider carries liability insurance. (7-1-98)

c. Medical Judgments. Homemakers shall not make medical judgments nor any determinations regarding the application of advance directives. (7-1-98)

d. Bathing and Washing Hair. Contractors shall obtain adequate and appropriate insurance coverage prior to assigning homemakers to assist clients with bathing and (or) washing hair. (3-19-99)

06. Service Priority. Once approved, clients shall be prioritized to receive homemaker services based on their needs, as determined through the completion of the UAI as follows: (7-1-98)

a. Highest priority shall be given to clients with the greatest degree of functional or cognitive impairment; then (7-1-98)

b. To clients lacking informal supports; then (7-1-98)

c. To clients whose homes are in poor condition with respect to those circumstances which the homemaker service can remedy. (7-1-98)

07. Homemaker Training And Supervision. All homemakers shall receive an employee orientation from the provider before performing homemaker services. Orientation shall include the purpose and philosophy of homemaker services, review of homemaking skills, program regulations, policies and procedures, proper conduct in relating to clients, and handling of confidential and emergency situations involving a client. (7-1-98)

a. CPR. Homemakers shall complete CPR training within three (3) months of hire and shall maintain

certification thereafter. (7-1-98)

b. In-Service Training. Providers shall annually provide homemakers with a minimum of ten (10) hours training, including CPR, for the purpose of upgrading their skills and knowledge. (7-1-98)

c. Providers shall assure that homemakers who assist clients with bathing or hair washing receive specific training in performing these services prior to being assigned to a client. (7-1-98)

d. Homemaker Supervision. All providers shall maintain written job descriptions for homemakers and shall have written personnel policies. All homemakers shall receive an annual performance evaluation. Homemaker supervisors shall be available to homemakers during work hours to discuss changes in client's circumstances, to resolve problems with schedules, or to respond to emergencies. (7-1-98)

08. Medical Emergencies. In case of medical emergency, the homemaker shall immediately call 911 or the available local emergency medical service and, if appropriate, shall initiate CPR. (7-1-98)

09. Conduct Of Homemakers. Contractors shall insure, through personnel policies, orientation procedures, signed homemaker agreements, and supervision, that homemaker conduct is governed by the following restrictions. A copy of these restrictions, signed by the homemaker, shall be placed in each homemaker's personnel file. (7-1-98)

a. Accepting Money or Loans. A homemaker shall not accept money or a loan, in any form, from a client. (7-1-98)

b. Sale of Goods. A homemaker shall not solicit the purchase of goods, materials, or services. (7-1-98)

c. Addresses and Telephone Numbers. A homemaker shall not provide a personal telephone number or home address to clients. (7-1-98)

d. Private Work. A homemaker shall not work privately for a client of homemaker services. (7-1-98)

e. Client's Residence. A homemaker shall not enter a client's residence in the absence of the client unless the client has given permission to enter to accomplish scheduled work and the permission is documented in the client file. (7-1-98)

f. Proselytizing. A homemaker shall not engage in religious proselytizing during the course of employment. (7-1-98)

g. Medication Administration. A homemaker shall not administer medications. The homemaker may remind a client to take medications, assist with removing the cap from a multi-dose or bubble pack container, and may observe the client taking medications. (7-1-98)

h. Confidentiality. A homemaker shall regard all client communications and information about clients' circumstances as confidential. (7-1-98)

i. Smoking. A homemaker shall not smoke in the home of a client. (7-1-98)

10. Intake And Assessment. (7-1-98)

a. Normal Intake. Client contact shall be initiated within five (5) days of receipt of the referral, and an assessment shall be conducted within two (2) weeks of referral. (7-1-98)

b. Emergency Intake. Referrals indicating a crisis or potential crisis such as a marked decline in health or functional status, hospital discharge, or adult protection referral require a home visit be conducted to assess service need within one (1) working day of receipt of referral. If appropriate and available, a homemaker shall be assigned and service shall be initiated immediately. Such emergency homemaker service shall not exceed two (2) weeks'

duration. Referrals assessed to need emergency service shall take precedence over applicants carried on a waiting list. (7-1-98)

c. **Client Assessment.** To determine the level of need and the type of service needed, the provider shall conduct an in-home assessment using the ICOA UAI. Service alternatives shall be discussed and referrals initiated as appropriate. (7-1-98)

d. **Assessment Coordination.** A client need not be re-assessed if an assessment completed within the past ninety (90) days by another human services agency provides the same information as the ICOA's UAI and the client signs a Release of Information form. A client assessment shall be completed if no current assessment from another agency is available. In either case, a home visit shall be included in the process of developing the client's individual SSP. (7-1-98)

11. Individual Supportive Service Plan (SSP). A supportive service plan shall be signed by the client or legal representative prior to initiation of service. (7-1-98)

a. An approved plan shall reflect needed services to be provided by available family or others. (7-1-98)

b. **Revision of the SSP.** After services have been in place for one (1) month, the homemaker shall inform the supervisor of any modifications needed in the SSP, such as changes in hours of service or tasks to be performed. (7-1-98)

c. **Reassessments of SSP.** The SSP shall be updated at least annually. Any revisions to an SSP shall be initiated by the client prior to being put into effect. An SSP may be updated more often than annually if changes in a client's circumstances (i.e., functional or cognitive ability, living conditions, availability of supports) indicate a necessity for re-assessment. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

056. ~~CARE COORDINATION~~ CASE MANAGEMENT.

01. Policy. ~~Care coordination~~ Case management is a consumer-driven, social model case management service that empowers individuals and their families to make choices concerning in-home, community-based or institutional long-term care services. (7-1-98)(7-1-99)T

02. Qualifications. Any person hired to fill the position of ~~care coordination~~ case management supervisor or ~~care coordinator~~ case manager on or after July 1, 1998, shall have the qualifications identified in Subsections 010.08 and 010.10 of this chapter. (7-1-98)(7-1-99)T

03. Service Priority. Service priority is based on the following criteria: (7-1-98)

a. Require minimal assistance with one or more ADLs or IADLs; and (7-1-98)

b. Require services from multiple health/social services providers; and (7-1-98)

c. Are unable to obtain the required health/social services for themselves; or (7-1-98)

d. Lack available family or friends who can provide the needed assistance. (3-19-99)

04. Screening And Referral. (7-1-98)

a. The purpose of screening is to determine whether an older person needs service referral, assistance and client advocacy, or is a potential ~~care coordination~~ case management client who should receive a home visit and a

comprehensive assessment.

(7-1-98)(7-1-99)T

b. Screening shall be provided over the telephone. Screening may also be provided in the field, if appropriate. (7-1-98)

c. Screening shall usually be accomplished by the I&A component, Adult Protection, provider, or by a community agency. However, ~~care coordination case management~~ may receive a direct referral of a potential client who has not been screened. In such cases, ~~care coordination case management~~ shall conduct screening or refer the potential client to the I&A component for screening. (3-19-99)(7-1-99)T

d. ~~All Care Coordination Programs shall utilize the pre-screen and referral component of the UAI to screen potential clients.~~ (7-1-98)

e. Pre-referral screening shall be done to determine if a potential client meets the criteria for receipt of ~~Care Coordination Case Management~~ Services. If the potential client meets the criteria and agrees to the referral, the client shall be referred for a comprehensive assessment utilizing the UAI. (7-1-98)(7-1-99)T

f. Referrals who do not meet the criteria for ~~Care Coordination Case Management~~ Services shall be referred for other appropriate services. (7-1-98)(7-1-99)T

g. If notification was requested, the referral source shall be notified of case disposition following the screening. (7-1-98)

05. Referral For ~~Care Coordination Case Management~~. Referrals shall be accepted from any source and may include eligible clients who are seeking or already receiving other services. (7-1-98)(7-1-99)T

06. Working Agreements. (7-1-98)

a. The ~~Care Coordination Case Management~~ Program shall enter into working agreements with primary community resources utilized by older persons. These resources may include AAA service providers, mental health centers, hospitals, home health agencies, legal services providers, and others. (7-1-98)(7-1-99)T

b. Working agreements shall address at least the following: (7-1-98)

i. How long each party shall take to respond to a request for service; (7-1-98)

ii. Release of information procedures; (7-1-98)

iii. Referral and follow-up procedures; (7-1-98)

iv. How each party shall notify the other of program changes and non-availability of service; and (7-1-98)

v. Procedures for working out problems between the two (2) parties. (7-1-98)

07. Core Services. ~~Care coordination Case management~~ provides responsible utilization of available informal (unpaid) supports before arranging for formal (paid) services. The ~~care coordinator case manager~~ and client shall work together in determining the frequency and duration of needed services. Services shall be arranged subsequent to approval by the client or legal representative. Services provided shall be recorded and monitored to insure cost effectiveness and compliance with the SSP. (7-1-98)(7-1-99)T

a. Client assessment shall be conducted during a home visit and shall utilize the UAI. (7-1-98)

b. A client need not be re-assessed if an assessment completed within the past ninety (90) days by another human service agency provides the same information as the ICOA's UAI and the client signs a Release of Information form. (7-1-98)

c. SSP. Based on the information obtained during the client assessment and input obtained from family or professionals familiar with the client, the ~~care coordinator~~ case manager shall develop a written SSP which shall include at least the following: (7-1-98)(7-1-99)T

- i. Problems identified during the assessment; (7-1-98)
- ii. Exploration of opportunities for family and other informal support involvement to be included in development of the SSP; (7-1-98)
- iii. Overall goals to be achieved; (7-1-98)
- iv. Reference to all services and contributions provided by informal supports including the actions, if any, taken by the ~~care coordinator~~ case manager to develop the informal support services; (7-1-98)(7-1-99)T
- v. Documentation of all those involved in the service planning, including the client's involvement (7-1-98)
- vi. Schedules for ~~care coordination~~ case management monitoring and reassessment; (7-1-98)(7-1-99)T
- vii. Documentation of unmet need and service gaps; and (7-1-98)
- viii. References to any formal services arranged, including fees, specific providers, schedules of service initiation, and frequency or anticipated dates of delivery. (7-1-98)

d. The SSP shall be reevaluated and updated by the ~~care coordinator~~ case manager at least annually or when significant changes in the client's status occur; (7-1-98)(7-1-99)T

- e. A copy of the current SSP shall be provided to the client or legal representative. (7-1-98)
- f. Case files shall be maintained for three (3) years following service termination. (7-1-98)

08. Other Supportive Services. (7-1-98)

a. Necessary Services. ~~Care coordinators~~ Case managers shall assist clients to obtain available benefits, services, medically related devices, assistive technology, necessary home modifications, or other services required to fulfill unmet needs. (3-19-99)(7-1-99)T

b. Social-Emotional Support. ~~Care coordinators~~ Case managers shall link clients and their families with available services which facilitate life adjustments and bolster informal supports. (7-1-98)(7-1-99)T

c. Unmet Needs. To assist the AAA in future planning, ~~care coordinators~~ case managers shall identify and document unmet client needs. (7-1-98)(7-1-99)T

d. Other Informal Resources. In all cases, available informal supports shall be explored prior to utilization of formal services. (7-1-98)

09. Structure And Role. ~~Care coordination~~ Case management is a centralized evaluator and arranger of services and provides those activities previously outlined under "Service Functions". AAAs shall be the direct provider for ~~care coordination~~ case management services. The AAA is responsible for the implementation of the ~~care coordination~~ case management program. (7-1-98)(7-1-99)T

a. ~~Care coordinators~~ Case managers shall coordinate service delivery between multiple agencies, individuals, and others. (3-19-99)(7-1-99)T

b. All providers of ~~Care Coordination~~ Case Management Services shall carry insurance in the types and amounts which meet acceptable business and professional standards. (7-1-98)(7-1-99)T

c. Providers shall conduct an orientation program for all new employees which covers, at least, local resources available, ~~care coordination~~ case management service delivery, confidentiality of information, and client rights. (7-1-98)(7-1-99)T

d. In addition to the development and maintenance of the SSP, program and client records shall be maintained to provide an information system which assures accountability to clients, the ~~Care Coordination Case Management~~ Program, and funding agencies, and which supplies data for AAA planning efforts. The information system established shall comply with the following ICOA requirements: (7-1-98)(7-1-99)T

- i. NAPIS Registration Form; (7-1-98)
- ii. Completed UAI; (7-1-98)
- iii. Pertinent correspondence relating specifically to the client; (7-1-98)
- iv. A narrative record of client and community contacts, including problems encountered and SSP modifications developed in response; (7-1-98)
- v. Completed SSP, signed by the client; (7-1-98)
- vi. Written consent and acceptance of ~~Care Coordination~~ Case Management Services and release of information forms; (7-1-98)(7-1-99)T
- vii. Any other documentation necessary for systematic ~~care coordination~~ case management and SSP continuity. (7-1-98)(7-1-99)T

10. Standards Of Performance. AAAs shall assure ~~care coordination~~ case management meets the requirements for service neutrality. An agency providing ~~care coordination~~ case management shall not be a direct provider of other in-home services without proper written justification and approval by the Director of the ICOA. (7-1-98)(7-1-99)T

11. Evaluation. Evaluation is required to assure quality control. The AAA is responsible for monitoring ~~care coordination~~ case management activities for quality control and assurance. The AAA shall review client records to determine: (7-1-98)(7-1-99)T

- a. Services are being provided as outlined in the SSP; (7-1-98)
- b. Services are meeting the goals established in the SSP; (7-1-98)
- c. The client is satisfied with the service(s) being provided; (7-1-98)
- d. Changes in service have been authorized; (7-1-98)
- e. The SSP continues to be cost-effective; (7-1-98)
- f. Providers are noting observations and relating information about informal caregivers, additional actions required by the ~~care coordinator~~ case manager, re-evaluations, amendments to the SSP, and client contacts. (7-1-98)(7-1-99)T

IDAPA 15 - OFFICE OF THE GOVERNOR - IDAHO COMMISSION ON AGING

15.01.02 - RULES GOVERNING ADULT PROTECTION SERVICES

DOCKET NO. 15-0102-9901

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1999.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Requires area agencies to provide adult protective services as a direct service, with no option for waiver.

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:

For the protection of the public health, safety or welfare.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is being imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, an informal negotiated rulemaking process was used because the changes proposed in these rules are not considered controversial. The proposed changes were reviewed and discussed in a meeting with the six (6) directors of the area agencies on aging on May 17, 1999. They were also reviewed at the June 3, 1999 Commission meeting. The Commissioners recommended at that meeting that we not go through the expense and staff time of a formal negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ken Wilkes at 208/334-2219.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this July 20, 1999.

Lupe Wissel, Director
Idaho Commission on Aging
3380 Americana Terrace, Suite 120
PO Box 83720, Boise, ID 83720-0007
Phone: 208/334-3833
Fax: 208/334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0102-9901

022. PROVISION OF SERVICE REQUIREMENTS.

In accordance with section 67-5011, Idaho Code, each AAA shall assume all responsibilities cited in Chapter 53, Title 39, Idaho Code. (7-1-98)

01. Direct Provision Of Service. Each AAA shall provide AP as a direct service. ~~ICOA may waive this requirement upon justification that such direct provision of AP service is not in the interest of effective service delivery.~~ (7-1-98)(7-1-99)T

02. Performance-Based Agreements. Each AAA shall provide AP services pursuant to performance-based agreements delineating the duties and obligations of each ~~area agency~~ AAA AP program. (7-1-98)(7-1-99)T

03. Court Visitors. No AP employee shall serve as a court appointed visitor in a guardianship or conservatorship proceeding involving a proposed ward who is or has been the alleged victim in an AP investigation. (7-1-98)

IDAPA 15 - OFFICE OF THE GOVERNOR - IDAHO COMMISSION ON AGING

15.01.02 - RULE GOVERNING ADULT PROTECTION SERVICES

DOCKET NO. 15-0102-9902

NOTICE OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 1999.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 67-5003, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

It clarifies resident to resident abuse investigations.

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:

For the protection of the public health, safety or welfare.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charges is being imposed or increased.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Ken Wilkes at 208/334-2219.

DATED this July 20, 1999.

Lupe Wissel, Director
Idaho Commission on Aging
3380 Americana Terrace, Suite 120
PO Box 83720
Boise, ID 83720-0007
Phone: 208/334-3833
Fax: 208/334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0102-9902

031. INVESTIGATIVE REQUIREMENTS.

01. Review Of Allegations. Upon receipt of a report of abuse, neglect or exploitation the AAA shall conduct a review of the allegations of such report to determine whether: (7-1-99)T

a. The report was required to be made to ICOA or its contractors pursuant to Section 39-5303, Idaho Code; and (7-1-99)T

b. An emergency exists. (7-1-99)T

02. **Need for Investigation.** If, based on its review, the AAA determines that the report was not required by section 39-5303, Idaho Code, no further investigation need be conducted on such report. (7-1-99)T

043. **Vulnerability Determination.** Upon investigating an AP report, each ~~area agency~~ AAA shall determine whether an alleged victim is vulnerable as defined in Section 39-5302, Idaho Code. If the alleged victim is not vulnerable as defined in Section 39-5302, Idaho Code, AP may refer the complaint to the Ombudsman, Law Enforcement or other appropriate entity for investigation and resolution. (~~7-1-98~~)(7-1-99)T

024. **Assessment Of Alleged Victim.** An alleged victim's vulnerability and associated risk factors shall be determined through the administration of the UAI or other standardized supplemental forms. Initial interviews and assessments of an alleged victim shall be conducted by an AP worker. (7-1-98)

035. **Investigative Findings.** AP shall make one (1) of two (2) investigative findings upon completion of an AP investigation: (7-1-98)

a. Substantiated. AP determines that a report is valid based on sufficient evidence. (7-1-98)

b. Unsubstantiated. AP determines that a complaint is invalid due to insufficient supporting evidence. This finding requires AP to close the case. (7-1-98)

i. If an allegation is unsubstantiated, but the vulnerable adult has unmet service needs, AP shall initiate appropriate referrals with consent of the vulnerable adult or his legal representative. (7-1-98)

ii. A case shall be closed if AP determines that an allegation has been made in bad faith or for a malicious purpose. (7-1-98)

iii. A case shall be closed if AP determines that an alleged victim is not a vulnerable adult. (7-1-98)

046. **Caretaker Neglect.** In investigating a report of caretaker neglect, AP shall take into account any deterioration of the mental or physical health of the caregiver resulting from the pressures associated with care giving responsibilities that may have contributed to the neglect of the vulnerable adult. In such cases, AP shall make every effort to assist the primary caregiver in accessing program services necessary to reduce the risk to the vulnerable adult. In AP cases in which family members are experiencing difficulties in providing twenty-four (24) hour care for a functionally impaired relative, AP shall make appropriate referrals to available community services to provide needed assistance. (7-1-98)

057. **Referral To Law Enforcement.** A substantiated report of abuse, neglect or exploitation is presumed to have caused a serious imposition of rights or injury to the alleged victim and shall be immediately referred to law enforcement pursuant to Section 39-5310, Idaho Code. (7-1-98)

068. **Adult Protection And Ombudsman Coordination.** ~~Area agencies~~ AAAs shall ensure that AP staff and the substate ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. (~~7-1-98~~)(7-1-99)T

072. **Confidentiality.** All records relating to a vulnerable adult and held by an ~~area agency~~ AAA are confidential and shall only be divulged as permitted pursuant to Sections 39-5307, 39-5304 (5), 39-5308, Idaho Code, and IDAPA 15.01.01, Section 028, "Rules Governing Senior Services Program". (~~3-19-99~~)(7-1-99)T

IDAPA 15 - OFFICE OF THE GOVERNOR - IDAHO COMMISSION ON AGING
15.01.20 - RULES GOVERNING AREA AGENCY ON AGING (AAA) OPERATIONS
DOCKET NO. 15-0120-9901

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1999.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Each area agency on aging shall submit an area plan and an annual update by May 15 of each year.

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:

For the protection of the public health, safety or welfare.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is being imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, an informal negotiated rulemaking process was used because the changes proposed in these rules are not considered controversial. The proposed changes were reviewed and discussed in a meeting with the six (6) directors of the area agencies on aging on May 17, 1999. They were also reviewed at the June 3, 1999 Commission meeting. The Commissioners recommended at that meeting that we not go through the expense and staff time of a formal negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ken Wilkes at 208/334-2219.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this July 20th, 1999.

Lupe Wissel, Director
Idaho Commission on Aging
3380 Americana Terrace, Suite 120
PO Box 83720, Boise, ID 83720-0007
Phone: 208/334-3833
Fax: 208/334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0120-9901

052. AREA PLANS.

Each AAA shall submit a four (4) year area plan to the ICOA by close of business May 15, 1998, and by May 15 every four (4) years thereafter. Annual updates shall be submitted by May 15 of each year. The area plan shall be submitted in a uniform format prescribed by the ICOA to meet the requirements of the OAA and all pertinent federal regulations. (~~7-1-98~~)(7-1-99)T

IDAPA 15 - OFFICE OF THE GOVERNOR - IDAHO COMMISSION ON AGING

15.01.21 - RULES GOVERNING OLDER AMERICANS ACT SERVICES

DOCKET NO. 15-0121-9901

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1999.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Clarifies the role and responsibilities of Information and Assistance services as they relate to Adult Protection and case management services.

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:

For the protection of the public health, safety or welfare.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charges is being imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, an informal negotiated rulemaking process was used because the changes proposed in these rules are not considered controversial. The proposed changes were reviewed and discussed in a meeting with the six (6) directors of the area agencies on aging on May 17, 1999. They were also reviewed at the June 3, 1999 Commission meeting. The Commissioners recommended at that meeting that we not go through the expense and staff time of a formal negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ken Wilkes at 208/334-2219.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this July 20th, 1999.

Lupe Wissel, Director
Idaho Commission on Aging
3380 Americana Terrace, Suite 120
PO Box 83720, Boise, ID 83720-0007
Phone: 208/334-3833
Fax: 208/334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0121-9901

021. INFORMATION AND ASSISTANCE.

01. ~~Information Regarding Opportunities~~ Area-Wide I&A Service. Each AAA shall, in accordance with Section 306, OAA, directly provide area-wide toll-free I&A telephone service. ~~(7-1-98)~~(7-1-99)T

02. Client Screening. I&A shall provide client screening ~~in coordination with Care Coordination, Adult Protection, and Ombudsman services~~ and appropriate referrals. ~~(7-1-98)~~(7-1-99)T

03. Screening Client Assessment. ~~Each I&A program shall utilize the UAI to screen potential clients~~ All screened clients requiring assessment shall be referred to case management or adult protection as appropriate. ~~(7-1-98)~~(7-1-99)T

04. Reporting Requirements. I&A service providers shall maintain records as required by the ICOA, and shall report to the ICOA the number of persons who use the service. Such records shall include information about the purpose and date of incoming calls, referrals of callers to other service providers, and any follow-up information regarding the outcome of referrals. (7-1-98)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 16-0101-9905
NOTICE OF NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation in an informal, negotiated rulemaking process prior to the initiation of formal rulemaking procedures by the agency. The negotiated rulemaking action is authorized by Section 39-105, Idaho Code. The formal rulemaking action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, it is a federal requirement that the Department of Health and Welfare, Division of Environmental Quality (DEQ) collect sufficient money to fund an operating permit program in accordance with Title V of the Clean Air Act. See 40 CFR 70.4(b)(7) and (8).

MEETING SCHEDULE: Persons interested in participating in the negotiated rulemaking process are encouraged to attend the following meetings:

September 8, 1999, 10 a.m.
Division of Environmental Quality, Conference Room B
1410 N. Hilton, Boise, Idaho

September 22, 1999, 10 a.m.
Division of Environmental Quality, Conference Room B
1410 N. Hilton, Boise, Idaho

October 6, 1999, 10 a.m.
Division of Environmental Quality, Conference Room B
1410 N. Hilton, Boise, Idaho

The meeting site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting. For arrangements, contact the undersigned at (208)373-0418.

DESCRIPTIVE SUMMARY: This rulemaking is designed to increase collection of registration fees to a level equal to agency expenditures from the fee account. Currently, expenditures are approximately twice collections. Collection of the fees is authorized by Section 39-115(3), Idaho Code. The rules will be developed by DEQ in conjunction with a negotiating committee.

The principle issue involved is ensuring that DEQ has adequate resources and funding for the Title V operating permit program in order to maintain primacy. The fund balance has been reduced significantly over the past two years. This rule will affect owners and operators of facilities affected by the Title V operating permit program.

The goal of the negotiated rulemaking process will be to develop by consensus the text of a recommended rule. If a consensus is reached, a draft of the rule, incorporating the consensus and any other appropriate information, recommendations, or materials, will be transmitted to DEQ for consideration and use in the formal rulemaking process. If a consensus is unable to be achieved on particular issues, the negotiated rulemaking process may result in a report specifying those areas on which consensus was and was not reached, together with arguments for and against positions advocated by various participants. At the conclusion of the negotiated rulemaking process, DEQ intends to present a rule to the Board of Health and Welfare (Board) for temporary adoption and, at the same time, commence

formal rulemaking with the publication of a proposed rule, using and taking into consideration the results of the negotiated rulemaking process. DEQ intends to present the rule to the Board for temporary adoption in November 1999 or February 2000.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Sue Richards at (208)373-0502 or srichard@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposal to initiate negotiated rulemaking. All written comments must be received by the undersigned on or before September 22, 1999.

Dated this 11th day of August, 1999.

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

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE
DOCKET NO. 16-0105-9901
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ) to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before September 15, 1999. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rulemaking updates Idaho's rules so that they are consistent with revisions to the federal RCRA regulations as of July 1, 1999. Also included in this rulemaking are corrections to federal regulation citations. In addition, this proposed rule updates the requirements of Section 997, Confidentiality of Records, by adding a reference to the Rules Governing the Protection and Disclosure of Records in the Possession of the Division of Environmental Quality, which were adopted in 1998 to implement the 1998 amendments to the public records statute and the HWMA.

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

After consideration of public comments, DEQ intends to present the final proposal to the Board of Health and Welfare in November 1999 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2000 session of the Idaho Legislature.

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

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or jbrueck@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. All written comments must be received by the undersigned on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0105-9901

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260-266, 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 1998~~9~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-19-99)()~~

01. Exceptions. Nothing in 40 CFR Parts 260 - 266, 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (7-2-97)

02. Availability Of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

a. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206)553-4270; and (7-2-97)

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)

c. Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. For purposes of 40 CFR 260.20 ~~and 260.22~~, "Federal Register" shall be defined as the Idaho Administrative Bulletin. ~~(3-19-99)()~~

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. ~~(3-19-99)()~~

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Division of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD

which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

d. Delisting levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):.

antimony	0.06
arsenic	0.50
barium	7.6
beryllium	0.010
cadmium	0.050
chromium	0.33
lead	0.15
mercury	0.009
nickel	1
selenium	0.16
silver	0.30
thallium	0.020
vanadium	2
zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

e. Modification of Treatment Process. (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Division of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)

f. Records and Data Retention and Submittal. (3-16-96)

- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)
- iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation By Reference. 40 CFR Part 262 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. For purposes of 40 CFR ~~262.53~~, 262.55, 262.56, and 262.57(b), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.51, ~~262.53~~, and 262.54(g)(1), EPA shall be defined as the U.S. Environmental Protection Agency. (3-19-99)()

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2) and 262.34(d)(5)(iv)(e~~C~~), (see 40 CFR 262.34(a)(4)), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (7-1-97)()

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. (3-19-99)()

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.149, 264.150, and 264.301(l)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. (3-19-99)()

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.149 and 265.150) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. (3-19-99)()

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts (excluding Subparts A and B) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. ~~(3-19-99)~~(____)

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, and 268.42(b). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. ~~(3-19-99)~~(____)

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(3), 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. ~~(3-19-99)~~(____)

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A and B are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~, except that the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ~~(3-19-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation By Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. ~~(3-19-99)~~(____)

02. Used Oil As A Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

a. Be submitted to the Idaho Division of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706; and (2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1998~~9~~. ~~(3-19-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

996. ADMINISTRATIVE PROVISIONS.

Except as set forth in Section 013 administrative appeals from all final agency decisions shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, ~~Section 000 et seq.~~, "Rules Governing Contested Cases and Declaratory Rulings". (2-11-94)()

997. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules shall be disclosed to the public in accordance with Chapter 3, Title 9, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 9-342A, Idaho Code, and IDAPA 16.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Division of Environmental Quality". (3-19-99)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.07 - RULES FOR CONSTRUCTION AND OPERATION OF
PUBLIC SWIMMING POOLS IN IDAHO

DOCKET NO. 16-0107-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code. In this rulemaking, the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ) proposes to repeal the Rules for Construction and Operation of Public Swimming Pools in Idaho, IDAPA 16.01.07, as described in the descriptive summary below.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for hearing must be received by the undersigned on or before September 15, 1999. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The Idaho Department of Health and Welfare has authority for the enforcement of minimum standards of health, safety and sanitation for all public swimming pools within the state under Section 39-105(3)(d), Idaho Code. Historically, the Department of Health and Welfare's Division of Environmental Quality (DEQ) has administered the public swimming pool program pursuant to DEQ's Rules for Construction and Operation of Public Swimming Pools in Idaho, IDAPA 16.01.07. In response to a recommendation of the Legislative Environmental Common Sense Subcommittee, the Board of Health and Welfare has decided to transfer this responsibility from DEQ to the District Health Departments through the Department of Health and Welfare, Division of Health (DOH). To achieve that result, DOH is proposing its own public swimming pool rules (Docket No. 16-0214-9901), and DEQ is proposing to repeal its public swimming pool rules. The repeal of the DEQ rules and the adoption of the DOH rules have been scheduled so that both actions, once adopted by the Board of Health and Welfare and approved by the Legislature, will take effect simultaneously.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Health and Welfare in November 1999 for adoption of a pending rule. The repeal is expected to be final and effective upon the conclusion of the 2000 session of the Idaho Legislature.

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

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Jerry Yoder at (208)373-0502 or jyoder@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. All written comments must be received by the undersigned on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.09 - RULES REGULATING SWINE AND POULTRY FACILITIES

DOCKET NO. 16-0109-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, Section 39-104A, Idaho Code, contains explicit authorization for regulating swine and poultry facilities.

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

September 14, 1999, 7 p.m.
University Place Auditorium
1776 Science Center Drive
Idaho Falls, Idaho

September 15, 1999, 7 p.m.
College of Southern Idaho
The Shields Building, Room 118
315 Falls Avenue, Twin Falls, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to adopt a new rule chapter entitled "Rules Regulating Swine and Poultry Facilities." The rules were developed by the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ) in conjunction with an advisory committee made up of persons having interests in swine and poultry facilities. The intent of the proposed rules is to ensure the protection of public health and the environment through properly controlling animal waste.

The proposed rules set forth a permit process for swine and poultry facilities having the one-time animal unit capacity of 2,000 animal units. Existing facilities meeting this capacity, who register within three months of the effective date of the proposed rules, are exempt from being permitted, unless they expand. Existing facilities, however, must still meet certain non-locational requirements of the rules and are still subject to other applicable laws including, but not limited to, Section 39-118, Idaho Code; the Ground Water Rule, IDAPA 16.01.11; and the Water Quality Standards and Wastewater Treatment Requirements, IDAPA 16.01.02. The proposed rules provide for the submission of an application containing specified information, set performance standards for liquid storage impoundments, set out an application procedure, and provide for general permit conditions as well as specific permit conditions.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Health and Welfare in November 1999 for adoption of a temporary or pending rule.

FEE SUMMARY: An application fee is required for all facilities seeking a permit. The fee is based on a scale depending on the capacity of the proposed facility. Section 39-119, Idaho Code, authorizes imposition of this fee.

NEGOTIATED RULEMAKING: The rule text has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 810 through 815. The negotiation was open to the public. Participants in the negotiation included representatives of the pork and poultry industries, environmental organizations, members of the Idaho legislature, and representatives of counties and cities. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 99-5, May 5, 1999, page 36.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rule, contact Susan Burke at (208)373-0502 or sburke@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding the proposed rule. All written comments must be received by the undersigned on or before October 1, 1999.

Dated this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0109-9901

IDAPA 16
TITLE 01
Chapter 09

RULES REGULATING SWINE AND POULTRY FACILITIES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Board of Health and Welfare the authority to promulgate Rules Regulating Swine and Poultry Facilities pursuant to Sections 39-104A, 39-105, and 39-107, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as Rules of the Department of Health and Welfare, IDAPA 16.01.09, "Rules Regulating Swine and Poultry Facilities". ()

02. Scope. These rules establish the procedures and requirements for the issuance of a permit to construct, operate, close or expand swine and poultry facilities of a defined capacity. The intent of these rules is to ensure animal waste from swine and poultry facilities are properly controlled so as not to adversely affect public health or the environment. ()

002. WRITTEN INTERPRETATIONS.

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

003. ADMINISTRATIVE APPEALS.

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

004. -- 009. (RESERVED).

010. DEFINITIONS.

- 01. Animal Unit.** A unit of measurement calculated by adding the following numbers: the number of swine weighing over twenty-five (25) kilograms (approximately fifty-five pounds (55)) multiplied by four-tenths (.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1), plus the number of poultry multiplied by one one-hundredth (.01) on facilities with continuous overflow watering plus, three one-hundredths (.03) on facilities with liquid manure handling systems. ()
- 02. Animal Waste.** Animal excrement, feed wastes, process wastewater or any other waste associated with the confinement of swine or poultry. ()
- 03. Animal Waste Management System.** Any structure or system that provides for the collection, treatment, disposal, distribution, or storage of animal waste. ()
- 04. Certified Planner.** A person who has completed the nutrient management certification in accordance with the Nutrient Management Standard. ()
- 05. Department.** The Idaho Department of Health and Welfare. ()
- 06. Director.** The Director of the Department of Health and Welfare or his designee. ()
- 07. Existing Facility.** A facility built and in operation one (1) year or more prior to the original effective date of these rules. ()
- 08. Expanding Facility.** A swine or poultry facility of less than two thousand (2,000) animal units that increases its one-time animal unit capacity to two thousand (2,000) or more animal units or an existing facility that increases its one-time animal unit capacity by ten percent (10%). ()
- 09. Facility Or Swine Or Poultry Facility.** Any place, site or location or part thereof where swine or poultry are kept, handled, housed, or otherwise maintained and includes but is not limited to buildings, lots, pens, and animal waste management system, and which has the one-time animal unit capacity of two thousand (2000) or more animal units. ()
- 10. Land Application.** The spreading on or incorporation of animal waste into the soil mantle primarily for beneficial purposes. ()
- 11. Nutrient Management Plan.** A plan prepared in conformance with the Nutrient Management Standard or other equally protective standard approved by the Director for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production and to minimize the potential for environmental degradation, particularly impairment of water quality. ()
- 12. Nutrient Management Standard.** The United States Department of Agriculture-Natural Resource Conservation Service Code 590 or the Idaho Agricultural Pollution Abatement Plan-Nutrient Management Standard Component Practice. ()
- 13. One-Time Animal Unit Capacity.** The maximum number of animal units that a facility is designed to hold at any given point in time. ()
- 14. Operate.** Confine, feed, propagate, house, or otherwise sustain swine or poultry. ()
- 15. Permit.** A written authorization by the Director to construct, operate, or expand a swine or poultry facility. ()
- 16. Permittee.** The person in whose name a permit is issued. ()
- 17. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties. ()

18. Poultry. This term includes chickens, turkeys, ducks, geese and any other bird raised in captivity. ()

19. Process Wastewater. Any water used in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of swine or poultry and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact, swimming, or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste. ()

20. Unauthorized Discharge. A release of animal waste to the environment or waters of the state that is not authorized by the permit or the terms of an NPDES permit issued by the federal EPA. ()

21. Waters Of The State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. ()

011. -- 099. (RESERVED).

100. APPLICABILITY.

01. Permit Required. No person shall construct, operate, or expand a regulated swine or poultry facility without first obtaining a permit issued by the Director as provided in these rules. ()

02. Regulated Facilities. New swine and poultry facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units and expanding facilities are required to be permitted as provided in these rules. ()

03. Common Control. Two (2) or more swine or poultry facilities under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than two thousand (2,000) animal units, if they use a common animal waste management system or land application site. ()

04. Existing Swine And Poultry Facilities. Those swine and poultry facilities built and in operation one (1) year or more prior to the original effective date of these rules are exempt from the requirements of these rules except as provided in Section 210. ()

101. -- 199. (RESERVED).

200. PERMIT APPLICATION.

01. Permit Application. Every person requiring a permit under these rules shall submit a permit application to the Department. A permit application will be used to determine if the construction, operation, and closure of a swine or poultry facility will be in conformance with these and other applicable rules. ()

02. Preapplication Conference. Prospective applicants are encouraged to meet with the Department to discuss application requirements and procedures. ()

03. Contents Of Application. Each application shall include, in the format set forth by the Director and when determined applicable by the Director, the following information in Subsections 200.04 through 200.08 in sufficient detail to allow the Director to make necessary application review decisions concerning design, environmental protection and public health. ()

04. Relevant Information. ()

a. Name, mailing address and phone number of the facility owner. ()

- b. Name, mailing address and phone number of the facility operator. ()
 - c. Name and mailing address of the facility. ()
 - d. Legal description of the facility location. ()
 - e. The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners. ()
 - f. The names and locations of all swine or poultry facilities owned and/or operated by the applicant within the last ten (10) years. ()
 - g. The one-time animal unit capacity of the facility. ()
 - h. The type of animals to be confined at the facility. ()
 - i. Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho Department of Water Resources which, if approved, will supply adequate water for the proposed operation. ()
 - j. Proof of financial capability to meet the conditions of an approved closure plan for a facility. The mechanism used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must insure that the funds necessary to meet the costs of closure will be available whenever they are needed. The mechanisms include, but are not limited to, trust funds, surety bonds, letters of credit, insurance and corporate guarantees. ()
 - k. The facility's biosecurity and sanitary standards. ()
- 05. Construction Plan.** Plans and specifications for the facility's animal waste management system that include the following information: ()
- a. Vicinity map(s) prepared on one (1) or more seven and one-half foot (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: ()
 - i. Layout of the facility, including buildings and animal waste management system; ()
 - ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; ()
 - iii. The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and ()
 - iv. Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility. ()
 - b. Facility construction specifications including: ()
 - i. A site plan showing: ()
 - (1) Building locations; ()
 - (2) Waste facilities; ()
 - (3) All waste conveyance systems; and ()

(4) All irrigation systems used for land application, including details of approved water supply protection devices. ()

ii. Building plans showing: ()

(1) All wastewater collection systems in housed units; ()

(2) All freshwater supply systems, including details of approved water supply protection devices; ()

and (3) Detailed drawings of wastewater collection and conveyance systems and containment construction; ()

(4) Detailed construction and installation procedures. ()

06. Site Characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information: ()

a. A description of monitoring methods, frequency, and reporting components related to either leak detection systems and/or ground water monitoring wells; ()

b. The climatic, hydrogeologic, and soil characteristics; ()

c. The depth to water and a potentiometric map for the uppermost aquifer; ()

d. The vertical and horizontal conductivity, gradient, and ground water flow velocity; ()

e. Estimates of recharge to the uppermost aquifer; ()

f. Information which characterizes the relationship between the ground water and adjacent surface waters; and ()

g. A summary of local ground water quality data. ()

07. Nutrient Management Plan. A plan prepared by a Certified Planner demonstrating compliance with the Nutrient Management Standard for land application. ()

08. Closure Plan. A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes: ()

a. The estimated length of operation of the facility; and ()

b. A description of the procedures, methods, and schedule to be implemented at the facility for final disposal of all animal waste. ()

09. Other Information. An applicant shall provide any other information relative to Subsections 200.04 through 200.08 deemed necessary by the Director to assess protection of human health and the environment. ()

10. Application Fee. A fee shall be submitted with each permit application as follows: ()

a. Three thousand dollars (\$3,000) for facilities that have a one-time animal unit capacity of less than five-thousand (5,000) animal units; ()

b. Five thousand dollars (\$5,000) for facilities that have a one-time animal unit capacity of five thousand to ten thousand (5,000-10,000) animal units; and ()

c. Ten thousand dollars (\$10,000) for facilities that have a one-time animal unit capacity over ten thousand (10,000) animal units. ()

201. -- 209. (RESERVED).

210. EXISTING FACILITIES.

01. Registration Requirement. Existing facility owners shall register with the Department within three (3) months after the original effective date of these rules. Registration shall include the information in Subsection 200.04 except for Subsection 200.04.j. Nothing in Section 210 shall be construed to deny an existing facility the opportunity to apply for, and receive, a permit under these rules. ()

02. Plan Requirement. Existing facilities shall submit a nutrient management plan and closure plan to the Director for approval within two (2) years of the original effective date of these rules in accordance with Subsections 200.07 and 200.08. An application fee shall not be required unless the facility is expanding. ()

03. Expanding Facility. The owner of an existing facility shall not increase the one-time animal unit capacity of the facility by ten percent (10%) or more without first obtaining a permit for the expansion as required by these rules. ()

211. -- 249. (RESERVED).

250. REQUIREMENTS FOR WATER QUALITY PROTECTION.

The following minimum design and performance standards are intended as a baseline for protection of public health and the waters of the state. These standards shall apply to all facilities and be reflected in the permit unless the Director approves, based on an applicant's site specific information, that compliance with a specific standard is not required to protect water quality and the public health. Other conditions, as determined by the Director to be necessary to protect water quality, may be included in a permit. ()

01. Animal Waste Management System Design Criteria. A facility's animal waste management system shall be designed and constructed in accordance with the NRCS and the American Society of Agricultural Engineers standards, whichever is most stringent and shall: ()

a. Contain the maximum expected operating water balance and the twenty-five (25) year twenty-four (24) hour rainfall event and the one (1) in five (5) year winter runoff. ()

b. Provide capacity to store the peak volume of process wastewater that will be generated during a six (6) month period. ()

c. Provide a one (1) foot freeboard in addition to the storage requirements, specified in Subsections 250.01.a. and 250.01.b. ()

d. Impoundments, other than for emergency runoff, containing or designed to contain process wastewater shall be designed for efficient leak detection and provide for adequate leak recovery and shall not be located in the one-hundred (100) year floodplain. ()

e. Impoundment lining materials shall be designed so that the seepage rate shall be no greater than 1×10^{-7} cm/sec. ()

02. Water Quality Monitoring. Ground water and/or leak detection monitoring shall be conducted for every facility with a liquid storage impoundment and shall be designed to give the earliest possible detection of an unauthorized discharge. ()

03. Discharges. Facilities shall be constructed, operated and maintained to not cause unauthorized discharges. ()

04. Spill Contingency Plan. Facilities shall prepare a discharge response strategy that describes procedures and methods to be implemented for the abatement and cleanup of any pollutant. ()

05. Stockpile Areas. Animal waste stockpile areas, including compost areas, shall be constructed to ensure that all water and precipitation, which comes into contact with the stockpiles, does not enter waters of the state. ()

251. -- 299. (RESERVED).

300. APPLICATION PROCESSING PROCEDURE.

01. Application Completeness. Within thirty (30) days of receipt of an application, the Director shall provide written notice to the applicant as to whether the application meets all the requirements of Section 200. The Department shall provide public notice of the receipt of a complete application. An application which does not, on its face, meet all the requirements of Section 200 of these rules shall be returned to the applicant by the Director with a written list of the deficiencies. The Director will not process an application until it is determined to be complete in accordance with these rules. ()

02. Notice Of Environmental Suitability Of Facility Location. Within thirty (30) days of the Director's notice that the application is complete, the Director shall determine whether the facility is environmentally suitable for the selected location. In making this decision, the Director shall review the location of the facility relative to flood zones, dwellings, wells, surface and ground water and those other items the applicant must identify on the vicinity map. Written notice of the Director's determination will be sent to the applicant, with a copy sent to the appropriate county and city officials for the selected location, along with a Department analysis that includes the following: ()

a. A brief description of the proposed facility, its animal waste management system and its nutrient management plan; ()

b. A brief summary of the basis for the determination on environmental suitability including references to applicable requirements and supporting materials; ()

c. A description of the schedule for issuing a permit; and ()

d. The name and phone number of the Department staff to contact for additional information. ()

03. Draft Permit. Within sixty (60) days of the Director's determination that a facility is environmentally suitable for its proposed location, the Director shall either issue a draft permit or a notice of denial of a permit to the applicant. The draft permit shall be in the same form as a final permit and shall specify conditions of construction, operation and closure. ()

04. Public Comments. The Department shall provide notice to the public of its issuance of a draft permit. The public may provide written comments for a time period and in a manner specified in the Department's notice. The Department may, in its discretion, provide an opportunity for the public to provide oral comments. ()

05. Permit Denial. The Director may deny a permit if: ()

a. The owner of a facility is not in substantial compliance with a final agency order or any final order or judgement of a court secured by any state or federal agency relating to the operation of a swine or poultry facility; ()

b. The application is inaccurate; ()

c. The facility as proposed cannot meet the requirements set forth in these rules or cannot be constructed, operated and closed in a manner that protects human health and the environment; or ()

d. The appropriate county or city does not approve the location of the facility. ()

06. Final Permit. Within sixty (60) days of the issuance of a draft permit, the Director shall issue a final permit to the applicant, however, a permit shall not be issued by the Director until the applicant has received final approval from the appropriate county or city for the location of the facility and has received approval for a water right from the Department of Water Resources. The permit shall be effective for a fixed term of not more than five (5) years, and may be reissued upon receipt of an updated application and demonstration of compliance with the rules and permit requirements existing at the time of reissuance. ()

07. Additional Information. At any time during the application process an applicant shall provide the Director with additional information the Director deems necessary to process a permit, within thirty (30) days of the Director's request. The time period within which the Director must act with regard to the permit shall be stayed until the information requested is provided. If an applicant fails to provide the information within this time period, unless a longer time period is allowed by the Director, the Director may cease the application process and require the applicant to submit a new application. ()

301. -- 399. (RESERVED).

400. PERMIT CONDITIONS.

The following conditions shall apply to all permittees. ()

01. Compliance Required. The permittee shall comply with all conditions of the permit. The permit shall not relieve the permittee of the responsibility to comply with all other applicable local, state, and federal laws. ()

02. Financial Capability. Permittees shall have the financial capability to meet the conditions of an approved closure plan for a facility. ()

03. Construction And Operation Of Facility. The permittee shall ensure that construction, operation and maintenance of the facility proceed according to the construction plans and specifications and the approved monitoring, nutrient management and closure plans, and comply with the following: ()

a. Within thirty (30) days of completion of construction, submit as built plans. ()

b. Apply appropriate management practices as approved by the Director. ()

c. The facility or operations associated with the facility shall not create a public health hazard or nuisance conditions including odors. ()

d. The facility shall not dispose of any material not approved for disposal under the permit into the animal waste management system including, but not limited to, human waste. ()

e. The removal of animal waste from an impoundment or storage structure shall be performed in a manner to not damage the integrity of the liner. ()

f. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with IDAPA 02.04.03, "Rules of Department of Agriculture Governing Animal Industry," Section 050, "Dead Animals, Movement, Disposal". ()

g. Nutrient management plans shall be amended if modifications to the facility operation, as outlined in the Nutrient Management Standard or other conditions, warrant the amendment. ()

h. Soil tests shall be conducted on all land application sites owned or leased by the permittee every year to determine compliance with the nutrient management plan and Nutrient Management Standard. The Director may require more frequent soil tests if deemed necessary. ()

04. Provide Information. The permittee shall furnish to the Director within a reasonable time, any

information including copies of records required by the permit or other applicable rules, which the Director may reasonably require to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules. ()

05. Entry And Access. The permittee shall allow the Director, consistent with Title 39, Chapter 1, Idaho Code, and in compliance with the biosecurity and sanitary standards of a facility, so long as the standards and requirements do not inhibit reasonable access, to: ()

- a. Enter at reasonable times upon the premises of a permitted facility or where records are kept; ()
- permit; b. Have access to and copy at reasonable times any records that must be kept under conditions of the ()
- c. Inspect any facility or land application site; and ()
- d. Sample or monitor at reasonable times, substances or parameters directly related to compliance with the permit or these rules. ()

06. Reporting. The permittee shall report to the Director under the circumstances and in the manner specified in Section 400: ()

- a. Orally, no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any noncompliance which may endanger the public health or the environment; and ()
- b. In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event which has resulted or which may result in noncompliance with these rules. The report shall contain: ()
 - i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; ()
 - ii. The period of the event including, to the extent possible, times and dates; ()
 - iii. Measures taken to mitigate the event or eliminate the event and protect the public health; and ()
 - iv. Steps taken to prevent recurrence of the event. ()
- c. In writing, when the permittee knows or should reasonably know of material relevant facts not submitted or incorrect information submitted in a permit application or any report or notice to the Director. ()

07. Begin Construction. If a permittee fails to begin construction or expansion of a facility within two (2) years of the effective date of a permit, the Director may void the permit and require a new application. ()

08. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee shall apply for a new permit at least one hundred eighty (180) days prior to the expiration of any permit issued pursuant to these rules. ()

401. -- 449. (RESERVED).

450. SPECIFIC PERMIT CONDITIONS.

01. Basis For Specific Permit Conditions. Conditions necessary for the protection of the environment and the public health may differ from facility to facility because of varying environmental conditions and animal waste compositions. The Director may establish, on a case-by-case basis, specific permit conditions. Specific

conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to, the following: ()

- a. Chemical, biological, physical and volumetric characteristics of the process wastewater; ()
- b. Geological and climatic nature of the facility site; ()
- c. Size of the site and its proximity to population centers and to ground and surface water; ()
- d. Legal considerations relative to land use and water rights; ()
- e. Techniques used in process wastewater distribution and the disposition of that vegetation exposed to process wastewaters; and ()
- f. The need for monitoring and record keeping to determine if the facility is being operated in conformance with its design and if its design is adequate to protect the environment and the public health. ()

02. Limitations To Operation. Conditions of the permit may specify or limit: ()

- a. Process wastewater composition; ()
- b. Method, manner and frequency of process wastewater treatment; ()
- c. Physical, chemical and biological characteristics of a facility; ()
- d. An odor management plan; and ()
- e. Any other condition the Director finds necessary to protect public health or the environment. ()

03. Compliance Schedules. The Director may establish a compliance schedule for facilities as part of the permit conditions including: ()

- a. Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or permit conditions; and ()
- b. Dates by which those steps or actions are to be taken. ()

04. Monitoring Requirements. Any facility may be subject to monitoring requirements including, but not limited to, the following: ()

- a. The type, installation, use and maintenance of monitoring equipment; ()
- b. Monitoring or sampling methodology, frequency and locations; ()
- c. Monitored substances or parameters; ()
- d. Testing and analytical procedures; and ()
- e. Reporting requirements including both frequency and form. ()

451. -- 499. (RESERVED).

500. PERMIT MODIFICATION.

- 01. Minor Modifications.** Minor modifications are those which do not have a potential affect to the

environment or the public health. Such modifications shall be made by the Director. Minor modifications are generally limited to: ()

- a. The correction of typographical errors; ()
- b. Transfer of ownership or operational control; or ()
- c. Certain minor changes in monitoring or operational conditions. ()

02. Major Modifications. All modifications not considered minor shall be considered major modifications. The procedure for making major modifications shall be the same as that used for a new permit under these rules. ()

501. -- 549. (RESERVED).

550. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility shall submit a transfer application to the Director that includes at least the following: ()

- a. The relevant information required by Subsection 200.04; and ()
- b. Any change of conditions at the facility resulting from the transfer of ownership or operation. ()
- c. The Director shall review the transfer application and within sixty (60) days of its receipt either approve or deny the transfer. ()

02. Transfer Approval. An approved permit transfer shall be a minor modification in accordance with Subsection 500.01. ()

03. Transfer Denial. A notification of a permit denial shall set forth the reasons for the denial, steps necessary to meet the requirements for a permit transfer and the opportunity for the applicant to request a hearing. ()

04. Permit Obligations. The new permittee assumes all rights and responsibilities of the transferred permit. ()

551. -- 599. (RESERVED).

600. VIOLATIONS.

01. Failure To Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition shall be deemed a violation of these rules. ()

02. Falsification Of Statements And Records. It shall be a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. ()

03. Discharges. Any unauthorized discharge from a facility shall be a violation of these rules. ()

04. Penalties. Any person violating any provision of these rules or any permit or order issued thereunder shall be liable for a civil or criminal penalty in accordance with Title 39, Chapter 1, Idaho Code. ()

05. Permit Revocation. The Director may revoke a permit for: ()

- a. A material violation of any condition of a permit; or ()
- b. If the permit was obtained by misrepresentation or failure to disclose all relevant facts. ()

06. Revocation Hearing. Prior to revoking a permit, the Director shall issue a notice of intent which shall become final unless the permittee timely requests an administrative hearing in writing. Such hearing shall be conducted in accordance with Section 003 of these rules. ()

601. -- 998. (RESERVED).

999. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 9-342A, Idaho Code, and IDAPA 16.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Division of Environmental Quality". ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.02.04 - RULES GOVERNING EMERGENCY MEDICAL SERVICES ACCOUNT III GRANTS

DOCKET NO. 16-0204-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 39-145(2), 39-146B and 49-306, Idaho Code and HB58.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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

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

New legislation passed during the 1999 session created a dedicated fund into which fees added to drivers' licenses and certain instruction permits will be deposited. These funds, which will be collected beginning in January of 2000, are to be used exclusively for grants to licensed Emergency Medical Services agencies for the purposes of acquiring Emergency Medical Services vehicles and patient care equipment. This rulemaking specifies the eligibility criteria, application process, and distribution methodology to be used by the Emergency Medical Services Bureau in the award of these grants.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Dia Gainor, Bureau Chief, at (208) 334-4000.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0204-9901

IDAPA 16
TITLE 02
Chapter 04

RULES GOVERNING EMERGENCY MEDICAL SERVICES ACCOUNT III GRANTS

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Section 39-145, Idaho Code, to adopt rules concerning the administration of the Idaho Emergency Medical Services Act. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as Idaho Department of Health and Welfare, IDAPA 16.02.04, "Rules Governing Emergency Medical Services Account III Grants". ()

02. Scope. This rulemaking specifies the eligibility criteria, application process, and distribution methodology to be used by the Emergency Medical Services Bureau in the award of these grants. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this bureau has an EMS Grants Standards Manual, which contains policy and interpretation of the rules of this Chapter, or to the documentation of compliance with the rules of this Chapter. Copies of the Manual may be obtained from the EMS Bureau, P.O. Box 83720, Boise, Idaho 83720-0036. ()

003. ADMINISTRATIVE APPEALS.

Appeals shall be governed by the provisions of IDAPA 16.05.03, Rules Governing Contested Case Proceedings and Declaratory Rulings. ()

004. DEFINITIONS.

For the purposes of these rules, the following terms and abbreviations will be used, as defined below: ()

01. Applicant. An entity submitting documents required by the EMS Bureau for the purposes of acquiring funds or capital equipment from the EMS Account III established by Section 39-146B, Idaho Code. ()

02. Approval. The disbursement of a grant from EMS Account III to an applicant. ()

03. Award. The placement of an applicant on a prioritized list indicating the potential for receipt of grant approval during the current fiscal year. ()

04. EMS Bureau. The Emergency Medical Services (EMS) Bureau of the Idaho Department of Health and Welfare. ()

05. EMS Account III. A dedicated fund subject to appropriation by the Legislature which is established and defined in Section 39-146B, Idaho Code. ()

06. Grant. The disbursement of funds from, or capital equipment purchased by, EMS Account III revenue. ()

07. Grant Cycle. The process of grant application distribution, application submission, awards and approval which occur in accordance with dates established in these rules. ()

005 -- 099. (RESERVED).

100. GRANT CYCLE.

The EMS Bureau shall conduct the grant process in accordance with the following schedule: ()

01. Application Availability. The EMS Bureau shall make an application and guidance available no later than February 28 of each year, which shall initiate the grant cycle. ()

02. Application Period. The applicant shall have through May 31 of that grant cycle to complete and

submit the application to the EMS Bureau. ()

03. Application Evaluation Period. The EMS Bureau and state EMS Advisory Committee shall evaluate the applications received from eligible applicants prior to June 30 of that grant cycle. ()

04. Award Notification. The EMS Bureau shall issue notification to every applicant regarding the disposition of their grant request prior to July 31 of that grant cycle. ()

05. Grant Approval. Grant disbursement shall occur prior to September 30 of that grant cycle. ()

06. Deadline For Return Of Funds. All unused grant funds shall be returned to the EMS Account III by the applicant no later than April 1 of that grant cycle. ()

101. ELIGIBILITY FOR GRANT.

A governmental entity or a non-profit entity registered with the Idaho secretary of state is eligible to receive a grant. ()

102. APPLICATION REQUIRED.

A completed EMS Bureau application must be submitted by the applicant for the purpose of requesting a grant, on or before the conclusion of the application period specified in Section 100 of these rules in order to be considered during the grant cycle. ()

01. Required Information. The applicant shall provide the EMS Bureau with information, including: ()

- a. Documentation of one (1) or more vendor price quotes for all proposed equipment purchases; ()
- b. Operating budget; ()
- c. All funding sources and revenue generated by source; ()
- d. Contact person for verification of fiscal information; ()
- e. Federal Tax Identification Number; ()
- f. Resident population within the applicant response area in Idaho; ()
- g. Migrant and tourist population within the applicant response area in Idaho; ()
- h. Type, quantity, and purpose of similar equipment presently in use by the applicant; ()
- i. Age and condition of equipment being replaced if applicable; ()
- j. Narrative description of need; ()
- k. Prioritization by the applicant of equipment requested when the application requests funding for two (2) or more items; and ()
- l. County or local governmental endorsement. ()

02. Incomplete Application. An application which is missing required information shall be excluded from consideration for an award. ()

03. Application Purpose. The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. ()

103. -- 199. RESERVED.

200. AWARD ELIGIBILITY REQUIREMENTS.

In order to be considered for an award an applicant must be recognized by the EMS Bureau as one of the following: ()

01. A Currently Licensed EMS Service. The applicant must hold a current Ambulance or Non-Transport License in accordance with IDAPA 16.02.03, "Rules Governing Emergency Medical Services". ()

02. An Applicant With A Pending Idaho EMS License. Grant approval shall not be issued to an applicant until an Idaho EMS license has been issued. ()

a. Applicants with a pending Idaho EMS license will be considered as ineligible if licensure is not achieved by the application period deadline as defined in Section 100 of these rules. ()

b. Applicants determined to be ineligible for an award due to licensure status may reapply in a subsequent grant cycle. ()

03. A Currently Licensed EMS Service With A Pending Licensure Change Request. An applicant that is a currently licensed EMS service with a pending change to licensure may receive grant approval for any ambulance or equipment which is necessary for the pending licensure change only if the licensure change is approved by the EMS Bureau. ()

201. -- 299. (RESERVED).

300. AWARD RECOMMENDATION.

The EMS Bureau shall request a recommendation from the state EMS Advisory Committee (EMSAC) as defined in IDAPA 16.02.03, "Rules Governing Emergency Medical Services," Section 100, regarding the distribution of grant funds. ()

01. Assessment And Validation Of Need. The EMSAC shall review grant applications prior to EMSAC making a recommendation about the distribution of awards. ()

02. Contingency Awards. The EMSAC may make a recommendation about what awards should be considered by the EMS Bureau in the event that other awards are withdrawn as described in Section 600 of these rules. ()

301. CRITERIA FOR EMS VEHICLES.

For each grant cycle the following criteria shall be used to evaluate applications for EMS vehicles, with maximum weight available for each criterion as indicated. Greater weight will be assigned to those conditions which indicate greater need for each criterion: ()

01. Applicant Fleet Size. The number and type of vehicles currently in use by the applicant; weight = ten (10). The application demonstrating a smaller fleet size will be assigned greater weight. ()

02. Age Of Applicant Vehicle(s). The number of years which has elapsed since the vehicle being replaced was originally manufactured or rechassied; weight = fifteen (15). The application demonstrating greater age of vehicle(s) will be assigned greater weight. ()

03. Four Wheel Drive Capability Of Applicant Vehicle(s). The type, operability, and frequency of use of four (4) wheel drive capacity of the applicant fleet; weight = ten (10). The application demonstrating greater frequency of conditions requiring four (4) wheel drive utilization will be assigned greater weight. ()

04. Mileage Of Applicant Vehicle(s). The number of miles reflected on the vehicle odometer at the time of application; weight = fifteen (15). The application demonstrating higher mileage of similar vehicles in active use will be assigned greater weight. ()

05. Deployment Ratios. A mathematical comparison of current and post-grant vehicle availability based on the number of similar vehicles divided by the applicant coverage area in square miles and the number of similar vehicles divided by the population; weight = fifteen (15). The application demonstrating a greater change in deployment ratio will be assigned greater weight. ()

06. Fiscal Resource Base. The proportion of operating budget supported by district levy revenue; weight = ten (10). The application demonstrating less revenue from taxes expressed as a percent of total revenue for the most recent year will be assigned greater weight. ()

07. Local Government Endorsement. The proportion of Idaho cities and counties within which the applicant's primary response area occurs that endorse the application; weight = five (5). The application demonstrating a larger percent of local government endorsements will be assigned greater weight. ()

08. Prevalence Of Volunteers. The percent of certified personnel identified on the most recent agency license application as volunteer; weight = percent/10. The application demonstrating a greater prevalence of volunteer certified personnel will be assigned greater weight. ()

09. Narrative. The need for and lack of availability of funds from other sources as documented by the applicant; weight = five (5). The application demonstrating a greater need for and lack of available funds will be assigned greater weight. ()

302. CRITERIA FOR OTHER EMS EQUIPMENT.

The following criteria shall be used to evaluate applications for other EMS equipment, with maximum weight available for each criterion as indicated. Greater weight will be assigned to those conditions which indicate greater need for each criterion: ()

01. Applicant Equipment. The number, type and age of similar equipment currently in use by the applicant; weight = fifteen (15). The application demonstrating lack of accessibility to similar equipment will be assigned greater weight. ()

02. Anticipated Use. An estimate of the frequency and patient types for which the equipment may be used; weight = fifteen (15). The application demonstrating greater anticipated use will be assigned greater weight. ()

03. Duration Of Use. An estimate of the length of time the equipment would be used for a patient when indicated, expressed as a mean time; weight = fifteen (15). The application demonstrating a greater duration of use will be assigned greater weight. ()

04. Deployment Ratios. A mathematical comparison of current and post-grant equipment availability based on number of pieces of similar equipment divided by the applicant coverage area in square miles and the number of pieces of similar equipment divided by population; weight = fifteen (15). The application demonstrating a greater change in deployment ratio will be assigned greater weight. ()

05. Fiscal Resource Base. The proportion of operating budget supported by district levy revenue; weight = ten (10). The application demonstrating less revenue from taxes expressed as a percent of total revenue for the most recent year will be assigned greater weight. ()

06. Local Government Endorsement. The proportion of Idaho cities and counties within which the applicant's primary response area occurs that endorse the application; weight = five (5). The application demonstrating a larger percent of local government endorsements will be assigned greater weight. ()

07. Prevalence Of Volunteers. The percent of certified personnel identified on the most recent agency license application as volunteer; weight = percent/10. The application demonstrating a greater prevalence of volunteer certified personnel will be assigned greater weight. ()

08. Narrative. The need for and lack of availability of funds from other sources as documented by the applicant; weight = five (5). The application demonstrating a greater need for and lack of available funds will be ()

assigned greater weight. ()

303. -- 399. (RESERVED).

400. SECURITY INTEREST.

Successful applicants shall be required to execute a security agreement as required by Section 39-146B(3), Idaho Code, and shall sign a Memorandum of Grant Terms, Conditions, and Security Agreement for Vehicle/Equipment provided by the EMS Bureau. ()

401. -- 499. (RESERVED).

500. UNUSED GRANT FUNDS.

All funds not expended for costs associated with the applicant's award shall be returned to the EMS Account III by June 1 of the grant cycle during which the funds were awarded. ()

501. WITHDRAWAL OF GRANT APPLICATION.

Any applicant may withdraw or forfeit an application at any time. ()

01. Notification. The EMS Bureau may discontinue the grant award or approval process if either of the following occurs: ()

a. The chief administrative official of the applicant agency or his designee submits a notice of withdrawal in written form to the EMS Bureau. ()

b. The applicant does not provide required documentation during the award or approval process. ()

02. Right Of Assignment. The applicant may not assign any award to another applicant. ()

03. Ability To Compete. The withdrawal of an application does not affect the applicant's ability to reapply in a subsequent grant cycle. ()

502. FRAUDULENT INFORMATION ON GRANT APPLICATION.

Providing false information on any application or document submitted under these rules is grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the EMS III account. ()

503. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.02.14 - RULES GOVERNING CONSTRUCTION AND OPERATION OF
PUBLIC SWIMMING POOLS IN IDAHO

DOCKET NO. 16-0214-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 39-105(3)(d) and Title 39, Chapter 1, Idaho Code.

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

September 16, 1999, at 7:00 pm
Rodeway Inn, Gold Room
1115 Curtis Road, Boise, Idaho

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

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

These rules govern the construction, operation and maintenance of pools in order to minimize the incidences of illnesses or accidents. The rule addresses the following: the need to change swimming pool classifications, the geothermal swimming pools' unique water problems, the concerns of the industry on lifeguard and responsible person requirements, and the need of the industry to have engineering and architectural self certification for new construction.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Richard Horne at (208) 523-5382.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0214-9901

IDAPA 16
TITLE 02
Chapter 14

**RULES GOVERNING CONSTRUCTION AND OPERATION
OF PUBLIC SWIMMING POOLS IN IDAHO**

000. LEGAL AUTHORITY.

Idaho Code Section 39-105(3)(d) grants authority to the Board of Health and Welfare to adopt and to the Director, Department of Health and Welfare, to enforce minimum standards of health, safety and sanitation for all public swimming pools within the State. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as Idaho Department of Health and Welfare IDAPA 16.02.14, "Rules Governing Construction and Operation of Public Swimming Pools in Idaho". ()

02. Scope. The provisions of these rules shall apply to all public swimming pools as hereinafter defined, including all facilities incident thereto. The purpose of these rules shall be to control and regulate the design, construction, operation and maintenance of such pools to protect public health and safety. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this agency may write statements that pertain to the interpretation of the rules in this chapter, or to the documentation of compliance with the rules of this chapter. The documents are available for public inspection and copying at cost in the main office of the Department of Health and Welfare. ()

003. ADMINISTRATIVE APPEALS.

Appeals shall be governed by Idaho Department of Health and Welfare Rules IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ()

004. PUBLIC RECORDS.

The Public Health Districts will comply with Sections 9-337 through 9-347, Idaho Code, when requests for the examination and copying of public records are made, unless otherwise exempt, as set forth in Section 9-340, Idaho Code. ()

005. POLICY.

It is the intent of these rules to prevent the spread of communicable disease and to assure a clean and safe environment in public swimming pools. ()

006. APPLICABILITY.

All public swimming pools, as defined, shall be constructed and operated in conformance with these rules. Public swimming pools constructed prior to 1982 that can meet the requirement of Sections 190 through 198 and Sections 230 and 231 shall not be required to meet the structural aspects of these rules. These rules shall apply to all public swimming pools except private pools and special-use pools. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purpose of these rules, the following words and phrases will be used, as defined below: ()

01. Bather. A person who becomes partially or totally immersed in water in a pool. ()

02. Board. Idaho State Board of Health and Welfare. ()

03. Break In Grade. Where the slope of the bottom of pool exceeds a uniform slope greater than one (1) foot in twelve (12) feet horizontally. ()

- 04. Department.** Idaho Department of Health and Welfare. ()
- 05. Director.** Director of the Department of Health and Welfare. ()
- 06. Director's Designee.** The seven (7) Public Health Districts. ()
- 07. Geothermal Water.** Water derived from and heated exclusively from the natural heat energy from the earth. ()
- 08. Geothermal Pool.** A flow-through public pool, which uses water solely derived from and heated exclusively by the natural heat energy from the earth. ()
- 09. Flow-Through Pool.** A pool fed by a continuous supply of acceptable water that causes an equal volume of water to overflow to waste. ()
- 10. Lifeguard.** A person who holds a current lifeguard training certificate and basic life support cardiopulmonary resuscitation (CPR) certificate from the American Red Cross, YMCA, Ellis & Associates, or any other equivalent certifying agency approved by the Director's designee. ()
- 11. Lifeguard Chair.** An elevated stand erected for use by a lifeguard while superintending the safety of bathers in a pool. The height and location shall afford the user an unobstructed view of all bathers within the pool enclosure. ()
- 12. Operator.** An individual eighteen (18) years of age or older, who is familiar with the operation of the pool and is responsible for the health and safety of the public using the pool and for operating the pool in compliance with these rules. The operator shall have an approved certification of competency from a Certified Pool Operator (CPO), National Swimming Pool Foundation Certification; an Aquatic Facility Operator (AGO), National Recreation and Parks Association Certification; a National Swimming Pool Institute (NSPI Tech 1), National Spa and Pool Institute Certification Program, District Health Department Certification, or other certification programs approved by the Director. The operator shall also have a basic life support cardiopulmonary resuscitation (CPR) certificate and current first aid certification. ()
- 13. Person.** A person, firm, partnership, association, corporation, company, governmental agency, club or organization of any kind. ()
- 14. Pool.** An artificial structure containing water and its appurtenances used or intended to be used for swimming, diving, or recreation. ()
- 15. Private Pool.** Any pool constructed in connection with or appurtenant to single family dwellings or condominiums used solely by the persons maintaining their residence within such dwellings and the guests of such persons. ()
- 16. Public Swimming Pool.** Herein referred to as public pool. A pool, and its appurtenances, that contains water more than two (2) feet deep, is used or intended to be used for swimming, diving, or recreational bathing, and is for the use of any segment of the public pursuant to a general invitation but not an invitation to a specific occasion or occasions. ()
- 17. Recreational Bathing.** A public pool with water-related activities that is different from that associated with a conventional pool. ()
- 18. Remodel.** To replace all or part of any structure, circulation system or appurtenance of a pool facility, or to modify to the extent its design, configuration, or operating characteristics differ from those of the original. The term does not include normal maintenance, repair, or replacement of equipment or similar equipment that has previously been approved. Only that which is being remodeled needs to meet current specifications. ()
- 19. Spa.** An artificial structure containing water no more than four (4) feet deep and a recirculation system primarily designed for relaxation or therapeutic use where the user is sitting, reclining, or at rest. ()

20. Special-Use Pool. A pool used exclusively for rehabilitating, curing, or treating a disease or disorder. This term also includes geothermal flow-through pools used exclusively for relaxation or therapeutic use where the user is sitting, reclining, or at rest. ()

21. Wading Pool. A public pool with water less than two (2) feet deep used mainly by non-swimming children and those supervising the children. ()

011. -- 019. (RESERVED).

020. SUBMISSION OF PLANS AND SPECIFICATIONS.

01. Plans. No person shall construct or remodel any public pool until plans, specifications, and a plan review fee have been submitted, and the Director's designee has issued a letter of acceptance. Plans and specifications shall be prepared by an architect or engineer licensed to practice in the state of Idaho. The architect or engineering plans, specifications and reports, shall contain information sufficient to demonstrate the proposed pool is in compliance with these rules and shall so certify. ()

02. Construction Compliance Certificate. The operator shall submit, prior to public use of new facilities, a construction compliance certificate to the Director's designee. This certificate shall be prepared and signed by a professional engineer or architect licensed to practice in the state of Idaho. The certificate shall include a statement that the pool and the appurtenances have been constructed in accordance with approved plans and specifications. ()

03. Stability. Pools shall be designed and constructed to withstand all anticipated loadings for both full and empty conditions. A hydrostatic relief valve or other suitable means shall be provided in areas having a high water table. The designing architect or engineer shall be responsible for certifying to the structural stability and safety of the pool. ()

021. -- 029. (RESERVED).

030. PERMITS.

No public pool may be open to the public unless the operator has applied for and received a permit. Permits shall expire on December 31 of each year, unless earlier revoked or suspended for violation of these rules. Exempt pools may voluntarily request to obtain a permit and be inspected. Only persons who comply with these rules shall be entitled to receive and retain a permit. Permits are not transferable. ()

031. APPLICATION.

An application for permit shall be made on forms obtained from the Director's designee. ()

032. PERMIT FEE.

All applications shall be accompanied by payment of the fee specified in the Idaho Department of Health and Welfare Rules, IDAPA 16.05.05, "Rules Governing Fees for Health and Environmental Operating Permits, Licenses, and Inspection Services". ()

033. -- 039. (RESERVED).

040. INSPECTIONS.

The Director's designee is authorized to conduct inspections as deemed necessary to insure compliance with all provisions of these rules and shall have right of entry at any time the pool is in operation. ()

041. NOTICE OF VIOLATION.

If a violation of any provision of these rules is found during an inspection, the inspector shall provide a written notice of such violation to the operator, which will establish a time frame for correction. ()

042. REINSPECTION.

A reinspection will be made to determine if the violation has been corrected. If upon reinspection the violation has

been corrected, the pool will be allowed to remain open. If upon reinspection the violation still remains, the permit may be temporarily suspended and the pool closed until such time the violation has been corrected and approved by the Director or Director's designee. ()

043. -- 049. (RESERVED).

050. TEMPORARY SUSPENSION AND REVOCATION OF PERMITS.

01. Cause. The Director or the Director's designee may temporarily suspend, or may revoke a permit for failure to comply with these rules or in cases where the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact. ()

02. Suspension. If the Director or the Director's designee determines that conditions at a public pool constitutes a serious danger to the health or safety of the public, a written order stating the particular reason for suspension shall be given to the operator; the permit shall be immediately suspended and the pool closed until such time the condition is corrected. If the violation to these rules has not been corrected and a reinspection shows the violation still remains, a written order stating the particular reason for suspension shall be given to the operator and the permit shall be temporarily suspended and the pool closed until such time the condition is corrected. In the event a permit is suspended the person to whom the permit was issued shall be afforded the right to appeal pursuant to Section 003 of these rules. ()

03. Revocation. If an operator fails to comply with the orders of a temporary suspension, the permit shall be revoked unless the operator immediately closes the pool. Before a permit is revoked, the person to whom the permit was issued shall receive notice in writing indicating items that fail to comply with this chapter. The permit holder shall be advised of his right to appeal pursuant to Section 003 of these rules. ()

04. Reissue. The permit may be reissued upon proper application and upon presentation of evidence that the deficiencies or abuses causing revocation have been corrected. ()

051. -- 059. (RESERVED).

060. PENALTY.

Any person who willfully violates, disobeys, or disregards the provisions of these rules shall be guilty of a misdemeanor under the provisions of Section 39-117, Idaho Code. ()

061. -- 069. (RESERVED).

070. CONSTRUCTION REQUIREMENTS -- PLUMBING CODES.

All plumbing shall conform with and meet the provisions of Division of Building Safety IDAPA 07.02.06, "Rules Concerning Plumbing Codes," adopted by the Idaho State Plumbing Board. ()

071. CONSTRUCTION REQUIREMENTS -- ELECTRICAL CODE.

All electrical appliances and wiring shall conform with and meet the provisions of Division of Building Safety, IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code," adopted by the Idaho State Electrical Board. ()

072. CONSTRUCTION REQUIREMENTS -- UNIFORM BUILDING CODE.

All buildings shall conform with and meet the provisions of Division of Building Safety IDAPA 07.03.06, "Rules Governing the Use of the Uniform Building Code". ()

073. CONSTRUCTION REQUIREMENTS -- MATERIALS.

Pools and all appurtenances thereto shall be constructed of materials that are inert, nontoxic to man, impervious, permanent, and enduring; which can withstand the design stresses; and which will provide a tight tank with a smooth and easily cleanable surface, or to which an easily cleaned surface finish can be applied. ()

074. CONSTRUCTION REQUIREMENTS -- CORNERS.

Corners formed by intersection of walls and floors shall be rounded. ()

075. CONSTRUCTION REQUIREMENTS -- FINISH.

Pool finish, including bottom and sides, shall be of light colored material, nontoxic to man, with a smooth and easily cleanable surface. ()

076. -- 079. (RESERVED).

080. DESIGN DETAIL -- DIMENSIONS.

No limits are specified for length and width of pools except any pool in which diving is allowed shall be at least sixteen (16) feet wide. ()

081. DESIGN DETAIL -- CIRCULATION.

Provisions shall be made for complete, continuous circulation of water throughout all parts of the pool. Pools with a recirculation system shall have the necessary treatment and filtration equipment as required. Flow-through pools that can meet the bacterial and clarity requirements of Sections 230 and 231 will not be required to meet Sections 250 through 256 and Sections 260 and 261 of these rules. ()

082. DESIGN DETAIL -- SHAPE.

The shape of any pool shall be such that the circulation of water and the safety of bathers are not impaired. ()

083. DESIGN DETAIL -- WADING POOLS.

Wading pools shall have a maximum depth of two (2) feet and shall be physically separated from any pool. The wading pool shall have a turnover rate of at least once every two (2) hours. All wading pools shall have separate equipment for water recirculation and disinfection and there shall be no cross connections between a wading pool and any other pool. Wading pools shall be equipped with anti vortex drains to avoid any possibility of entrapment. ()

084. DESIGN DETAIL -- NO DIVING SIGN.

If a pool is not designed for diving, a conspicuous sign shall be posted which states, "NO DIVING," such sign shall contain lettering no less than six (6) inches high. Pools allowing diving shall be at least eight (8) feet six (6) inches deep. ()

085. DESIGN DETAIL -- SAFETY LINE.

A safety line shall be required to provide a visual and physical indicator of the separation between the shallow and deep portions of a pool. The safety line shall be in place when the pool is open to the general public except during periods of lap swimming, competitive swimming or supervised training. The safety line shall be located in the shallow area no closer than one (1) foot, nor any further than two (2) feet away from the break in grade line or five (5) foot depth. The safety line shall be securely fastened to wall anchors of corrosion resistant material and of the type that shall be recessed or have no projections that shall constitute a hazard when the line is removed. The safety line's position shall be marked with visible floats. ()

086. -- 089. (RESERVED).

090. SLOPE OF FLOOR -- SHALLOW AREA.

Any portion of the pool floor with a depth less than five (5) feet shall be uniform, slope to drain, and shall not exceed a slope of more than one (1) foot in twelve (12) feet horizontally. ()

091. SLOPE OF FLOOR -- DEEP AREA.

The slope of the pool floor at a water depth of five (5) feet or more shall be uniform, sloped to drain, and shall not exceed a slope of one (1) foot in three (3) feet horizontally. ()

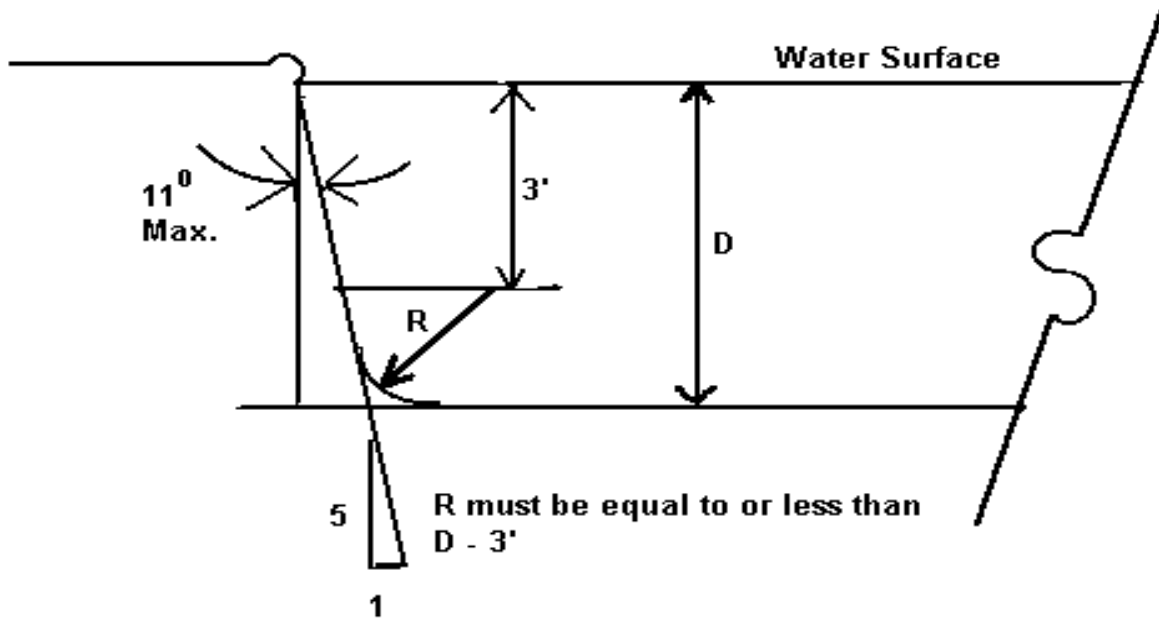
092. -- 099. (RESERVED).

100. SIDE WALLS.

Walls of a swimming pool shall be either: vertical for water depth of at least six (6) feet; or vertical to a depth of three (3) feet below the water surface and then curved to join the bottom with a radius not greater than the difference between the depth at that point and three (3) feet, provided vertical is interpreted to permit slopes not greater than one (1) foot horizontally for each five (5) feet of sidewall depth (eleven (11) degrees from vertical). ()

101. ILLUSTRATION OF POOL SIDE WALL.

Illustration of Pool Side Wall



()

102. -- 109. (RESERVED).

110. Width Of Decks And Walkways.

A continuous deck, a minimum of eight (8) feet wide, shall extend completely around the pool, except a pool with less than one thousand eight hundred (1800) square feet of surface area that shall have a continuous deck a minimum of four (4) feet wide. A minimum of three (3) feet shall be provided at the rear of any diving equipment or slide. A spa may be constructed adjacent to a pool provided the spa has one hundred twenty (120) square feet of water surface area or less; the spa is separated from the pool by a common wall no more than twelve (12) inches wide; the common wall is constructed in such a fashion to prevent its use as a walkway; and a continuous deck a minimum of four (4) feet wide extends completely around the pool and the spa. ()

111. SLOPE OF DECKS AND WALKWAYS.

Decks shall have a nonslip surface and be sloped to remove any surface drainage from entering the pool water. Drainage shall be conducted from the deck in a manner that will not create hazardous or objectionable conditions. Drainage from the decks shall not be returned to the recirculation system. ()

112. -- 119. (RESERVED).

120. LADDERS, RECESSED STEPS, AND STAIRS REQUIREMENTS.

Recessed steps, stairs or ladders shall be provided at the shallow and deepest end of a pool. If the pool is over thirty (30) feet wide, such steps, ladders, or stairs shall be installed on each side. ()

121. RECESSED STEPS.

Recessed steps shall be readily cleanable and shall be arranged to drain into the pool. The steps shall have a minimum tread of five (5) inches and a minimum width of fourteen (14) inches. ()

122. STAIRS.

Where stairs are provided, they shall be equipped with a handrail. Walking surfaces and treads shall be of nonslip design and have the leading edge in contrasting color. Steps shall have a minimum tread of twelve (12) inches and a maximum rise of ten (10) inches. There shall be no abrupt drop off or submerged projections into the pool unless guarded by handrails. ()

123. LADDERS.

Ladders shall be corrosion-resistant and shall be equipped with nonslip treads. All ladders shall be so designed as to provide a handhold and shall be rigidly installed. There shall be a clearance of not more than five (5) inches or less than three (3) inches between any ladder and the pool wall. ()

124. HANDRAILS.

Where recessed steps or ladders are provided within the pool, there shall be a handrail at the top of both sides that extends over the coping or edge of the deck. Handrails shall be tight and secure. ()

125. ACCESS TO DIVING BOARDS.

Platforms and steps for diving boards shall be of sufficient structural strength to safely carry the maximum anticipated loads. Steps shall be of corrosion-resistant material, easily cleanable, and of nonslip design. Handrails shall be provided at all steps and ladders leading to diving boards more than one (1) meter above the water. Platforms and diving boards over one (1) meter high shall be protected with guard railings. ()

126. -- 129. (RESERVED).

130. DIVING AREA -- HEADROOM.

All pools shall have at least thirteen (13) feet of unobstructed area above each diving board as measured from the front end of the board, and this unobstructed area shall extend horizontally at least sixteen (16) feet forward of the plummet, at least eight (8) feet behind the plummet, and at least eight (8) feet to both sides of the plummet. ()

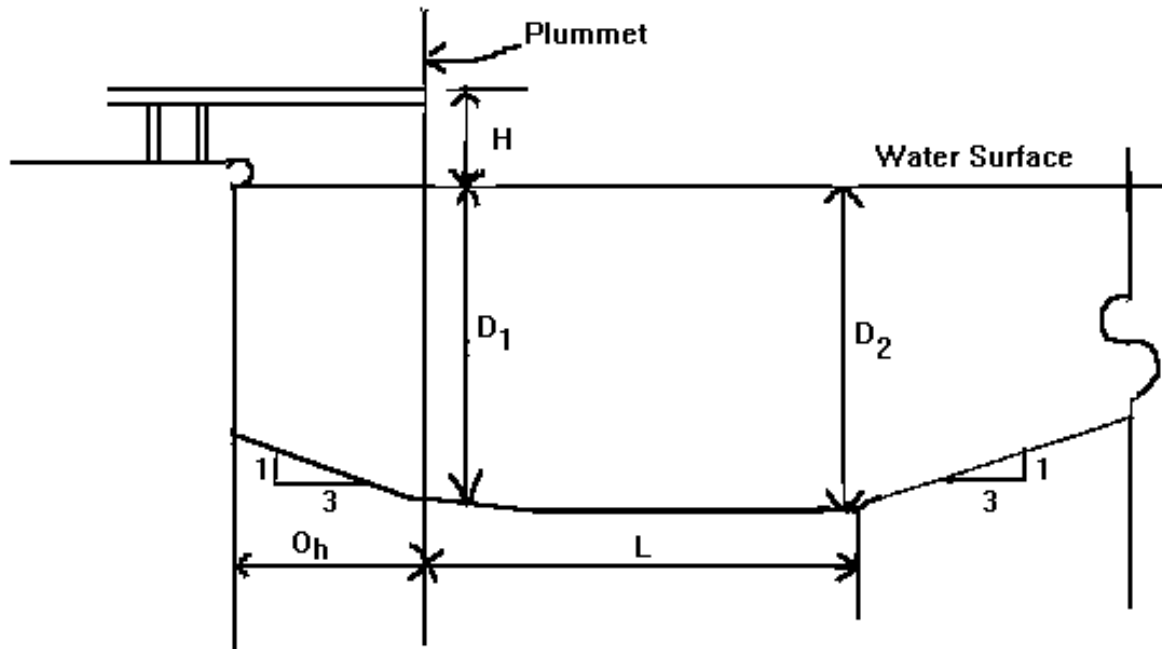
131. DIVING AREA -- WATER DEPTH.

The dimensions of the diving area on public pools shall conform to the following: ()

Minimum Dimensions					
Height of the diving board above the water level		Depth of water at the plummet	Distance ahead of plummet	Depth of water at the distance L From plummet	Overhang of diving board beyond edge of pool
H		D-1	L	D-2	O-H
Meters	Feet	Feet	Feet	Feet	Feet
0.00 to 0.50	0'0" to 1'7"	8'6"	11'6"	8'6"	3'0"
0.51 to 0.75	1'8" to 2'6"	9'3"	11'6"	9'3"	4'0"
0.76 to 1.00	2'7" to 3'3"	10'0"	14'0"	10'0"	5'0"
1.01 to 3.00	3'4" to 10'0"	13'0"	20'0"	13'0"	6'0"
*Diving boards and platforms in excess of three (3) meters or ten (10) feet in height are not allowed in a pool without special provisions, controls, and definite limitation on their use, which has been approved by the Director's designee.					

132. ILLUSTRATION OF DIMENSIONS OF DIVING AREA.

Illustration of Dimensions of Diving Area



()

133. SEPARATION OF LOW DIVING BOARDS.

All diving boards installed on pools at heights not greater than three (3) feet three (3) inches or one (1) meter above the water level shall be separated from adjacent diving boards of the same or less height by a distance of not less than eight (8) feet, and shall be located not less than ten (10) feet from the side wall of the pool. ()

134. SEPARATION OF HIGH DIVING BOARDS.

All diving boards installed on pools at heights greater than three (3) feet three (3) inches or one (1) meter above the water level shall be separated from adjacent diving boards of the same or less height by a distance of not less than ten (10) feet, and shall be located not less than twelve (12) feet from the side wall of the pool. ()

135. ANCHORING OF DIVING BOARDS.

All installed equipment shall be firmly anchored. ()

136. -- 139. (RESERVED).

140. LIGHTING AND ELECTRICAL REQUIREMENTS.

All electrical appliances and wiring shall conform with and meet the provisions of IDAPA 07.01.06, The Department of Labor and Industrial Services, "Use of National Electrical Code," adopted by the Idaho Electrical Board. Defects in the electrical system, including underwater lights, overhead lights, and their respective lenses, shall be immediately repaired. ()

141. PORTABLE ELECTRICAL DEVICES.

Portable electrical devices such as announcing systems and radios, unless battery operated, shall be prohibited within the pool enclosure. ()

142. OVERHEAD WIRING.

There shall be no overhead electrical wiring within twenty (20) feet horizontal distance of the pool enclosure. ()

143. UNDERWATER LIGHTING.

Where underwater lighting is used, the lights shall be spaced to provide illumination so all portions of the pool, including the bottom, may be readily seen without glare. ()

144. -- 149. (RESERVED).

150. VENTILATION.

All indoor pools, bathhouses, dressing rooms, shower rooms, and toilet spaces shall be ventilated either by natural or mechanical means to prevent corrosion or the build-up of mold or mildew. ()

151. -- 159. (RESERVED).

160. DRESSING ROOMS, TOILETS, AND SHOWERS.

Dressing rooms, toilets and showers shall be made available to all users of a pool. Dressing rooms shall be finished in light colors and planned so good sanitation can be maintained throughout the buildings at all times. No glass containers shall be permitted. ()

161. LOCATION OF DRESSING ROOMS.

Dressing rooms shall be located near toilets and showers, and should be adjacent to the locker or checkroom. The layout of the dressing rooms shall be such that bathers, on leaving the dressing room, should pass the toilet and shower en route to the pool. ()

162. FLOORS IN DRESSING ROOMS, TOILETS, AND SHOWERS.

Floors shall be constructed of non-absorbent materials with non-slip finishes and shall slope to properly located drains. A sufficient number of drains shall be installed to prevent water from collecting on the floor. ()

163. CONSTRUCTION OF DRESSING ROOMS.

The material used for walls, partitions, and furniture shall be such that it can be easily cleaned and will not be damaged by frequent hosing, wetting, or disinfection. ()

164. TOILETS.

Toilet facilities shall be provided for both men and women; shall be accessible to disabled persons; and shall be kept clean and properly maintained. ()

165. SHOWERS.

Showers shall be provided for both men and women, and shall be accessible to disabled persons. Fixtures shall be kept clean and properly maintained. The hot water temperature for showers shall be not less than ninety (90) degrees and no more than one hundred twenty (120) degrees. Thermostatic tempering, or mixing valves, shall be installed to prevent scalding of bathers. Soap shall be made available. ()

166. HAND SINKS.

A minimum of one (1) hand wash sink with hot and cold running water shall be provided in each toilet room. Soap shall be made available. ()

167. EXCEPTION.

The requirements of Section 160 through 166 do not apply to any pool operated solely for and in conjunction with a hotel, motel or other place of lodging or other facility containing multiple dwellings. However, dressing rooms, toilets, and showers shall be in compliance with this section if provided in the pool area of hotels, motels, or other facilities containing multiple dwellings. ()

168. -- 169. (RESERVED).

170. WATER SUPPLY.

The water supply serving a pool shall meet the water quality requirements of the Director's designee for potable water

except the Director's designee may approve the use of geothermal waters. Drinking water shall be approved and if applicable meet provisions of IDAPA 16.01.08, "Idaho Rules For Public Drinking Water Systems". All portions of the water distribution system shall be protected against backflow and cross connections. ()

171. -- 179. (RESERVED).

180. SEWER SYSTEM.

A sewer system shall be provided and be adequate to serve the facility, including bathhouse, locker room, and related accommodations. The sanitary sewer serving the pool and auxiliary facilities shall discharge to a public sewer system wherever possible. Where no such sewer is available, the connection shall be made to a suitable disposal system designed, constructed, and operated in accordance with IDAPA 16.01.03, "Individual/Subsurface Sewage Disposal Rules". ()

181. -- 189. (RESERVED).

190. HEALTH AND SAFETY -- POOL CLOSURE.

The operator shall immediately close the pool when a pool is in violation of Sections 191, 192, 198, and 230, or when ordered by the Director or the Director's designee. The pool shall remain closed until such time as conditions are brought into compliance or the order has been rescinded. ()

191. HEALTH AND SAFETY -- OPERATOR.

All pools shall have an operator. ()

192. HEALTH AND SAFETY -- LIFEGUARD REQUIREMENT.

All pools with water surface area equal to or exceeding one thousand eight hundred (1,800) square feet shall have a lifeguard on duty. Any pool that allows children under the age of thirteen (13) to swim without adult supervision shall have a lifeguard on duty. When lifeguard services are not required, a warning sign shall be placed in plain view for all swimmers and shall state "WARNING NO LIFEGUARD ON DUTY" with clearly legible letters at least four (4) inches in height. In addition, the sign shall state, "CHILDREN UNDER 13 YEARS OLD SHOULD NOT USE THE FACILITY WITHOUT AN ADULT IN ATTENDANCE," and "DO NOT SWIM ALONE". ()

193. HEALTH AND SAFETY -- LIFEGUARD CHAIRS.

If lifeguard chairs are provided, they shall be so located and constructed as to provide a clear, unobstructed view of the pool bottom in the area under surveillance. ()

194. HEALTH AND SAFETY -- LIFESAVING EQUIPMENT.

Each lifeguard on duty shall have a rescue tube. Every pool shall have at least one (1) shepherd's crook or life saving pole, having blunted ends, at least twelve (12) feet in length. Equipment shall be readily accessible and shall be mounted in a conspicuous place and be kept in good repair and ready condition. Each pool shall have a readily accessible full-length backboard that shall comply with American Red Cross specifications or equivalent. Each pool shall have a readily accessible first aid kit and a pocket face mask to assist with CPR. ()

195. HEALTH AND SAFETY -- SAFETY AND SANITATION.

A lifeguard or operator shall be in full charge of bathers and shall have authority and responsibility to enforce all rules of safety and sanitation. Suitable placards embodying sanitation requirements are to be conspicuously posted in the pool enclosure. Safety and sanitation requirements are as follows: ()

01. Shower. A cleansing shower shall be taken before swimming. ()

02. Disease. Persons having an infectious or communicable disease that may be transmitted through water shall be excluded from swimming. ()

03. Running And Roughhousing. No running or rough play shall be permitted. ()

04. Contamination. Contamination of water, walkways, or dressing room floors in any way is prohibited. ()

- 05. Glass.** Glass containers shall be prohibited in the pool area. ()
- 196. HEALTH AND SAFETY -- ACCESS.**
When the pool is not open for use, access shall be restricted. ()
- 197. HEALTH AND SAFETY -- EMERGENCY COMMUNICATION.**
A means of contacting emergency medical services shall be readily accessible and be provided on the premises. ()
- 198. CLARITY.**
Water shall have sufficient clarity at all times so the main drain can be clearly visible from the deck. Failure to meet this requirement shall constitute grounds for immediate closure of the pool. It is the responsibility of the operator to close the pool when conditions exist that the main drain is not visible from the deck. ()
- 199. (RESERVED).**
- 200. SUPERVISION.**
Every pool shall be operated under the supervision of an operator who assumes responsibility for compliance with all parts of these rules. The operator shall be responsible for operating the pool in a safe and healthful manner. ()
- 201. OPERATIONS MANUAL.**
Each pool shall have a pool operations manual, in order to ensure proper operation and maintenance. The pool operations manual shall be readily accessible. The operations manual should include instructions for such items as maintenance schedules, records and reports, water chemistry, accidents, emergency procedures, care of filters, operation of pumps and other equipment, and proper handling and storage of all chemicals used. ()
- 202. RECORD KEEPING.**
The following information shall be recorded each day the pool is open, and shall be kept on the premises and available for review: ()
- 01. Disinfectant Levels;** ()
 - 02. pH Readings;** ()
 - 03. Clarity Readings;** ()
 - 04. Amount And Type Of Chemicals Used; and** ()
 - 05. Accidents Requiring Professional Medical Treatment.** Accidents requiring professional medical treatment, including drownings or near drownings. ()
- 203. REPORTABLE ACCIDENTS.**
Accidents requiring professional medical treatment, including drownings or near drownings, shall be reported within twenty-four (24) hours of occurrence to the Director's designee. ()
- 204. -- 209. (RESERVED).**
- 210. DEPTH MARKING LOCATIONS.**
Water depth shall be plainly marked at or above the water surface on the vertical wall of the pool and on the horizontal edge of the deck or walk next the pool. Depth markers shall be placed at maximum and minimum points; at the five (5) foot break between the deep and shallow portions; at intermediate one (1) foot increments of depth, where the water depth is five (5) feet or less; and at regular intervals around the pool, not more than twenty-five (25) feet apart. ()
- 211. DEPTH MARKERS.**
Depth markers shall be numerals a minimum of four (4) inches high of a color contrasting with the background. Where depth markers cannot be placed on the vertical walls above the water level, other means shall be used. The

markings shall be plainly visible to persons both in and out of the pool. ()

212. -- 219. (RESERVED).

220. WATER QUALITY STANDARDS.

Pools shall be designed to provide for continuous disinfection of the pool water with a chemical that has an effective disinfectant and imparts an easily measured, active residual. A test kit for measuring the accurate concentration of the disinfectant shall be provided at each pool. ()

221. CHLORINE DISINFECTION.

When chlorine is used, a minimum free available chlorine residual of not less than one (1) part per million (ppm) with a maximum of five (5) parts per million (ppm) shall be maintained whenever a pool is in use. ()

222. BROMINE DISINFECTION.

When bromine is used, a minimum residual of not less than one (1) part per million (ppm) with a maximum of five (5) parts per million (ppm) shall be maintained whenever a pool is in use. ()

223. CHLORINATED ISOCYANURATES DISINFECTION.

If chlorinated isocyanurates are used, the maximum allowable concentration shall be one hundred (100) parts per million (ppm). When isocyanurates are used, a test kit for measuring the concentration of the stabilizer shall be provided. ()

224. ORP OR HRR DISINFECTION.

If a pool uses an oxidation reduction potential (ORP) controller or a high resolution redox (HRR) controller as a method of measuring an effective index of disinfection, the chemical used should be introduced in quantities needed to maintain levels at a minimum of six hundred and fifty (650) millivolts (mV). ()

225. OTHER DISINFECTION METHODS.

Other disinfecting methods may be used when it can be demonstrated to the Director's designee that a pool provides a satisfactory residual effect that is easily measured. Other disinfection methods may also be allowed if demonstration and analysis provide assurance that results are effective and not dangerous to public health, create objectionable physiological effects, or impart toxic properties to the water. ()

226. ACID BASED CHEMISTRY.

Pool water shall be maintained in an alkaline condition as indicated by a pH of not less than seven and two-tenths (7.2) and not over seven and eight-tenths (7.8). The total alkalinity of the water should be within the acceptable range of eighty (80) parts per million (ppm) to two hundred (200) parts per million (ppm). An accurate pH testing kit shall be provided at each pool. ()

227. OTHER CHEMICALS.

Any chemical shall be used in accordance with the manufacturer's recommendations and shall not cause irritation to the eyes or skin of the bathers, or have other objectionable physiological effects on bathers. ()

228. CHEMICAL STORAGE.

All chemicals shall be kept from reach by the general public. Chemicals shall be stored in original containers and shall be stored in accordance with the instructions of the manufacturer or, in the absence of such instructions, as directed by the Director's designee. ()

229. CLEANING.

Pools shall be maintained and operated in a clean, safe, and sanitary manner at all times. Pool walls and bottom should be vacuumed or brushed as needed to remove visible material. Decks shall be kept clean, safe, and maintained in good condition. Bathrooms, showers and dressing rooms shall be kept clean, safe, and sanitary at all times. ()

230. BACTERIOLOGICAL QUALITY OF POOL WATERS.

The water in public pools shall not contain the presence of fecal coliform bacteria. If fecal coliform bacteria are present in any sample, a confirmation sample shall be taken with twenty-four (24) hours. Should any two (2)

consecutive water samples taken show the presence of fecal coliform bacteria, the pool shall be immediately closed until the bacterial quality of the water is found absent for the presence of fecal coliform bacteria. ()

231. MONTHLY SAMPLING.

Pools not required to have a disinfection system or those pools having a disinfection system but do not meet the requirements of Sections 220 through 225 shall be required to sample the water for the presence of fecal coliform bacteria on a monthly basis. Sampling shall be done during hours of peak bather loads. ()

232. -- 239. (RESERVED).

240. DISINFECTANT AND CHEMICAL FEEDERS.

01. Feeder. Pools shall be equipped with a disinfectant feeder or feeders that shall meet the following requirements: ()

a. Equipment shall be capable of being easily disassembled for cleaning or repair and shall be constructed of corrosion-resistant materials. ()

b. Equipment shall be constructed to permit repeated adjustments without loss of output rate accuracy and shall be constructed to minimize stoppage from debris that may be contained in aid chemicals used. ()

c. Equipment shall be designed specifically for the type of disinfectant used. ()

d. Equipment shall be provided with controls for adjusting the flow rate of disinfectant. ()

02. Backflow Prevention. When the disinfectant is introduced at the suction side of the pump, a device or method shall be provided to prevent air lock of the pump or recirculation system. ()

03. Chlorine Gas Equipment. When compressed chlorine gas is used, the following additional features shall be provided: ()

a. Chlorine rooms shall have a ventilating fan with an airtight duct beginning near the floor and terminating at a safe point of discharge to the outdoors, away from any occupied area or any fresh air intake. A louvered air intake shall be provided near the ceiling. The ventilating fan shall provide one (1) air change per minute and operate from a switch located outside the door. ()

b. Chlorinator equipment shall be designed to withstand wear without developing leaks. ()

c. Chlorine cylinders shall be anchored in an upright position to prevent falling over. A valve stem wrench shall be maintained on the chlorine cylinder so the supply can be shut off quickly in the case of an emergency. Empty chlorine gas cylinders shall be tagged as such. Full and empty gas cylinders shall be stored only in the chlorine room and have protective hoods in place when not in use. ()

d. A new washer or gasket approved for use on chlorine gas shall be used each time a chlorine cylinder is connected to the chlorinator. Spare washers/gaskets shall be kept on site. ()

e. A self-contained breathing apparatus designed for use in a chlorine atmosphere shall be provided, and shall be located in an area outside the chlorination room, and is easily accessible to pool employees. ()

f. An automatic chlorine leak detector or commercial twenty-six (26) degrees Baume Aqua Ammonia shall be provided for chlorine gas leak detection. ()

g. Installation of chlorinator equipment, and operation thereof, shall be carried out by or under the supervision of personnel trained in the installation and operation of such equipment. ()

04. Hypochlorite Equipment. When a hypochlorite solution is fed through hypochlorinator

equipment, such equipment shall also provide the following additional features: ()

- a. Feed shall be positive under all conditions of pressure in the circulating system, without artificial constriction of the pump suction line whether this line is under vacuum or pressure head. ()
- b. Shall provide constant feed with varying supply or back pressure. ()
- c. Prevent backflow from the circulation system to the solution container. ()
- d. Prevent siphoning of hypochlorite solution when recirculation pump and hypochlorinator are both turned off. ()

241. -- 249. (RESERVED).

250. RECIRCULATION SYSTEM -- FLOW RATE.

A recirculation system, consisting of pumps, piping, skimmers, filters, water disinfection equipment, and other accessory equipment shall be so designed and sized as to completely recirculate the pool volume of water at least once every eight (8) hours. ()

251. RECIRCULATION SYSTEM -- SIZING.

All equipment and connecting piping shall be designed to reduce friction losses, and for the piping to carry the required quantity of water at a velocity not to exceed six (6) feet per second for suction side pipe, and not more than ten (10) feet per second for filter discharge pipe. Piping shall be of non-toxic material, resistant to corrosion, and able to withstand normal operating pressures. It is recommended all plastic pipes conform with NSF Standard 14 for potable water applications of the National Sanitation Foundation (NSF) and bear the NSF seal. ()

252. RECIRCULATION SYSTEM -- CLEANING.

A cleaning system shall be provided to remove dirt from the bottom of the pool. When a vacuum is used as an integral part of the recirculation system, connections shall be located in the walls of the pool, at least eight (8) inches below waterline, and at such point the floor of pool can be cleaned. ()

253. RECIRCULATION SYSTEM -- FLOW INDICATOR.

A functioning rate-of-flow indicator shall be installed and located so the recirculation rate will be accurately measured. It shall be accurate within five percent (5%) of true flow, and shall be located in a position that is easy to read. ()

254. RECIRCULATION SYSTEM -- CLEANING.

A pump and motor unit shall be provided for the recirculation of water that has been selected to meet the quantity of water required for filtering, and cleaning the filter, with the total dynamic head developed by the complete system. It is recommended the pump comply with requirements of NSF Standard 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," of the National Sanitation Foundation (NSF) and bear the NSF seal. ()

255. RECIRCULATION SYSTEM -- THERMOMETERS.

Pools equipped with heaters shall have a minimum of one (1) fixed thermometer located between the heating outlet and the pool. ()

256. RECIRCULATION SYSTEM -- STRAINER.

The recirculation system shall include a corrosion-resistant strainer, readily accessible for frequent cleaning. ()

257. -- 259. (RESERVED).

260. FILTERS.

All pools shall be equipped with a filtration system for the purpose of clarifying the water so it meets or exceeds the minimum clarity requirement. Filters shall be designed and sized to achieve the proper turnover rate without exceeding the maximum flow rate. All filters shall be equipped with pressure or vacuum gauges. Any filter used in a pool shall comply with all applicable requirements of NSF Standard 50, "Circulation System Components and

Related Materials for Swimming Pools, Spas/Hot Tubs," or in the absence of applicable requirements, be approved by the Director's designee. ()

261. DISPOSAL OF WASTE.

Provisions shall be made to dispose of material cleaned from filters and backwash water in a manner that will not create a nuisance. If drainage to a sanitary sewer or storm drain is permitted, an air gap shall be provided that will positively preclude against surge or backflow introducing contaminated water into the pool or recirculation system. ()

262. -- 269. (RESERVED).

270. WALL INLETS.

Except as otherwise provided in this section, inlets shall be rounded and smooth and installed not less than eighteen (18) inches below the normal operating level and located to produce a uniform circulation, without the existence of dead spots. Inlets shall not extend from the pool wall or floor so as to create a hazard. The distance between adjacent wall inlets shall not exceed fifteen (15) feet. If wall inlets are used, there shall be at a minimum of one (1) per each six hundred (600) square feet of pool surface area. If wall inlets are used there shall be a minimum of two (2) inlets. In case of a shallow pool, the Director's designee may grant an exception to this requirement if inlets cannot be installed at the depth otherwise required. ()

271. FLOOR INLETS.

Any pool having a width greater than forty (40) feet shall have floor inlets or a combination of wall and floor units that meet the requirements of Section 260. They shall be located so they provide general circulation and not direct flow to floor drains. The distance between floor drains shall not exceed fifteen (15) feet and the floor inlets shall not exceed ten (10) feet from the nearest wall. ()

272. -- 279. (RESERVED).

280. OVERFLOW SYSTEMS.

All pools shall be designed to provide continuous skimming. Overflow gutters or surface skimmers shall be provided. The overflow system shall be designed and installed so the water level of the pool is maintained at the operating level of the rim or weir device. ()

281. OVERFLOW GUTTERS.

Overflow gutters shall extend around the entire perimeter of the pool except at steps or recessed ladders. The gutter lip shall be level within three-tenths (.3) inch. The gutter shall be capable of continuously removing one hundred (100) percent of the recirculated water and returning it to the filter. All overflow gutters shall be connected to the recirculation system through a properly designed surge system. The gutter, drains, and return piping to the surge system shall be designed to rapidly remove overflow water caused by recirculation displacement, wave action or other causes produced from the maximum pool bathing load. Gutters shall be designed to prevent entrance or entrapment of bathers. The overflow outlets shall be provided with outlet pipes that shall in any case be a minimum of two (2) inches in diameter. Outlets shall be a maximum of fifteen (15) feet apart and opening in grating less than one and a half (1.5) times cross-sectional pipe area. ()

282. SKIMMERS -- REQUIREMENT.

A minimum of one (1) skimmer shall be provided for each four hundred (400) square feet of water surface area or fraction thereof. There shall be no fewer than two (2) skimmers in every pool. Any skimmer used in a pool shall comply with all applicable requirements of NSF Standard 50 "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," of the NSF International or in the absence of applicable requirements, be approved by the Director's designee. ()

283. SKIMMERS -- CAPACITY.

The total capacity of all skimmers used shall be a minimum of two-thirds (2/3) of the required filter flow. Piping for skimmers used shall be designed for a capacity of not less than eighty (80) percent of the required filter flow of the recirculation system, and in no case less than thirty (30) gallons per minute per eight (8) inches of weir. ()

284. SKIMMERS -- EQUALIZERS.

All skimmers used shall be equipped with an approved equalizer valve and an equalizer line with an inside diameter of not less than two (2) inches, installed not less than twelve (12) inches below the normal operating level of the water. The inlet to the equalizer line or lines shall be designed to prevent the creation of a holding force whenever the body or limb of a bather comes into contact with the inlet. The inlet shall be protected by a grill or shroud that will prevent a bather or any limb of a bather from entering the inlet. ()

285. SKIMMERS -- LOCATION.

All inlets shall be spaced at least five (5) feet away from any skimmer. One (1) skimmer shall be placed at a point in the pool opposite the direction of the prevailing winds. ()

286. -- 289. (RESERVED).

290. LOCATION OF DRAINS.

Every pool shall have a tandem main drain located in the deepest section of the pool and shall have the ability to empty the pool through these drains. ()

291. MULTIPLE DRAINS.

Multiple drains shall be provided if the pool width exceeds fifty (50) feet. Outlet drains shall be no further apart than twenty (20) feet on center and no closer than ten (10) feet from the end or side walls or another outlet drain. ()

292. DRAIN GRATING.

The main drain outlet grating shall have an area of openings four (4) times the area of the discharge pipe or provide sufficient area so the maximum velocity of water passing through the grate will not exceed six (6) feet per second. The maximum width of grate openings shall be not more than one-half (1/2) inch in diameter. Main drains shall be securely fastened in such a way it cannot be removed without the use of tools. If only one (1) main drain is connected to a pump, the drain shall be of anti-vortex design to prevent the possibility of entrapping suction. ()

293. -- 299. (RESERVED).

300. FENCE AND BARRIERS.

A fence or barrier a minimum of four (4) feet high to exclude unauthorized persons from the pool area shall enclose each public pool with less than one thousand eight hundred (1,800) square feet of surface area. A fence or barrier a minimum of eight (8) feet high to exclude unauthorized persons from the pool area shall enclose each public pool with one thousand eight hundred (1,800) square feet of surface area or greater. ()

301. -- 309. (RESERVED).

310. GEOTHERMAL POOL EXEMPTIONS.

Geothermal pools are hereby exempt from the following rules. ()

01. Exemptions. ()

a. If a pool can meet the bacterial requirements of Section 230 and the clarity requirements of Section 198, it will not be required to meet any requirements of Sections 220 through 225 and Sections 240, 250, and 260. ()

b. Section 226, "Acid Base Chemistry". ()

c. If an existing pool has a gravel bottom, Sections 075, 271, and Sections 290 through 292. ()

02. Remodeling. Remodeling of an existing geothermal pool will not change exemptions. ()

311. -- 319. (RESERVED).

320. TECHNICAL WAIVERS OR MODIFICATIONS.

The Director or the Director's designee may waive or modify the requirements of these rules as a condition of the permit to operate a pool, except no technical waiver or modification will be granted from the health and safety portion of these rules. The person requesting a technical waiver or modification shall submit a written request to the Director's designee specifying the section number of these rules and the rationale for considering a modification or waiver of the requirements; an analysis of the potential public health, safety hazards and issues associated with the proposed action; and scientific data or other information, as appropriate, showing safety or public health will not be compromised by the proposed action. ()

321. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.01 - RULES GOVERNING ELIGIBILITY FOR MEDICAID FOR FAMILIES AND CHILDREN
DOCKET NO. 16-0301-9901
NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2000 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b); 39-106(l), 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 June 2, 1999 Idaho Administrative Bulletin, Volume 99-6, pages 225 through 233.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5815.

DATED this 21st day of July, 1999.

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

IDAPA 16
TITLE 03
Chapter 01

RULES GOVERNING ELIGIBILITY FOR MEDICAID FOR FAMILIES AND CHILDREN

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 99-6, June 2, 1999, pages 225 through 233.**

**This rule has been adopted as Final by the Agency and is now pending
review by the 2000 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED
DOCKET NO. 16-0305-9902
NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2000 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b); 39-106(l), 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 June 2, 1999 Administrative Bulletin, Volume 99-6, pages 235 through 244.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5815.

DATED this 21st day of July, 1999.

Sherri Kovach
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IDAPA 16
TITLE 03
Chapter 05

RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 99-6, June 2, 1998, pages 235 through 244.**

**This rule has been adopted as Final by the Agency and is now pending
review by the 2000 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED
DOCKET NO. 16-0305-9903
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 39-106(l); 56-202(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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

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

Decreases payment levels for Aid to the Aged, Blind and Disabled.

Updates the names of living arrangements from Adult Residential Care Facility to the new Residential and Assisted Living Facility (IDAPA 16.03.22) and Adult Foster Care to the new Certified Family Home (IDAPA 16.03.19).

Exempts a transfer of his or her own assets by a participant's spouse, after the participant's Medicaid eligibility is established, from the asset transfer penalty.

Requires participants in Residential and Assisted Living Facilities to choose between Aid to the Aged, Blind and Disabled cost and services under the Home and Community based services waiver.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Patti Campbell at (208) 334-5815.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-9903

319. CONTRIBUTIONS FOR ~~ADULT RESIDENTIAL CARE~~ AND ASSISTED LIVING FACILITY RESIDENTS.

Contributions from a third party, for a participant residing in an ~~adult residential care~~ and assisted living facility, are excluded. The contribution must be paid directly to the facility. The contribution must pay for items or services, other than medical care, provided to the participant by the facility. The items or services must not be included in the participant's AABD cash, or must be charges for care exceeding the Department's ~~Adult Residential Care~~ and Assisted Living Facility Level I, II or III Allowance. The participant must not be charged a higher rate than other residents of the facility. The person making the contribution must provide a signed statement identifying the item or service the payment covers, the reason the item or service is needed by the participant, and the monthly amount of the payment. ~~(7-1-99)~~(8-1-99)T

(BREAK IN CONTINUITY OF SECTIONS)

501. BASIC ALLOWANCE.

The basic allowance for a participant, not living in a nursing facility, is listed in Subsections 501.01 through 501.04. ~~(7-1-99)~~

01. Single Participant. A participant is budgeted five hundred ~~forty~~ twenty-five dollars (\$~~540~~25) monthly as a basic allowance when living in a situation described in Subsections 501.01.a. through 501.01.f. ~~(1-1-99)~~(8-1-99)T

- a. Living alone. ~~(7-1-99)~~
- b. Living with his ineligible spouse. ~~(7-1-99)~~
- c. Living with another participant who is not his spouse. ~~(7-1-99)~~
- d. Living in another's household. ~~(7-1-99)~~
- e. Living in a room and board home. Room and board is a living arrangement where the participant purchases lodging (room) and meals (board). ~~(7-1-99)~~
- f. Living with his TAFI child. ~~(7-1-99)~~

02. Couple Or Participant Living With Essential Person. A participant living with his participant spouse or his essential person is budgeted seven hundred ~~sixty-six~~ fifty-two dollars (\$~~766~~52) monthly as a basic allowance. ~~(1-1-99)~~(8-1-99)T

03. SIGRIF. A participant living in a semi-independent group residential facility (SIGRIF) is budgeted three hundred forty-nine dollars (\$349) monthly as a basic allowance. ~~(7-1-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

511. SEMI-INDEPENDENT GROUP RESIDENTIAL FACILITY (SIGRIF) ALLOWANCE.

The Adult Residential Care Committee (ARCC) must certify need for care, before the SIGRIF allowance can be budgeted. A participant's SIGRIF allowance is two hundred ~~seventy-seven~~ sixty-two dollars (\$~~277~~62) monthly. ~~(1-1-99)~~(8-1-99)T

512. UNLICENSED ~~ADULT RESIDENTIAL CARE~~ AND ASSISTED LIVING FACILITY OR ADULT FOSTER UNCERTIFIED FAMILY HOME ALLOWANCE.

Each participant living in an unlicensed ~~adult residential care~~ and assisted living facility or ~~adult foster uncertified family home~~ with a non-relative is budgeted a basic allowance of fifty-eight dollars (\$58) monthly. The participant is

also budgeted an unlicensed care allowance, not to exceed three hundred and ~~thirty~~ fifteen dollars (\$330~~15~~) monthly.
~~(7-1-99)~~(8-1-99)T

513. ~~LICENSED ADULT RESIDENTIAL CARE AND ASSISTED LIVING FACILITY AND ADULT FOSTER CARE CERTIFIED FAMILY HOME ALLOWANCES.~~

Each participant living in an ~~adult residential care and assisted living facility (RALF)~~, (see IDAPA 16.03.22, "Rules Governing Licensed Residential and Assisted Living Facilities in Idaho") or ~~adult foster certified family home (CFH)~~, (see IDAPA 16.03.19, "Rules Governing Certified Family Homes") is budgeted a basic allowance of fifty-eight dollars (\$58) monthly. A participant is also budgeted a monthly allowance for ~~adult residential care or adult foster care~~ based on his level of care. If the participant gets a lower level of care than his assessed level, his allowance is for the lower level of care. Care levels and monthly allowances are listed in Subsections 513.01 through 513.03.

TABLE 513 - CARE LEVELS AND MAXIMUM PAYMENTS ALLOWANCES		
	LEVEL OF CARE	MAXIMUM MONTHLY ALLOWANCE
01.	LEVEL I	Seven hundred and eighty-three <u>sixty-eight</u> dollars (\$7 <u>83</u> 68)
02.	LEVEL II	Eight hundred and forty <u>thirty-five</u> dollars (\$8 <u>35</u> 0)
03.	LEVEL III	Nine hundred and eighteen <u>three</u> dollars (\$9 <u>18</u> 03)

~~(7-1-99)~~(8-1-99)T

514. ~~ADULT RESIDENTIAL AND ASSISTED LIVING FACILITY CARE AND ADULT FOSTER CARE CERTIFIED FAMILY HOME ASSESSMENT AND LEVEL OF CARE.~~

The participant's need for care, level of care, plan of care, and the licensed facility's ability to provide care is assessed by the Regional Adult Residential Care Committee (ARCC) when a participant is admitted. The ARCC must approve the placement before AABD cash can be paid.
~~(7-1-99)~~(8-1-99)T

(BREAK IN CONTINUITY OF SECTIONS)

521. ~~MOVE FROM LICENSED ADULT RESIDENTIAL AND ASSISTED LIVING CARE FACILITY OR ADULT FOSTER CARE CERTIFIED FAMILY HOME TO LIVING SITUATION OTHER THAN A NURSING HOME OR HOSPITAL.~~

A participant may move from a ~~licensed facility~~ to a living situation, other than a nursing home or hospital. No change to his AABD cash is made, based on the move, until the next month.
~~(7-1-99)~~(8-1-99)T

522. ~~MOVE TO A LICENSED ADULT RESIDENTIAL CARE AND ASSISTED LIVING FACILITY OR ADULT FOSTER CARE CERTIFIED FAMILY HOME FROM NURSING HOME OR HOSPITAL.~~

A participant may move to an ~~adult residential care and assisted living facility or adult foster care certified family home~~ from a nursing home or hospital. AABD eligibility, payment amount and underpayment are determined for the month of the move using Table 522.

TABLE 522 - COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVING FROM NURSING HOME OR HOSPITAL		
	STEP	PROCEDURE
01.	<u>Step 1</u>	<u>Divide the participant's monthly RALF or CFH allowance by thirty (30). Do not exceed the maximum allowance.</u>

<u>TABLE 522 - COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVING FROM NURSING HOME OR HOSPITAL</u>		
	<u>STEP</u>	<u>PROCEDURE</u>
<u>02.</u>	<u>Step 2</u>	<u>Multiply the result by the number of days left in the month. Begin with the day after the day nursing home or hospital care stopped. Use this amount to compute AABD cash in the RALF or CFH. Income already used to meet patient liability in the nursing home is not counted against AABD cash for the month of the move.</u>
<u>03.</u>	<u>Step 3</u>	<u>Subtract the nursing home personal needs allowance from the participant's countable income.</u>
<u>04.</u>	<u>Step 4</u>	<u>Multiply the participant's daily rate for nursing home care by the number of days in the month he got nursing home care.</u>
<u>05.</u>	<u>Step 5</u>	<u>Subtract this amount from the remaining income.</u>
<u>06.</u>	<u>Step 6</u>	<u>Use the remaining income to compute AABD cash in the RALF or CFH for the month of the move.</u>

(7-1-99)(8-1-99)T

523. MOVE TO A LICENSED ~~ADULT~~ RESIDENTIAL AND ASSISTED LIVING CARE FACILITY OR ~~ADULT FOSTER CARE~~ CERTIFIED FAMILY HOME FROM LIVING SITUATION OTHER THAN NURSING HOME OR HOSPITAL.

A participant may move to a licensed residential and assisted living facility (RALF) or certified family home (CFH) from a different living situation, other than a nursing home or hospital. The AABD underpayment is determined for the month of the move using Table 523.

<u>TABLE 523 - COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVE FROM OTHER LIVING SITUATION</u>		
	<u>STEP</u>	<u>PROCEDURE</u>
<u>01.</u>	<u>Step 1</u>	<u>Divide the participant's monthly RALF or CFH allowance by thirty (30). Do not exceed the maximum allowance.</u>
<u>02.</u>	<u>Step 2</u>	<u>Multiply the result by the number of days left in the month. Begin with the day after the day the participant moved from the other living situation. Use this amount to compute AABD cash in the RALF or CFH.</u>
<u>03.</u>	<u>Step 3</u>	<u>Any remainder is the participant's AABD cash underpayment for the month of the move. The remainder is rounded to the next higher dollar, if not an even dollar.</u>

(7-1-99)(8-1-99)T

524. MOVE FROM NURSING HOME OR HOSPITAL.

If a participant may moves from a nursing home or hospital, to a different living situation, but not other than an adult residential care and assisted living facility or adult foster care certified family home. His AABD cash for the month is determined as if he lived in his new living situation the entire month. His AABD cash is his AABD allowances less his countable income.

(7-1-99)(8-1-99)T

525. CHOICE BETWEEN AABD CASH AND HCBS-NF WAIVER SERVICES.

A participant eligible for AABD cash in a Certified Family Home or Residential and Assisted Living Facility and also eligible for services under the HCBS-NF waiver, must chose between AABD cash and waiver services. The participant must not receive AABD cash and waiver services during the same month. The requirement to chose

between AABD cash and HCBS-NF waiver services will be phased in on same schedule as the HCBS-NF waiver. The schedule is listed in Table 525.

TABLE 525 - EFFECTIVE DATE OF AABD CASH AND HCBS-NF CHOICE	
Counties	Effective Date
<u>Bannock, Bear Lake, Bingham, Caribou, Franklin, Power and Oneida.</u>	<u>August 1, 1999</u>
<u>Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls, Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton.</u>	<u>October 1, 1999</u>
<u>Benewah, Bonner, Boundary, Kootenai, Shoshone, Clearwater, Idaho, Latah, Lewis and Nez Perce.</u>	<u>December 1, 1999</u>
<u>Adams, Canyon, Gem, Owyhee, Payette, Washington, Ada, Boise, Elmore and Valley.</u>	<u>February 1, 2000</u>

(8-1-99)T

5256. -- 530. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

831. ASSET TRANSFER FOR LESS THAN FAIR MARKET VALUE.

Starting August 11, 1993, the participant is subject to a penalty if he ~~or his spouse~~ transfers ~~either spouse's~~ his income or resources for less than fair market value. ~~Transfer includes reducing or eliminating the participant's ownership or control of the asset.~~ The asset transfer penalty applies to Medicaid services received October 1, 1993 and later. Excluded resources, other than the home and associated property, are not subject to the asset transfer penalty. The asset transfer penalty applies to a Medicaid participant in long-term care or HCBS. A participant in long-term care is a patient in a nursing facility or a patient in a medical institution, requiring and receiving the level of care provided in a nursing facility. (7-1-99)(8-1-99)T

01. Transfer Of Income Or Resources. Transfer of income or resources includes reducing or eliminating the participant's ownership or control of the asset. (8-1-99)T

02. Transfer Of Income Or Resources By A Spouse. A transfer by the participant's spouse of either spouse's income or resources, before eligibility is established, subjects the participant to the asset transfer penalty. After the participant's eligibility is established, a transfer by the spouse of the spouse's own income or resources does not subject the participant to the asset transfer penalty. (8-1-99)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO
DOCKET NO. 16-0308-9901

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective May 1, 1999. These rules have been adopted by the agency and are now pending review by the 2000 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with 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 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(s) 39-106(l) and 56-202(b), 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.

In Section 121.03 of these rules a clarification was made to read, "at least the third calendar month before the baby is due" to the text of the proposed rule. The proposed rules have been amended in response to public comment and to make, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the section that has changes are printed in this bulletin. The original text of the proposed rules is published in the June 2, 1999 Idaho Administrative Bulletin, Volume 99-6, pages 245 through 248.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Beverley Sheeley at (208) 334-5624.

DATED this 21st day of July, 1999.

Sherri Kovach
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IDAPA 16
TITLE 03
Chapter 08

RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

There are substantive changes to 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 9-6, June 2, 1999, pages 245 through 248.

This rule has been adopted as Final by the Agency and is now pending review by the 2000 Idaho State Legislature for final adoption.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-9901

121. MANDATORY INDIVIDUALS.

Individuals who must be included in the family are listed in Subsections 121.01 through 121.03. (5-1-99)T

01. Children. Children under the age of eighteen (18) or, under the age of nineteen (19) if they are attending a secondary school or the equivalent level of vocational or technical training full time. Children must reside with a parent or a caretaker relative who exercises care and control of them. A dependent child's natural or adoptive brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. (5-1-99)T

02. Parents. Parents who have an eligible natural or adopted child residing with them. (7-1-98)

03. Pregnant Woman. A pregnant woman with no other children who is in her last trimester of pregnancy at least the third calendar month before the baby is due and is unable to work due to medical reasons. (5-1-99)T(5-1-99)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9903

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective March 1, 1999. These rules have been adopted by the agency and are now pending review by the 2000 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 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(s) 56-202(f), 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.

In Section 630, transition from an ICF/MR to a less restrictive environment within 30 days of determination that the recipient does not meet ICF/MR level of care was added to provide consistency in the transition process. In Section 654 clarification was made that RMU or ACCESS unit staff need not redetermine a participants continuing need for ICF/MR level of care when a person lives in an institution. Section 656 was revised to better clarify the parameters surrounding the administrative review by central office staff. The temporary/proposed rules have been amended in response to public comment, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rule was published in the May 5, 1999 Administrative Bulletin, Volume 99-5, pages 67 through 69 and the temporary rule was published in the April 7, 1999 Administrative Bulletin, Volume 99-4, pages 41 through 43.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jean Christensen at (208) 364-1828.

DATED this 21st day of July, 1999.

Sherri Kovach
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IDAPA 16
TITLE 03
Chapter 09

RULES GOVERNING MEDICAL ASSISTANCE

There are substantive changes to 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 text of the temporary rule was published in the Idaho Administrative Bulletin, Volume 99-4, April 7, 1999, pages 41 through 43.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 99-5, May 5, 1999, pages 67 through 69.

This rule has been adopted as Final by the Agency and is now pending review by the 2000 Idaho State Legislature for final adoption.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-9903

630. CHANGE IN ELIGIBILITY - ICF/MR.

Individuals who were redetermined ineligible between November 1, 1998 and March 1, 1999 will be eligible to continue services until March 1, 2001. Individuals redetermined after March 1, 1999 will be eligible to continue services until March 1, 2001. Individuals who do not meet ICF/MR level of care after March 1, 2001, will lose Medicaid payment for services on the date specified by the RMU or Access unit. All new applicants after March 1, 1999 must meet this criteria to be eligible. (3-1-99)T

01. Transitioning To A Less Restrictive Environment. Persons living in an ICF/MR shall be transitioned to a less restrictive environment ~~as soon as possible after~~ within thirty (30) days of the determination that the recipient does not meet ICF/MR level of care. (7-1-99)(3-1-99)T

02. Home Care For Certain Disabled Children (HCDC). Persons receiving HCDC Medicaid services through ICF/MR eligibility, will receive services until the end of the month in which the redetermination was made. These individuals must receive ten (10) days notification of termination of services. If the redetermination is made less than ten (10) days from the end of the month, payment continues until the end of the following month. (7-1-99)

03. Developmentally Disabled Waiver. Individuals receiving Developmentally Disabled waiver services will have thirty (30) days from the time of the determination to transition to other community supports. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

654. ANNUAL REDETERMINATION FOR ICF/MR LEVEL OF CARE.

The RMU or Access Unit staff must redetermine the participant's continuing need for ICF/MR level of care for community services. Documentation will consist of the completion of a redetermination statement on the "Level of Care" form HW0083. Such documentation shall be accomplished no later than every three hundred sixty-five (365) days from the most recent determination. ~~(3-1-99)T~~(3-1-99)T

(BREAK IN CONTINUITY OF SECTIONS)

656. REQUEST FOR RECONSIDERATION OF ICF/MR LEVEL OF CARE.

~~Applicants~~ Persons who have been found to not be eligible for ICF/MR level of care may request a reconsideration by a team which includes administrative staff from the Division of Family and Community Services, the Division of Medicaid and Interdisciplinary Professionals who were not involved in the original eligibility decision prior to a request for fair hearing. ~~This action does not replace the participant's right to a fair hearing. If a person requests a reconsideration, they will have thirty (30) days from the decision of the Review Team to file for a fair hearing.~~ ~~(3-1-99)T~~(3-1-99)T

01. Time Frame For Receiving Appeal. An appeal for a administrative review must be received by the regional program fifteen (15) days from the regional denial. This action does not replace the right to a fair hearing. ~~(3-1-99)T~~

02. Time Frame For Requesting Fair Hearing. Persons who receive a denial from the Administrative Review may request a fair hearing within thirty (30) days of the administrative denial. ~~(3-1-99)T~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9906

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1999.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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 of propose of the proposed rulemaking:

This rule change will add assistive and augmentative communication devices as an element of Medical assistance provided through Medicaid. Medicaid currently only pays for these devices for all children and for individuals that are receiving services under a waived program. Proposed rule changes will allow individuals that meet specified Medical needs criteria to receive a communication device funded by Medicaid.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs and to confer a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Cindy Taylor at (208) 364-1843.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 22, 1999.

DATED this 21st day of July, 1999.

Sherri Kovach
Administrative Procedures Coordinator
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-9906

106. DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES.

The Department will purchase or rent when medically necessary cost effective durable medical equipment and medical supplies for recipients residing in community settings including those provided through home health agency plans of care which meet the requirements found in Subsections 105.01 and 105.02. No payment will be made for any recipient's DME or medical supplies that are included in the per diem payment while such an individual is an inpatient in a hospital NF, or ICF/MR. (7-1-99)

01. Medical Necessity Criteria. DME/medical supplies will be purchased or rented only if ordered in writing (signed and dated) by a physician prior to delivery of equipment or supplies. Date of delivery is considered the date of service. The following information to support the medical necessity of the item(s) shall be included in the physician's order and accompany all requests for prior authorization or be kept on file with the DME provider for items which do not require prior authorization: (7-1-99)

a. The recipient's medical diagnosis and prognosis including current information on the medical condition which requires the use of the supplies and/or medical equipment; and (7-1-99)

b. An estimate of the time period that the medical equipment or supply item will be necessary and frequency of use. As needed (PRN) orders must include the conditions for use and the expected frequency; and (7-1-99)

c. For medical equipment, a full description of the equipment needed. All modifications or attachments to basic equipment must be supported; and (7-1-99)

d. For medical supplies, the type and quantity of supplies necessary must be identified; and (11-1-86)

e. The number of months the equipment or supplies will be needed; and (7-1-99)

f. Additional information may be requested by the Department or its designee for specific equipment and/or supplies such as, but not limited to, wheelchairs, apnea monitors, oximeters, ~~electric~~ hospital beds. (7-1-99)(7-1-99)T

02. Medical Equipment Program Requirements. All claims for durable medical equipment are subject to the following guidelines: (7-1-99)

a. Unless specified by the Department, durable medical equipment does not require prior authorization by the Department or its designee. (7-1-99)

i. When multiple features or models of equipment are available, authorization will be limited to the least costly version that will reasonably and effectively meet the minimum requirements of the individuals needs. (7-1-99)T

b. Unless specified by the Department in the Medical Vendors Handbook, all equipment must be rented except when it would be more cost effective to purchase it. Rentals are subject to the following guidelines: (7-1-99)

i. Rental payments, including intermittent payments, shall automatically be applied to the purchase of the equipment. When rental payments equal the purchase price of the equipment, ownership of the equipment shall pass to the Department. (10-1-91)

ii. The Department may choose to continue to rent certain equipment without purchasing it. Such items include but are not limited to apnea monitor, ventilators and other respiratory or monitoring equipment. (7-1-99)(7-1-99)T

iii. The total monthly rental cost of a DME item shall not exceed one-tenth (1/10) of the total purchase price of the item. (7-1-99)

iv. The determination of cost-effectiveness of rental versus purchase will be made by the vendor based on guidelines specified by the Department in the most current Medical Vendors Handbook. Documentation to support the vendor's decision must be kept on file. (7-1-99)

c. No reimbursement will be made for the cost of repairs (materials or labor) covered under the manufacturer's warranty. The date of purchase and warranty period must be kept on file by the DME vendor. The following warranty periods are required to be provided on equipment purchased by the Department: (7-1-99)

i. A power drive wheelchair shall have a minimum one (1) year warranty period; (7-1-99)

ii. An ultra light wheelchair shall have a lifetime warranty period; (10-22-93)

iii. An active duty lightweight wheelchair shall have a minimum five (5) year warranty period; (7-1-99)

iv. All other wheelchairs shall have a minimum one (1) year warranty period; (7-1-99)

v. All electrical components and new or replacement parts shall have a minimum six (6) month warranty period; (7-1-99)

vi. All other DME not specified above shall have a minimum one (1) year warranty period; (7-1-99)

vii. If the manufacturer denies the warranty due to user misuse/abuse, that information shall be forwarded to the Department at the time of the request for repair or replacement; (10-1-91)

viii. The monthly rental payment shall include a full service warranty. All routine maintenance, repairs, and replacement of rental equipment is the responsibility of the provider. (10-22-93)

d. Any equipment purchased will ~~remain~~ become the property of the Department and ~~return of the equipment to the Department may be required. Recipients who meet one (1) of the following criteria should check with the Department or its designee for instructions on the disposition of the equipment: recipient.~~ (7-1-99)(7-1-99)T

~~i. The recipient is no longer eligible for MA; or (11-1-86)~~

~~ii. The recipient no longer requires the use of the equipment; or (11-1-86)~~

~~iii. The recipient expires. (10-1-91)~~

e. Covered equipment is ~~limited to the following listed items:~~ must meet the definition of durable medical equipment and be medically necessary as defined in Subsection 003.36. All equipment must be prior authorized by the Department or its designee except for the following: (11-1-86)(7-1-99)T

~~i. Apnea or cardiac monitors/alarms; and (11-1-86)~~

ii. Bilirubin lights; and (7-1-99)

~~iii. C-PAP machines; and (10-29-92)~~

~~iv. Commode chairs and toilet seat extenders; and (11-1-86)~~

~~v. Crutches and canes; and (11-1-86)~~

~~vi. Electronic bone growth stimulators; and (11-1-86)~~

~~ivii. Electric or hydraulic patient lift devices designed to transfer a person to and from bed to bathtub, but excluding lift chairs, devices attached to motor vehicles, and wall mounted chairs which lift persons up and down stairs; and (7-1-99)~~

- ~~viii.~~ Home dialysis equipment; and (7-1-99)
- ~~ix.~~ Grab bars for the bathroom adjacent to the toilet and/or bathtub; and (11-1-86)
- ~~xvi.~~ Hand-held showers; and (11-1-86)
- ~~xvii.~~ Head gear (protective); and (7-1-99)
- ~~xviii.~~ Hearing aids (see Section 108 for coverage and limitations); and (7-1-99)
- ~~xix.~~ Home blood glucose monitoring equipment; and (11-1-86)
- ~~xiv.~~ Hospital beds, mattresses, trapeze bars, and side rails; and ~~(11-1-86)~~
- ~~xv.~~ Intravenous infusion pumps, ~~insulin infusion pumps,~~ and/or NG tube feeding pumps, IV poles/
stands, intrathecal kits; and ~~(7-1-99)~~(7-1-99)T
- ~~xvi.~~ ~~IPPB machines,~~ ~~h~~Hand-held nebulizers, air therapy vests, and manual or electric percussor; and
~~(7-1-99)~~(7-1-99)T
- ~~xvii.~~ Medication organizers; and (7-1-99)
- ~~xviii.~~ Oxygen concentrators; and (11-1-86)
- ~~xix.~~ Pacemaker monitors; and (11-1-86)
- ~~xx.~~ ~~Respirators,~~ ~~e~~Compressors and breathing circuit humidifiers; and ~~(11-1-86)~~(7-1-99)T
- ~~xxi.~~ Sliding boards and bath benches/chairs; and (11-1-86)
- ~~xxii.~~ Suction pumps; and (11-1-86)
- ~~xxiii.~~ Sheep skins, foam or gel pads for the treatment of decubitus ulcers; and (7-1-99)
- ~~xix.~~ Traction equipment; and (7-1-99)
- ~~xxv.~~ ~~Transcutaneous and/or neuromuscular electric nerve stimulators; and~~ ~~(11-1-86)~~
- ~~xxvi.~~ Walkers; ~~and~~ ~~(11-1-86)~~(7-1-99)T
- ~~xxvii.~~ ~~Wheelchairs, manual and electric.~~ (7-1-99)

03. Coverage Conditions - Equipment. The following medical equipment is subject to the following limitations and additional documentation requirements: (7-1-99)

a. Wheelchairs. The Department will provide the least costly wheelchair which is appropriate to meet the recipient's medical needs. The Department will authorize the purchase of one (1) wheelchair per recipient not more often than once every five (5) years. Specially designed seating systems for wheelchairs shall not be replaced more often than once every five (5) years. Wheelchair rental or purchase requires prior authorization by the Department or its designee and shall be authorized in accordance with the following criteria: (7-1-99)

i. In addition to the physician's information, each request for a wheelchair must be accompanied by a written evaluation by a physical therapist or an occupational therapist. The evaluation must include documentation of the appropriateness and cost effectiveness of the specific wheelchair and all modifications and/or attachments and its ability to meet the recipient's long-term medical needs; (7-1-99)

ii. Manual wheelchairs will be authorized based on the recipient's need according to the following criteria: (7-1-99)

(1) The recipient must be nonambulatory or have severely limited mobility and require a mobility aid to participate in normal daily activities and the alternative would be confinement to a bed or chair; (7-1-99)

(2) A standard lightweight wheelchair will be authorized if the recipient's condition is such that he cannot propel a standard weight wheelchair; (7-1-99)

(3) An ultra light weight wheelchair will be authorized if the recipient's conditions are such that he cannot propel a lightweight or standard weight wheelchair. (7-1-99)

iii. Electric wheelchairs are purchased only if the recipient's medical needs cannot be met by a manual wheelchair. The attending physician must certify that the power drive wheelchair is a safe means of mobility for the recipient and all of the following criteria are met: (7-1-99)

(1) The recipient is permanently disabled; and (7-1-99)

(2) The disability is such that, because of severe upper extremity weakness or lack of function, the recipient cannot operate any manual wheelchair. (7-1-99)

iv. Additional wheelchairs may be considered within the five (5) year limitation with written documentation from the physician and a written evaluation from a physical therapist or an occupational therapist indicating that the current wheelchair no longer meets the client medical needs and what may be damaging to client's medical condition. (7-1-99)T

b. Electronic blood glucose testing devices with voice synthesizers must be prior authorized by the Department or its designee and are covered only when the following documentation is submitted and verified by the attending physician: (7-1-99)

i. The recipient has been determined to be legally blind and is unable to read a standard glucose monitor (this does not include any correctable vision defects; and) (7-1-99)

ii. The recipient lives alone or has no care giver available during the times when the glucose testing must be done. (7-1-99)

c. Electronic pain suppression/muscle stimulation devices TENS Units must be prior authorized by the Department or its designee and are purchased only when the effectiveness of such devices is documented by the physician and only after: (7-1-99)

i. The pain has been present for a minimum of three (3) months; and (7-1-99)

ii. Other treatment modalities have been tried and failed (documentation must be submitted with request for prior authorization; and (7-1-99)

iii. The effectiveness of the device is documented following a maximum of a two (2) month trial rental period; and (7-1-99)

iv. The physician determines that the recipient is likely to derive significant therapeutic benefit from the continuous use of the device over a long period of time. (7-1-99)

d. ~~Semi-Electric~~ hospital beds must be prior authorized by the Department or its designee and ~~are purchased or rented~~ will be approved only when the following is documented by the physician: ~~(7-1-99)~~(7-1-99)T

i. The recipient's medical condition is such that he is unable to operate a manual hospital bed; and (7-1-99)

- ii. The recipient is unable to change position as needed without assistance; and (7-1-99)
- iii. The recipient resides in an independent living situation where there is no one to provide assistance with a manual bed for the major portion of the day. (10-31-89)
- e. Continuous positive airway pressure (C-PAP) machines must be prior authorized by the Department or its designee and are purchased or rented only in the following circumstances: (7-1-99)
 - i. The physician certifies that the recipient's diagnosis is obstructive sleep apnea, which is supported by a sleep study; and (7-1-99)
 - ii. There is documentation that the recipient's oxygen saturations improve with the use of the machine or respiratory events can be controlled with use of this machine. The machine may be rented for three (3) to six (6) months to determine its effectiveness. (7-1-99)
 - f. Bilevel positive airway pressure (BiPAP) machines must be prior authorized by the Department or its designee and are purchased or rented only in the following circumstances: (7-1-99)
 - i. A C-PAP machine has been proven ineffective in treating obstructive sleep apnea; and/or (10-22-93)
 - ii. The C-PAP machine has proven ineffective during titration; and/or (7-1-99)
 - iii. Used in place of a ventilator. (10-22-93)
 - g. Lymphedema pumps shall be authorized only as a last resort for the treatment of refractory lymphedema involving one (1) or more limbs. The following documentation must be provided: (7-1-99)T
 - i. Documentation showing location and size of the venous stasis ulcer. (7-1-99)T
 - ii. Documentation showing how long each ulcer has been present. (7-1-99)T
 - iii. Documentation showing that the patient has been treated with regular compression bandaging for at least the past six (6) months. (7-1-99)T
 - iv. Documentation showing approximately when and the results that the patient has been treated with custom fabricated gradient pressure stockings/sleeves. (7-1-99)T
 - v. Documentation showing all other treatments used for the venous stasis ulcers during the last six (6) months. (7-1-99)T
 - vi. Documentation showing the recipient has been seen regularly by a physician for treatment of venous stasis ulcer(s) during the last six (6) months. (7-1-99)T
- 04. Communication Devices.** Will be considered for purchase by the Department under the following conditions. (7-1-99)T
 - a. Communication devices must be prescribed by the primary care physician. (7-1-99)T
 - b. The need for the device must be based on a comprehensive history and physical. (7-1-99)T
 - c. The device must be considered medically necessary by the primary care physician and the individual must lack the ability to communicate needs with the primary care physician or caregiver. (7-1-99)T
 - d. The device must be the most effective least costly means of meeting the minimum requirements of the client's needs. If the individual knows sign language or is capable of learning sign language a communication device would not be considered medically necessary. (7-1-99)T

e. The assessment and evaluation for the communication device must include comprehensive information as related to the individuals ability to communicate and review of the most cost effective devices to meet the individuals needs. Documentation shall include: (7-1-99)T

i. Demographic and biographic summary; (7-1-99)T

ii. Inventory of skills and sensory function; (7-1-99)T

iii. Inventory of present and anticipated future communication needs; (7-1-99)T

iv. Summary of device options; (7-1-99)T

vi. Recommendation for device; and (7-1-99)T

vii. Copy of individual treatment plan. (7-1-99)T

f. Repairs to the device must be prior authorized and must not include modifications, technological improvements or upgrades. (7-1-99)T

g. Reimbursable supplies include rechargeable batteries, overlays, and symbols. (7-1-99)T

h. Replacements, modifications, and upgrades will be reimbursed only with prior authorization by the Department, and will require a complete new assessment. Authorization for replacements modifications and upgrades will be issued only in the following circumstances: (7-1-99)T

i. System is broken through no fault of the client and is deemed non repairable and client is unable to function without it. (7-1-99)T

ii System no longer meets the client's minimum medical needs. (7-1-99)T

iii. The use or provision of the system by any individual other than the recipient for which the system was authorized is prohibited. (7-1-99)T

iv. The Department shall have no obligation to repair or replace the communication device if it has been damaged defaced, lost or destroyed as a result of neglect, abuse, or misuse of the equipment. (7-1-99)T

i. Training and orientation of the communication device may be billed as speech therapy by Medicaid approved providers such as a Developmental Disability Agency, or a Hospital that employs a speech therapist. (7-1-99)T

j. There must be an annual evaluation of the effectiveness of the communication device. If the device is not effective or is not being used, it must be returned to the Department. (7-1-99)T

045. Medical Supply Program Requirements. All claims for medical supply items are subject to the following requirements: (7-1-99)

a. The Department ~~may~~ will purchase no more than a one (1) month supply of necessary medical supplies for the treatment or amelioration of a medical condition identified by the attending physician in an amount not to exceed one hundred dollars (\$100) per month without prior authorization. Any combination of one (1) month's worth of supplies greater than one hundred dollars (\$100) may require prior authorization by the Department or its designee. The prior authorization period will be established by the Department or its designee. ~~(7-1-99)~~(7-1-99)T

b. Each request for prior authorization must include all information required in Subsection 106.01. (7-1-99)

c. Covered supplies are limited to the following: (11-1-86)

- and
- i. Catheter supplies including catheters, drainage tubes, collection bags, and other incidental supplies; (11-1-86)
 - ii. Cervical collars; and (11-1-86)
 - iii. Colostomy and/or urostomy supplies; and (11-1-86)
 - iv. Disposable supplies necessary to operate Department approved medical equipment such as suction catheters, syringes, saline solution, etc.; and (11-1-86)
 - v. Dressings and bandages to treat wounds, burns, or provide support to a body part; and (11-1-86)
 - vi. Fluids for irrigation; and (11-1-86)
 - vii. Incontinence supplies (See Subsection 106.05.b. for limitations); and (7-1-99)
 - viii. Injectable supplies including normal saline and Heparin but excluding all other prescription drug items; and (10-31-89)
 - ix. Blood glucose or urine glucose checking/monitoring materials (tablets, tapes, strips, etc.), automatic injectors; and (7-1-99)
 - x. Therapeutic drug level home monitoring kits. (10-31-89)
 - xi. Oral, enteral, or parenteral nutritional products (See Subsection 106.05.a. for limitations and additional documentation requirements). (7-1-99)

056. Coverage Conditions - Supplies. The following medical supply items are subject to the following limitations and additional documentation requirements: (7-1-99)

a. Nutritional products. Nutritional products will be purchased only under the following circumstances: (7-1-99)

i. A nutritional plan shall be developed and be on file with the provider and shall include appropriate nutritional history, the recipient's current height, weight, age and medical diagnosis. For recipients under the age of twenty-one (21), a growth chart including weight/height percentile must be included; (7-1-99)

ii. The plan shall include goals for either weight maintenance and/or weight gain and shall outline steps to be taken to decrease the recipient's dependence on continuing use of nutritional supplements; (10-1-91)

iii. Documentation of evaluation and updating of the nutritional plan and assessment by a physician as needed but at least annually. (7-1-99)

b. Incontinent supplies. Incontinent supplies are covered for persons over four (4) years of age only and do not require prior authorization unless the recipient needs supplies in excess of the following limitations: (7-1-99)

i. Diapers are restricted in number to two hundred forty (240) per month. If the physician documents that additional diapers are medically necessary, the Department or its designee may authorize additional amounts on an individual basis. (7-1-99)

ii. Disposable underpads are restricted to one hundred fifty (150) per month. (10-22-93)

iii. Pullups are only allowed when it is documented by the physician that the recipient is participating in a toilet training program. Documentation for toilet training program must be updated on a yearly basis. (7-1-99)(7-1-99)T

067. Program Abuse. The use or provision of DME/medical supply items to an individual other than the recipient for which such items were ordered is prohibited. The provision of DME/medical supply items that is not supported by required medical necessity documentation is prohibited and subject to recoupment. Violators are subject to penalties for program fraud and/or abuse which will be enforced by the Department. The Department shall have no obligation to repair or replace any piece of durable medical equipment that has been damaged, defaced, lost or destroyed as a result of neglect, abuse, or misuse of the equipment. Recipients suspected of the same shall be reported to the SUR/S committee. (7-1-99)

078. Billing Procedures. The Department will provide billing instructions to providers of DME/medical supplies. When prior authorization by the Department or its designee is required, the authorization number must be included on the claim form. (7-1-99)

089. Fees And Upper Limits. The Department will reimburse according to Subsection 060.04 Individual Provider Fees. (12-31-91)

0910. Date Of Service. Unless specifically authorized by the Department or its designee the date of services for durable medical equipment and supplies is the date of delivery of the equipment and/or supply(s). The date of service cannot be prior to the vendor receiving all medical necessity documentation. (7-1-99)

11. Notice Of Decision. A Notice of Decision approving or denying a requested item will be issued to the client by the Department. The client has thirty (30) days to request an administrative hearing on the decision. Upon written request, the Department may extend the thirty (30) day deadline to provide the client additional time to develop his appeal request. The client may also submit additional information and request a reconsideration at any time hearings will be conducted to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 300. (7-1-99)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-9901

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2000 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(b), Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the June 2, 1999 Administrative Bulletin, Volume 99-6, pages 249 and 250.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Russell Spearman at (208) 364-1842.

DATED this 21st day of July, 1999.

Sherri Kovach
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IDAPA 16
TITLE 03
Chapter 10

RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 99-6, June 2, 1999, pages 249 and 250.**

**This rule has been adopted as Final by the Agency and is now pending
review by the 2000 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO
DOCKET NO. 16-0310-9903
NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1999.

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

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 8, 1999.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

This Docket contains the definition of "on-site" as required by the Joint Legislative Oversight Committee and minor clarifications to the existing rules.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Judith Shipley at (208) 364-1841.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 22, 1999.

DATED this 21st day of July, 1999.

Sherri Kovach
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-9903

451. DEFINITIONS.

In determining hospital reimbursement on the basis either of Customary Charges or of the Reasonable Cost of inpatient services under Medicaid guidelines, whichever is less, the following will apply: ~~(7-1-97)~~(7-1-99)T

01. Allowable Costs. The Current Year's Title XIX apportionment of a hospital's Allowable Costs determined at final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the ~~Medicare Health Insurance Manual Parts I and II (HIM 15 I & II)~~ Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (7-1-97)(7-1-99)T

02. Apportioned Costs. Apportioned Costs consist of the share of a hospital's total Allowable Costs attributed to Medicaid program recipients and other patients so that the share borne by the program is based upon actual services received by program recipients, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in ~~Health Insurance Manual (HIM-15)~~ the PRM and in compliance with Medicaid reimbursement rules. (7-1-97)(7-1-99)T

~~**03. Base Year.** For services rendered prior to July 1, 1987, the Base Year is the most recent provider fiscal year in which a finalized Medicare cost report has been issued by the Intermediary. Providers with fiscal years which begin in the Base Year may not be exempt from the rules governing the Title XIX cost limitations in effect any time in the Current Year. The per admission costs related to the Base Year will be adjusted by the volume adjustment formula using the Current Year's total admissions under the rules in effect prior to the rules enacted July 1, 1987. The admissions and related services provided after the effective date of these rules during the Current Year will be governed by these rules. (7-1-97)~~

043. Capital Costs. For the purposes of hospital reimbursement, Capital Costs are those allowable costs considered in the final settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (7-1-97)(7-1-99)T

054. Case-Mix Index. The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the Current Year will be divided by the index of the principal year to assess the percent change between the years. (7-1-97)

065. Charity Care. Charity Care is care provided to individuals who have no source of payment, third-party or personal resources. (7-1-97)

076. Children's Hospital. A Children's Hospital is a Medicare certified hospital as set forth in 42 CFR Section 412.23(d). (7-1-97)

087. Cost Report. A Cost Report is the complete Medicare cost reporting form HCFA 2552, or its successor, as completed in full and accepted by the Intermediary for Medicare cost settlement and audit. (7-1-97)

098. Current Year. Any hospital cost reporting period for which Reasonable Cost is being determined will be termed the Current Year. (7-1-97)

109. Customary Charges. Customary Charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Title XIX program. No more than one hundred percent (100%) of covered charges will be reimbursed for the separate Operating Costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 453.02. (7-1-97)

110. Disproportionate Share Hospital (DSH) Allotment Amount. The DSH Allotment Amount determined by Health Care Financing Administration which is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (7-1-97)

121. Disproportionate Share Hospital (DSH) Survey. The DSH Survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH pursuant to Subsection 454.01.

(7-1-97)

132. Disproportionate Share Threshold. The Disproportionate Share Threshold shall be: (7-1-97)

a. The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (7-1-97)

b. A Low Income Revenue Rate exceeding twenty-five percent (25%). (7-1-97)

143. Excluded Units. Excluded Units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (7-1-97)

154. Hospital Inflation Index. For purposes of determining the rate of increases of historical and forecasted Title XIX Inpatient Operating Cost Limits, and interim rates, the DRI, Data Resources Incorporated, Type Hospital Market Basket quarterly moving average, or its successor, is the Hospital Inflation Index. (7-1-97)

165. Low Income Revenue Rate. The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (7-1-97)

a. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (7-1-88)

b. The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (7-1-97)

176. Medicaid Inpatient Day. For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (7-1-97)

187. Medicaid Utilization Rate (MUR). The MUR for each hospital will be computed using the Department's record of paid inpatient days for the ~~calendar~~ fiscal year divided by the total inpatient days for the same ~~calendar~~ fiscal year as reported in the DSH Survey. In this paragraph, the term "inpatient days" includes Medicaid swing-bed days, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH Threshold computations. (7-1-97)(7-1-99)T

198. Obstetricians. For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (7-1-88)

19. On-Site. A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location shall be in close proximity to the hospital where it is based, and both facilities shall serve the same patient population (e.g. from the same area, or catchment, no further away than fifteen (15) miles from a urban hospital or thirty-five (35) miles from a rural hospital). (7-1-99)T

20. Operating Costs. For the purposes of hospital reimbursement, Operating Costs are the allowable costs included in the cost centers established in the finalized Medicare Cost Report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (7-1-97)

21. Other Allowable Costs. Other Allowable Costs are those Reasonable Costs recognized under the Medicaid Reasonable Cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as Operating Costs, but recognized by Medicare principles as Allowable Costs will be included in the total Reasonable Costs. Other Allowable Costs include, but are not necessarily limited to, physician's component which was combined-billed, Capital Costs, ambulance costs, excess costs, carry-forwards and medical education costs. (7-1-97)

22. Principal Year. The Principal Year is the period from which the Title XIX Inpatient Operating Cost Limit is derived. (7-1-97)

a. For services rendered from July 1, 1987 through July 5, 1995, the Principal Year shall be the provider's fiscal year ending in calendar year 1984 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (7-1-97)

b. For inpatient services rendered after July 5, 1995, through June 30, 1998, the Principal Year shall be the provider's fiscal year ending in calendar year 1992 in which a finalized Medicare Cost Report, or its equivalent, is prepared for Title XIX cost settlement. (7-1-97)

c. For inpatient services rendered after June 30, 1998, the Principal Year shall be the provider's fiscal year ending in calendar year 1995 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (7-1-97)

23. Public Hospital. For purposes of Subsection 453.02, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (7-1-97)

24. Reasonable Costs. Except as otherwise provided in Section 453, Reasonable Costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Title XIX cost limit. (7-1-97)

25. Reimbursement Floor Percentage. The percentage of allowable Medicaid costs guaranteed to hospitals with more than forty (40) licensed and Medicare certified inpatient beds during the following state fiscal years is as follows: (7-1-97)

a. State Fiscal Year Ending June 30, 1996 - eighty percent (80%); (7-1-97)

b. State Fiscal Year Ending June 30, 1997 - eighty-one percent (81%); (7-1-97)

c. State Fiscal Year Ending June 30, 1998 - eighty-two percent (82%); (7-1-97)

d. State Fiscal Year Ending June 30, 1999 - eighty-three percent (83%); (7-1-97)

e. State Fiscal Year Ending June 30, 2000 - eighty-four percent (84%); (7-1-97)

f. State Fiscal Year Ending June 30, 2001 - eighty-five percent (85%). (7-1-97)

26. TEFRA. TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (7-1-97)

27. Uninsured Patient Costs. For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment Amount, only inpatient costs of uninsured patients will be considered. An inpatient with insurance but no ~~benefit~~ covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient. (7-1-97)(7-1-99)T

28. Upper Payment Limit. The Upper Payment Limit for hospital services shall be as defined in the Code of Federal Regulations. (7-1-97)

452. TITLE XIX INPATIENT OPERATING COST LIMITS.

In the determination of Reasonable Costs, a separate Title XIX cost limit for the services rendered under the approved state plan will be in effect during the Current Year. Payments will meet the costs of an economically and efficiently operated facility when the Title XIX cost limit, in effect during the same Current Year, is applied. (7-1-97)

01. Title XIX Cost Limits For Dates Of Service Prior To A Current Year. The reimbursable Reasonable Costs for services rendered prior to the beginning of the Principal Year, but included as prior period claims in a subsequent period's Cost Report, will be subject to the same operating cost limits as the claims under settlement. (7-1-97)

02. Application Of The Title XIX Cost Limit After Effective Date Of Rules. In the determination of a hospital's Reasonable Costs for inpatient services rendered after the effective date of a Principal Year, a Hospital Inflation Index, computed for each hospital's fiscal year end, will be applied to the Operating Costs, excluding Capital Costs and Other Allowable Costs as defined for the Principal Year and adjusted on a per diem basis for each subsequent year under the Hospital Inflation Index. (7-1-97)

a. Each inpatient routine service cost center, as reported in the finalized Principal Year end Medicare Cost Report, will be segregated in the Title XIX cost limit calculation and assigned a share of total Title XIX inpatient ancillary costs. The prorated ancillary costs shall be determined by the ratio of each Title XIX routine cost center's reported costs to total Title XIX inpatient routine service costs in the Principal Year. (7-1-97)

b. Each routine cost center's total Title XIX routine service costs plus the assigned share of Title XIX inpatient ancillary costs of the Principal Year will be divided by the related Title XIX patient days to identify the total costs per diem in the Principal Year. (7-1-97)

i. The related inpatient routine service cost center's per diem capital and graduate medical education costs plus the prorated share of inpatient ancillary capital costs will be subtracted from the per diem amount identified in Subsection 452.02.b. to identify each inpatient routine service cost center per diem cost limit in the Principal Year. (7-1-97)

ii. If a provider did not have any Title XIX inpatient utilization or render any Title XIX inpatient services in an individual inpatient routine service cost center in the fiscal year serving as the Principal Year, the Principal Year for only those routine cost centers without utilization in the provider's Principal Year will be appropriately calculated using the information available in the next subsequent year in which Title XIX utilization occurred. (7-1-97)

~~e.~~ ~~Claims with dates of admission prior to July 1, 1987 which include services on July 1, 1987, and thereafter for that admission, will be reimbursed under the rules in effect prior to July 1, 1987.~~ (7-1-97)

~~dc.~~ Each routine cost center's cost per diem for the Principal Year will be multiplied by the Hospital Inflation Index for each subsequent fiscal year. (7-1-97)

~~ed.~~ The sum of the per diem cost limits for the Title XIX inpatient routine service cost centers of a hospital during the Principal Year, as adjusted by the Hospital Inflation Index, will be the Title XIX cost limit for Operating Costs in the Current Year. (7-1-97)

i. At the date of final settlement, reimbursement of the Title XIX Current Year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem Operating Costs as adjusted for each subsequent fiscal year after the Principal Year through the Current Year by the Hospital Inflation Cost Index. (7-1-97)

ii. Providers will be notified of the estimated inflation index periodically or Hospital Inflation Index (HCFA Market Basket Index) prior to final settlement only upon written request. (7-1-97)

453. ADJUSTMENTS TO THE TITLE XIX COST LIMIT.

A hospital's request for review by the Bureau of Medicaid Policy and Reimbursement, or its successor, concerning an adjustment to or exemption from the cost limits imposed under the provisions set forth in Sections 450 through 499,

shall be granted under the following circumstances (see also Section 500): (7-1-97)

01. Adjustments. Because of Extraordinary Circumstances. Where a provider's costs exceed the Title XIX limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (7-1-97)

02. Reimbursement To Public Hospitals. A Public Hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (7-1-97)

03. Adjustment To Cost Limits. A hospital shall be entitled to a reasonable increase in its Title XIX Cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case-mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid inpatients since the Principal Year. Any hospital making such showing shall be entitled to an increase commensurate with the increase in per diem costs. (7-1-97)

a. The Title XIX operating cost limit may be adjusted by multiplying cost limit by the ratio of the Current Year's Case-Mix Index divided by the Principal Year's Case-Mix Index. ~~(7-1-97)~~(7-1-99)T

b. The contested case procedure set for forth in IDAPA 16.05.03.330.02, "Rules Governing Contested Case Proceedings and Declaratory Rulings," shall be available to larger hospitals seeking such adjustments to their Title XIX Cost Limits. (7-1-97)

04. Hospitals With Forty Or Fewer Licensed And Medicare Certified Beds. Hospitals with forty (40) or fewer licensed and Medicare certified beds, excluding nursery and neonatal intensive care bassinets, will be guaranteed one hundred percent (100%) of their allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. (7-1-97)

05. Hospitals With More Than Forty Licensed And Medicare Certified Beds. Hospitals with more than forty (40) licensed and Medicare certified beds will be guaranteed at least eighty percent (80%) of their total allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. (7-1-97)

a. With the exception of Subsection 453.05.b., at the time of final settlement, the allowable Medicaid costs related to each hospital's fiscal year end will be according to the Reimbursement Floor Percentage defined for each state fiscal year end. (7-1-97)

b. In the event that HCFA informs the Department that total hospital payments under the Inpatient Operating Cost Limits exceed the inpatient Upper Payment Limit, the Department may reduce the guaranteed percentage defined as the Reimbursement Floor Percentage to hospitals with more than forty (40) licensed and Medicare certified beds to the level of the previous year. (7-1-97)

06. Adjustment To The Proration Of Ancillary Costs In The Principal Year. Where the provider asserts that the proration of ancillary costs does not adequately reflect the total Title XIX cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary services provided to each Title XIX recipient for each type of patient day during each recipient's stay during the principal year. The provider will be granted this adjustment only once upon appeal ~~prior to notice of program reimbursement for the provider's fiscal year ending after the effective date of these rules~~ for the first cost reporting year that the limits are in effect. ~~(7-1-97)~~(7-1-99)T

454. ADJUSTMENT FOR DISPROPORTIONATE SHARE HOSPITALS (DSH).

All hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. (7-1-97)

01. DSH Survey Requirements. On or before January 31, of each calendar year, the Department will

send each hospital a DSH Survey. Each hospital shall return the DSH Survey on or before May 31 of the same calendar year. A hospital shall not be entitled to a DSH payment if the hospital fails to return the DSH Survey by the May 31 deadline without good cause as determined by the Department. From the DSH Survey and Department data, payments distributing the state's annual DSH allotment amount will be made by September 30 of the same calendar year. (7-1-97)

02. Mandatory Eligibility. Mandatory Eligibility for DSH status ~~and outstationing~~ shall be provided for hospitals which: (7-1-97)(7-1-99)T

- a. Meet or exceed the disproportionate share threshold as defined in Subsection 451.13. (7-1-97)
- b. Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services, and ~~has~~ have provided such services to individuals entitled to such services under the Idaho Medical Assistance Program for the reporting period. (7-1-97)(7-1-99)T
- i. Subsection 454.02.b. does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (7-1-97)
- ii. Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (7-1-88)
- c. The MUR shall not be less than one percent (1%). (7-1-97)
- d. If a hospital exceeds both disproportionate share thresholds, set forth in Subsection 451.13, and the criteria of Subsections 454.02.b. and 454.02.c. are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 454.02 f. through 454.02.j. (7-1-97)
- e. In order to qualify for a DSH payment, a hospital located outside the state of Idaho shall: (7-1-97)
 - i. Qualify under the mandatory DSH requirements set forth in this Section; (7-1-97)
 - ii. Qualify for DSH payments from the state in which the hospital is located; and (7-1-97)
- iii. ~~Receive~~ Have fifty thousand dollars (\$50,000) or more in ~~payments covered charges~~ for services provided to Idaho recipients during the year covered by the applicable DSH Survey. (7-1-97)(7-1-99)T
- f. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals shall receive a DSH payment equal to two percent (2%) of the ~~interim~~ payments related to the Medicaid inpatient days included in the MUR computation. (7-1-97)(7-1-99)T
- g. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals shall receive a DSH payment equal to four percent (4%) of the ~~interim~~ payments related to the Medicaid inpatient days included in the MUR computation. (7-1-97)(7-1-99)T
- h. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals shall receive a DSH payment equal to six percent (6%) of the ~~interim~~ payments related to the Medicaid inpatient days included in the MUR computation. (7-1-97)(7-1-99)T
- i. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) shall receive a DSH payment equal to four percent (4%) of the ~~interim~~ payments related to the Medicaid inpatient days included in the MUR computation. (7-1-97)(7-1-99)T
- j. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) shall receive a DSH payment equal to six percent (6%) of the ~~interim~~ payments related to the Medicaid inpatient days included in the MUR computation. (7-1-97)(7-1-99)T

03. Out-Of-State Hospitals Eligible For Mandatory DSH Payments. Out-of-state hospitals eligible for Mandatory DSH payments will receive DSH payments equal to one half (1/2) of the percentages provided for Idaho hospitals in Subsections 454.02.d. through 454.02.j. (7-1-97)

04. Deemed Disproportionate Share Hospital (DSH). All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 454.02, will be designated a Deemed Disproportionate Share Hospital. Out of state hospitals will not be designated as Deemed DSH. The disproportionate share payment to a Deemed DSH hospital shall be the greater of: (7-1-97)

a. Five dollars (\$5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or ~~(7-1-97)~~(7-1-99)T

b. An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH Allotment Amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (7-1-97)

05. Insufficient DSH Allotment Amounts. When the DSH Allotment Amount is insufficient to make the aggregate amount of DSH payments; to each DSH hospitals, ~~DSH~~ payments to each hospital will be reduced by the percentage by which the DSH Allotment Amount was exceeded. ~~(7-1-97)~~(7-1-99)T

06. DSH Payments Will Not Exceed Costs. A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the state plan or were uninsured for health care services provided during the year. (7-1-97)

a. Payments made to a hospital for services provided to indigent patients by a state or a unit of local government within a state shall not be considered a source of third party payment. (7-1-97)

b. Claims of ~~uncompensated~~ uninsured costs which increase the maximum amount which a hospital may receive as a DSH payment must be documented. ~~(7-1-97)~~(7-1-99)T

07. DSH Will Be Calculated On An Annual Basis. A change in a provider's allowable costs as a result of a reopening or appeal will not result in the recomputation of the provider's annual DSH payment. ~~(7-1-97)~~(7-1-99)T

(BREAK IN CONTINUITY OF SECTIONS)

457. OUTPATIENT HOSPITAL SERVICES.

Outpatient hospital services must be provided on-site. Covered outpatient services and items will be paid the lesser of Customary Charges or the Reasonable Cost of ~~inpatient~~ services. They will be paid in accordance with the Upper Payment Limit. ~~(7-1-97)~~(7-1-99)T

01. Hospital Outpatient Surgery. Those items furnished by a hospital to an outpatient in connection with Ambulatory Surgical Center must be surgical procedures covered by Idaho Medicaid. The aggregate amount of payments for related facility services, furnished in a hospital on an outpatient basis, is equal to the lesser of: (7-1-97)

a. The hospital's Reasonable Costs as reduced by federal mandates for certain Operating Costs, Capital Costs, Customary Charges; or (7-1-97)

b. The blended payment amount which is based on hospital specific cost and charge data and Medicaid rates paid to free-standing Ambulatory Surgical Centers (ASC). (7-1-97)

c. The blended rate for outpatient surgical procedures is equal to the sum of forty-two percent (42%) of the hospital specific amount and fifty-eight percent (58%) of the ASC amount. (7-1-97)

02. Hospital Outpatient Radiology Services. Radiology services include diagnostic and therapeutic radiology, CAT scan procedures, magnetic resonance imaging, ultrasound and other imaging services. The aggregate payment for hospital outpatient radiology services furnished will be equal to the lesser of: (7-1-97)

- a. The hospital's Reasonable Costs; or (7-1-97)
- b. The hospital's Customary Charges; or (7-1-97)
- c. The blended payment amount for hospital outpatient radiology equal to the sum of forty-two percent (42%) of the hospital specific amount and fifty-eight percent (58%) of the Department's fee schedule amount. (7-1-97)

03. Reduction To Outpatient Hospital Costs. With the exception of Medicare designated sole community hospitals and rural primary care hospitals, all other hospital outpatient costs not paid according to the Department's established fee schedule, including the hospital specific component used in the blended rates, will be reduced by five and eight-tenths percent (5.8%) of Operating Costs and ten percent (10%) of each hospital's Capital Costs component. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

462. INTERIM COST SETTLEMENTS.

The Department ~~will~~ may initiate or a hospital may request an interim cost settlements; based on the Medicare cost reports as submitted to the Medicare Intermediary. (7-1-97)(7-1-99)T

01. Cost Report Data. Interim settlement cost report data will be adjusted to reflect Medicaid payments and statistical summary reports sent to providers before the filing deadline. (7-1-97)

02. Hard Copy Of Cost Report. Hospitals which ~~must~~ request to undergo interim cost settlement with Idaho Medicaid must submit a hard copy of the Medicare cost report to the Bureau of Medicaid Policy and Reimbursement, or its designee, upon filing with the Intermediary. (7-1-97)(7-1-99)T

a- ~~The Department may grant extensions for filing the Medicare cost report for circumstances beyond the provider's control.~~ (7-1-97)

03. Limit Or Recovery Of Payment. The Department may limit a recovery or payment of an interim settlement amount up to twenty-five percent (25%) of the total settlement amount when the cost report information is in dispute. (7-1-97)(7-1-99)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES
DOCKET NO. 16-0319-9901
NOTICE OF PUBLIC HEARING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to 39-3505 and 39-2525(2), Idaho Code.

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

**September 8, 1999, at 7:00 p.m.,
Syringa Room, 414 West Appleway Ave.,
Coeur d'Alene, Idaho**

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

DESCRIPTIVE SUMMARY: The 1996 Legislature passed H.B. 742 which amended the Idaho Board and Care Act and the Residential Care for the Elderly Act. Among other items it required that anyone provided care commercially to the elderly or individuals with a physical disability, mental illness, or developmental disability to meet at a minimum the requirements of the adult foster care or residential care rules depending upon the size of the facility. This includes adult foster care homes, 1501 homes, personal care services homes, specialized family homes, and residential care facilities.

In the past, each of these types of facilities operated with differing minimum requirements for safety, supervision, and care. The Department of Health and Welfare believes that a better approach is to develop one common set of standards for all residential facilities which must be licensed regardless of program type.

The original text was published in the Idaho Administrative Bulletin, Volume 99-8, August 4, 1999, pages 212 through 244.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact John Hathaway at (208) 364-1863.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 1999.

DATED this 16th day of August, 1999.

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

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.22 - RULES FOR LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITIES IN IDAHO
DOCKET NO. 16-0322-9901
NOTICE OF PUBLIC HEARING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to 39-3505 and 39-2525(2), Idaho Code.

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

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The original text was published in the Idaho Administrative Bulletin, Volume 99-8, August 4, 1999, pages 249 through 310.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact John Hathaway at (208) 364-1863.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 22, 1999.

DATED this 16th day of August, 1999.

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

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.54 - RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE
MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-9902

NOTICE OF PUBLIC HEARING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

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

September 29, 1999 – 9:30 a.m. - Idaho Department of Insurance
J.R. Williams Building, 700 W. State Street, 3rd Floor, Boise, ID 83720

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

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

Rules relating to the "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act" are being amended to add additional insurance choices and portability protections for Medicare beneficiaries. A summary of this action is found in Idaho Administrative Bulletin Volume No. 99-7, pages 191 through 218.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Joan Krosch, Health Insurance Coordinator, at (208) 334-4300.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before September 22, 1999.

Dated this 30th day of July 1999.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

IDAPA 19 - BOARD OF DENTISTRY
19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-9901

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 16, 1999.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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

This rulemaking is necessary to provide clarification that a dentist must possess an anesthesia permit when utilizing the services of other anesthesia personnel.

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: Protection of the public health, safety or welfare.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. Rule 61 was proposed in 1998 and the Board voted not to adopt the rule at that time. The Board has continued to study the rule and has fully considered additional informal comment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For Assistance on technical questions concerning the proposed rule, contact Sylvia C. Boyle, Administrator, at (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 8th day of July, 1999.

Sylvia C. Boyle
Administrator
Idaho State Board of Dentistry
708 ½ W. Franklin St.
Boise, Idaho 83702
(208)334-2369 (telephone)
(208)334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-9901

055. GENERAL ANESTHESIA AND DEEP SEDATION (Rule 55).

Dentists licensed in the state of Idaho cannot use general anesthesia or deep sedation techniques in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the

following conditions: (10-1-87)

01. General Requirements. A dentist applying for a permit to administer general anesthesia and deep sedation shall provide proof that the dentist: (10-1-87)

a. Has completed a minimum of one (1) year of advance training in anesthesiology and related academic subjects beyond the undergraduate dental school level. This training is described in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry," as referred to in Subsection 006.01.b., or ~~(3-18-99)~~(4-16-99)T

b. Is a diplomate of the American Board of Oral and Maxillofacial Surgery; or (10-1-87)

c. Is a member of the American Association of Oral and Maxillofacial Surgeons; or (10-1-87)

d. Is a Fellow of the American Dental Society of Anesthesiology; ~~or~~ and ~~(10-1-87)~~(4-16-99)T

e. Has Certification of Advanced Cardiac Life Support Training or its equivalent; and ~~(3-18-99)~~(4-16-99)T

f. Has an established protocol or admission to a recognized hospital. (3-18-99)

02. Facility Requirements. The dentist must have a properly equipped facility for the administration of general anesthesia, staffed with a dentist-supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team will be determined by evaluators appointed by the Board. The Board adopts the standards regarding approval of equipment within the facility as set forth by the American Association of Oral and Maxillofacial Surgeons in their office anesthesia evaluation manual (see Subsection 006.01.a.). (3-18-99)

03. Personnel. For general anesthesia and deep sedation techniques, the minimum number of personnel shall be three (3) including: (10-1-87)

a. A qualified person to direct the sedation as described in Subsections 055.01.a. through 055.01.f.; and (3-18-99)

b. A qualified person whose primary responsibilities are observation and monitoring of the patient and who has documented current CPR certification; and (3-18-99)

c. An assistant for the operator who has documented current CPR certification. (3-18-99)

04. Conscious Sedation. A dentist holding a permit to administer general anesthesia under this rule may also administer conscious sedation. (3-18-99)

05. Permit Renewal. Renewal of the permit will be required every three (3) years in conjunction with the routine dental licensure renewal. Proof of a minimum of fifteen (15) credit hours of continuing education in general anesthesia and deep sedation techniques will be required to renew a permit. A fee may be assessed to cover administrative costs. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

060. ADMINISTRATION OF CONSCIOUS SEDATION ~~(LIGHT) WITH PARENTERAL DRUGS (Rule 60).~~

Dentists licensed in the state of Idaho cannot use conscious sedation in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the following conditions: ~~(3-18-99)~~(4-16-99)T

01. General Requirements. A dentist applying for a permit to administer conscious sedation shall provide proof that the dentist has received formal training and certification in the use of conscious sedation drugs as described in the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry," as referred to in Subsection 006.01.b. published by the American Dental Association. The formal training program shall:
(3-18-99)

a. Be sponsored by or affiliated with a dental school accredited by the ~~Council on Dental Education Commission on Dental Accreditation~~ of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and
(~~10-1-87~~)(4-16-99)T

b. Consist of a minimum of sixty (60) hours didactic education and twenty (20) hours patient contact. Patient contact includes the administration of the intravenous (IV) sedation and management by the participant from induction through emergence.
(3-18-99)

c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received.
(3-18-99)

02. Facility Requirements. The dentist must have a properly equipped facility for the administration of conscious sedation staffed with a dentist-supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team will be determined by evaluators appointed by the Idaho State Board of Dentistry.
(3-18-99)

03. Personnel. For conscious sedation, the minimum number of personnel shall be two (2) including:
(10-1-87)

a. The operator; and
(10-1-87)

b. An assistant trained to monitor appropriate physiologic parameters and assist in any support or resuscitation measures required.
(10-1-87)

c. Auxiliary personnel must have documented training in basic life support, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The practitioner and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction.
(3-18-99)

04. Grandfather Clause. A licensed dentist who has been using conscious sedation on an out-patient basis in a competent manner in the three (3) years preceding the effective date of this rule (October 1, 1987), but has not had the benefit of formal training as outlined, may continue such use provided he fulfills the provisions set forth in Section 050 and Subsections 060.02 and 060.03, and obtains a permit from the Board.
(3-18-99)

05. Permit Renewal. Renewal of the permit will be required every three (3) years in conjunction with the routine dental licensure renewal. Proof of a minimum of fifteen (15) credit hours continuing education in conscious sedation will be required to renew a permit. A fee may be assessed to cover administrative costs. (3-18-99)

061. ~~(RESERVED)~~ USE OF OTHER ANESTHESIA PERSONNEL (Rule 61).
Dentists performing dental procedures in a dental office who utilize the services of an anesthesiologist, a certified registered nurse anesthetist (CRNA), or another dentist with an anesthesia permit, must possess an anesthesia permit required under these rules for the level of anesthesia being provided to the patient.
(4-16-99)T

IDAPA 20 - DEPARTMENT OF LANDS
20.02.01 - RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT
DOCKET NO. 20-0201-9901
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 38-1304.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

The State Board of Land Commissioners recommends amending rules related to road construction and maintenance. The basis for the recommendations comes from the 1996 Forest Practices Water Quality Audit, an interagency effort that occurs every four (4) years. In addition, these changes reflect what the Department of Lands, industry, and other affected landowners learned as a result of the 1995-1996 weather triggered landslide events on forestland. Lastly, the changes address concerns raised by the Idaho Farm Bureau Association – Forestry Committee relative to road closure and abandonment practices.

Generally, these changes clarify the intent of the rules and reduce redundancy. Specific requirements are proposed for road construction on steep slopes that reflect current industry standards to prevent soil erosion and protect water quality. Lastly, road abandonment standards are clarified to address roads that may be used in the future or those that will be permanently closed. The rule recognizes that the different treatments are appropriate to control erosion on abandoned roads.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Jim Colla, Forest Practices Coordinator, (208) 769-1525.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 20th day of July, 1999.

Stanley F. Hamilton
Director
Idaho Department of Lands
954 West Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
(208) 334-0200
(208) 334-2339 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0201-9901

040. ROAD CONSTRUCTION AND MAINTENANCE.

01. Purpose. Provide standards and guidelines for road construction and maintenance that will maintain forest productivity, water quality, and fish and wildlife habitat. (10-14-75)

02. Road Specifications And Plans. Road specifications and plans shall be consistent with good safety practices. Plan each road to the minimum use standards adapted to the terrain and soil materials to minimize disturbances and damage to forest productivity, water quality, and wildlife habitat. (8-13-85)

a. Plan transportation networks to minimize avoid road construction within stream protection zones, except at approaches to stream crossings. ~~Design to~~ Leave or reestablish areas of vegetation between roads and streams. (8-13-85)()

b. Roads shall be ~~planned~~ no wider than necessary to safely accommodate the anticipated use. Minimize cut and fill volumes by designing aligning the road ~~alignment~~ to fit the natural terrain features as closely as possible. Use as much of the excavated material as practical in fill sections. Plan minimum cuts and fills particularly near stream channels. ~~Adequately compact fill material or dispose of excess material on geologically stable sites.~~ (8-13-85)()

~~e. Design embankments and waste so that excavated material may be disposed of on geologically stable sites.~~ (8-13-85)

~~ed.~~ Plan roads to drain naturally by out-sloping or in-sloping with cross-drainage and by grade changes where possible. Plan dips, water bars, ~~or cross-drainage, or subsurface drainage~~ on roads when necessary. (7-1-96)()

~~ed.~~ Relief culverts and roadside ditches shall be planned whenever reliance upon natural drainage would not protect the running surface, excavation or embankment. ~~Design Plan~~ Plan culvert installations to prevent erosion of the fill by properly sizing, bedding and compacting. Plan drainage structures to achieve minimum direct discharge of sediment into streams. (8-13-85)()

~~ef.~~ The following rule applies to installations of new culverts and re-installations during road reconstructions or re-installations caused by flood or other catastrophic events. Culverts used for temporary crossings are exempt from ~~this rule~~ the fifty (50) year design requirement, but they must be removed immediately after they are no longer needed and before the spring run-off period. Culvert installations on Class I fish bearing streams must provide for fish passage. (4-21-92)()

i. Design culverts for stream crossings to carry the fifty (50) year peak flow using engineering methods acceptable to the department or determine culvert size by using the culvert sizing tables below. The minimum size culvert required for stream crossings shall not be less than eighteen (18) inches in diameter, with the exception of that area of the Snake River drainage upstream from the mouth of the Malad River, including the Bear River basin, where the minimum size shall be fifteen (15) inches. (7-1-96)

CULVERT SIZING TABLE - I
USE FOR NORTH IDAHO AND THE SALMON RIVER DRAINAGE

This culvert sizing table will be used for the area of the state north of the Salmon River and within the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
less than 32	18	6

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
33 - 74	24	12
75 - 141	30	20
142 - 240	36	32
241 - 366	42	46
367 - 546	48	65
547 - 787	54	89
788 - 1027	60	112

Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
1028 - 1354	66	142
1355 - 1736	72	176
1737 - 2731	84	260
2732 - 4111	96	370
4112 - 5830	108	500
5831 - 8256	120	675

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures. (4-21-92)

CULVERT SIZING TABLE - II
USE FOR SOUTH IDAHO

This culvert sizing table will be used for the area of the state south of the Salmon River and outside the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
less than 72	18#	6
73 - 150	24	12
151 - 270	30	20
271 - 460	36	32
461 - 720	42	46

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
721 - 1025	48	65
1026 - 1450	54	89
1451 - 1870	60	112

Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
1871 - 2415	66	142
2416 - 3355	72	176
3356 - 5335	84	260
5336 - 7410	96	370
7411 - 9565	108	500
9566 - 11780	120	675

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures.

See exception for southeast Idaho in Subsection 040.02.f.i. of this rule. (4-21-92)

ii. Relief culverts, and those used for seeps, springs, wet areas, and draws shall not be less than twelve (12) inches in diameter for permanent installations. (7-1-96)

~~gf. Plans~~ Stream crossings, including fords, ~~to shall~~ be minimum in number and planned and installed in compliance with the ~~minimum standards for stream channel alterations under the provisions of Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and with culvert sizing requirements of Subsection 040.02.e. Plan~~ all culvert installation on Class I streams to provide for fish passage. (8-13-85)()

hg. If reuse of existing roads would violate other rules, the operator shall obtain a variance according to Subsection 020.01. Consider reuse of existing roads when reuse or reconstruction would result in the least long-run impact on site productivity, water quality, and fish and wildlife habitat. (7-1-96)

03. Road Construction. ~~Place debris, overburden, and other materials associated with road construction in such a manner as to prevent entry into streams. Deposit excess material and slash on stable locations outside the Stream Protection Zones. Construct or reconstruct roads in a manner to prevent debris, overburden, and other material from entering streams.~~ (8-13-85)()

a. Roads shall be constructed in compliance with the planning guidelines of Subsection 040.02. (7-1-96)

b. Avoid reconstruction or reuse of existing roads located in stream protection zones, except for approaches to stream crossings, unless it will result in the least long-term impact on site productivity, water quality, and fish and wildlife habitat. ()

~~bc.~~ Clear ~~drainage ways~~ of all debris generated during construction or maintenance which potentially interferes with drainage or water quality. Deposit excess material and slash on stable locations outside the stream protection zones. (7-1-96)()

ed. Where exposed material (road surface, excavation, embankment, borrow pits, waste piles, etc.) is potentially erodible, and where sediments would enter streams, stabilize prior to fall or spring runoff by seeding, compacting, rocking, riprapping, benching, mulching or other suitable means. (11-7-86)()

~~de.~~ In the construction of road fills ~~near streams~~, compact the material to reduce the entry of water, minimize erosion, and settling of fill material. Minimize the amount of snow, ice, or frozen soil buried in embankments. No significant amount of woody material shall be incorporated into fills. Available slash and debris may should be utilized as a filter windrowed along the toe of the fill, but must meet the requirements of Subsection 040.04.e: the Idaho Forestry Act and Fire Hazard Reduction Laws, Title 38, Chapters 1 and 4, Idaho Code. (7-1-96)()

e- ~~Construct stream crossings in compliance with minimum standards for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. Roads shall not be constructed in stream channels. Roads that constrict upon a stream channel shall be constructed in compliance with minimum standards for stream channel alterations under provisions of Title 42, Chapter 38, Idaho Code.~~ (8-13-85)

f. During and following operations on out-sloped roads, retain out-slope drainage and remove berms on the outside edge except those intentionally constructed for protection of road grade fills. (8-13-85)

g. Provide for drainage of quarries to prevent sediment from entering streams. (8-13-85)

h. Construct cross drains and relief culverts to minimize erosion of embankments. ~~Minimize the time between construction and installation of erosion control devices. Installation of erosion control devices should be concurrent with road construction.~~ Use riprap, vegetative matter, downspouts and similar devices to minimize erosion of the fill. Install drainage structures or cross drain incompleted roads which are subject to erosion prior to fall or spring runoff. Install relief culverts with a minimum grade of one percent (1%). (7-1-96)()

i. Earthwork or material hauling shall be postponed during wet periods if, as a result, erodible material would enter streams. (8-13-85)()

j. ~~In rippable materials, roads shall be constructed with no overhanging banks and any trees that present a potential hazard to traffic shall be felled concurrently with the construction operation. Cut slopes shall be reconstructed to minimize sloughing of material into road surfaces or ditchlines. Remove or stabilize material subject to sloughing concurrent with the construction operation.~~ (8-13-85)()

k. Road construction on steep slopes. On slopes greater than sixty percent (60%) in unstable or erodible soils, roads shall be full benched without fill slope disposal. At stream and draw crossings keep fills to a minimum. A variance is required if a full bench is not used. ()

04. Road Maintenance. Conduct regular preventive maintenance operations to ~~avoid deterioration of the roadway surface and~~ minimize disturbance and damage to forest productivity, water quality, and fish and wildlife habitat. (8-13-85)()

a. Sidecast all debris or slide material associated with road maintenance in a manner to prevent their entry into streams. (8-13-85)

b. Repair ~~and stabilize~~ slumps, slides, and other erosion ~~features~~ sources causing stream sedimentation to the degree needed to reasonably insure stabilization. (8-13-85)()

c. Active roads. An active road is a forest road being used for hauling forest products, rock and other road building materials. The following maintenance shall be conducted on such roads. (8-13-85)

i. Culverts and ditches shall be kept functional. (8-13-85)

ii. During and upon completion of seasonal operations, the road surface shall be crowned, out-sloped, in-sloped or water barred, and berms removed from the outside edge except those intentionally constructed for protection of fills. (8-13-85)

iii. The road surface shall be maintained as necessary to minimize erosion of the subgrade and to provide proper drainage. (8-13-85)

iv. Hauling shall be postponed during wet periods if sediment would enter streams. ()

iv. If road oil or other surface stabilizing materials are used, apply them in such a manner as to prevent their entry into streams. (8-13-85)

d. Inactive roads. An inactive road is a forest road no longer used for commercial hauling but maintained for access (e.g., for fire control, forest management activities, recreational use, and occasional or incidental use for minor forest products harvesting). The following maintenance shall be conducted on inactive roads. (8-13-85)

i. Following termination of active use, ditches and culverts shall be cleared and the road surface shall be crowned, out-sloped or in-sloped, water barred or otherwise left in a condition to minimize erosion. Drainage structures shall be maintained thereafter as needed. (7-1-96)

ii. The roads may be permanently or seasonally blocked to vehicular traffic. (8-13-85)

e. ~~Abandoned roads. An abandoned road~~ Long-term inactive roads. A long-term inactive road is not intended to be used again in the near future but will be likely used again at some point in the future. No subsequent maintenance of ~~an abandoned~~ a long-term inactive road is required after the following procedures are completed: (8-13-85)()

i. The road is left in a condition suitable to control erosion by out-sloping, water barring, seeding, or other suitable methods. (8-13-85)

ii. ~~Ditches are cleaned.~~ (8-13-85)

iii. The road is blocked to vehicular traffic. (8-13-85)

iv. ~~The department may require the removal of bridges and culverts, except where the owner elects to maintain the drainage structures as needed~~ ditches and unstable fills. Any bridges or culverts left in place shall be maintained by the landowner. (8-13-85)()

f. Permanently abandoned roads are not intended to be used again. All drainage structures must be removed and roadway sections treated so that erosion and landsliding are minimized. ()

i. Drainage structures shall be removed and stream gradients restored to their natural slope. ()

ii. The road prism shall be ripped to break up compacted areas. ()

iii. Fill slopes of roads within stream protection zones shall be pulled back to a stable configuration unless long-term stability has already been achieved. ()

iv. Unstable sidehill fills shall be pulled back to a stable configuration. ()

v. Ditch line erosion shall be controlled by cross-ditching, outsloping, or regrading to eliminate ditches. ()

vi. All bare earth areas created by regrading, ripping, and drainage removal shall be stabilized by seeding, mulching, armoring, or other suitable means. ()

05. Winter Operations. Due to risk of erosion and damage from roads and constructed skid trails inherent in winter logging, at minimum the following shall apply: (4-21-92)

a. Roads to be used for winter operations must have adequate surface and cross drainage installed prior to winter operations. Drain winter roads by installing rolling dips, driveable cross ditches, open top culverts, outsloping, or by other suitable means. (4-21-92)

b. During winter operations, roads will be maintained as needed to keep the road surface drained during thaws or break up. This may include active maintenance of existing drainage structures, opening of drainage holes in snow berms and installation of additional cross drainage on road surfaces by ripping, placement of native material or other suitable means. (4-21-92)

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD
25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD
DOCKET NO. 25-0101-9902
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 36-2107(b) and (d), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

The hearing site was accessible to persons with disabilities. Requests for accommodation must have been 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:

The proposed changes to Section 041 provide for a float lead boatman to qualify on a specific reach of a river section instead of an entire section and extends the time a float lead boatman must float the river applied for. The amendments to Section 059 provides for a reduction in the number of float boats on section SA4B of the Salmon River. New Section 065 enacts a new rule that provides for the license amendment procedure.

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

There are no fees and no fee increases involved in these proposed rules.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published pursuant to IDAPA 04.11.01.811. Public hearings concerning this rulemaking were held as follows: 6 p.m. on Friday, December 19, 1997 at the Middle School in Emmett, Idaho, and at 6:30 p.m., Thursday, November 12, 1998, at the Senior Citizens Center in Star, Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact: Dean Sangrey, Executive Director, (208) 327-7380 - FAX 327-7382

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 1999.

DATED this 20th day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 25-0101-9902

041. FLOAT LEAD BOATMAN QUALIFICATIONS.

An applicant for a float lead boatman license must have had six (6) complete float boat trips except that upon Board approval, a licensee may train on and be licensed for a specific reach of a section only. (Complete trip means the total section or reach of a section of river designated by the Board in Subsection 059.01). One (1) trip must have been within the ~~twenty-four~~ sixty (2460) months preceding the date of the application on each of the classified rivers applied for. Any float boatman wishing to qualify for a lead float boatman license shall maintain a log of each commercial float boat trip made with dates, location, and signature of the outfitter. This training must be recorded on a form provided by the Board. (4-1-92)()

(BREAK IN CONTINUITY OF SECTIONS)

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.

RIVER/SECTION	Maximum No. 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 week-ends 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 from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. (Each outfitter may use at any time a maximum of four (4) boats for 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.	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

RIVER/SECTION	Maximum No. Power	Maximum No. Float
(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
(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

RIVER/SECTION	Maximum No. Power	Maximum No. Float
(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
(PO1) Pend Oreille River	5	5
(PR1) Priest River - Dickensheet Campground to Priest River City.	none	5
* (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

RIVER/SECTION	Maximum No. Power	Maximum No. Float
(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 8
(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
* (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

RIVER/SECTION	Maximum No. Power	Maximum No. Float
(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
(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

RIVER/SECTION	Maximum No. Power	Maximum No. Float
(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
* (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

RIVER/SECTION	Maximum No. Power	Maximum No. Float
(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

(4-1-99)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 No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Coeur d'Alene	8	1
Dworshak Reservoir	7	2
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)

064. --065. (RESERVED).

065. LICENSE AMENDMENTS.

01. Procedure For Amendment To Outfitter License. An outfitter must procure an amendment to their license through the following procedure: ()

a. The applicant requests an Amendment Request Form (OG9) from the Board. ()

b. The applicant fills out and returns the completed Amendment Request Form to the Board along with an amended operating plan, financial statement, map (if applicable), land manager signoff sheets (if applicable), and the amendment fee as provided for in Section 009. ()

c. The Board initiates a review and analysis of the application following which the applicant is informed that: ()

i. Additional materials are needed to complete the application; or ()

ii. The amendment request is granted; or ()

iii. The amendment request is denied. ()

02. Procedure For Amendment To Guide License. A guide must procure an amendment to their license through the following procedure: ()

a. The guide or the outfitter must initiate the amendment request by contacting the Board. ()

b. The guide for which all amendment requests are made must meet and provide proof of original training requirements for the area and activity to be added or amended and proof of such training must be sent to the Board along with the amendment fee as provided for in Section 009. ()

c. The Board initiates a review and analysis of the application following which the applicant is informed that: ()

i. Additional materials are needed to complete the application; or ()

ii. The amendment request is granted; or ()

iii. The amendment request is denied. ()

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION
26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 67-4223, and 67-4249, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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 rulemaking:

IDAPA 26, Title 01, Chapter 20, establishes fees for and rules governing the use of lands and facilities administered by the Idaho Department of Parks and Recreation, and establishes procedures for obtaining individual and group use reservations. Substantive changes are: 1) clarifies legislative intent that fees in this chapter are maximum fees, and that the board may approve lower fees which are commensurate with the level of maintenance and operation of the facility or service for which the fee is charged; 2) allows the board to approve admission fees of up to \$10 for such facilities as the Bruneau Dunes Observatory and Education Center, Three Island Crossing History Center, and the Land of the Yankee Fork Interpretive Center; 3) allows the board to approve a maximum of \$3 for motor vehicle entrance fees at all parks; 4) reduces the maximum second-vehicle annual passport fee to \$5; 5) allows the board to approve a maximum fee for park cabins and yurts, and back country yurts, of \$12/night/person; 6) allows the board to approve maximum fees of \$14/night/person at the Harriman State Park dormitory and cookhouse, and establishes the maximum fee at the Harriman Ranch Manager's House at \$250/night; 7) allows the board to approve a maximum fee of \$3 for department RV dump stations; 8) allows for charging of state sales tax on all fees except motor vehicle entrance fees; 9) changes the reservation window to be from 11 months prior to the date reserved to up to 2 days before the date reserved; 10) allows reservations to be made for a specific camp site if it is available at the time of reservation; 11) changes the deadline for arrival on a reservation from 8:00 p.m. on the first day to 1:00 p.m. on the day following the first night, and; 12) allows the board to approve a maximum fee of \$85/night for park cottages with full utilities to \$85/night.

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

- 1) Allows the board to approve fees up to \$10/person for admission to internal park facilities which provide educational opportunities or require special accommodations.
- 2) Allows the board to approve daily motor vehicle entrance fees up to \$3 at all parks.
- 3) Establishes individual park annual passports and allows the board to charge up to \$25.
- 4) Allows the board to approve fees up to \$12/person/night for park yurts, tepees and cabins, and back country yurts. Eliminates the higher non-resident fee for back country yurts.
- 5) Allows the board to approve fees up to \$14/person/night for the Harriman State Park dormitory and cookhouse.
- 6) Allows the board to approve fees up to \$250/night for the Ranch manager's house.
- 7) Allows the charging of state sales tax on all sales excluding daily motor vehicle entrance fees.
- 8) Allows the board to approve fees up to \$85/night for park cottages with full utilities.
- 9) Allows the board to approve fees up to \$3 for the use of park RV dump stations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule was heard on two separate dates at Idaho Parks and Recreation Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark E. Brandt, Policy Coordinator, at the address and telephone below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 4th day of August, 1999.

Mark E. Brandt, Policy Coordinator
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
P.O. Box 83720
Boise, ID 83720-0065
Phone: (208) 334-4199
FAX: (208) 334-3741

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-9901

200. CAMPING.

01. Occupancy. Camping shall be permitted only in designated campsites with maximums of: eight (8) people, one (1) extra vehicle, two (2) tents, and one (1) motor vehicle or towed unit with built-in sleeping accommodations. Additional vehicle(s) may be parked at the site with permission of the park manager. (3-13-97)()

02. Motorcycles. Maximum of two (2) motorcycles constitute one (1) motor vehicle or towed unit with built-in sleeping accommodations. (3-13-97)

03. Length Of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the department for more than fifteen (15) days in any thirty (30) day period. Shorter or longer periods may be designated for any individual area by the director or designee. (3-13-97)()

04. Saving Sites. Saving campsites is prohibited. The party registering for a campsite shall be the party that occupies it for the first night. (1-1-94)

05. Condition Of Site. Campers shall keep their campgrounds and other use areas clean. (7-1-93)

06. Liquid Waste Disposal. All liquid wastes shall be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. (1-1-94)

07. Unattended Sites. Campers may not leave their camps unattended for longer than one (1) camping day, except by permission of the park manager. (1-1-94)

08. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. (7-1-93)

09. Campsite Parking. All boats, trailers, rigs and motorized vehicles shall fit entirely within the campsite parking spur provided with the assigned campsite. All equipment which does not fit entirely within the campsite parking spur shall be parked outside the campground in an area designated by the park manager. If no outside parking is available, a second campsite shall be purchased. (1-1-94)

10. Equipment. All camping equipment and personal belongings of a camper shall be maintained within the assigned campsite perimeter. (3-13-97)

11. Check Out. Campers are required to check out and leave a clean campsite by 1 p.m. of the day following the paid night of camping. (7-1-99)

12. Visitors. Visitors to campers shall park outside the campground, except with permission of the park manager. Visitors shall conform to established day use hours. (1-1-94)

13. Responsible Party. The individual purchasing a campsite is responsible for assuring compliance with the rules within this chapter. (1-1-94)

14. Camping Prohibited. No camping is permitted outside designated campsites unless specifically authorized. (3-13-97)

(BREAK IN CONTINUITY OF SECTIONS)

225. FEES AND SERVICES.

01. Authority. (3-13-97)

a. The board shall adopt fees for the use of lands, facilities, and equipment. Visitors shall pay all fees. (3-13-97)

b. Park managers shall set fees for goods and services unique to the individual park. With the exception of those fees for services which are appropriately determined by negotiation on a case-by-case basis, all fees set by the park manager shall be clearly posted. (3-13-97)

02. General Provisions. All fees in this chapter are maximum fees unless otherwise stated. Actual fees charged shall be commensurate with the level of maintenance and operation of the facility or service for which the fee is charged. ()

023. Camping. Camping fees include the right to use designated campsites and facilities. Utilities and facilities may be restricted by weather or other factors. (3-13-97)

034. Group Use. (7-1-93)

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall have a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (1-1-94)

b. Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) to one thousand (1,000) may be approved by the director with forty-five (45) days advance notice. Groups over one thousand (1,000) may be approved by the board with sixty (60) days advance notice. The director may approve groups over one thousand (1,000) with thirty (30) days advance notice, if they are repeat users. (1-1-94)

c. The motorized vehicle entry fee may be charged to groups entering a designated area for a noncamping visit. (3-13-97)

045. Fees And Deposits. Fees and deposits may be required for certain uses or the reservation of certain facilities. (3-13-97)

056. Fee Collection Surcharge. A surcharge may be assessed when department staff are compelled to collect fees at a self-collection facility. (3-13-97)

07. Admission Fees. A maximum per person fee of ten dollars (\$10) may be charged for internal park facilities which provide an educational opportunity or require special accommodations. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. FEE SCHEDULE.

01. Campsites.

CAMPSITES TABLE	
Primitive Campsite (may include: table, grill, camp-spur, vault toilet, no water.)	\$7.00/day
Basic Campsite (may include: table, grill, camp-spur, central water, vault toilets.)	\$9.00/day
Developed Campsite (may include: table, grill, camp-spur, central water, flush toilets.)	\$12.00/day
Deluxe Campsite (designed to accommodate higher occupancy limits of up to twelve (12) persons)	\$22.00/day
Electric hookups at site	additional \$4.00/day
Sewer hookups at site	additional \$2.00/day
Use of campground showers by noncampers	\$3.00/person
Fee collection surcharge	\$5.00/occurrence
Camping fee includes MVEF (see Subsection 250.04. of this chapter).	

(3-13-97)

02. Limited Income Discount.

LIMITED INCOME DISCOUNT TABLE.	
Idaho residents showing proof of limited income (Medicaid card or other evidence as approved by the board) may receive a discount of:	\$4.00/day

(7-1-99)

03. Reservation Service Charge. Where reservations are available a non-refundable reservation service charge of six dollars (\$6) shall be charged. (7-1-99)

04. Motorized Vehicle Entry Fee (MVEF).

MOTORIZED VEHICLE ENTRY FEE (MVEF) TABLE.	
Daily charge per motorized vehicle Farragut, Old Mission, Eagle Island, Lucky Peak, Henrys Lake, Harriman, Ponderosa	\$3.00
All other facilities which charge a MVEF	\$2.00
Daily charge per commercial motor coach (no annual pass available)	\$20.00
Statewide Annual State Park Passport per motorized vehicle	\$35.00
Statewide Annual State Park Passport per motorized vehicle if purchased prior to February 1	\$25.00
Individual Park Annual Passport per motorized vehicle (where offered)	<u>\$25.00</u>
Second Vehicle Annual Passport. (The second vehicle passport shall be purchased at the same location as the first vehicle passport. A vehicle registration in the same owner's name is required).	\$40 <u>5.00</u>

(~~3-13-97~~)()

05. Eagle Island Waterslide Rides.

EAGLE ISLAND WATERSLIDE RIDES TABLE.	
Bracelet	10 rides for \$4.00
All day pass	\$8.00

(3-13-97)

06. Yurts, ~~Tepees, And~~ Cabins, Etc.

<u>PARK YURTS, TEPEES AND CABINS, ETC.</u> TABLE.	
<u>Yurts, Tepees and Cabins</u>	<u>\$72/night</u>
Up to four (4) persons	\$30.00/night
Up to six (6) additional persons <u>Each additional person above the sleeping capacity of the facility</u>	<u>\$412.00 each/night</u>
Administrative/Cancellation Fee	\$15.00

(~~7-1-99~~)()

07. Back Country Yurts.

BACK COUNTRY YURTS TABLE	
Yurt rental fee - resident (up to six (6) person)	\$60 <u>72.00/night</u>
Yurt rental fee - non resident (up to six (6) persons)	\$80.00/night

BACK COUNTRY YURTS TABLE	
Extra person fee <u>Each additional person above the sleeping capacity of the facility</u>	\$102.00/night
Administrative/Cancellation fee	\$30.00
Key deposit	\$20.00

(7-1-99)()

08. Extra Vehicle. ~~One (1) extra vehicle is allowed to~~ may be parked either within the camp spur (so long as it fits entirely within the spur); or in an overflow area; for five dollars (\$5)/day. (3-13-97)()

09. Special Charges. A fee of twenty dollars (\$20) ~~will~~ shall be charged for each check returned for insufficient funds. (3-13-97)()

10. Group Facility Fees. (3-13-97)

a. A minimum reservation service charge of twenty-five dollars (\$25) ~~will~~ shall be charged for each group use reservation. Additional charges may be imposed depending upon the cost of providing services (contact the park manager). (3-13-97)()

b. Groups using overnight facilities shall be charged two dollars (\$2) per person per night camping fees. (3-13-97)

c. The reservation service charge together with the first night group use fee and any required deposits are required to confirm a group use facility reservation. The reservation service charge is non-refundable. First night group use fee ~~will~~ shall be refunded if notice of cancellation is provided not later than 2 p.m., local time, ten (10) days prior to date of scheduled arrival. (3-13-97)()

d. Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they ~~must~~ shall be paid at the time of check-in. Cleaning/damage deposits ~~will~~ shall be fully refunded if the facilities are left in the same condition in which they were accepted. (7-1-99)()

e. Commercial group use fees may be negotiated (contact the park manager). (3-13-97)

f. Fee Table.

FARRAGUT STATE PARK	
	(minimum fee per day)
Thimbleberry	\$90.00
Kestrel	\$150.00
Nighthawk	\$300.00
Buttonhook--Larch	\$70.00
Buttonhook--Oceanspray	\$90.00
Buttonhook--Saw-Whet	\$50.00
Cleaning/Damage Deposit	\$100.00

HARRIMAN STATE PARK	
Dormitory and Cookhouse per person (fifteen (15) person minimum, forty (40) person maximum)	\$124.00/night
Cleaning/Damage Deposit	\$150.00
Boy's House (Maximum capacity--Seventy (70) persons)	
Up to four (4) hours	\$50.00
Full day	\$80.00
Ranch Manager's House (Maximum capacity -- eight (8) persons)	<u>\$250.00/night</u>
Cleaning/Damage deposit	\$50.00

LIONHEAD UNIT OF PRIEST LAKE STATE PARK	
Group Camp (including kitchen and sleeping quarters)	\$175.00/day
RV hookups See fee schedule set by Subsection 250.01 of this chapter	
Cleaning/Damage Deposit may be required, not to exceed	\$50.00

THREE MEADOWS GROUP CAMP WITHIN DWORSHAK STATE PARK	
Basic daily rate (includes lodge and two (2) sleeping cabins)	\$225.00
Lodge rental (day-use only)	\$75.00/day
Additional sleeping cabins	\$50.00/night
Group leader cabin rental	\$50.00/night
Tent sites	\$9.00/night
RV sites	\$15.00/night
Cleaning/Damage Deposit	\$150.00
Notwithstanding the provisions of Section 300 of this chapter, reservation requests for group use facilities at Three Meadows Group Camp will be accepted by mail on and after October 1 for the following calendar year.	

(7-1-99)()

11. Boating Facilities.

BOATING FACILITIES TABLE	
Vessel launching (per vessel/per day) (Annual park passport, daily MVEF, or payment of camping fees applies toward vessel launching fees)	\$23.00/ day
Overnight moorage--any length of vessel. (Applicable to persons who have paid for a park campsite and are not camping on the vessel)	\$5.00/night
Overnight moorage--persons camping on vessel	
Any length vessel	\$8.00/night
Any length vessel moored at buoy	\$5.00/night

(7-1-99)()

12. RV Dump Station Fees.

(3-13-97)

a. A fee of ~~two~~ three dollars (\$~~2~~3) shall be charged for use of department dump stations.

(3-13-97)()

b. Annual park passport, daily MVEF or payment of campsite fees ~~will~~ shall apply toward use of RV dump stations.

(3-13-97)()

13. **Modification Of Fees.** Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The department reserves the right to waive or reduce fees and charges for department sponsored promotions.

(7-1-93)

14. **Sales Tax.** ~~All fees include applicable state tax.~~ Applicable sales tax may be added to all sales excluding daily motor vehicle entrance fees.

(7-1-93)()

15. **Length Of Stay.** Fifteen (15) days in any thirty (30) day period.

(7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

275. CRITERIA FOR ~~CAMPSITE~~ INDIVIDUAL RESERVATIONS FOR PARKS THAT HAVE A RESERVATION PROGRAM.

01. **Confirmation Requirements.** Reservation service charge plus first night campsite fee are required to confirm a reservation.

(3-13-97)

02. **Mail Reservations.** ~~Reservations, for parks that have a reservation program, shall be accepted only by mail for a minimum of three (3) calendar months beginning the first working day of January for that calendar year. Reservation requests received prior to the first working day of January shall be returned to the sender. Reservation requests shall be processed according to date received, after the first working day of January. Telephone and walk-in reservations shall be accepted at a later date, to be established at each park. Reservations may be made up to eleven (11) months in advance, but at least two (2) days prior to the first day to be reserved. Reservations may be accepted within two (2) days of the first day to be reserved with the approval of the park manager.~~

(3-13-97)()

03. **Multiple Or Group Reservations.** ~~A separate reservation, in the occupant's name, with appropriate registration service charges and fees included, must be received for each campsite. More than one (1) reservation request may be submitted in one (1) envelope, provided all required information is submitted along with~~

~~each separate request. Other requirements may apply on an individual park basis. One (1) person may pay for all members of a group reservation or each group member may pay individually.~~ (3-13-97)(____)

04. Reservation Service Charges. The reservation service charge and first night campsite fee for mail-in and telephone reservation requests must be received with the reservation request. A walk-in reservation can be made and paid for at any time, if an appropriate site is available. (3-13-97)

~~05. Campsite Requests. A request for a specific campsite cannot be honored. An appropriate site shall be assigned if available at time of reservation.~~ (3-13-97)(____)

06. Late Arrival. Reservations shall only be held until 8 p.m. of the day immediately following the first reserved night date of arrival, unless park staff is otherwise notified of a late arrival. Check-in time cannot be guaranteed in any reserved site prior to 2 p.m. on the designated date of arrival. (1-1-94)(____)

07. Reservation Service Charge Non-Refundable. The reservation service charge is non-refundable and does not apply to the first night's campsite fee. First night campsite fee will be refunded if notice of cancellation is received ~~twenty-four~~ forty-eight (248) hours prior to scheduled arrival date (not later than 2 p.m., local time, on the ~~two (2)~~ two (2) days preceding arrival). (3-13-97)(____)

08. Reservations Non-Transferable. Reservations are not transferable. (3-13-97)

(BREAK IN CONTINUITY OF SECTIONS)

300. RESERVING GROUP USE FACILITIES.

01. Generally. Unless otherwise provided, reservations ~~may be made up to eleven (11) months in advance but at least two (2) days prior to the first day to be reserved and requests for group use facilities shall be accepted the first working day of January.~~ Reservations shall be on a first come, first served basis. A completed reservation form, the required reservation service charge, the first night group use fees and all required deposits must be received in the park no more than twenty (20) days after the park mails it to the applicant. In no case may a (mail) reservation be accepted if the completed reservation form and the required service charges and fees are not received by the park ten (10) calendar days before the reserved date. (7-1-99)(____)

02. Responsible Party. A designated group leader shall be responsible for all facilities and shall be on-site at all times. A damage or cleaning deposit may be required by the park manager as a condition of reservation. (7-1-93)

03. Park Manager Authority. The park manager may deny a reservation to any group whose prior behavior has violated department rules, whose in-park activities are incompatible with the park's operation, or whose in-park activity will violate department rules. (1-1-94)

04. Additional Information. Additional information concerning group use reservations and definitions can be found in Subsection 250.08 of this chapter. (3-13-97)

(BREAK IN CONTINUITY OF SECTIONS)

325. RENTAL OF STATE-OWNED COTTAGES WITHIN HEYBURN STATE PARK. TABLE.

Cottages with full utilities	\$ 6 85.00/night
Cottages with partial utilities	\$35.00/night
Rental to any person shall be for a minimum of five (5) days and a maximum of fourteen (14) days in any thirty (30) day period. A six dollar (\$6) nonrefundable reservation fee shall be charged, and provisions of Section 300. of this chapter apply. A cleaning/damage deposit of twenty-five dollars (\$25) may be required.	

(~~7-1-99~~)()

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION
26.01.24 - RULES GOVERNING THE ADMINISTRATION OF THE SAWTOOTH NATIONAL
RECREATION AREA SPECIAL LICENSE PLATE FUNDS

DOCKET NO. 26-0124-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 67-4223, 67-4249, and 49-419A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

Section 49-419A, Idaho Code, authorized the establishment of the Sawtooth National Recreation Area (SNRA) special license plate, with a portion of the fees collected to be distributed to the department for use in the development and maintenance of recreation facilities within the SNRA. This chapter establishes procedures for the administration of the special plate funds including project application, eligibility, review, award and management.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule was heard at a meeting of the Idaho Park and Recreation Board.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark E. Brandt, Policy Coordinator, at the address and telephone below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 4th day of August, 1999.

Mark E. Brandt, Policy Coordinator
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
P.O. Box 83720
Boise, ID 83720-0065
Phone: (208) 334-4199
FAX: (208) 334-3741

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0124-9901

IDAPA 26
TITLE 01
Chapter 24

**26.01.24 - RULES GOVERNING THE ADMINISTRATION OF THE SAWTOOTH NATIONAL
RECREATION AREA SPECIAL LICENSE PLATE FUNDS**

000. LEGAL AUTHORITY.

The Idaho Park and Recreation Board is authorized under Section 67-4223(a), Idaho Code, to adopt, amend, or rescind rules as may be necessary for proper administration of the department and its programs. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter shall be cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.24, "Rules Governing the Administration of the Sawtooth National Recreation Area Special License Plate Funds". ()

02. Scope. This chapter establishes procedures for the administration of the Sawtooth National Recreation Area special plate funds, received pursuant to Section 49-419A, Idaho Code, including requirements for project application, eligibility, review, award and management. ()

002. WRITTEN INTERPRETATIONS.

This agency has written interpretations of these rules, in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules, or documentation of compliance with IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 150. ()

003. APPEALS.

Any person who may be adversely affected by a final decision, ruling, or direction of the director or board may appeal such final decision, ruling, or direction as outlined in IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 250. ()

004. PUBLIC RECORDS.

The records relative to any grant project are public record, and are to be controlled as outlined under 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 300. ()

005. CITATION.

The official citation of this chapter is IDAPA 26.01.24.000. et seq. For example, the citation for this section is IDAPA 26.01.24.005. ()

006. -- 009. (RESERVED)

010. DEFINITIONS.

01. Applicant. A public entity, user group, organization, or individual that identifies a need for a project and applies for a sawtooth national recreation area special license plate fund grant through the department. ()

02. Board. The Idaho Park and Recreation Board, a bipartisan, six (6) member board, appointed by the governor. ()

03. Department. The Idaho Department of Parks and Recreation. ()

04. Director. The director and chief administrator of the department or the designee of the director. ()

05. Park And Recreation Fund. That fund created in Section 67-4225, Idaho Code. ()

06. Project. Any effort in compliance with applicable rules and policies governing the use of Sawtooth National Recreation Area special license plate funds. ()

07. Sawtooth National Recreation Area (SNRA) Special License Plate Funds. Those funds derived from the sale and purchase of Sawtooth National Recreation Area special license plates pursuant to Section 49-419A, Idaho Code. ()

011. -- 049. (RESERVED).

050. ELIGIBLE APPLICANTS FOR SAWTOOTH NATIONAL RECREATION AREA SPECIAL LICENSE PLATE FUNDS.

Any public entity or private group, organization or individual which provides evidence of its ability to implement or operate and maintain the project following the completion of the project. ()

051. -- 099. (RESERVED).

100. ELIGIBLE PROJECTS.

01. Determination Of Eligibility. The director shall determine eligibility of projects in accordance with Section 49-419A, Idaho Code, and this chapter. ()

02. Eligible Projects. Eligible projects shall be limited to planning, design, development, construction, repair and maintenance of: ()

- a. Motorized and non-motorized trails; ()
- b. Camping facilities; ()
- c. Bridges located on a motorized or non-motorized trail; ()
- d. Restrooms used primarily by recreationists; ()
- e. Parking areas used primarily to access outdoor recreation facilities; ()
- f. Boat launch facilities; ()
- g. Boat docks; ()
- h. Interpretive centers, facilities and services for recreationists including informational and directional signs; ()
- i. Emergency medical facilities and services for recreationists; and ()
- j. Unpaved roads leading to recreation areas. ()

03. Location Of Eligible Projects. All eligible projects shall be located within the SNRA and shall be open to the public regardless of race, color, religion, national origin, gender, age or disability. ()

101. -- 149. (RESERVED).

150. APPLICATION PROCEDURES.

To be considered for a grant, an applicant must file with the department a memorandum of understanding in a form prescribed by the director and bearing original signatures no later than January 1 of each year. ()

151. -- 199. (RESERVED).

200. DISBURSEMENT OF FUNDS.

The department shall remit to the applicant at least eighty-five percent (85%) of all moneys collected pursuant to Section 49-419A, Idaho Code, not later than January 25, April 25, July 25 and October 25 of each year. The

department shall retain up to fifteen percent (15%) to cover costs related to the administration of this chapter. ()

201. -- 249. (RESERVED).

250. EXPENDITURE OF FUNDS.

The applicant shall expend all funds received pursuant to this chapter within two (2) years of receipt. ()

251. -- 299. (RESERVED).

300. RETURN OF FUNDS.

Any funds required by these rules to be returned from the applicant to the department shall be credited to the park and recreation account and disbursed on or before the dates provided in Section 150 of this chapter. ()

301. -- 349. (RESERVED).

350. DOCUMENTATION.

01. Allowable Costs. Applicable Office of Management and Budget (OMB) cost principles shall be followed in determining reasonable and allowable costs. ()

02. Documentation And System Of Internal Controls. The applicant shall maintain a system of internal controls in order to identify the source and disbursement of funds provided for all project costs by project. Accounting records shall be supported by source documentation such as vouchers, canceled checks, invoices, payroll, time and attendance records, contract and sub-grant award documents, and other required billing forms. ()

04. Record Retention. The applicant shall retain all financial information referenced in these rules regarding a project for a time period of three (3) years from the date of the receipt of funds, or until the satisfactory completion of any litigation or audit concerning the project, whichever date is later. ()

05. Audit Authority. The department shall have the right of access to any pertinent books, documents, papers, or other records of applicant which are pertinent to these rules, in order to make audits, examinations, excerpts, and transcripts. An audit may result in the disallowance of costs incurred by the applicant and the establishment of a debt (account receivable) due the department. ()

351. -- 399. (RESERVED).

400. MAINTENANCE STANDARDS.

The applicant shall ensure facilities developed, constructed or repaired with SNRA special license plate funds are maintained and operated in a condition equivalent to that existing when it was funded, normal wear and tear excepted. Maintenance standards shall be adopted by the applicant during the application phase of the grant. ()

401. -- 449. (RESERVED).

450. PROJECT CONVERSIONS.

No project funded by SNRA special license plate funds shall, without prior approval of the department, be converted to uses other than for the authorized purpose of the original grant. The department shall approve a conversion only when the SNRA special license plate funds expended on the project can be returned to the department, or the applicant can provide an immediate substitution of other projects of at least equal current fair market value and of reasonable equivalent usefulness and location. ()

501. -- 499. (RESERVED).

500. PURCHASE AND BIDDING REQUIREMENTS.

All local, state and federal laws pertaining to the expenditure of SNRA special license plate funds shall be followed by the applicant. ()

501. -- 999. (RESERVED).

IDAPA 27 - BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY
DOCKET NO. 27-0101-9901
NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule have been adopted by the agency and is now pending review by the 2000 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-1717, 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 May 5, 1999 Administrative Bulletin, Volume 99-5, pages 92 and 93.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Richard Markuson at (208) 334-2356.

DATED this 12th day of July, 1999.

Richard K. Markuson
Director
Idaho State Board of Pharmacy
280 N. 8th St., Ste. 204
Boise, Idaho 83702
(208)334-2356 (Telephone)
(208)334-3536 (Facsimile)

IDAPA 27
TITLE 01
Chapter 01

RULES OF THE IDAHO BOARD OF PHARMACY

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 99-5, May 5, 1999, pages 92 and 93.**

**This rule has been adopted as Final by the Agency and is now pending
review by the 2000 Idaho State Legislature for final adoption.**

IDAPA 27 - BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY
DOCKET NO. 27-0101-9902
NOTICE OF PROPOSED RULE

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 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

The rule-making is necessary to: 1) establish the parameters for the proper use of Pharmacy technicians; 2) allow for Board oversight of Pharmacy Technicians, as well as discipline of Pharmacy Technicians, and responsible pharmacists and pharmacies, where technicians act improperly; and 3) establish a mechanism for annual registration.

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

No fee or charge imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because of the relatively simple nature of the rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Richard K. Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

Richard K. Markuson
Director
Idaho State Board of Pharmacy
280 N. 8th St., Ste. 204
Boise, Idaho 83702
(208)334-2356 (Telephone)
(208)334-3536 (Facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-9902

251. PHARMACY TECHNICIANS.

01. Definition - Pharmacy Technician. Means an individual, registered with the Board who is trained according to the written standards of the employer (pharmacist or pharmacy owner) and employed by the training pharmacist and/or training pharmacy owner to perform routine functions, that do not require the use of a licensed pharmacist's 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. (7-1-99)()

02. ~~Registered Responsibility Of Pharmacy And Pharmacist Duties -- Assignment of Functions.~~
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. The pharmacy and the pharmacist-in-charge are each responsible for all aspects of the sale at retail and the dispensing of medications, drugs, devices, and other materials at the pharmacy, including the preparing, compounding, distribution or dispensing of medications. No pharmacy or pharmacist may allow assignment to, or permit performance by, any individual, other than a pharmacy technician employed at the registered pharmacy, a registered pharmacist exter/intern, or a licensed pharmacist, of any functions connected to the preparing, compounding, distribution or dispensing of medications at the pharmacy.~~ (7-1-93)()

b. ~~Perform evaluations and interpretations of a prescription and any needed clarifications prior to filling. The pharmacy or the pharmacist-in-charge may assign to, or allow performance by, a pharmacy technician employed at the registered pharmacy, only of those functions connected with the preparing, compounding, distribution or dispensing of medications, which meet all of the following criteria:~~ (7-1-93)()

i. The function is routine; ()

ii. The function is one for which the pharmacy technician is adequately trained and supervised; and ()

iii. The function does not require the use of a licensed pharmacist's professional judgment. ()

c. ~~Consult with the prescriber concerning any necessary clarification regarding a patient and his prescription. Only a registered pharmacist may do any of the following (which, without limiting the scope of the term "professional judgment", is a non-exclusive list of actions requiring a licensed pharmacist's professional judgment):~~ (7-1-93)()

i. Receive a new prescription order verbally from a prescriber or other person authorized by law. ()

ii. Perform evaluations and interpretations of a prescription and any needed clarifications prior to filling. ()

iii. Consult with the prescriber concerning any necessary clarification regarding a patient and his prescription. ()

iv. Interpret any clinical data in a patient's medication record system (e.g., drug usage, refill frequency, drug interactions, etc.) (7-1-93)

ev. Perform professional consultation with any prescriber, nurse or other health care professional. (7-1-93)

vi. Supervise the packaging of drugs and check the completed procedure and product. (7-1-93)

vii. Issue the new prescription to the patient or his agent with consultation. (7-1-93)

~~h.viii. Be responsible for all~~ Supervise the activities of pharmacy technicians to insure that all such activities are performed completely, safely and without risk or harm to patients. (7-1-99)()

d. A violation of the rules on pharmacy technicians by a pharmacist or a pharmacy 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, or other appropriate disciplinary action. ()

03. ~~Supervision Of Non-Pharmacist.~~ Where a ~~non-pharmacist~~ pharmacy technician performs one (1) or more functions in connection with the preparing, compounding, distribution or dispensing of the dispensing process, the pharmacy technician shall be under the supervision of a licensed pharmacist who, in addition to the pharmacy and the pharmacist-in-charge, shall be responsible for all aspects of 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 technicians shall be not less than one (1) pharmacist for every two (2) pharmacy technicians in any practice setting. (7-1-99)()

05. ~~Responsibility Of Pharmacist-In-Charge Pharmacy Technicians.~~ (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 p~~ Pharmacy technicians shall perform all functions properly assigned to them with all necessary care. No pharmacy technician shall accept assignment of, or perform, any functions connected with the preparing, compounding, distribution or dispensing of medications unless such pharmacy technician is employed at the assigning pharmacy and such function meets all of the criteria set forth in Subsection 251.02.b. (7-1-99)()

b. The Board of Pharmacy may initiate ~~criminal~~ proceedings against pharmacy technicians who perform such tasks or functions ~~that require the expertise and service of a pharmacist.~~ connected with the preparing, compounding, distribution or dispensing of medications: ()

i. That are not routine functions: ()

ii. That the pharmacy technician is not adequately trained and supervised for; or ()

iii. That require the use of a licensed pharmacist's professional judgment. Such persons may be charged by the appropriate authorities with practicing pharmacy without a license in violation of Section 54-1726, Idaho Code. (7-1-99)()

c. ~~A violation of the rules on 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. The Board of Pharmacy may initiate proceedings against pharmacy technicians who perform such tasks or functions connected with the preparing, compounding, distribution or dispensing of medications in a negligent or improper manner or otherwise violate the rules on pharmacy technicians. Such violations shall be grounds for revocation or suspension of the pharmacy technician's registration, or other appropriate disciplinary action.~~ (7-1-99)()

06. ~~Identification Of Pharmacy Technicians~~ (7-1-99)

a. All pharmacy technicians working as such 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. (7-1-99)()

b. All pharmacy technicians must identify themselves as a pharmacy technician on any phone calls initiated or received by them while performing pharmacy functions. (7-1-99)

07. Registration Of Pharmacy Technician. ()

a. Annual Registration. All pharmacy technicians shall register annually with the Board. The Board will develop an appropriate annual registration notice and annual registration form to be mailed to all registered pharmacy technicians prior to June 1 of each year. The notice will state the annual pharmacy technician registration renewal fee. ()

b. Initial Registration. Before commencing employment at a pharmacy as a pharmacy technician (including previously registered pharmacy technicians who are changing employing pharmacies), an individual must register with the Board, pay the registration fee, and have received a certificate of registration from the Board, provided however, an individual who has not previously had his registration as a pharmacy technician revoked or suspended may commence employment as a pharmacy technician immediately upon the completion and mailing of the registration form and applicable fee to the Board. The initial registration period shall be from the date of initial registration to the next annual registration date. ()

c. Contents of Registration Form. The annual registration form and the initial registration form shall be prepared by the Board, and shall require such information regarding the individual and the employing pharmacy as the Board may reasonably require. In addition, registration shall include the statement of the pharmacy owner (or an authorized agent of the pharmacy owner), and of the pharmacist-in-charge that either: ()

i. The individual has been adequately trained by the pharmacist-in-charge, or by the pharmacy, to perform those routine functions in connection with the preparing, compounding, distribution or dispensing of medications as are, or will be, assigned to such individual; ()

ii. The pharmacist-in-charge or the pharmacy owner has verified that such individual possesses adequate training to perform those routine functions in connection with the preparing, compounding, distribution or dispensing of medications as are, or will be, assigned to such individual; or ()

iii. Such individual will be adequately so trained prior to the assignment of any routine functions in connection with the preparing, compounding, distribution or dispensing of medications. ()

08. Discipline And Appeal. Any proceedings by the Board against any pharmacy technician shall comply in all respects with the Administrative Procedures Act, Chapter 52, Title 67, Idaho Code. ()

IDAPA 27 - BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY
DOCKET NO. 27-0101-9903
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

The rulemaking is necessary to allow returns of Unit Dose packaged drugs by Licensed Skilled Nursing Care Facilities and Hospitals, and to allow storage, for an indefinite period, of non-prescription over-the-counter drugs by Licensed Skilled Nursing Care Facilities.

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

No fee or charge imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the simple nature of the rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Richard K. Markuson, Director, at (208) 334-2356.

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 September 22, 1999.

DATED this 21st day of July, 1999.

Richard K. Markuson
Director
Idaho State Board of Pharmacy
280 N. 8th St., Ste. 204
Boise, Idaho 83702
(208)334-2356 (Telephone)
(208)334-3536 (Facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-9903

156. PHARMACIES.

01. Change Of Ownership Or Location. In case of change of ownership or location of a pharmacy, the original registration becomes void and must be returned with a new pharmacy application. (7-1-93)

02. Annual Report Of Pharmacy Employer. Annually, on the date of renewal of registration, the pharmacy employer must notify the Board of the registered pharmacist-manager of the pharmacy and each registered employee-pharmacist and each extern/intern training in the pharmacy, on the place provided on the application. Any change in pharmacist or extern/intern employment must be reported to the Board within five (5) days. (7-1-93)

03. Responsible Pharmacist Manager. A non-registered proprietor of a pharmacy shall place in charge of such pharmacy a pharmacist licensed in the state of Idaho who shall be known as "responsible pharmacist manager" and the non-registered proprietor shall immediately report to the state Board of Pharmacy the name of the pharmacist manager. (7-1-93)

04. Responsibility Of Pharmacist Manager. Responsible pharmacist managers of pharmacies owned by non-registered proprietors are responsible for the management of such stores so far as they are affected by the pharmacy laws. Every part of the establishment coming under the regulation of the pharmacy laws shall be under the full and complete control of such responsible pharmacist manager. (7-1-93)

05. Return Of Drugs Or Other Items. In the interest of public health, drugs, medicines, sickroom supplies, devices and items of personal hygiene shall not be accepted for return by any pharmacist or pharmacy after such drugs, medicines, sickroom supplies, devices and items of personal hygiene have been taken from the premises where sold, distributed or dispensed, except that unopened "Unit Dose" packaged medications for in-patients of licensed skilled nursing care facilities and hospitals may be returned to the dispensing pharmacy for credit provided the following conditions set forth in subsection 156.05.b below are satisfied:- ()

a. Unit Dose is defined as medications packaged in individually sealed doses with tamper-evident packaging (e.g., single unit of use, blister packaging, unused indictable vials and ampules) labeled with a minimum of trade name or generic name and manufacturer, strength, lot number and expiration date. No controlled substance may be returned except those delivered by unit dose on a daily delivery system. (7-1-93)()

b. The following conditions must be satisfied for returns of Unit Dose packaged medications for credit: ()

i. The medications must be returned with tamper-evident packaging intact. ()

ii. In the professional judgment of the pharmacist, the medications meet all federal and state standards for product integrity. ()

iii. Policies and procedures are followed for the appropriate storage and handling of medications at the facility and for the transfer, receipt, and security of medications returned to the dispensing pharmacy. ()

iv. A system is in place to track restocking and reuse to allow medications to be recalled if required. ()

v. No controlled substance may be returned except those delivered by Unit Dose on a daily delivery system. ()

06. Damaged Drugs. To sell, offer for sale, barter or give away any drugs damaged by fire or water or by any other means that might affect the potency of the drug is prohibited without first obtaining the written approval of the Board. (7-1-93)

07. Dangerous Drugs. Legend, controlled substances, or other limited sale items must be stored in accordance with United States Pharmacopoeia/National Formulary requirements in the prescription area (where prescriptions are compounded, dispensed or filled) and in a manner as to limit access to licensed pharmacists or

authorized personnel of that area only. Failure to comply with this requirement shall be prima facia evidence of unprofessional conduct. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

257. DRUGS FROM OUTSIDE SOURCES.

01. Outside Pharmacies. Whenever drugs or pharmaceutical services are obtained from outside of the institutional facility arrangements shall be made to insure that such outside pharmacist provides his services with sufficient professionalism, quality and availability to adequately protect the safety of the patients and to properly serve the needs of the facility. Such arrangements shall be made in writing and shall, at a minimum, specify that: (7-1-93)

a. The outside pharmacist is to act in the capacity of a part-time Director and therefore, subject to these rules. (7-1-93)

b. The pharmacist shall provide on-call service at all times. (7-1-93)

c. Adequate storage facilities for drugs will be provided. (7-1-93)

d. All prescription drugs in oral solid dosage form supplied to a licensed skilled nursing care facility, whether from an outside source or in-house pharmacy, shall be limited to no more than an eight day supply except where USP indicates the drug shall be dispensed in the original container. Up to a thirty-four (34) day supply will be allowed if provided in "Unit Dose", as defined in Idaho Board of Pharmacy Rule Subsection 156.05. ~~Non-legend, over the counter drugs prescribed, may be dispensed in a thirty-four (34) day supply or stock bottles of one hundred (100).~~ Return of these drugs will only be allowed if they are supplied in "Unit Dose". (7-1-97)()

e. All drugs in liquid form will be supplied in amounts not to exceed sixteen (16) ounces or an amount not to exceed a thirty-four (34) day supply. Returns will only be allowed for liquid medications that have been supplied and remain in unopened, manufacturer sealed containers. (7-1-97)

f. All drugs housed in long term care facilities will be labeled according to Idaho Board of Pharmacy Rule 159. (8-4-94)

g. Automatic refilling of medications is prohibited, except where unit dose is used in a daily delivery system. Any continuation of medications must be reordered by the licensed skilled nursing care facility pursuant to a current physician's order. (7-01-94)

h. All drugs supplied shall be labeled so as to insure that recalls can be effected and that proper control and supervision of such drugs may be exercised. (7-1-93)

02. Patient's Own Drugs. Whenever patients bring drugs into an institutional facility such drugs shall not be administered unless they can be precisely identified; administration shall be pursuant to a physician's order only. (7-1-93)

a. If such drugs are not to be administered, then the Director shall, according to procedures specified by him in writing, have them turned in to the pharmacy which shall package and seal them and return them to an adult member of the patient's immediate family or store and return them to the patient upon discharge. (7-1-93)

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-9901
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

RULE 032 - Members Of The Armed Forces - is being amended to clarify that the safe harbor exception to being considered a resident applies to individuals in the military.

RULE 105 - Adjustments To Taxable Income -- Additions Required Of All Taxpayers - is being amended to correct references to subsections within the rule that were amended.

RULE 107 - Adjustments To Taxable Income -- Additions Required Only Of Corporations And Partnerships - is being amended to delete references to "nonresident" and replace with "individual" as applicable. Code references are being updated because of legislation.

RULE 109 - Adjustments To Taxable Income -- Additions Required Only Of Estates And Trusts - is being amended to correct code references as a result of renumbering because of legislation.

RULE 115 - Interest Expense Offset Related To Tax-Exempt Interest Income - is being amended to delete information added to the statute in 1999 legislation.

RULE 120 - Adjustments To Taxable Income - Subtractions Available To All Taxpayers - is being amended to clarify when Idaho lottery prizes are not exempt by Section 67-7439, Idaho Code. If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed and the full amount of the prize is included in income.

RULE 121 - Adjustments To Taxable Income - Subtractions Available Only To Individuals - is being amended to allow the deduction passed by House Bill 276 for married individuals who claim the standard deduction. The deduction needs to be added to the rule which identifies all subtractions to taxable income available to individuals.

RULE 128 - Idaho Adjustments -- Pass-Through Entities - is being amended to delete references to "nonresident" and replace with "individual" as applicable.

RULE 171 - Idaho Capital Gains Deduction -- Qualified Property - is being amended to clarify that for installment sales, the determination of whether the property meets the required holding period is made using the law applicable for the year of the sale.

RULE 173 - Idaho Capital Gains Deduction -- Pass-Through Entities - is being amended to delete reference to "nonresident" and replace with "individual" as applicable.

RULE 190 - Idaho Medical Savings Accounts - is being amended to clarify that contributions to a medical savings account each year are limited to the amount deductible for that year. Contribution amounts that exceed the limitation for the year and are not withdrawn as a deposit in error within thirty days from the date of deposit are subject to tax and the distribution penalty.

RULE 201 - Net Operating Loss Carrybacks and Carryovers - is being amended to change the number of years

for net operating loss carryback periods from three years to two years and the carry forward periods from fifteen years to twenty years, effective for the years beginning on or after January 1, 2000. This amendment is a result of legislation.

RULE 254 - Nonresident And Part-Year Resident Individuals -- Subtractions Allowed In Computing Idaho Adjusted Income - is being amended to clarify when Idaho lottery prizes are not exempt by Section 67-7439, Idaho Code. If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed and the full amount of the prize is included in income.

RULE 255 - Nonresident And Part-Year Resident Individuals -- Proration Of Exemptions And Deductions - is being amended to allow the deduction passed by House Bill 276 for married individuals who claim the standard deduction.

RULE 280 - Partnerships Operating Within And Without Idaho - is being promulgated to clarify that multistate partnerships apply the principles set by Section 63-3027, Idaho Code, when determining Idaho taxable income.

RULE 570 - Special Rules -- Sales Factors - is being amended to adopt MTC regulations that were amended to address net gains from liquid assets and the calculation of the sales factor.

RULE 615 - Combined Reports Including Foreign Country Operations - is being deleted as obsolete due to past code changes.

RULE 645 - Water's Edge -- Treatment Of Dividends - is being amended to clarify the calculation of the dividends elimination of Foreign Sales Corporations (FSC) when a water's edge election is made. Code references are being updated because of legislation.

RULE 803 - Rounding - is being promulgated to specify the requirement of rounding on documents filed under Chapter 30, Title 63, Idaho Code, and to provide rules for rounding.

RULE 830 - Information Returns - is being amended to add additional information returns that are required to be filed with the Tax Commission.

RULE 855 - Permanent Building Fund Tax - is being amended due to changes to Section 63-3022L, Idaho Code, allowing a pass-through entity to pay income tax for an electing individual partner or shareholder. The rule is being amended to state that if the pass-through entity pays the income tax for an electing individual partner or shareholder, the entity must also pay the permanent building fund tax for that individual.

RULE 872 - Reporting And Paying State Income Tax Withholding - is being amended to provide the payment date for quarterly filers will be the last day of the month following the end of the quarter and will make the rule consistent with legislative changes.

RULE 873 - Employee's Withholding Allowance Certificates - is being amended to delete unnecessary and obsolete information regarding the federal Form W-4.

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 rulemaking 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 rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-9901

032. MEMBERS OF THE ARMED FORCES (Rule 032).

01. Idaho Residency Status. Section 574 of the Soldiers' and Sailors' Civil Relief Act provides that an individual on active duty with the United States Armed Forces is not a resident of or domiciled in Idaho solely as a result of being stationed in Idaho. (3-20-97)

a. A qualifying service member is an Idaho resident only if he is domiciled in Idaho for the entire taxable year. The domicile of a qualified service member is presumed to be that member's military home of record until the qualified service member establishes a new domicile. (3-20-97)

b. A qualified service member who is domiciled in Idaho for less than the entire taxable year is a part-year resident. (3-20-97)

c. A qualified service member who is not domiciled in Idaho anytime during the taxable year is a nonresident. (3-20-97)

d. A member of the armed forces meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho, even though Idaho is the person's military home of record. Any individual meeting the safe harbor exception to residency status is considered either a nonresident or part-year resident. ()

e. The Soldiers' and Sailors' Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)

02. Active Duty Military Pay. (3-20-97)

a. Section 574 of the Soldiers' and Sailors' Civil Relief Act provides that the active duty military pay of a qualified member of the United States Armed Forces who is not domiciled in Idaho is exempt from Idaho income tax. The active duty military pay is not considered income from services performed within, or from sources within, Idaho. See Section 63-3026A(3)(c), Idaho Code. (3-20-97)

b. The active duty military pay of a service member who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(j), Idaho Code, provides that compensation paid by the United States Armed Forces for military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. See Section 63-3022(j), Idaho Code, for the specific qualifications of this deduction. (3-20-97)

03. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered active duty military pay. Therefore, Subsection 032.02 does not apply. (3-20-97)

a. Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. (3-20-97)

b. For purposes of this rule, a former active duty service member whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. (3-20-97)

04. Nonmilitary Income. All Idaho source income earned by a military service member is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (3-20-97)

05. Nonmilitary Spouse. Subsection 032.02 does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (Rule 105).

Section 63-3022, Idaho Code. (3-20-97)

01. State Taxes. As provided in Section 63-3022(a), 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. (7-1-99)

02. Net Operating Loss Deduction. As provided in Section 63-3022(b), Idaho Code, add any net operating loss deduction included in taxable income. (7-1-99)

03. Capital Loss Carryover Deduction. As provided in Section 63-3022(j), Idaho Code: (7-1-99)

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, unless the corporation was part of a unitary group with at least one (1) member of the group taxable by Idaho for that taxable year. (7-1-99)

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)

04. Interest And Dividend Income Exempt From Federal Taxation. As provided in Section 63-3022M, 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. (7-1-99)

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. 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 105.044.b.i. and 105.044.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 income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets shall be attached to the return. (7-1-98)(____)

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. (7-1-98)

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. (7-1-98)

05. Interest Expense Attributable To Tax-Exempt Interest Income. As provided by Section 63-3022M, Idaho Code, a taxpayer 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. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

107. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS AND PARTNERSHIPS (Rule 107).
Section 63-3022, Idaho Code. (3-20-97)

01. Income Of ~~Nonresident~~ Individual Officers, Directors, Shareholders, Partners, Or Members. As provided in Section 63-3022(~~h~~)L, Idaho Code, a C corporation with fifty percent (50%) or more of its income taxable to Idaho, an S corporation, or a partnership may be required to include in its Idaho taxable income the amounts in Subsections 107.01.a. and 107.01.b. (~~3-20-97~~)(____)

a. Compensation Reportable to Idaho. (3-20-97)

i. Corporations. A corporation described in Subsection 107.01 may be required to add the Idaho compensation paid by the corporation to an ~~nonresident~~ individual officer, director, shareholder, or member. (~~3-20-97~~)(____)

ii. Partnerships. A partnership may be required to add the Idaho compensation paid by the partnership to an ~~nonresident~~ individual partner or member. (~~3-20-97~~)(____)

iii. Idaho compensation for a part-year resident or nonresident is determined pursuant to Rule 262 of these rules. (~~3-20-97~~)(____)

b. Pass-Through Items Reportable to Idaho. (3-20-97)

i. S Corporations. An S corporation may be required to add the pass-through items reportable as Idaho source income by an ~~nonresident~~ individual shareholder. (~~3-20-97~~)(____)

ii. Partnerships. A partnership may be required to add the pass-through items reportable as Idaho source income by an ~~nonresident~~ individual partner or member. (~~3-20-97~~)(____)

02. Capital Loss. As provided in Section 63-3022(~~k~~)j, Idaho Code, S corporations and partnerships are required to add a capital loss provided for in Section 1212, Internal Revenue Code, when paying the tax for ~~nonresident~~ individual shareholders and partners. (~~3-20-97~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

109. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF ESTATES AND TRUSTS (Rule 109).

Section 63-3022, Idaho Code. As provided in Section 63-3022(~~h~~), Idaho Code, an estate or trust may be required to add the distributable net income reportable as Idaho source income by a nonresident beneficiary. (~~3-20-97~~)()

(BREAK IN CONTINUITY OF SECTIONS)

115. INTEREST EXPENSE OFFSET RELATED TO TAX-EXEMPT INTEREST INCOME (Rule 115).

Section 63-3022M, Idaho Code. (7-1-99)

01. In General. The interest expense offset provided by Section 63-3022M, 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. (7-1-99)

02. Definitions Tax-Exempt Interest Income. For purposes of computing the interest expense offset attributable to tax-exempt interest income, ~~terms are defined as follows:~~ (7-1-98)

~~a. 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 63-3022M, Idaho Code, interest expense from a pass-through entity, and interest expense of a foreign corporation included in a worldwide combined report. (7-1-99)~~

~~b. 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. (7-1-98)()~~

~~ia. 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. (7-1-98)~~

~~ib. 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. (7-1-98)~~

03. Total Income. For purposes of computing the interest expense offset, total income shall be computed as follows: (7-1-98)

a. Corporations. (7-1-98)

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. (7-1-98)

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. (7-1-98)

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. (7-1-98)

- iv. Intercompany amounts shall be eliminated to the extent included in these amounts. (7-1-98)
 - b. S Corporations. (7-1-98)
 - 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. (7-1-98)
 - 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. (7-1-98)
 - c. Partnerships. (7-1-99)
 - i. Total income shall equal the amount reported as total income on Form 1065, U.S. Partnership Return of Income, 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. (7-1-99)
 - ii. If the partnership is a shareholder in an S corporation, total income shall also include the partnership's distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1065. (7-1-99)
 - d. Individuals. (7-1-99)
 - i. Total income shall equal the amount reported as total income on Form 1040, U.S. Individual Income Tax Return. (7-1-99)
 - ii. If the individual is a partner in a partnership, total income shall also include the individual'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 1040. (7-1-99)
 - iii. If the individual is a shareholder in an S corporation, total income shall also include the individual's distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1040. (7-1-99)
- 04. 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. (7-1-98)

(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(a), Idaho Code. (7-1-99)

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 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. (7-1-99)

03. Income Not Taxable By Idaho. As provided in Section 63-3022(f), 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: (7-1-99)

a. Interest income from obligations issued by the United States Government. 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, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery ~~winnings prizes~~ prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. ~~(7-1-98)()~~

04. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market 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(f), 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: (7-1-99)

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(i), 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. (7-1-99)

03. Standard Or Itemized Deduction. As provided in Section 63-3022(k), 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. (7-1-99)

a. 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 Rule 105 of these rules. (7-1-99)

b. 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. (7-1-99)

c. If the standard deduction is claimed on a married filing joint return, the standard deduction shall be increased by one hundred fifty dollars (\$150). ()

04. Social Security And Railroad Retirement Benefits. As provided in Section 63-3022{(m)}{+},

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. ~~(7-1-99)~~(____)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. 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. (7-1-99)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022~~(n)~~~~(e)~~, 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. ~~(7-1-99)~~(____)

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. 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)

12. 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)

13. 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)

14. 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 and interest earned on an Idaho medical savings account. ~~(7-1-98)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

128. IDAHO ADJUSTMENTS -- PASS-THROUGH ENTITIES (RULE 128).

01. In General. An adjustment to a partnership, S corporation, estate or trust allowed or required by Idaho statute generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. (3-20-97)

a. Partnerships. An adjustment passes through to a partner based on that partner's distributive share of partnership profits. (3-20-97)

b. S Corporations. An adjustment passes through to a shareholder based on that shareholder's pro rata share of income or loss. (3-20-97)

c. Estates and Trusts. An adjustment passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. (3-20-97)

02. Limitations. Deductions claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. (3-20-97)

03. Different Taxable Year Ends. If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the adjustment shall be claimed in the same taxable year that income or loss from that entity is reported for federal income tax purposes. (3-20-97)

04. Information Provided By A Pass-Through Entity. The pass-through entity shall prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each adjustment. Copies of these schedules shall be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the adjustment is allowed or required. (3-20-97)

05. Pass-Through Entities That Pay Tax. Generally, a pass-through entity shall report the same Idaho adjustments as those allowed to the ~~nonresident individual~~ partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. However, a pass-through entity is not allowed a deduction for an Idaho net operating loss, a capital loss pursuant to Section 1212, Internal Revenue Code, an Idaho capital gains deduction, or any other adjustment that is not specifically allowed by statute or rule to an entity such as the one paying the tax. (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. (7-1-98)

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: (7-1-98)

i. Real or tangible personal property not having an Idaho situs at the time of the exchange; and (7-1-98)

ii. Tangible personal property not used by a revenue-producing enterprise. (7-1-98)

c. Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. ()

ed. Examples Of Nonqualifying Property. (7-1-98)

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. (7-1-98)

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. (7-1-98)

03. Holding Periods Of S Corporation And Partnership Property. (7-1-98)

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 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. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (Rule 173). (3-20-97)
Section 63-3022H, Idaho Code.

01. In General. (3-20-97)

a. Qualified property held by an S corporation or partnership may be eligible for the Idaho capital

gains deduction. The deduction is claimed on the return of an individual shareholder or individual partner. (3-20-97)

b. Partnerships and S corporations electing to pay the tax for an ~~nonresident~~ individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (3-20-97)()

02. Limitation Of Interest In Pass-Through Entity. (3-20-97)

a. An individual may claim an Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation or partnership only to the extent that he held his interest in income of the S corporation or partnership for the required holding period. A shareholder's interest in income of the S corporation is his pro rata share of the income or loss. A partner's interest in income of the partnership is his distributive share of partnership profits. The individual must also meet any gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. (3-20-97)

b. Example. A shareholder in an S corporation had a fifty percent (50%) interest in income in year one (1). At the beginning of year two (2), the shareholder sold half his stock. During years two (2) through four (4) the shareholder had a twenty-five percent (25%) ownership interest. In year five (5) the shareholder purchased additional stock and his ownership interest increased to fifty percent (50%). Fifteen (15) months later the S corporation recognizes a capital gain on the sale of Idaho real property held since year one (1). The shareholder reports fifty percent (50%) of the gain on his tax return for year six (6), but is entitled to a capital gains deduction on only twenty-five percent (25%) of the total gain. His capital gains deduction is limited to twenty-five percent (25%) of the gain since he did not hold his fifty percent (50%) ownership interest for the full eighteen (18) months preceding the date of the sale of the property. (7-1-99)

03. Multistate Entities. A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

04. Examples. (3-20-97)

a. XYZ Farms, a multistate partnership, sold a parcel of Idaho farmland purchased seven (7) years ago. The sixty thousand dollar (\$60,000) gain is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of nine thousand dollars (\$9,000), computed as follows: $(\$60,000 \times 75\% = \$45,000 \text{ gain apportioned to Idaho} \times 1/3 = \$15,000 \text{ attributable to each partner} \times 60\% = \$9,000 \text{ capital gains deduction allowable on each partner's nonresident return})$. (3-20-97)

b. XYZ Farms, a multistate partnership, sold a parcel of Idaho real estate held for investment for the past seven (7) years. The sixty thousand dollar (\$60,000) gain is determined to be nonbusiness income and is allocated to Idaho. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), computed as follows: $(\$60,000 \text{ gain allocated to Idaho} \times 1/3 = \$20,000 \text{ partner's share} \times 60\% = \$12,000 \text{ Idaho capital gains deduction allowable on each partner's nonresident return})$. (3-20-97)

c. A resident partner's capital gain is not limited by the apportionment factor of the pass-through entity. Therefore, in both of the examples in Subsections 173.04.a. and 173.04.b., a resident partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000). (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

190. IDAHO MEDICAL SAVINGS ACCOUNTS (Rule 190).
Section 63-3022K, Idaho Code. (7-1-98)

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. (7-1-98)

02. ~~Withdrawal To Pay Eligible Medical Expenses~~ Reimburse The Account Holder. (3-20-97)()

a. A withdrawal from an Idaho medical savings account to reimburse the ~~taxpayer~~ account holder 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. (7-1-98)()

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). (7-1-98)

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)

04. Contributions That Exceed The Amount Deductible. An account holder is limited in the amount he can contribute to his Idaho medical savings account each year to the amount deductible for that year. The maximum amount deductible is two thousand dollars (\$2,000), four thousand dollars (\$4,000) for a joint account. Contributions to an Idaho medical savings account that exceed the limitation for that year and that are not withdrawn as a deposit in error within thirty (30) days from the date of deposit, shall be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses. ()

(BREAK IN CONTINUITY OF SECTIONS)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (Rule 201). Section 63-3022(c), Idaho Code. (7-1-99)

01. Definitions For Purposes Of Net Operating Loss Carrybacks And Carryovers. (3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted ~~from in computing~~ Idaho taxable income, as modified by Section 63-3021, Idaho Code. (3-20-97)()

02. Adjustments To Net Operating Losses. (3-20-97)

a. Adjustments to a net operating loss shall be determined pursuant to the law applicable to the loss year. (3-20-97)

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations. (3-20-97)

03. Adjustments In Carryback And Carryover Years. (3-20-97)

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year shall be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (3-20-97)()

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. (3-20-97)()

c. Adjustments may be made even though the year is closed due to the statute of limitations. (3-20-97)

04. Net Operating Loss Carrybacks. (3-20-97)

a. The net operating loss carryback allowed for the entire carryback period shall not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). ()

~~ab.~~ Except as provided in Subsection 201.04.c., the net operating loss carryback, ~~not to exceed one hundred thousand dollars (\$100,000) per taxpayer,~~ shall be applied as follows: ()

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss carryback is applied to the third preceding taxable year and if not absorbed, the difference applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years may be is subtracted from taxable years arising in the succeeding fifteen (15) succeeding taxable years, in order, until absorbed. (3-20-97)()

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss carryback is applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. ()

~~b.~~ For a unitary group of corporations, each corporation having a net operating loss that results from its share of the Idaho apportioned loss adjusted for its nonbusiness income or nonbusiness loss is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (3-20-97)

c. If ~~the~~ taxpayer may makes a valid election to forego the carryback period, the provisions of Subsection 201.04.ab.; shall not apply and ~~deduct~~ the net operating loss carryover shall be applied as follows: ()

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (3-20-97)()

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. ()

d. Timing and Method of Electing to Forego Carryback. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (7-1-99)

i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)

iii. The amount of the net operating loss. (3-20-97)

e. If the election is made on an amended or original return filed subsequent to the time allowed in Subsection 201.04.d. of this rule, it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.04.a.b. ~~(3-20-97)~~(____)

05. Order In Which Losses Are Applied In A Year. Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

06. Documentation Required When Claiming A Net Operating Loss Deduction. A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

07. Conversion Of C Corporation To S Corporation. A net operating loss carryback or carryover from a taxable year in which a corporation is a C corporation cannot be carried to a taxable year in which the corporation is an S corporation. However, an S corporation subject to the tax on built-in gains is allowed to deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

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(c), 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. (7-1-99)

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 issued by the United States Government. 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, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery ~~winnings~~ prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. ~~(7-1-98)~~(____)

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 within the reservation. See Rule 033 of these rules. (7-1-98)

d. Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. (7-1-99)

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. See Subsections 121.04.a. and 121.04.b. of these rules. (7-1-99)

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 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. (7-1-98)

a. Subtract contributions to an Idaho medical savings account that meet the requirements of Section 63-3022K, Idaho Code. (7-1-98)

b. Subtract interest earned on an Idaho medical savings account to the extent included in Idaho gross income. (7-1-98)

12. Technological Equipment Donation. Subtract donations of technological equipment allowed by Section 63-3022J, Idaho Code. See Rule 180 of these rules. (3-20-97)

13. Worker's Compensation Insurance. As allowed by Section 63-3022{(n)}(e), 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. (7-1-99)(____)

255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (Rule 255).
Section 63-3026A(4). (3-20-97)

01. In General. The exemptions and deductions allowable for federal purposes, except for the deduction of state income taxes, are allowed in part in computing Idaho taxable income. (3-20-97)

02. Proration Percentage. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, multiply the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(k), Idaho Code, by the proration percentage. The proration percentage is calculated by dividing Idaho adjusted income by total adjusted income. ~~Round~~ The percentage shall be rounded to the nearest whole percent. The percentage may not exceed one hundred percent (100%), nor be less than zero (0). (3-20-97)()

a. Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(i), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. (3-20-97)

b. Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage shall be between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage shall be zero (0). (3-20-97)

c. If the standard deduction is claimed on a married filing joint return, the standard deduction shall be increased by one hundred fifty dollars (\$150). The addition to the standard deduction on a married filing joint return shall be made before prorating the standard deduction. ()

(BREAK IN CONTINUITY OF SECTIONS)

267. -- 2979. (RESERVED).

280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (Rule 280).

01. In General. A partnership that operates within and without Idaho shall apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. ()

02. Exceptions To Apportionment Formula. If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use: ()

a. Separate accounting as provided in Rule 585 of these rules; or ()

b. An additional factor or substitute factor pursuant to Rule 595 of these rules. ()

03. Information Provided To Partners. The partnership shall provide to each partner information necessary for the partner to compute his Idaho income tax. Such information shall include: ()

a. The apportioned share of each pass-through item of income and deduction; ()

- b. The apportioned share of each Idaho addition and subtraction; ()
- c. Idaho tax credits and tax credit recapture; ()
- d. Income allocated to Idaho; and ()
- e. The partnership's property, payroll and sales factor numerators and denominators if the partner is not an individual. ()

281. -- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

570. SPECIAL RULES -- SALES FACTOR (Rule 570).

Section 63-3027(s), Idaho Code.

(3-20-97)

01. De Minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho. (3-20-97)

02. Gross Receipts From Intangibles. If the income producing activity in respect to business income from intangible personal property can be readily identified, the income is included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Rule 525 of these rules, and income from the sale, licensing or other use of intangible personal property, see Rule 550 of these rules. (3-20-97)

03. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses shall be treated as provided in Subsection 570.03. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.03, each treasury function shall be considered separately. ()

a. For purposes of Subsection 570.03, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. ()

b. For purposes of Subsection 570.03, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. ()

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. ()

d. Examples. ()

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. ()

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.03 does not operate to classify those sales as attributable to a treasury function. ()

~~606. -- 614.~~ (RESERVED).

~~615. COMBINED REPORTS INCLUDING FOREIGN COUNTRY OPERATIONS (Rule 615).~~
Section 63-3027(t), Idaho Code. (3-20-97)

~~01. Reporting Pursuant To The Internal Revenue Code.~~ If a unitary business has foreign country operations that are required or allowed to report income pursuant to the Internal Revenue Code, the translation method for determining income for Idaho reporting purposes shall be the same as that used for federal reporting purposes. (3-20-97)

~~02. Not Reporting Pursuant To The Internal Revenue Code.~~ If a unitary business has foreign country operations that are not subject to the reporting requirements of the Internal Revenue Code, the following translation methods may be used for determining income: (3-20-97)

a. ~~The profit and loss method where there is no recognition of any unrealized gains or losses resulting from the restatement or revaluation of assets or liabilities to reflect changes or fluctuations in currency values; or~~ (3-20-97)

b. ~~Any other translation method that does not recognize unrealized exchange rate gain or loss resulting from the restatement of assets or liabilities and that reasonably reflects income from operations in the foreign country.~~ (3-20-97)

~~03. Written Approval.~~ A unitary business may not change its method of translation for determining income from foreign country operations without first obtaining the written approval of the Tax Commission. (3-20-97)

~~6406. -- 619.~~ (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

645. WATER'S EDGE -- TREATMENT OF DIVIDENDS (Rule 645).
Section 63-3027C, Idaho Code. (3-20-97)

01. Dividends Received From Payors Incorporated Outside The United States. Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as business income. These dividends are treated as business income of the water's edge combined group even if paid from earnings included in the taxpayer's combined report in prior years. (3-20-97)

02. Dividends Received From Payors Incorporated In The United States. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be business income of the water's edge combined group. (3-20-97)

03. Deemed Dividends From Possession Corporations. The income of a possession corporation, excluded in Section 63-3027B(~~ae~~), Idaho Code, shall be included in business income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income greater than zero (0). Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. (3-20-97)()

04. Dividends From Foreign Sales Corporations. As provided in Section 63-3027C(d)(1), Idaho Code, dividends received from a Foreign Sales Corporation (FSC) shall be eliminated in the proportion that FSC federal taxable income for the year during which the dividend was paid bears to the total FSC income before taxes for that year. For example, a FSC paid one million dollars (\$1,000,000) in dividends during the taxable year. For that same taxable year, the FSC had federal taxable income totaling ten million dollars (\$10,000,000) and total FSC income before taxes of twenty million dollars (\$20,000,000). The dividends eliminated would be five hundred thousand dollars (\$500,000) computed as follows: $((\$10,000,000 \text{ federal taxable income} / \$20,000,000 \text{ total FSC income before taxes}) \times \$1,000,000 \text{ FSC dividend paid} = \$500,000 \text{ dividend elimination})$. ()

04. Interest Expense Offset. The interest expense offset provided in Section 63-3022(~~a~~)M, Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

801. -- 8042. (RESERVED).

803. ROUNDING (Rule 803).

Section 63-113, Idaho Code. Amounts shown or required to be shown on any return, form, statement or other document required to be submitted to the Tax Commission under Title 63, Chapter 30, Idaho Code, shall be rounded to the nearest whole dollar. Amounts less than fifty cents (\$.50) are reduced to the whole dollar. Amounts of fifty cents (\$.50) or more are increased to the next whole dollar. ()

804. (RESERVED).

(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 1098, Mortgage Interest Statement, if the property was located in Idaho. ()

b. Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. ()

c. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. ()

d. Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. ()

~~ae~~. Form 1099-MISC, Miscellaneous Income, if it is was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (3-20-97)()

bf. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax ~~is~~ was withheld. (3-20-97)(____)

eg. Form 1099-S, Proceeds From Real Estate Transactions, if it ~~is~~ was issued for transactions related to property located in Idaho. (3-20-97)(____)

dh. Form MSA-1, Idaho Medical Savings Accounts. (7-1-98)

ej. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

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)

855. PERMANENT BUILDING FUND TAX (Rule 855). Sections 63-3082 through 63-3087, Idaho Code. (3-20-97)

01. In General. The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

02. Pass-Through Entities. The permanent building fund tax does not apply to partnerships, estates, trusts or S corporations if all the income of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. If an election is made under Section 63-3022L, Idaho Code, the entity shall pay the tax for each individual partner or shareholder making the election. (7-1-99)(____)

03. Corporations Included In A Group Return. The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return. (3-20-97)

04. Inactive Or Nameholder Corporations. An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax shall pay the permanent building fund tax. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872). Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Filing Of Returns. (7-1-99)

a. In General. An employer shall file returns quarterly to report payroll and state income tax withheld. Returns shall be filed on or before the last day of the month following the end of the quarter. (7-1-99)(____)

b. Farmer-Employers. Generally, an employer who is a farmer shall file returns annually to report payroll and state income tax withheld. However, an employer who is a farmer shall file returns quarterly on or before the last day of the month following the end of the quarter if ~~required to remit income tax withheld quarterly~~ he is a

covered employer required to file with the Department of Labor. (7-1-99)()

c. Zero Tax Returns. A return shall be filed for each reporting period. For reporting periods in which the employer had no payroll or withheld no tax, the return shall be completed and filed by the due date. (7-1-99)

02. Extension Of Time To File Returns. The Tax Commission may allow a one (1) month extension of time to file the withholding return. (3-20-97)

a. The employer shall file a written request ~~by the due date of the withholding return~~ that identifies the reason for the extension and includes the required minimum payment ~~by the due date of the withholding return~~. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (3-20-97)()

b. The employer shall file a return reporting the actual tax withheld for the period within one (1) month of the due date. The tax paid with the extension request shall be shown on the adjustment line of the return. Interest from the due date applies to any additional tax due. (3-20-97)

03. Payment Of State Income Tax Withheld. (7-1-99)

a. In general. An employer shall remit monthly any state income tax withheld. However, employers who owe ~~less than five hundred dollars (\$500) or less per calendar quarter and have established a satisfactory record of timely filing and payment of the tax~~ may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarterly. (7-1-99)()

b. Farmer-employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of February. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarterly if he ~~pays salaries exceeding twenty thousand dollars (\$20,000) for that quarter~~ is a covered employer required to file with the Department of Labor. (7-1-99)()

04. Employer's Annual Reconciliation. On or before the last day of February, employers shall file a return reconciling the tax remitted throughout the preceding calendar year and the state income tax withholding reported on the W-2s. (3-20-97)

05. Employee's Wage And Tax Statements. Federal Form W-2 or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (7-1-99)

a. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (3-20-97)

b. On or before the last day of February, each employer shall file with the Tax Commission a W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. (3-20-97)

c. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. (3-20-97)

d. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e), Idaho Code, and treated as if no W-2s were filed. (3-20-97)

e. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to

the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on work days, hours, mileage or commissions. (7-1-99)

06. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

873. EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATES (RULE 873). (3-20-97)
Section 63-3035, Idaho Code.

~~**01. Form W-4.** Federal Form W-4, Employee's Withholding Allowance Certificate, shall be used for Idaho income tax withholding purposes. (3-20-97)~~

~~a. Employees subject to Idaho income tax withholding shall report the same marital status and total number of withholding allowances for Idaho as for federal income tax withholding purposes. (3-20-97)~~

~~b. Employers who are required to report exempt withholding status or excess withholding allowances to the Internal Revenue Service pursuant to Treasury Regulation 31.3402(f)(2)-1(g) shall submit a copy of this information to the Tax Commission. (3-20-97)~~

021. Verification And Notice. (3-20-97)

a. The Tax Commission may request verification of the marital status or withholding allowances claimed by an employee on a federal Form W-4. If the employee fails to verify the claimed marital status or withholding allowances, a Notice of Deficiency as provided by Section 63-3045, Idaho Code, may be issued. If a Notice of Deficiency is issued but is not protested or is upheld on appeal, the Tax Commission shall issue an order specifying the marital status and maximum number of withholding allowances the employee is allowed for Idaho withholding purposes. (3-20-97)(____)

~~**02. Notification.** The Tax Commission shall notify the employer of the order. The order is effective immediately on receipt by the employer and shall remain in effect the rest of the calendar year, unless the employee files a federal Form W-4 claiming fewer allowances than ordered. The employer is liable to the Tax Commission for any deficiencies that result from withholding in excess of the maximum number of withholding allowances specified in the most recent Tax Commission order. (3-20-97)(____)~~

~~**e03. Petition For Changes.** An employee subject to a Tax Commission order may petition the Tax Commission for a change to the order. If the employee establishes that a material change of circumstances has occurred, the Tax Commission shall issue a new order and notify the employer. The determination of the Tax Commission on any change to the order is final. (3-20-97)(____)~~

IDAPA 35 - STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-9902
NOTICE OF PROPOSED RULE

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 rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

Rule 027 - Computer Equipment, Software, and Data Services - Sales Tax Rule 027 is being amended to clarify that sales of computer software maintenance agreements are taxable to the extent they represent sales of computer software. The rule is also being amended to delete obsolete language and update terminology.

Rule 030 - Recreational Facilities And Admissions Defined - Sales Tax Rule 030 is being amended to include only information on admissions. Recreational facilities information is being moved to a new Sales Tax Rule 129.

Rule 044 - Trade-Ins, Trade-Downs, And Barter - Sales Tax Rule 044 is being amended to add clarity for rental/lease trade-ins as applied for sales and use tax.

Rule 071 - Resale Certificates-Purchases For Resale - Sales Tax Rule 071 is being deleted and will be replaced by Sales Tax Rule 128.

Rule 075 - Exemption Certificates - Exemption Claims Other Than Resale - Sales Tax Rule 075 is being deleted and will be replaced by Sales Tax Rule 128.

Rule 076 - Use Of Exemption Certificate For Cash Purchase By Government Agencies (Form ST-104G) - Sales Tax Rule 076 is being deleted and will be replaced by Sales Tax Rule 128.

Rule 085 - Sales To And Purchases By Nonprofit Organizations - Sales Tax Rule 085 is being amended to clarify that certain sales of admissions by qualifying non-profit organizations are no longer taxable after the enactment of House Bill 124 in 1999. The rule must also be amended to state that sales tax exemptions were enacted in 1999 for purchases by Idaho Community Action Agencies; the Idaho Primary Care Association and community health centers who are members of the Idaho Primary Care Association; and the Idaho Children's Home Society. Also, the rule is being amended to emphasize that the exemption for purchases by the Idaho Foodbank Warehouse, Inc. is separate from the exemption for purchases of food and related items by other charities giving away food to the needy.

Rule 107 - Motor Vehicles - Gifts, Military Personnel, Nonresident, New Resident, Tax Paid to Another State, Sales to Family Members, Sales to Indians, and Other Exemptions - Sales Tax Rule 107 is being amended to clarify that motor vehicles and household goods purchased in another state by non-residents over 90 days prior to becoming a resident of Idaho, do not owe use tax on those purchases.

Rule 128 - Certificates For Resale And Other Exemption Claims - Sales Tax Rule 128 is being promulgated to incorporate Sales Tax Rules 071, 075, and 076 into one rule. The new rule will combine the certificates for resale, exemption claims, government exemption claims and will delete redundant and obsolete language.

Rule 129 - Use Of A Recreational Facility, Instructional Fees, and Pari-Mutuel Betting - Sales Tax Rule 129 is being promulgated to define recreational facility and to emphasize that fees paid for the use of a recreational facility are not the same as fees paid for admissions.

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 rulemaking 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 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 September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-9902

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (Rule 027).

01. Hardware; And Computers; ~~And Peripherals~~ Defined. (7-1-93)()

a. Hardware is the physical computer assembly and all peripherals, ~~including but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers~~ whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (7-1-93)()

b. ~~Computer.~~ Computers means are programmable machines or devices having information processing capabilities and includes word, data, and math processing equipment, testing equipment, ~~and~~ programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (7-1-93)()

02. Computer Software, ~~Computer Program, And~~ Storage Media And Transfer Media Defined. (7-1-93)()

a. Computer Software. Computer software, interchangeable with the terms program or software program, is a means sequences of instructions or collections of data which, when incorporated into a machine-usable readable data processing storage or communication medium or device, ~~such as printed material, cards, disks, tapes, modems, or memory;~~ is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as instructions and data, including any documentation or related information held on storage media or transferred by whatever means from any location. (7-1-93)()

b. ~~Computer Program. Computer program means instructions encoded in a programming language and the data which are manipulated by the instructions, regardless of whether such information is held in a machine-readable format on storage media or a hardcopy human readable format.~~ (7-1-93)

eb. ~~Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, and semiconductor memory chips or other media used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols.~~ (7-1-93)()

03. Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See ~~ISTC~~ Rule 024 of these rules. (7-1-93)()

04. Canned Software. The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis ~~or is electronically transferred by whatever means~~, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program. (7-1-93)()

a. Canned software may be transferred to a customer electronically or ~~in the form of punched cards, magnetic tape, or other storage media or by listing the program instructions on coding sheets~~. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer coding sheets on which or into which such canned software is recorded, coded, or punched. (7-1-93)()

b. Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software ~~resides is recorded, coded, or punched~~ passes to the customer or the software ~~is recorded, coded, or punched~~ resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software for the purpose of direct use or to be recorded or punched by the customer or by the lessor on the customer's premises, by any means is a sale or lease of tangible personal property and is taxable. (7-1-93)()

c. Tax applies to the entire amount charged to the customer for canned software. ~~Where~~ If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (7-1-93)()

d. ~~The sale, license, or lease of canned software is a taxable transaction, even though the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer.~~ (7-1-93)

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive ~~storage media on which prewritten periodic program improvements have been recorded enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications~~. The maintenance contract may also provide that the purchaser will be entitled to ~~receive error corrections and telephone or on-site consultation support services~~. (7-1-93)()

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. (7-1-93)

b. If the maintenance contract is optional to the purchaser of canned software, then ~~only~~ the portion of the contract fee representing ~~storage media improvements~~ upgrades or new software is subject to sales tax ~~if~~ if the fees for consultation support services and error corrections ~~upgrades are~~ is separately stated. If the fees for ~~consultation services and error corrections~~ is are not separately stated ~~from the fee for storage media improvements~~,

the entire charge for the maintenance contract is subject to sales tax. (7-1-93)()

06. Reports Compiled By A Computer. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled ~~after January 1, 1992~~, from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (7-1-93)()

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are stored on a computer disk. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

07. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by ~~ISTC Rule 011~~ of these rules. (7-1-93)()

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (7-1-93)()

08. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form ~~in~~ or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom

programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (7-1-93)(____)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

09. Data Processing Service Agreement. ~~Data processing service agreements are~~ includes contractual agreements to access computer equipment owned and operated by another, either by batch or on-line, for the purpose of processing data or examining or acquiring data stored in or accessible to such ~~or to receive services from a computer equipment owned and operated by another~~. A charge for computer time under the terms of a data processing service agreement is a service and not subject to sales tax. Computer hardware sold, leased, or rented in connection with a data processing service agreement must be separately stated and taxed as provided in Subsection 027.043. (7-1-93)(____)

10. Purchases For Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See ~~ISTC Rule 07128~~ of these rules. (7-1-93)(____)

030. RECREATIONAL FACILITIES AND ADMISSIONS DEFINED (Rule 030).

01. Admissions. ~~The amount paid for the right to use a reserved seat or any seat in any auditorium, theater, circus, stadium, school building, meeting house or gymnasium to view any type of entertainment is taxable. Charges for admission to a place of event in Idaho are taxable. The right charge to gain access to a place or event use a table at a nightclub, hotel or roof garden is subject to taxable whether such charge is designated as a cover charge, minimum charge or any such similar charge and the amount paid for such right is subject to the tax. This is true whether the charge made for the use of the seat, table or similar accommodation is combined with an admission charge proper to form a single charge or is separate and distinct from an admission charge or is itself the sale charge.~~ (7-1-93)(____)

a. When an original admission charge carries the right to remain in a place or use a seat or table or other similar accommodation for a limited time only and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the code. (7-1-93)

b. When a person or organization acquires the sole right to use any place or the right to dispose of or control ~~all~~ the admissions to any place ~~for one or more occasions with the intent to charge people to attend the event,~~ the amount paid for such right is not subject to the sales tax ~~on admissions~~. Such a transaction constitutes a rental for resale ~~of the entire place whether or not it is so designated~~. However, if when the person or organization in turn sells admission, the tax will apply to the amounts paid for such admission. If the person or organization does not charge people to attend the event, their rental of the recreational facility may be subject to sales tax. See Rule 129 of these rules. (7-1-93)(____)

02. Use Of A Recreational Facility. ~~Charges for bowling, green fees, membership dues, or other fees required to be paid to golf clubs, racquet clubs, swim clubs, health clubs, or other clubs and organizations of a similar nature, the primary purpose of said charges or fees being to procure the use of a particular facility, facilities, or building for the purpose of recreation or physical conditioning are subject to sales tax.~~ (7-1-93)

03. Dues. ~~Dues paid to such fraternal organizations as the Elks, Eagles, Masonic Order, or similar organizations will not normally be paid primarily for the use of such facilities as might be designed for recreation; in such cases, recreational use of facilities will be incidental to other purposes for tax. However, any separate, identifiable fees charged by such fraternal organizations, in excess of ordinary membership dues and fees, specifically for the use of recreational or physical conditioning facilities will be subject to sales tax including, but not limited to, bowling fees, green fees, swimming fees, court fees, or equipment usage fees.~~ (7-1-93)

04. Admissions Combined With The Use Of Tangible Personal Property. ~~Charges imposed on~~

~~persons admitted to swimming pools, skating rinks, golf courses and bowling alleys, etc., often combine the privilege of entering the place with the right to use tangible personal property. Where a uniform price is imposed upon all persons admitted without regard to the intention of the individual to use tangible personal property or the other facilities included, the total charge will be presumed to be an admission charge and subject to tax. (7-1-93)~~

052. Rental Of Tangible Personal Property. When a charge is made only for the rental of tangible personal property such as skates, ~~bathing suits~~ golf clubs, etc., the rental will be taxable, ~~if the rental charged exceeds eleven cents (\$0.11); or if~~ a lesser charge is made to a person not desiring to use the property or services offered; ~~this lesser amount shall be deemed to represent the amount charged for admission. (7-1-93)(____)~~

06. Instructional Fees. Separately stated instruction fees, such as for jazzercise, aerobics, dance, and swimming are not subject to tax. (7-1-93)

07. Pari-Mutuel Betting. Pari-mutuel betting is not subject to the sales tax. Admission charges to attend horse racing, dog racing or any other event are taxable. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

044. TRADE-INS, TRADE-DOWNS AND BARTER (Rule 044).

01. Trade-Ins. A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (7-1-93)

02. Trade-In Allowance. When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. (7-1-93)

a. ~~Before July 1, 1990, the deduction applied ONLY if the value allowed for trade-in goods was accepted as partial payment for the merchandise purchased from the retailer. Values allowed on trade-in goods which represented FULL payment, barter, or exceeded full payment, trade-down, could not be used to reduce the taxable sales price of the merchandise purchased from the retailer. Before a trade-in allowance can be given, the person trading in the item must be the owner. (7-1-93)(____)~~

b. ~~Effective July 1, 1990, the deduction applies regardless of whether the value allowed for the trade-in goods represents partial or full payment, or exceeds full payment for the merchandise purchased from the retailer. (7-1-93)~~

eb. Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500). (7-1-93)

dc. ~~Example: On July 1, 1990, a dealer agrees to sell a customer a car for four thousand dollars (\$4,000) and allows him a five thousand dollars (\$5,000) trade-in for his car. The dealer gives the customer one thousand dollars (\$1,000) cash. No sales tax is due on this trade-down. When the dealer resells the more expensive car, he must collect sales tax. If this transaction had occurred before July 1, 1990, the dealer would have had to collect sales tax on the four thousand dollars (\$4,000) sales price of the car. (7-1-93)(____)~~

e. Example: On July 1, 1990, a car dealer agrees to exchange cars with a customer in a straight across trade with no other consideration. The car received by the customer is not subject to sales tax, since the retail sales price is completely reduced by the trade-in deduction. The car received by the dealer is put into his resale inventory and, when it is later resold, sales tax will be collected. If this transaction had occurred before July 1, 1990, the dealer would have had to collect sales tax on the retail sales price of the car sold to the customer. (7-1-93)

03. Disallowed Trade-In Deductions. Trade-in deductions are not allowed on transactions between individuals, because the trade-in property does not become merchandise held for resale. (7-1-93)()

a. Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties must pay tax on the fair market value of the vehicle received in the barter. (7-1-93)

b. Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000). (7-1-93)

04. Insurance Settlements. An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident ~~which causes damage beyond reasonable cost to repair.~~ His insurance company ~~declares~~ determines the damage exceeds the value of the his car a total loss and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (7-1-93)()

05. Core Charges. Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are subject to sales tax. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed. (7-1-93)

06. Trade-In For Rental/Lease Property. When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the value of the trade-in property has been depleted and the lessor actually begins charging for the lease or rental. The methods of applying the trade-in value to the lease are: (7-1-93)

a. The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments. (7-1-93)

b. The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up. (7-1-93)

c. A combination of the two (2) methods, above. (7-1-93)

d. ~~For example, a~~ For example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000). Use one (1) of the following alternatives to compute sales tax due. ()

i. Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment. ()

ii. Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments. ()

iii. Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly. (7-1-93)()

07. Rental/Lease Property Traded In. When a lessee trades in tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given. ()

a. Example: A lessee trades in a leased car to an automobile dealer and assigns his right to purchase the vehicle to the dealer. Since the dealership purchased the car from the lessor, and not the lessee, there is no trade-in allowance. ()

b. Example: If the lessee, or the dealer as an agent for the lessee, purchases the leased vehicle from the lessor by paying the buy-out and related sales tax, the vehicle can qualify as a trade-in allowance thereby reducing the price on which sales tax is charged. ()

(BREAK IN CONTINUITY OF SECTIONS)

071. ~~RESALE CERTIFICATES-PURCHASES FOR RESALE (Rule 071) (RESERVED).~~

~~**01. In General.** This rule applies only to proper documentation for purchases of tangible personal property for resale. Proper documentation for retail sales exempted for other reasons is discussed in ISTC Rule 075. All forms approved by this rule may be reproduced. (7-1-93)~~

~~**02. Effective Date.** Subsections 071.03 through 071.08 apply to sales made on and after December 31, 1991. (7-1-93)~~

~~**03. Burden Of Proof.** All sales of tangible personal property made within Idaho are presumed to be retail sales and subject to sales tax unless an exemption is established as provided in ISTC Rule 075. The burden of proving that a sale is not a retail sale is upon the seller. The seller may overcome the presumption by obtaining a written statement from the purchaser on a resale certificate form approved by the Commission that the sale is a purchase for resale. When a resale certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the tangible personal property or services sold are taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate. (7-1-93)~~

~~**04. Qualified Users.** Resale certificates may be completed when buying goods for resale by the following purchasers: (7-1-93)~~

~~a. A retailer or wholesaler doing business in Idaho who holds an Idaho seller's permit number. (7-1-93)~~

~~b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (7-1-93)~~

~~c. An out-of-state retailer who makes not more than two sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (7-1-93)~~

~~**05. Approved Forms.** The resale certificate forms approved by the Commission are: (7-1-93)~~

~~a. Sales Tax Resale or Exemption Certificate, Form ST-101. (7-1-93)~~

~~b. Certificate of Purchase for Resale, Form ST-103. Beginning April 1, 1992, this form is replaced by Form ST-101, Sales Tax Resale or Exemption Certificate. The Commission will no longer make Form ST-103 available to the public. However, any properly completed Form ST-103 issued by a purchaser to a retailer before or after April 1, 1992, will be considered a valid form for making a resale exemption claim. (7-1-93)~~

~~c. Sales Tax Exemption Claim Form Grocer, Form ST-111. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept this form from a purchaser if the retailer has a properly executed resale certificate (Form ST-101 or ST-103) on file from the purchaser. (7-1-93)~~

~~d. The Uniform Sales and Use Tax Certificate Multi-jurisdiction adopted and approved by the Multi-state Tax Commission. Only multi-state taxpayers may use this form. (7-1-93)~~

06. Seller's Responsibility. With respect to purchases for resale, a seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed resale certificate if the customer intends to resell the items in the regular course of business. The general character of the goods purchased for resale must be those displayed on the certificate given to the retailer. (7-1-93)

a. Example: A restaurant operator completes a resale certificate for his supplier claiming exemption from sales tax for reason of resale. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (7-1-93)

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. (7-1-93)

07. Properly Executed Forms. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 071.04 of this rule. The following information must be provided on the approved certificates. (7-1-93)

a. The Sales Tax Resale or Exemption Certificate, Form ST-101; the Certificate of Purchase for Resale, Form ST-103; and the Uniform Sales and Use Tax Certificate Multi-jurisdiction are properly executed if they are completed with: the purchaser's name and address; the nature of the purchaser's business and the general character of the goods sold or rented in the regular course of business; the Idaho seller's permit number issued to the purchaser, unless the purchaser is a wholesaler or out of state retailer described in Subsection 071.04 of this rule; and the signature of the purchaser or his agent. (7-1-93)

b. The Sales Tax Exemption Claim Form Grocer, Form ST-111, is properly executed if it is completed with the purchaser's name, seller's permit number, if applicable, the signature of the individual claiming the exemption, and the total purchase price and general nature of the nontaxable products sold. (7-1-93)

e. An Idaho seller's permit number has up to nine (9) digits followed by an "S." Example: 123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid. (7-1-93)

08. Timely Acceptance Of Certificates. A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the resale claim. However, if no approved resale certificate is obtained from the purchaser in the manner provided or permitted by this rule, then the sale is presumed to be taxable. (7-1-93)

a. Resale certificates obtained by a seller at a time subsequent to but not within a reasonable time after the time of sale will be considered by the Commission in conjunction with all other evidence available to determine whether or not the seller has established, by clear and convincing evidence, that a sales tax transaction is exempt from tax. For the purposes of this rule, evidence is clear and convincing when it shows that the truth of the facts asserted is **HIGHLY PROBABLE**. Evidence which indicates that it is **MORE LIKELY THAN NOT** the fact is true is not sufficient to establish clear and convincing evidence. (7-1-93)

b. Example: Retailer X sells goods to Customer Y without charging the sales tax but does not obtain a resale certificate from Customer Y. Instead, Customer Y writes his seller's permit number on the invoice when he signs for the goods. Retailer X is later audited by the Tax Commission and attempts, but is unable, to obtain a resale certificate from Customer Y. Retailer X argues that the seller's permit number written on the invoice is clear and convincing evidence that Customer Y purchased the goods for resale. However, by itself, the number does not establish that Customer Y is in a business which sells the type of goods purchased from Retailer X. Even if it is more likely than not that Customer Y intended to resell the goods, Retailer X has not established, solely by the existence of the seller's permit number, that it is highly probable that the goods were for resale. Retailer X is liable for the tax on the sale to Customer Y. (7-1-93)

~~e. When a notice of deficiency determination has been issued to a seller by the Commission, and the seller petitions for redetermination as provided by ISTC 121, he may submit resale certificates obtained from his customers as evidence of exemption claims, but only if the resale certificates are presented to the Tax Commission within ninety (90) days of the date of the notice of deficiency determination. (7-1-93)~~

~~**09. Effective Date.** Subsections 071.10 through 071.15 of this rule apply to sales made before January 1, 1992. (7-1-93)~~

~~**10. Burden Of Proof.** All sales of tangible personal property made within Idaho are presumed to be retail sales and subject to sales tax unless an exemption is established as provided in ISTC 075. The burden of proving that a sale is not a retail sale is upon the seller. The seller may overcome the presumption by obtaining at the time of sale a written statement from the purchaser on the form approved by the Commission that the sale is a purchase for resale. The form generally approved by the Commission is the Certificate of Purchase for Resale, Form ST 103. (7-1-93)~~

~~**11. Seller's Responsibility.** A properly executed Certificate of Purchase for Resale obtained by the seller at or before the time of sale from a person engaged in the business of selling or renting tangible personal property and who holds a seller's permit issued by the Commission establishes a presumption that the sales transaction is not a retail sale. However, presumption of exclusion from the tax arises only if the certificate is taken by the retailer in good faith. (7-1-93)~~

~~a. A Certificate of Purchase for Resale is not taken in good faith if the retailer actually knew or reasonably should have known that the representation made by the purchaser on the certificate is erroneous as a matter of fact or that the exclusion claimed by the purchaser is not available as a matter of law. (7-1-93)~~

~~b. Example: A retailer is in the business of selling automobile parts. A purchaser buys a twelve (12) volt automobile battery and provides the seller with a Certificate of Purchase of Resale, Form ST-103, claiming that the battery is to be resold. However, retailer's employee installs the battery in a pickup truck of the purchaser. The retailer is required to collect and remit sales tax on the transaction, even though the purchaser has provided a certificate. The retailer through its employee had actual knowledge that the property purchased became part of the purchaser's motor vehicle. The certificate does not protect the retailer from the obligation to collect and remit taxes. (7-1-93)~~

~~**12. Seller's Permit Required.** Other than as provided by Subsection 071.13 of this rule, a Certificate of Purchase for Resale must show the purchaser's sales tax permit number. Contractors or other people who are required to report use tax but who are not retailers cannot purchase tangible personal property tax exempt by using their use tax account number on a Certificate of Purchase for Resale. These purchasers are not retailers and do not have a seller's permit number. A use tax number may be distinguished from a seller's permit number by the suffix letter following the arabic numerals. A seller's permit number is identified by the suffix "S." A use tax account number is identified by the suffix "U" and a withholding account number is identified by the suffix "W." A certificate showing a number with a suffix of "U" or "W" is not a valid certificate. (7-1-93)~~

~~**13. Wholesalers And Out-Of-State Retailers.** Two (2) kinds of businesses, wholesalers and out-of-state retailers, are not required to have an Idaho seller's permit but may validly make purchases of tangible personal property for resale tax exempt. (7-1-93)~~

~~a. Wholesalers, whose business is strictly limited to making sales of tangible personal property to others who purchase the property for resale, are not required to obtain a seller's permit. Such wholesalers must not hold themselves out as being in the business of making retail sales and must not make more than two (2) retail sales in Idaho within any twelve (12) month period. (7-1-93)~~

~~b. Out of state retailers who make no more than two (2) retail sales in Idaho in any twelve (12) month period and do not hold themselves out as being in the business of making retail sales in Idaho are not required to obtain a seller's permit. (7-1-93)~~

~~e. A wholesaler or out-of-state retailer may purchase tangible personal property for resale tax exempt by providing to its Idaho vendor a Certificate of Purchase for Resale, Form ST-103, without a seller's permit number~~

if the certificate is otherwise properly executed and in the space provided for the seller's permit number the purchaser issuing the certificate inserts the words ~~None out of state or None wholesaler only~~, as appropriate. (7-1-93)

14. Failure To Obtain Certificate. ~~If no Certificate of Purchase for Resale is obtained from the purchaser at the time of sale in the manner provided or permitted by this rule, then the sale is presumed to be taxable. The presumption may be overcome only by clear and convincing evidence. Certificates obtained by a seller from a purchaser at a time subsequent to the sale will be considered by the Commission in conjunction with all other evidence available to determine whether or not the seller has established, by clear and convincing evidence, that a sales transaction is exempt from tax.~~ (7-1-93)

15. Resale Stamp. Retailers or purchasers may stamp or imprint on their purchase orders, sales invoices, or other document evidencing the sale the following statement:

Check if applicable:

~~A valid resale certificate for this purchaser is on file with this seller and the merchandise listed on this invoice is being purchased for resale.~~

~~This resale certificate is valid if: properly executed ST-103 is on file with the seller; the statement is checked and signed by the purchaser in addition to any other signature on the document; and the purchaser's name and address appear on the document.~~ (7-1-93)

16. Other Approved Forms. ~~During the period January 1, 1992, through March 31, 1992, the legislature authorized, and then repealed, the issuance of tax exemption cards. Purchasers issued these cards, making purchases for resale, were required to complete Form ST-105, Idaho Sales Tax Exemption Claim Form; or Form ST-107, Blanket Sales Tax Exemption Claim. These forms are valid documentation to support exemptions claimed during this three (3) month period.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

~~075. EXEMPTION CERTIFICATES-EXEMPTION CLAIMS OTHER THAN RESALE (Rule 075):~~

01. In General. ~~This rule applies only to proper documentation for claiming exemption from sales tax when purchasing tangible personal property for reasons other than resale. Proper documentation for claiming exemption when purchasing for resale is discussed in Idaho Sales Tax Administrative Rule 071. All forms approved by this rule may be reproduced.~~ (6-23-94)

02. Effective Date. ~~Subsections 075.03 through 075.07 of this rule apply to sales made after December 31, 1991.~~ (7-1-93)

03. Burden Of Proof. ~~All sales of tangible personal property delivered within Idaho are presumed to be retail sales subject to sales tax unless an exemption is established. The burden of proving that a sale is exempt from sales tax is upon the seller. The seller may overcome the presumption by obtaining a written statement from the purchaser on an exemption certificate form approved by the Commission that the sale is exempt. When an exemption certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the tangible personal property or services sold are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.~~ (7-1-93)

04. Approved Forms. The forms approved by the Commission are: (7-1-93)

a. Sales Tax Resale or Exemption Certificate, Form ST-101. (7-1-93)

b. ~~Sales Tax Exemption Certificate, Form ST-104. Beginning April 1, 1992, this form is replaced by Form ST-101, Sales Tax Resale or Exemption Certificate. The Commission will no longer make Form ST-104~~

available to the public. However, any properly completed Form ST-104 issued by a purchaser to a retailer before or after April 1, 1992, will be considered a valid form for making an exemption claim. (7-1-93)

e. ~~Sales Tax Exemption Claim Form Grocer, Form ST-111. Retailers of food products who have been granted records reduction authority by the Commission may accept this form from a purchaser if the retailer has a properly executed exemption certificate, Form ST-101 or ST-104, on file from the purchaser. (7-1-93)~~

d. ~~The Uniform Sales and Use Tax Certificate Multi-jurisdiction. Adopted and approved by the Multi-state Tax Commission. Only multi-state taxpayers may use this form. (7-1-93)~~

e. ~~Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G. Only government agencies may complete this form. This form is required when a government agency is making purchases with cash. (7-1-93)~~

f. ~~Sales Tax Exemption Certificate Vehicle, Form ST-104-MV. This form must be completed by a purchaser claiming exemption from tax under Section 63-3622R, Idaho Code, when purchasing a motor vehicle or trailer. (7-1-93)~~

g. ~~Motor Vehicle Transfer Affidavit, Form ST-133. This form must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle to another. (7-1-93)~~

h. ~~In the case of exemptions claimed under the production exemption, retailers may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (7-1-93)~~

~~I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating or farming or as a repair part for equipment used primarily as described above.~~

~~This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.~~

~~Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.~~

~~NATURE OF BUSINESS~~

~~BUYER'S SIGNATURE~~

The signature on this certificate must be in addition to any other signature required on the invoice. The proper use of this certificate will eliminate the requirement to complete a Form ST-101 or ST-104. If no Form ST-101 or ST-104 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. (7-1-93)

05. Seller's Responsibility. ~~With respect to purchases claimed exempt from sales tax for reasons other than resale, a seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed exemption certificate has been obtained if the nature of the exemption claimed is available to the purchaser as a matter of law and the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (7-1-93)~~

a. ~~A retailer must collect tax on any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim exemption on those items that are specifically excluded from the exemption by the law, such as hand tools with a unit price not in excess of one hundred dollars (\$100), maintenance and janitorial equipment and~~

~~supplies, office equipment and supplies, selling and distribution equipment and supplies, property used in research and development, property used in transportation activities, equipment or other property used to make repairs, tangible personal property which becomes a component of any real property or any improvement or fixture thereto, licensed motor vehicles, aircraft, and recreational vehicles. (7-1-93)~~

~~b. Example: A farmer completes an exemption certificate claiming an exemption from sales tax for reason of the production exemption when purchasing a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the hammer, but is not liable for the collection of the sales tax on the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, hand tools with a unit price of one hundred dollars (\$100) or less are excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable, oil for a tractor, or taxable, oil for a licensed pickup truck, use. (7-1-93)~~

~~e. Additionally, when a retailer sells merchandise under the production exemption in Section 63-3622D, Idaho Code, which may be used for either a taxable or a nontaxable purpose, such as a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item, as long as the use described qualifies for the production exemption as a matter of law. (7-1-93)~~

~~d. A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (7-1-93)~~

~~e. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute exemption certificates to purchase construction materials for specific jobs in nontaxing states claiming an exemption from tax under Section 63-3622B, Idaho Code and Idaho Sales Tax Administrative Rule 012. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (6-23-94)~~

06. Properly Executed Form. (7-1-93)

~~a. Form ST-101, Sales Tax Resale and Exemption Certificate; Form ST-104, Sales Tax Exemption Certificate; and the Uniform Sales and Use Tax Certificate—Multi-jurisdiction are properly executed if they are completed with: the purchaser's name and address; the reason for and the nature of the claimed exemption; and the signature of the purchaser or his agent. (7-1-93)~~

~~b. Form ST-111, Sales Tax Exemption Claim Form Grocer, is properly executed if it is completed with the purchaser's name, the signature of the individual claiming the exemption, and the total purchase price, date of purchase, and general nature of the products sold. (7-1-93)~~

~~e. All other forms are properly executed if they are fully completed with the information required on the form. (7-1-93)~~

07. Timely Acceptance Of Certificates. A seller may accept an exemption certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim. However, if no approved exemption certificate is obtained from the purchaser in the manner provided or permitted by this rule, then the sale is presumed to be taxable. (7-1-93)

~~a. Exemption certificates obtained by a seller at a time subsequent to but not within a reasonable time after the time of sale will be considered by the Commission in conjunction with all other evidence available to determine whether or not the seller has established, by clear and convincing evidence, that a sales transaction is exempt from tax. For the purposes of this rule, evidence is clear and convincing when it shows that the truth of the facts asserted is HIGHLY PROBABLE. Evidence which indicates that it is MORE LIKELY THAN NOT that the fact is true is not sufficient to establish clear and convincing evidence. (7-1-93)~~

b. ~~Example: Retailer X sells a truck load of hay to Customer Y and does not charge sales tax on the transaction. Retailer X fails to obtain an exemption certificate from Customer Y. Retailer X is later audited by the Tax Commission and is unable to obtain an exemption certificate from Customer Y as he is no longer at the address shown on the invoice. Retailer X argues that hay is a farm supply and this alone should establish clear and convincing evidence that the sale is exempt. However, Customer Y may not be in a business which qualifies for the farming production exemption, such as racing or showing horses. Or, Customer Y may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. Although it is more likely than not that Customer Y is in the business of farming, Retailer X has not provided clear and convincing evidence that the hay was purchased for use in a farming operation. Retailer X is liable for the tax on the sale to Customer Y.~~ (7-1-93)

e. ~~When a notice of deficiency determination has been issued to a seller by the Commission, and the seller petitions for redetermination as provided by Idaho Sales Tax Administrative Rule 121, he may submit exemption certificates obtained from his customers as evidence of exemption claims, but only if the exemption certificates are presented to the Tax Commission within ninety (90) days of the date of the notice of deficiency determination.~~ (6-23-94)

~~**08. Effective Date.** Subsections 075.09 through 075.14 of this rule apply to sales made before December 31, 1991.~~ (7-1-93)

~~**09. Burden Of Proof.** All retail sales of tangible personal property made within the state of Idaho are presumed to be taxable. The presumption may be overcome in one of two (2) different ways:~~ (7-1-93)

a. ~~The seller may obtain from the purchaser at or before the time of sale a written statement from the purchaser on the form approved by the Commission that the sale is an exempt sales transaction.~~ (7-1-93)

b. ~~In the absence of such an exemption certificate, the retailer has the burden of establishing, by clear and convincing competent evidence, that a particular sales transaction is exempt from sales taxes.~~ (7-1-93)

~~**10. Seller's Responsibility.** A properly executed approved sales tax exemption certificate obtained by the seller at or before the time of sale establishes a presumption that the sales transaction is exempt. However, the presumption of exemption arises only if the exemption certificate is taken by the retailer in good faith. An exemption certificate is not taken in good faith if the retailer actually knew or reasonably should have known that the representation made by the purchaser on the certificate is erroneous as a matter of fact or that the exemption claimed by the purchaser is not available as a matter of law.~~ (7-1-93)

a. ~~Example 1: A retailer is in the business of selling automobile parts. A purchaser buys a twelve (12) volt automobile battery and provides the seller with an exemption certificate, Form ST-104, claiming that the battery is to be primarily and directly used in a farming operation. However, retailer's employee installs the battery in a pickup truck which is a licensed motor vehicle. The retailer is required to collect and remit sales tax on the transaction even though the purchaser has provided an exemption certificate. Because no production exemption is available for licensed motor vehicles, and the retailer through its employee had actual knowledge that the property purchased became part of a licensed motor vehicle, the exemption certificate does not protect the retailer from the obligation to collect and remit taxes.~~ (7-1-93)

b. ~~Example 2: A hardware store sells, among other things, hand tools. A purchaser buys several hand tools, each costing less than one hundred dollars (\$100), and provides the retailer with an exemption certificate, Form ST-104, claiming the tools will be primarily and directly used in a manufacturing operation. Because there is no production exemption for hand tools with a unit price of less than one hundred dollars (\$100), the retailer is required to collect sales tax on the sale. If no tax is collected and remitted, the retailer may not rely on the exemption certificate to defend against any assessment made by the Commission of tax on that sale.~~ (7-1-93)

e. ~~Example 3: A farm equipment dealer sells a farm tractor to a purchaser who provides the dealer with an exemption certificate, Form ST-104, claiming the tractor will be primarily and directly used in farming. Purchaser claims, in the space provided on the form for nature of his business, that he is a farmer. In fact, the purchaser is not a farmer but operates a commercial golf course. The tractor is used solely on the golf course. The retailer may accept the certificate in good faith unless 1) he actually knows the purchaser is not a farmer or actually knows the intended use of the tractor, or 2) circumstances relating to the sale would cause a reasonable person to~~

question the validity of the claim, for example, the purchaser's name is Acme Golf Course, Inc. When a certificate is accepted in good faith, the retailer need not charge tax nor can he be subsequently assessed tax on the sale by the Commission. (7-1-93)

11. ~~Approved Forms.~~ Only two (2) forms are generally authorized by the Idaho Tax Commission for use as a sales tax exemption certificate, except as provided in Subsection 075.13 of this rule. The first is Idaho Tax Commission Form ST-104. Supplies of this form may be obtained from any Idaho Tax Commission office. Retailers engaged in business in more than one state may, in lieu of Form ST-104, use the second authorized form, the uniform sales tax exemption form adopted and approved by the Multi-state Tax Commission. Only multi-state taxpayers may use this form and those choosing to use it are responsible for obtaining their own supply of blank forms. Other forms may be used if they have first been approved by the Commission. Form ST-104 may be reproduced. (7-1-93)

12. ~~Property Executed Forms.~~ When the Form ST-104 is used to claim a sales or use tax exemption, all relevant information must be included on the form, including the seller's name and address, the purchaser's name and address, which must be printed, a signature by the purchaser or the purchaser's authorized agent, and the specific ground upon which the exemption is claimed. The latter requirement is met by completing one (1) or more of items one (1) through four (4) on the exemption form. If an exemption is claimed under Item No. 1 Production Exemption, the spaces for indicating the nature of the property sold and the nature of the purchaser's business must be completed. (7-1-93)

13. ~~Production Exemption Stamp.~~ In the case of exemptions claimed under the production exemption, retailers may stamp or imprint on the face of their sales invoices a certificate containing the following language:

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating or farming or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

NATURE OF BUSINESS

BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. The proper use of this certificate will eliminate the requirement to complete a Form ST-104. If no Form ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection. (7-1-93)

14. ~~Failure To Obtain Certificate.~~ If no exemption certificate is obtained from the purchaser at the time of sale in the manner required or permitted by this rule, then the sale is presumed to be taxable. The presumption may be overcome only by clear and convincing evidence. Exemption certificates obtained by a retailer from a purchaser at a time subsequent to the sale, will be considered by the Commission in conjunction with all other evidence available to determine whether or not a retailer has established, by clear and convincing evidence, that a sales transaction is exempt from tax. (7-1-93)

15. ~~Other Approved Forms.~~ During the period January 1, 1992, through March 31, 1992, the legislature authorized, and then repealed, the issuance of tax exemption cards. Purchasers issued these cards claiming exemption from tax for reasons other than resale were required to complete Form ST-105, Idaho Sales Tax Exemption Claim Form; Form ST-106, Sales Tax Exemption Declaration; or Form ST-107, Blanket Sales Tax Exemption Claim. These forms are valid documentation to support exemptions claimed during this three (3) month period. (7-1-93)

~~076. USE OF EXEMPTION CERTIFICATE FOR CASH PURCHASES BY GOVERNMENT AGENCIES, FORM ST-104G (Rule 076).~~

~~01. Cash Sales To Government Agencies. Tax exempt cash sales to government agencies must be supported by a Form ST-104G, furnished to the vendor at the time of sale. Blank forms will be furnished to government agencies upon their request to the Tax Commission. A separate exemption certificate is required for each transaction. (7-1-93)~~

~~02. Exempt Cash Sales. Tax exempt cash sales to government agencies will be valid, only if: (7-1-93)~~

~~a. An original ST-104G is on file with the vendor for each separate transaction and is obtained at the time of sale. Photocopies are not valid. (7-1-93)~~

~~b. The form is legible, fully completed, and signed by the agency purchasing agent and the employee/purchaser. (7-1-93)~~

~~03. Entities Entitled To Use Form ST-104G. Retailers may accept this form from the state of Idaho, its agencies, departments and political subdivisions, and from the federal government. States other than Idaho, their agencies, departments, and political subdivisions CANNOT use this form as these entities are subject to sales tax on all purchases within Idaho. (7-1-93)~~

~~075. -- 076. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

085. SALES TO AND PURCHASES BY NONPROFIT ORGANIZATIONS (Rule 085).

01. In General. The Sales Tax Act does not provide any ~~GENERAL~~ general exemption for, charitable or nonprofit organizations, corporations, associations or other entities. Specific statutory provisions provide exemptions for some charitable organizations. Unless an exemption is clearly granted to a specific organization or to specific sales or purchases by a specific organization or a class of organization, no exemption applies. Special rules apply to religious organizations. See ~~Idaho Sales Tax Administrative Rule 086~~ of these rules. (6-23-94)(____)

02. Educational Institutions. Sales to and purchases made by non-profit educational institutions, as defined in ~~Idaho Code~~ Section 63-36220(a), Idaho Code, are exempt from Idaho sales or use taxes. (6-23-94)(____)

03. Health Related Entities. Sales to and purchases made by the specific health related entities listed in Section 63-36220(e), Idaho Code, are exempt from Idaho sales or use taxes. Health related organizations not named are not entitled to any exemption from sales and use taxes as a health related entity. (6-23-94)(____)

04. Hospitals. In addition to the health related entities listed in Section 63-36220(e), Idaho Code, hospitals which are nonprofit institutions licensed for the care of ill persons are exempt. To qualify for the exemption the hospital must be a facility defined in Section 39-1301(a), Idaho Code, and licensed as provided in ~~Title 39,~~ Chapter 13, Title 39, Idaho Code, or an equivalent law in another state. Hospitals operated for profit do not qualify for this exemption, nor do nursing homes, clinics, doctors' offices, or similar facilities unless the organization qualifies for an exemption under Section 63-36220, Idaho Code. (7-1-96)(____)

05. Idaho Foodbank Warehouse, Inc., Food Banks, And Soup Kitchens. The Idaho Foodbank Warehouse, Inc. is a nonprofit corporation which gathers food and food products at one (1) central location for distribution to food banks throughout Idaho. All sales to, donations to, and purchases by the Idaho Foodbank Warehouse, Inc., are exempt from sales and use taxes. Also exempt are sales to, donations to, and purchases of food or tangible personal property used by food banks and soup kitchens other than the Idaho Foodbank Warehouse, Inc. to store, prepare, or serve food. This exemption does not extend to the sale, purchase, use or other consumption by food

~~banks other than the Idaho Foodbank Warehouse, Inc., of licensed motor vehicles. (7-1-96)()~~

~~a. The Idaho Foodbank Warehouse, Inc. is a nonprofit corporation which gathers food and food products at one (1) central location for distribution to food banks throughout Idaho. Example 1: The XYZ Corporation purchases food from a grocer to donate to the Idaho Foodbank Warehouse, Inc. The XYZ Corporation must pay sales tax on the purchase since they are not purchasing the food for resale and no other exemption applies. (6-23-94)()~~

~~b. Example 2: The Idaho Food Bank Warehouse, Inc. purchases office supplies. No tax is due on the purchase. ()~~

06. Food Banks And Soup Kitchens.

~~b. Food banks or soup kitchens are nonprofit organizations, other than the Idaho Foodbank Warehouse, Inc., which, as one of their regular activities, furnish food to others without charge. Food and goods used to store, prepare, or serve food which are donated to these organizations are exempt from use tax. Sales to, donations to, and purchases of food or tangible personal property used by food banks and soup kitchens other than the Idaho Foodbank Warehouse, Inc. to grow, store, prepare, or serve food are exempt from sales and use taxes. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. This exemption does not extend to the sale, purchase, or use of licensed motor vehicles by food banks or soup kitchens. (7-1-96)()~~

~~ea. Example 1: A grocer removes food from his inventory of goods held for resale to donate to a food bank or soup kitchen the Idaho Foodbank Warehouse, Inc. The grocer is exempt from the use tax on his cost of the inventory donated. (7-1-93)()~~

~~eb. Example 2: The XYZ Corporation purchases food from a grocer to donate to a food bank. The XYZ Corporation is not purchasing the food items for resale, and no other exemption from sales tax applies. Sales tax must be paid on the purchase. (7-1-93)~~

~~c. Example 3: A food bank purchases a licensed motor vehicle. The purchase is subject to sales tax because the motor vehicle is not used to grow, prepare, or serve food. ()~~

067. Red Cross. Sales to the American Red Cross are exempted from state sales tax by federal law. (7-1-93)

~~**078. Nonsale Clothiers.** Beginning March 12, 1992, nNonprofit organizations, one of whose primary functions is to provide clothing to the needy without charge, may purchase the clothing without paying tax. Only clothing qualifies for the exemption. Other purchases by the organization are taxable. Clothing may also be removed from a resale inventory and donated to these organizations exempt from use tax. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. (7-1-93)()~~

~~a. Example 1: A department store removes clothing from resale merchandise to donate to a nonprofit, nonsale clothier. The store is exempt from the use tax on the cost of the inventory donated. (7-1-93)~~

~~b. Example 2: A nonprofit, nonsale clothier purchases clothing and bed sheets from a department store to give to the needy. No tax is due on the clothing, but the store must charge the organization sales tax on the bed sheets. (7-1-93)~~

~~**089. Exemption Certificate.** The organizations listed in this rule may make purchases without paying sales tax to the vendor by completing an exemption certificate. See Idaho Sales Tax Administrative Rule 075128 of these rules. (6-23-94)()~~

~~**0910. Literature.** The sale, or purchase, or the storage, use, or other consumption of literature, pamphlets, periodicals, tracts, and books, tapes, audio CDs, and other literature which is produced in a machine readable format which that are both published and sold by an entity qualified under Section 501(c)(3) of the Internal~~

Revenue Code are exempt from the tax if no part of the net earnings benefits any individual or shareholder.

(7-1-93)()

101. Sales By Nonprofit Organizations. An exemption from sales tax on sales to one of the foregoing entities does not constitute an exemption from the requirements to collect and remit tax when the entity makes taxable sales to purchasers not exempt from tax. When an exempt organization qualifies as a retailer the organization must register with the State Tax Commission, obtain a seller's permit, and collect and remit sales taxes on sales as defined in Section 63-3612, Idaho Code, in the same manner and in accordance with the same statutes and rules which govern all other retailers in the state. There ~~is~~ are one two (+2) exceptions to this rule. ()

a. Sales of places to sleep by the Idaho Ronald McDonald house are exempt from sales taxes ~~as of March 20, 1995.~~ (7-1-96)()

b. Sales of admissions by an entity qualified under Section 501(c)(3) of the Internal Revenue Code, or by an organization conducting an exempt function defined in Section 527 of the Internal Revenue Code when: ()

i. The event is not predominately recreational or commercial; and ()

ii. Any entertainment value included in the admission charge is minimal when compared to the charge for admission; and ()

iii. Such entity has paid a sales or use tax on taxable purchases or tangible personal property or services consumed during the event. ()

(BREAK IN CONTINUITY OF SECTIONS)

107. MOTOR VEHICLES - GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO INDIANS, AND OTHER EXEMPTIONS (Rule 107).

01. In General. This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to ~~Idaho Sales Tax Administrative Rule 106~~ of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (6-23-94)()

02. Gifts Of Motor Vehicles. When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

b. The recipient assumes no indebtedness. (7-1-93)

c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

d. The donor and recipient both complete a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, have it notarized, and submit it to the county assessor or Idaho Transportation Department along with the title to the vehicle being transferred. (7-1-93)

03. Nonresidents. A nonresident does not owe use tax on the use of a motor vehicle which is registered or licensed under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months, and is not required to be registered or licensed under Idaho law. For purposes of this subsection, a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. (6-23-94)()

04. New Residents. A new resident of Idaho does not owe tax on the use of household goods, personal effects and privately owned motor vehicles, a private automobile if he acquired ~~it~~ them while he resided in another state and used ~~it~~ them primarily outside Idaho. If ~~the~~ a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. (6-23-94)()

a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

b. ~~This e~~Exclusion from the tax ~~does not apply~~ applies only to motor vehicles owned by an business individual. A privately automobile owned motor vehicle is one which is owned by, and titled to, a private individual or individuals. (6-23-94)()

05. Military Personnel. Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)

06. Tax Paid To Another State. When sales tax has been properly imposed by another state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. (7-1-93)

a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

b. Example: A Wyoming resident buys a vehicle there for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his Wyoming title to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to Wyoming was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the five hundred dollars (\$500) tax due Idaho. The assessor will collect two hundred dollars (\$200) tax. (7-1-93)

c. Example: A vehicle was purchased by a Colorado resident two (2) months before moving to Idaho. The applicant paid three percent (3%) Colorado state sales tax, six one-hundredths of one percent (.06%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total Colorado general sales tax paid was five and two tenths percent (5.2%). Since the Idaho tax rate is five percent (5%), no tax is due Idaho because the amount of tax paid to Colorado exceeds the amount owed Idaho. (7-1-93)

d. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

e. Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

f. Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

07. Sales To Family Members. The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are

related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete Form ST-133 and have their sworn statements notarized. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (7-1-93)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollars (\$10,000) purchase price of the vehicle. (7-1-93)

08. Sales To Indians. An enrolled Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the purchaser must complete Form ST-133 and have their sworn statements notarized. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (7-1-93)

09. Bulk Sale Transfers. A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by ~~Idaho Sales Tax Administrative Rule 099 of these rules~~, is exempt from tax. The buyer must obtain written clearance from the State Tax Commission to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must present written evidence to the State Tax Commission to support the exemption. (~~6-23-94~~)()

10. Vehicles Purchased In Idaho For Use Outside Idaho. (7-1-93)

a. The sale of an on-road trailer or the sale of a motor vehicle is exempt from tax if the buyer can claim that immediately upon delivery the vehicle will be taken directly to another state or nation and titled and licensed there; the vehicle will not be required to be titled by the laws of Idaho; and no more than twenty-five percent (25%) of the vehicle's mileage will be accumulated in Idaho during any calendar year. (7-1-97)

b. The buyer must make these claims on Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle, and give the form to the dealer. The motor vehicle must then be taken out of Idaho and titled in another state or nation. (7-1-93)

c. This exemption does not apply to off-highway vehicles such as ATV's, snowmobiles, boats, and off-road bikes. (7-1-93)

11. Motor Vehicles And Trailers Used In Interstate Commerce. The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. See ~~Idaho Sales Tax Administrative Rule 101 of these rules~~. (~~6-23-94~~)()

12. Related Party Transfers And Sales. Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to ~~Idaho Sales Tax Administrative Rule 099 of these rules~~. The new owner must obtain written clearance from the State Tax Commission to present to the Idaho Transportation Department or county assessor when applying for title transfer. Also, the new owner must present written evidence to the State Tax Commission to support the exemption claimed, including proof that the prior owner paid sales or use tax on the vehicle, and proof of the related party relationship between the transferor and transferee. (~~7-1-97~~)()

(BREAK IN CONTINUITY OF SECTIONS)

128. --129: ~~(RESERVED)~~ **CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (Rule 128).**

01. In General. This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. ()

02. Burden Of Proof. All sales made within Idaho are presumed to be subject to sales tax unless an exemption is established. The burden of proving that a sale is not subject to tax is upon the seller. The seller may overcome the presumption by obtaining a written statement from the purchaser on a form approved by the State Tax Commission. When a valid certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. ()

03. Qualified Buyers For Purposes Other Than Resale. Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622NN, Idaho Code, completing, and providing the required form to the seller. ()

04. Qualified Buyers For Purposes Of Resale. The resale exemption may be claimed by the following purchasers when buying goods for resale: ()

a. A retailer or wholesaler doing business in Idaho who holds an Idaho seller's permit number. An Idaho seller's permit number has nine (9) digits followed by an "S". Example: 000123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid. ()

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. ()

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. ()

05. Description And Proper Execution Of Approved Forms. In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. They must comply with any additional requirements provided in this rule or on the form in question. ()

a. To claim a resale exemption on or after July 1, 2000, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. Form ST-103, Certificate of Purchase for Resale, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000 and complies with that form's instructions. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for and the nature of the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include a seller's permit number. ()

b. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. ()

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be ()

furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a travelling government employee nor for any other reasons enumerated on the form. ()

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or local government agency employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. ()

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. ()

f. Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. ()

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle, boat or RV. ()

h. Boat-Trailer-Snowmobile-ATV-Camper Unit-Office Trailer Certificate, Form ST-108BT, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108BT to make the claim. ()

i. Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. ()

j. Sales Tax Resale and Exemption Certificate, Form ST-101, is required on or after July 1, 2000 for tax-free purchases claimed under the production exemption. Form ST-104, Sales Tax Exemption Certificate, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000, and complies with that form's instructions. In lieu of Forms ST-101 or ST-104, retailers may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: ()

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating or farming or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

NATURE OF BUSINESS

BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 or ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection. ()

06. Seller's Responsibility -- Purchases For Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, or a Form ST-103, Certificate of Purchase for Resale, properly executed prior to July 1, 2000, if the customer intends to resell the items in the regular course of business. The general character of the goods purchased for resale must be those displayed on the certificate given to the retailer. ()

a. Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. ()

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. ()

07. Seller's Responsibility - Purchases Claimed Exempt From Sales Tax For Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received, or a Form ST-104, Sales Tax Exemption Certificate properly executed prior to July 1, 2000, if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. ()

a. A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: ()

- i. Hand tools with a unit price not in excess of one hundred dollars (\$100); ()
- ii. Maintenance and janitorial equipment and supplies; ()
- iii. Office equipment and supplies; ()
- iv. Selling and distribution equipment and supplies; ()
- v. Property used in research and development; ()
- vi. Property used in transportation activities; ()
- vii. Equipment or other property used to make repairs; ()
- viii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; ()
- ix. Licensed motor vehicles; ()
- x. Aircraft; and ()
- xi. Recreational vehicles. ()

b. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars (\$100) or less are excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). ()

c. Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. ()

d. A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. ()

e. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. ()

08. Timely Acceptance Of Certificates. A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. ()

a. Certificates obtained by a seller at a time subsequent to but not within a reasonable time after the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established, by clear and convincing evidence, that a sales tax transaction is exempt from tax. For the purposes of this rule, evidence is clear and convincing when it shows that the truth of the facts asserted is highly probable. Evidence which indicates that it is more likely than not the fact is true is not sufficient to establish clear and convincing evidence. ()

b. Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is clear and convincing evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer is in a business which sells the type of goods purchased from the retailer. Even if it is more likely than not that the customer intended to resell the goods, the retailer has not established, solely by the existence of the seller's permit number, that it is highly probable that the goods were for resale. The retailer is liable for the tax on the sale. ()

c. Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish clear and convincing evidence that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. Although it is more likely than not that the customer is a farmer, the retailer has not provided clear and convincing evidence that the hay was purchased for use in a farming operation. The retailer is liable for the tax on the sale. ()

d. When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. ()

129. USE OF A RECREATIONAL FACILITY, INSTRUCTIONAL FEES, AND PARI-MUTUEL BETTING (Rule 129).

01. Use Of A Recreational Facility. Charges or fees to procure the use of a particular facility, facilities, or building for the purpose of recreation or physical conditioning are subject to sales tax. ()

02. Dues. Dues paid to fraternal organizations such as the Elks, Eagles, Masonic Order, or similar organizations are not normally paid primarily for the use of facilities for recreation; in such cases, recreational use of facilities will be incidental. However, any separate, identifiable fees charged by such fraternal organizations, in excess of ordinary membership dues and fees, specifically for the use of recreational or physical conditioning facilities will be subject to sales tax including, but not limited to, bowling fees, green fees, swimming fees, court fees, or equipment usage fees. ()

03. Instructional Fees. Separately stated instruction fees, such as for jazzercise, aerobics, dance, and swimming are not subject to sales tax. ()

04. Pari-Mutuel Betting. Pari-mutuel betting is not subject to sales tax. ()

05. Use Of Tangible Personal Property. Charges imposed on persons using swimming pools, skating rinks, golf courses and bowling alleys, etc., often combine the privilege of entering the place with the right to use tangible personal property. When a uniform price is imposed upon all persons without regard to the intention of the individual to use tangible personal property or the other facilities included, the total charge will be presumed a charge for the use of a recreational facility and subject to sales tax. ()

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9902
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

The following Property Tax Administrative Rules are being deleted because the rules are either obsolete or repetitive of Idaho Code and no longer necessary. Rule 100 - Lien Of Taxes--Personal Property From Without State; Rule 115 - Property Exempt From Taxation--Certain Hospitals And Refuge Homes; Rule 151 - Exempt Property Not To Be Assessed Claim Procedure For Hardship Exemptions; Rule 200 - Property Assessable In County; Rule 208 - Taxpayer's Property Declaration; Rule 218 Nonresident Property Owner's Declaration; Rule 229 - Corrected Taxpayer's Valuation Assessment Notice To Be Mailed To Taxpayer; Rule 269 - Entry Of Property Upon Roll; Rule 301 - Make, Adopt, And Publish Rules; Rule 430 - Municipal Taxes--Certification Of Valuation; Rule 460 - Transient Personal Property Defined.

Rule 104 - Property Exempt From Taxation is being amended to require the person claiming the exemption prove eligibility for the exemption. The rule is being renumbered to Rule 600.

Rule 134 - Property Exempt From Taxation--Speculative Portion Of Value Of Agricultural Land is being amended to remove obsolete language, define terminology and to provide examples of calculations. The rule is being renumbered to Rule 613.

Rule 155 - Real Property Defined is being amended to correct code references and to clarify definitions of real property. The rule is being renumbered to Rule 210.

Rule 159 - Personal Property Defined is being amended to add language from Rule 208 for leased personal property and code references. The rule is being renumbered to Rule 205.

Rule 214 - Subsequent Assessment Of Property Concealed is being amended to reference Idaho Code. The rule is being renumbered to Rule 945.

Rule 327 - Equalization By Category--Identification And Reappraisal is being amended to add clarification to Category 46 and Category 65 on manufactured housing property.

Rule 585 - Guide To Reporting Net Profits Of Mines is being amended to delete obsolete language, add code references, define terminology and to clarify reporting practices of net profits of mines. The rule is being renumbered to Rule 982.

Rule 610 - Property Exempt From Taxation--Residential Improvements--Special Situations is being amended to allow for apportionment of the homeowner's exemption in special situations when a husband and wife maintain separate primary residences.

Rule 611 - Value Of Residential Property In Certain Zoned Areas is being amended to delete that owner occupancy is a requirement to qualify for the exemption and to better define the terms residential improvements and residential property.

Rule 709 - Property Tax Relief (Circuit Breaker) Program--Special Situations is being amended to allow for apportionment of the circuit breaker benefits in special situations when a husband and wife maintain separate primary residences.

Rule 962 - Taxation of Large Size Forest Tracts is being amended to make the rule consistent with procedures described in Section 63-1705, Idaho Code, which was changed by legislation.

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 changes are 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 rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-9902

100. ~~LIEN OF TAXES--PERSONAL PROPERTY FROM WITHOUT STATE (Rule 100).~~

01. ~~Tax Lien.~~ A tax lien is a claim or charge on the property which makes the property security for the discharge of the obligation. Tax liens transfer with the property. (7-1-93)

02. ~~Lien Effective Date.~~ Taxes become a lien on any personal or real property as of January 1 of the assessment year, except in the case of personal property from outside the state. The lien attaches to the property at the time of entrance. The property shall be assessed and placed on the assessment roll quarterly. (7-1-93)

03. ~~Assessment Notice.~~ The assessment notice for leased personal property shall be sent to the owner regardless of any contractual agreements between the lessor and lessee. (7-1-93)

1040. -- 1034. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~115. PROPERTY EXEMPT FROM TAXATION--CERTAIN HOSPITALS AND REFUGE HOMES (Rule 115).~~

~~01. Annual Declaration Of Personal Property.~~ The assessor shall require an annual declaration of personal property which will include the ownership of the property declared. (7-1-93)

~~02. Compliance With Idaho Code.~~ Declarations shall comply with the provisions of Sections 63-203, 63-204, 63-1203, and 63-1210, Idaho Code. (7-1-93)

~~03. Medical Equipment.~~ Medical equipment is equipment used exclusively in the practice of medicine. Chairs, tables, beds, lighting apparatus, cabinets, office equipment, office furniture, data processing equipment, and similar items of personal property are not medical equipment. (7-1-93)

~~04. Communication Equipment Not Medical Equipment.~~ Communication equipment, including shortwave, high frequency, and microwave transmission equipment used to transmit signals outside the hospital or refuge home are not medical equipment. (7-1-93)

~~05. Other Medical Equipment.~~ Leased, nonexempt medical equipment shall be assessed to the owner. (7-1-93)

~~1165. -- 119. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

~~136. -- 150. (RESERVED).~~

~~151. EXEMPT PROPERTY NOT TO BE ASSESSED--CLAIM PROCEDURE FOR HARDSHIP EXEMPTIONS (Rule 151).~~

~~01. Denial Of Property Tax Reduction Claim.~~ The procedure in Section 63-122(6)(a), Idaho Code, is to be used when property tax reduction claims have been denied by the Commission. (7-1-93)

~~02. Exemptions.~~ Exemptions granted for the current assessment year shall be reported under the proper category on abstracts submitted to the Commission. (7-1-93)

~~152. -- 154. (RESERVED).~~

~~156. -- 158. (RESERVED).~~

~~16036. -- 164. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

~~189. -- 199. (RESERVED).~~

~~200. PROPERTY ASSESSABLE IN COUNTY (Rule 200).~~

~~The burden of claiming exemption and the burden of proof of entitlement to the exemption shall be on the property owner. (7-1-93)~~

~~20189.~~ -- 203. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~159205.~~ **PERSONAL PROPERTY--DEFINED (Rule 159205).**

~~Sections 63-201, 63-302, and 63-309, Idaho Code.~~ Personal property can be moved without marring or defacing real property to which it may be attached. Personal property includes the following. (7-1-93)()

01. Equities In State Land. Land purchased from the state under contract is personal property. Tax can be paid in two (2) installments. (7-1-93)

02. Reservations And Easements. Reservations; including ~~reserved~~ mineral rights ~~reserved, and~~ divided ownership of property rights. Easements convey use but not ownership. (7-1-93)()

03 Machinery, Tools, And Equipment. Mechanical apparatuses, instruments, or implements not permanently integrated with real property, held as tenant improvements, or held for rent or lease are personal property. (7-1-93)

04. Furniture, Fixtures, Libraries, Art, And Coin Collections. Trade articles used commercially for convenience, decoration, service, or storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease are personal property. (7-1-93)

05. Recreational Vehicles. Unlicensed recreational vehicles are personal property. (7-1-93)

06. Boats. Unlicensed watercraft are personal property. (7-1-93)

07. Net Profit Of Mines. That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses as defined in Section 63-2802, Idaho Code, or by State Tax Commission rule is personal property. (7-1-93)()

08. Signs And Signboards. Signs and signboards, their bases and supports are personal property. (7-1-93)

09. Leased Personal Property. The listing of leased personal property shall also include the name and address of the other party to the lease and the terms of the lease. ()

~~205.~~ -- ~~207.~~ (RESERVED):

~~208.~~ **TAXPAYER'S PROPERTY DECLARATION (Rule 208).**

~~01. Listing Personal Property.~~ Personal property must be listed on the Taxpayer's Property Declaration. This declaration is mandatory and shall include: (7-1-93)

a. A complete itemized list of all taxable personal property including: ~~The name of the manufacturer; the date of acquisition and the installed cost; model, style, type, etc., where applicable; and serial numbers, if available. Once a basic list has been established, only the annual additions to or deletions from this tabulation may be required. In those cases where specific data is not available, the report shall show estimated dates and costs with appropriate notations.~~ (7-1-93)

b. ~~The listing of leased personal property shall also include the name and address of the other party to the lease and terms of the lease.~~ (7-1-93)

~~02. Remittance Of Property Declarations. Property declarations shall be mailed or delivered to taxpayer's last known address. (7-1-93)~~

~~03. Estimated Value. When the assessor has complied with the statutory requirement and fails to receive proper response, value shall be estimated based on the best available information. (7-1-93)~~

~~209. -- 213. (RESERVED).~~

~~206. -- 209. (RESERVED).~~

~~155210. REAL PROPERTY DEFINED (Rule 155210).
Sections 63-201, 63-304, and 63-309, Idaho Code. ()~~

~~01. Land Real Property. Land includes dirt fill, grading, leveling, and drainage and whatever is permanently upon or affixed to the land, except for the provisions defined in Section 63-309, Idaho Code. (7-1-93)()~~

~~02. Improvements. Improvements not listed in Section 63-1223, Idaho Code, are real property valuable additions to land, except for the provisions defined in Section 63-309, Idaho Code. (7-1-93)()~~

~~03. Manufactured Housing. Manufactured housing subject to the provision of Section 63-304, Idaho Code, is real property. ()~~

~~03. Physically Attached Or Affixed Property And Other Improvements. Property which is physically attached to the land or other improvements or affixed to the land in such a manner that it may not be removed without materially damaging the land or attached improvements is real property, or is of such a nature Real property includes appurtenances that it would normally be expected to be sold together with the land. (7-1-93)()~~

~~a. Equipment attached only by plug in electrical connection is not considered affixed. (7-1-93)()~~

~~b. Equipment permanently situated and adapted to use in one place is real property affixed. (7-1-93)()~~

~~c. Vault doors, drive-in windows, automatic tellers, and night depositories are real property affixed when owned by the owner of the building to which they are affixed. (7-1-93)()~~

~~04. Affixed Items. An affixed item owned by a tenant is personal property and is assessable to its owner, unless the lease agreement provides that the item becomes part of the real property. (7-1-93)~~

~~209. -- 213. (RESERVED).~~

~~211. -- 214. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

~~216. -- 217. (RESERVED).~~

~~218. NONRESIDENT PROPERTY OWNER'S DECLARATION (Rule 218).~~

~~01. Taxpayer's Property Declaration. The Taxpayer's Property Declaration as prescribed in ISTC 31 shall be required and shall list all taxable real and personal property. (7-1-93)~~

~~02. Prescribed Penalty. The prescribed penalty shall apply to each intentional omission of property~~

and shall apply whether or not the declaration has been filed. (7-1-93)

~~219. -- 228.~~ (RESERVED).

~~229. CORRECTED TAXPAYER'S VALUATION ASSESSMENT NOTICE TO BE MAILED TO TAXPAYER (Rule 229).~~

The taxpayer must be notified by a corrected notice from the assessor if ANY increase or decrease in value is made prior to the Board of Equalization convening. (7-1-93)

~~230~~16. -- 239. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~261. -- 268.~~ (RESERVED).

~~269. ENTRY OF PROPERTY UPON ROLL (Rule 269).~~

The assessor shall list property using categories as defined in ISTC 044. (7-1-93)

~~270~~1. -- 273. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~301. MAKE, ADOPT, AND PUBLISH RULES (Rule 301).~~

Any person, group, or other association may petition the Commission for promulgation, amendment, or repeal of a rule pursuant to the Administrative Procedures Act, Section 67-5255, Idaho Code. Such petitions may be submitted to the Commission in any written form but must contain an express statement that the writing is intended to be such a petition. In the case of a petition to promulgate or amend a rule, the petition must include suggested language to effect the desired regulatory action. The petition shall also include a statement of the reasons the petitioner believes the proposals should be adopted, and shall also include a statement of anticipated economic impact of the proposed change. Within thirty (30) days of receipt of a petition, the Commission shall notify the petitioner whether or not the Commission will institute rule-making procedures in accordance with the Administrative Procedures Act for the purpose of considering the petitioner's proposal. The petitioner shall receive written notice of time and place of all public hearings which the Commission may hold in regard to such a proposed rule. (7-1-93)

~~302~~1. -- 313. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

327. EQUALIZATION BY CATEGORY -- IDENTIFICATION AND REAPPRAISAL (Rule 327).

01. Identification Of Property. Property shall be identified for assessment purposes in the categories outlined below. These categories are to be used on the assessment notice and on the abstract of assessment. Categories segregate properties into groups of like status and function. (7-1-93)

a. CATEGORY 1. Irrigated Agricultural Land. Irrigated land capable of and normally producing machine harvestable crops. (3-23-94)

b. CATEGORY 2. Irrigated Pasture Land. Irrigated land used for pasture and not normally capable of producing machine harvestable crops. (3-23-94)

- c. CATEGORY 3. Non-irrigated Agricultural Land. Land capable of and normally producing machine harvestable crops without man-made irrigation. (3-23-94)
- d. CATEGORY 4. Meadow Land. Land capable of lush production of grass. (3-23-94)
- e. CATEGORY 5. Dry Grazing Land. Land capable of supporting grasses and browse, but incapable of supporting crops on regular rotation. (3-23-94)
- f. CATEGORY 6. Productivity Forestland. Forestland assessed under the productivity option. (3-23-94)
- g. CATEGORY 7. Bare Forestland. Forestland assessed as bare land with the yield tax option. (3-23-94)
- h. CATEGORY 8. Reforestation Land. Land for which the owner agrees to carry on specified reforestation practices. (3-23-94)
- i. CATEGORY 9. Patented Mineral Land. (3-23-94)
- j. CATEGORY 10. Homesite Land. Land being utilized for homesites on categories 1 through 9. (3-23-94)
- k. CATEGORY 11. Recreational Land. Land used in conjunction with recreation but not individual homesites. (3-23-94)
- l. CATEGORY 12. Rural Residential Tracts. Rural residential land not in a properly recorded subdivision. (3-23-94)
- m. CATEGORY 13. Rural Commercial Tracts. Rural commercial land not in a properly recorded subdivision. (3-23-94)
- n. CATEGORY 14. Rural Industrial Tracts. Rural industrial land not in a properly recorded subdivision. (3-23-94)
- o. CATEGORY 15. Rural Residential Subdivisions. Rural residential land in a properly recorded subdivision. (3-23-94)
- p. CATEGORY 16. Rural Commercial Subdivisions. Rural commercial land in a properly recorded subdivision. (3-23-94)
- q. CATEGORY 17. Rural Industrial Subdivisions. Rural industrial land in a properly recorded subdivision. (3-23-94)
- r. CATEGORY 18. Other Land. Land not compatible with other categories. (4-5-95)
- s. CATEGORY 19. Waste. Public Rights-of-Way includes roads, ditches, and canals. Use this category to account for total acres of land ownership. Acres in this category shall be listed on the abstract. (4-5-95)
- t. CATEGORY 20. Residential Lots or Acreages. Land INSIDE city limits zoned residential. (3-23-94)
- u. CATEGORY 21. Commercial Lots or Acreages. Land INSIDE city limits zoned commercial. (3-23-94)
- v. CATEGORY 22. Industrial Lots or Acreages. Land INSIDE city limits zoned industrial. (3-23-94)

- w. CATEGORY 25. Common Areas. Land and improvements not included in individual property assessments. (4-5-95)
- x. CATEGORY 26. Residential Condominiums. Land and improvements included in individual assessments of condominiums in areas zoned residential or in areas zoned commercial or industrial but maintained as residences. (7-1-97)
- y. CATEGORY 27. Commercial or Industrial Condominiums. Land and improvements included in individual assessments of condominiums in areas zoned commercial or industrial. (3-23-94)
- z. CATEGORY 30. Improvements. Other than residential, located on category 20. (3-23-94)
- aa. CATEGORY 31. Improvements. Residential improvements located on category 10 that qualify for circuit breaker programs. (3-23-94)
- bb. CATEGORY 32. Improvements. Other than residential, located on categories 1 through 12 and 15. (3-23-94)
- cc. CATEGORY 33. Improvements. Located on category 11. (3-23-94)
- dd. CATEGORY 34. Improvements. Residential in nature, located on category 12. (3-23-94)
- ee. CATEGORY 35. Improvements. Commercial in nature, located on category 13. (3-23-94)
- ff. CATEGORY 36. Improvements. Industrial in nature, located on category 14. (3-23-94)
- gg. CATEGORY 37. Improvements. Residential in nature, located on category 15. (3-23-94)
- hh. CATEGORY 38. Improvements. Commercial in nature, located on category 16. (3-23-94)
- ii. CATEGORY 39. Improvements. Industrial in nature, located on category 17. (3-23-94)
- jj. CATEGORY 40. Improvements. Located on category 18. (3-23-94)
- kk. CATEGORY 41. Improvements. Residential in nature, located on category 20. (3-23-94)
- ll. CATEGORY 42. Improvements. Commercial in nature, located on category 21. (3-23-94)
- mm. CATEGORY 43. Improvements. Industrial in nature, located on category 22. (3-23-94)
- nn. CATEGORY 44. Improvements. Taxable improvements located on otherwise exempt property under the same ownership. (3-23-94)
- oo. CATEGORY 45. Utility Systems. Locally assessed utility systems not under the jurisdiction of the Commission. (3-23-94)
- pp. CATEGORY 46. Manufactured Housing. Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation situated on land under the same ownership as the manufactured home. (3-23-94)()
- qq. CATEGORY 47. Improvements to Manufactured Housing. Additions not typically moved with manufactured housing. (3-23-94)
- rr. CATEGORY 48. Manufactured Housing. Manufactured housing on which a statement of intent to declare as real property has been filed. (3-23-94)
- ss. CATEGORY 55. Boats or Aircraft. Unlicensed watercraft or unregistered aircraft. (3-23-94)

- tt. CATEGORY 56. Construction Machinery, Tools, and Equipment. Unlicensed equipment such as cranes, tractors, scrapers, and rock crushers, used in the building trade or road construction. (3-23-94)
- uu. CATEGORY 57. Equities in State Property. Property purchased from the state under contract. (4-5-95)
- vv. CATEGORY 58. Farm Machinery, Tools, and Equipment. Unlicensed farm or ranch machinery, shop tools, or equipment not assessed as real property. (3-23-94)
- ww. CATEGORY 59. Furniture, Fixtures, Libraries, Art, and Coin Collections. Trade articles used commercially for convenience, decoration, service, storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease. (3-23-94)
- xx. CATEGORY 60. Improvements on Railroad Rights-of-Way. Improvements located on railroad rights-of-way under separate ownership. (3-23-94)
- yy. CATEGORY 61. Improvements by Lessee Other Than Category 62. Improvements made by the tenant or lessee to landlord's property. (3-23-94)
- zz. CATEGORY 62. Improvements on Exempt or Public Land. Taxable improvements which are owned separately from exempt or public land on which they are located. (3-23-94)
- aaa. CATEGORY 63. Logging Machinery, Tools, and Equipment. Unlicensed logging machinery, shop tools, and equipment not assessed as real property. (3-23-94)
- bbb. CATEGORY 64. Mining Machinery, Tools, and Equipment. Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-23-94)
- ccc. CATEGORY 65. Manufactured Housing. Manufactured housing not considered real property located on exempt, rented or leased land. (~~3-23-94~~)()
- ddd. CATEGORY 66. Net Profits of Mines. That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses as defined in Section 63-2802, Idaho Code, or by Commission rule. (3-23-94)
- eee. CATEGORY 67. Operating Property. Property assessed by the Commission. (3-23-94)
- fff. CATEGORY 68. Other Miscellaneous Machinery, Tools, and Equipment. Unlicensed machinery, tools, and equipment not used in agriculture, construction, logging, or mining. (3-23-94)
- ggg. CATEGORY 69. Recreational Vehicles. Unlicensed recreational vehicles. (3-23-94)
- hhh. CATEGORY 70. Reservations and Easements. Reservations, including mineral rights reserved divide ownership of property rights. Easements convey use but not ownership. (3-23-94)
- iii. CATEGORY 71. Signs and Signboards. Signs and signboards, their bases and supports. (3-23-94)
- jjj. CATEGORY 72. Tanks, Cylinders, Vessels. Containers. (3-23-94)
- kkk. CATEGORY 81. Exempt Property. For county use in keeping an inventory, including acreage, of exempt real and personal property. (3-23-94)

(BREAK IN CONTINUITY OF SECTIONS)

~~418. -- 429.~~ (RESERVED).

~~430. MUNICIPAL TAXES CERTIFICATION OF VALUATION (Rule 430).~~

~~01. Dates For Completing Certification.~~ For the budget preparation of a unit of government, the certification to all taxing districts of full market value less exemptions must be made by the assessor and auditor between the first (1st) and fourth (4th) Monday of January. (7-1-93)

~~02. Certification Is Full Market Value Of Property.~~ The certification of full market values less exemptions by the assessor and auditor under this section is the full market value of all real, personal, and operating property of the prior calendar year. (7-1-93)

~~03. District Shall Obtain Certification Data From Commission.~~ The full market value of operating property less exemptions shall be obtained by district from the Commission's data printout certification filed with the auditors. (7-1-93)

~~431. -- 459.~~ (RESERVED).

~~460. TRANSIENT PERSONAL PROPERTY DEFINED (Rule 460).~~

~~01. Transient Personal Property.~~ Transient personal property is property that is not properly registered for highway use in accordance with Section 49-434, Idaho Code, and that moves from county to county and spends more than thirty (30) days but less than one (1) year in any county. (7-1-93)

~~02. Exempt Property.~~ Farm machinery and other personal property not used in construction, logging, or mining shall not be considered transient personal property. (7-1-93)

~~03. Payment Of Taxes.~~ For payment of taxes refer to Section 63-1302, Idaho Code. (7-1-93)

~~461. -- 479.~~ (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~586.5. -- 605.9.~~ (RESERVED).

~~104600. PROPERTY EXEMPT FROM TAXATION (Rule 104600).~~

The burden of proof of entitlement to the exemption is on the person claiming exemption for the property. (7-1-93)()

~~601. -- 609.~~ (RESERVED).

~~610. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS -- SPECIAL SITUATIONS (Rule 610).~~

Section 63-602G, Idaho Code. ()

~~01. Scope.~~ This rule addresses issues relating to the homeowner's exemption as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. (7-1-99)

~~02. Dual Residency Couples.~~ As used in this rule, "dual residency couple" means a husband and wife,

each of whom has established a different dwelling place as his or her primary dwelling place as defined in Section 63-602G, Idaho Code, and Subsection 135.02 of these rules. (7-1-99)

03. Dual Residency Couples -- General Principles. (7-1-99)

a. Whether a particular residential improvement is an individual's primary dwelling place is a question of fact for each individual. Each spouse of a dual residency couple can maintain a separate primary dwelling place for purposes of the homeowner's exemption. The test to be applied is the general test set out in Subsection 135.02 of these rules. (7-1-99)

b. If a residential improvement is community property, either the husband or wife may exercise full management or control over it, except that neither the husband nor the wife can sell or encumber the property without the written consent of the other. Thus, either the husband or the wife can file an application for the homeowner's exemption regarding community property on his or her own authority. The signature of the other spouse is not required on the application. See Section 32-912, Idaho Code. (7-1-99)

c. Neither spouse is a partial owner of community property. (This principle is an exception to laws generally governing community property interests. It applies only for matters relating to the homeowner's exemption or the circuit breaker property tax relief program. See Section 63-701(8) Idaho Code.) Thus, there is no authority to reduce the amount of homeowner's exemption proportionally to reflect an ownership in community property. For purposes of the homeowner's exemption, a community property interest is treated the same as a full ownership interest. (7-1-99)

d. An owner may apply only once for the homeowner's exemption. See Section 63-602G(c), Idaho Code. Thus, an application by one (1) spouse regarding a residential improvement that is community property, precludes the other spouse from making a second application on any other residential improvement whether held by the other spouse as community or separate property. (7-1-99)

04. Example -- Both Residences Are Community Property. (7-1-99)

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

b. The first application is valid. Any subsequent application, though filed by the other spouse, is not valid because the couple can not make more than one (1) application. The full amount of homeowner's exemption applies to the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (7-1-99)

05. Example -- One Residence Is Community Property, The Other Is Separate Property. (7-1-99)

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement. One (1) is owned by the spouse who resides in it as his or her separate property, the other is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

b. The first application is valid. Any subsequent application, though filed by the other spouse, is not valid. If the first application relates to the community property, it is an application on behalf of both members of the community. Thus, the other spouse can not file a second application relating to his or her separate property. If the first application relates to the separate property, then the subsequent application relating to the community property is a second application by the spouse owning the separate property and is not valid. The full amount of homeowner's exemption applies to the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (7-1-99)

06. Example -- Both Residences Are Separate Property. (7-1-99)

a. Each member of a dual residency couple maintains his or her primary dwelling in a different

residential improvement, each of which is owned by the spouse residing in it as his or her separate property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

b. Both residential improvements qualify for the full homeowner's exemption. Neither application is a second application by the same owner. Each spouse is a sole owner of the residential improvement, so the proportional reduction provisions for partial ownership do not apply. (7-1-99)

07. Apportionment Of Homeowner's Exemption By Dual Residency Couples. Both spouses of a dual residency couple may elect to equally apportion the homeowner's exemption between the two (2) residential improvements if each files a written election with the county assessor of the county in which each property is located. When the election is made each residential improvement shall be entitled to one-half (1/2) of the exemption applicable to that property alone. The total exempted value of both properties shall not exceed the amount of exemption available to the individual residential improvement with the greatest market value if no election were made. ()

078. Multiple Ownerships Including Community Interests As Partial Owners. A community property interest in a residential improvement is a partial ownership when combined with the ownership of another individual who is not a member of the marital community. For example, if a deed conveys title to real property to a husband and wife and to an adult child of theirs, the husband and wife hold a community property interest in the improvement and the child is a tenant-in-common. The parents collectively hold a two-thirds (2/3) partial interest and the child holds a one-third (1/3) partial interest in the property. Qualification of the property for the homeowner's exemption is as follows: (7-1-99)

a. If the residential improvement is the primary dwelling of the husband and wife but not the child, the improvement qualifies for two-thirds (2/3) of the homeowner's exemption. (7-1-99)

b. If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the improvement qualifies for one-third (1/3) of the homeowner's exemption. (7-1-99)

c. If the residential improvement is the primary dwelling of the husband, wife and child, the improvement qualifies for the full homeowner's exemption. (7-1-99)

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the improvement qualifies for two-thirds (2/3) of the homeowner's exemption unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.067. The two-thirds (2/3) qualification results from the statutory provision that a community property interest is not considered a partial interest of either spouse. See Subsection 610.03.c. (7-1-99)()

e. If the residential improvement is the primary dwelling of one (1) spouse and the child, the improvement qualifies for the full homeowner's exemption unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02. through 610.067. (7-1-99)()

611. VALUE OF RESIDENTIAL PROPERTY IN CERTAIN ZONED AREAS (Rule 611).
Sections 63-602H, Idaho Code. ()

01. Improvements. ~~The residential improvements and any additional garage, shed, or out buildings on the same lot shall be appraised equitably with comparable improvements on residential lots in the vicinity.~~ **Residential Property.** Residential property that may qualify for the special valuation exemption provided in Section 63-602H, Idaho Code, may include land and residential improvements. Such property may be owner or non-owner occupied, but must have been in continuous residential use from the time zoning was changed to other than residential. If use of any portion of the property changes to other than residential, the property loses this exemption. (7-1-93)()

02. To Qualify For Exemption. The owner must reside in the residence in order to qualify. **Qualifying Residential Improvements.** Qualifying residential improvements are those improvements categorized by the

assessor as residential and not consisting of more than four (4) residential units within any qualifying structure. (7-1-98)()

~~612.~~ ~~614.~~ (RESERVED).

134613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (Rule ~~134613~~).

01. Definitions.

a. Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate established by the Commission required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (7-1-93)()

b. Speculative portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. ()

c. Economic rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. ()

d. Net Income. Net income is determined by deducting the landlord's share of current expenses from economic rent per acre. ()

02. Gross Income. Gross income shall be based on crop rotation and crop share programs typical to the area, five (5) year average yield, and prices at harvest. **Calculation Of Net Income From Cash Rent.** Net Income from cash rent is calculated in the following manner. (7-1-93)()

a. Crops grown. Determine the crops typically grown in the area. ()

b. Economic rent. Determine the average per acre gross income from individual crop rents typical to the area over the immediate past five (5) years. ()

c. Landlord's expenses. Determine the landlord's share of typical contracted expenses paid in the immediately preceding growing season. ()

d. Landlord's net income. Subtract the landlord's share of typical contracted expenses from the average gross income per acre for the immediately preceding growing season to determine net income. ()

03. Calculation Of Net Income From Crop Share Rent. Net income shall be determined by deducting the landlord's share of current expenses from gross income. Typical, not individual, income shall be used from crop share rent is calculated in the following manner. (7-1-93)()

a. Crops grown. Determine the crops typically grown in the area. ()

b. Average crop production. Determine average crop production per acre based on the most recent five (5) years. ()

c. Average commodity prices. Determine average commodity prices based on the most recent five (5) years. ()

d. Gross income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. ()

e. Landlord's share of gross income. Determine the landlord's share of gross income per acre from a crop rotation typical to the area. ()

f. Expenses. Determine the landlord's share of water, fertilizer, chemical, seed and harvest cost per acre for the immediately preceding growing season. ()

g. Net income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. ()

04. Use Of Assessor's Manual. Refer to ASSESSOR'S MANUAL for agricultural land valuation procedures. **Examples.** The following examples show calculations for the taxable value of agricultural land. Example 'a.' shows one calculation of capitalization rate (cap rate), example 'b.' shows calculations using cash rent agreements and example 'c.' shows calculations using crop share agreements. (7-1-93)()

a. Capitalization rate calculation example:

<u>TAX CODE AREAS</u>	<u>PROPERTY TAX RATES</u>
8	1.132395%
9	1.118622%
10	1.122678%
11	1.171484%
12	1.167430%
13	1.069204%
15	1.160310%
16	1.132395%
17	1.132395%

AVERAGE 1.13%
FARM CREDIT BANK INTEREST RATE 8.22%
TOTAL CAPITALIZATION RATE (CAP RATE) 9.35% ()

b. Cash rent agreement calculation example:

<u>CROPS</u>	<u>CONTRACT RENTS PER ACRE</u>	<u>ROTATION IN PERCENT</u>	<u>WEIGHTED INCOME PER ACRE</u>
Barley	\$100.00	14.42%	\$ 14.42
Beans	\$100.00	22.46%	\$ 22.46
Beets	\$170.00	20.33%	\$ 34.56
Corn/Grain	\$100.00	0.00%	\$ 0.00
Corn/Silage	\$110.00	0.00%	\$ 0.00
Hay/Alfalfa	\$120.00	21.32%	\$ 25.58
Potatoes	\$200.00	0.00%	\$ 0.00
Wheat	\$100.00	21.48%	\$ 21.48
Peas	\$125.00	0.00%	\$ 0.00

<u>CROPS</u>	<u>CONTRACT RENTS PER ACRE</u>	<u>ROTATION IN PERCENT</u>	<u>WEIGHTED INCOME PER ACRE</u>
Oats	\$110.00	0.00%	\$ 0.00
<u>TOTAL INCOME PER ACRE</u>			<u>\$118.49</u>

Value per acre equals net income per acre divided by CAP rate:

<u>TOTAL INCOME PER ACRE</u>	<u>\$118.49</u>
<u>LESS WATER COSTS</u>	<u>\$ 23.00</u>
<u>LESS MANAGEMENT(@ 5%)</u>	<u>\$ 5.92</u>
<u>NET INCOME PER ACRE</u>	<u>\$ 89.57</u>
<u>CAP RATE</u>	<u>9.35%</u>
<u>VALUE PER ACRE</u>	<u>\$958.00</u>

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c. Crop share agreement calculation example:

<u>Crop</u>	<u>Yield</u>	<u>Price</u>	<u>Gross Income</u>	<u>Landlord Share</u>	<u>Landlord Share Gross Income</u>	<u>Rotation Percent</u>	<u>Per Acre Share of Gross Inc.</u>
Barley	100.00	\$ 2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.75
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.45
G/Corn	0.00	\$ 3.22	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
S/Corn	0.00	\$24.40	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.30
Potatoes	0.00	\$ 4.74	\$ 0.00	25.00%	\$ 0.00	0.00%	\$ 0.00
Wheat	98.00	\$ 3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.16
Peas	0.00	\$ 8.68	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Oats	0.00	\$ 1.66	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
<u>TOTAL INCOME PER ACRE</u>						<u>100.00%</u>	<u>\$167.26</u>

Value per acre equals net income per acre divided by CAP rate:

<u>TOTAL INCOME PER ACRE</u>		<u>\$ 167.25</u>
<u>EXPENSES:</u>		
<u>Water</u>	<u>\$ 23.00</u>	
<u>Fertilizer</u>	<u>\$ 14.77</u>	
<u>Chemicals</u>	<u>\$ 9.04</u>	
<u>Seed</u>	<u>\$ 2.05</u>	
<u>Management</u>	<u>\$ 8.36</u>	
<u>Harvest</u>	<u>\$ 14.67</u>	
<u>TOTAL EXPENSE PER ACRE</u>		<u>\$ 71.90</u>
<u>NET INCOME</u>		<u>\$ 95.36</u>
<u>CAP RATE</u>		<u>9.35%</u>
<u>VALUE PER ACRE</u>		<u>\$1,019.47</u>

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05. Assessment Notice. ~~The assessment notice shall not include the speculative market value. This value shall be included on the abstract certified to the Commission.~~ **Cross Reference.** For the years 1999 and 2000, see Rule 165 of these rules. Beginning in the year 2001, see Rule 645 of these rules. (7-1-93)()

614. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

709. PROPERTY TAX RELIEF ("CIRCUIT BREAKER") PROGRAM -- SPECIAL SITUATIONS (Rule 709).
 Section 63-701, Idaho Code. ()

01. Scope. This rule addresses issues relating to the "circuit breaker" property tax relief program as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. (7-1-99)

02. General Principles. Relief under the circuit breaker program is only available to owners of property which have first qualified for the homeowner's exemption under Section 63-602G, Idaho Code. Rule 610 of these rules addresses when property qualifies for the homeowner's exemption in the special situations discussed in this rule. (7-1-99)

03. Dual Residency Couples. The definition of "dual residency couple" in Rule 610 of these rules applies to this rule. (7-1-99)

a. Example -- Both residences are community property. Circuit breaker relief is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610 of these rules. (7-1-99)

b. Example -- One (1) residence is community property, the other is separate property. Circuit breaker

relief is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610 of these rules. (7-1-99)

c. Example -- Both residences are separate property. Circuit breaker relief is available in regard to both residential improvements. See Rule 610 of these rules. (7-1-99)

d. Household income. In the three (3) examples in Subsection 709.03, the household income upon which qualification is determined is the total of one-half (1/2) the community income plus any separate income of the spouse residing in the residence plus the income of any other household member. (7-1-99)

04. Apportionment Of Circuit Breaker Benefits By Dual Residency Couples. If a dual residency couple makes the election provided in Subsection 610.07 of these rules, each spouse shall be entitled to one-half (1/2) of the amount of any circuit breaker relief available to that spouse alone. The household income of the spouse shall be one-half (1/2) of the community income plus any separate income of the spouse residing in the residence plus the income of any other household member. The total circuit breaker benefit shall not exceed the amount of benefit available to the individual spouse with the least household income if no election were made. ()

045. Multiple Ownerships Including Community Interests As Partial Owners. Example: A deed conveys title to real property to a husband and wife and to an adult child of theirs. The husband and wife hold a community property interest in the improvement and the child is a tenant-in-common. The parents collectively hold a two-thirds (2/3) partial interest and the child holds a one-third (1/3) partial interest in the property. Qualification of the property for the circuit breaker tax relief is as follows: (7-1-99)

a. If the residential improvement is the primary dwelling of the husband and wife but not of the child, the improvement qualifies for two-thirds (2/3) of the benefits. Household income is the total of the community and separate income of the spouses and the income of any other household member. (7-1-99)

b. If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the improvement qualifies for one-third (1/3) of the benefits. Household income is the total of the child's income and the income of any other household member. (7-1-99)

c. If the residential improvement is the primary dwelling of the husband, wife and child, the improvement qualifies for the full benefits. Household income is the total of the community and separate income of the spouses, the income of the child and the income of any other household member. (7-1-99)

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the improvement qualifies for two-thirds (2/3) of the benefits unless the residential improvement of the other spouse has qualified for the homeowner's exemption. Household income is the total of one-half (1/2) the community income plus any separate income of the spouse residing in the residence plus the income of any other household member. (7-1-99)

e. If the residential improvement is the primary dwelling of one (1) spouse and the child, the improvement qualifies for the full benefits unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption. Household income is the total of one-half (1/2) the community income plus any separate income of the spouse residing in the residence plus the income of the child and the income of any other household member. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

810. -- ~~96144~~. (RESERVED).

~~214945~~. SUBSEQUENT ASSESSMENT OF PROPERTY CONCEALED (Rule ~~214945~~).

The burden of proof of willfulness under Section 63-1401, Idaho Code is on the assessor. (7-1-93)()

946. -- 961. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

962. TAXATION OF LARGE SIZE FOREST TRACTS (Rule 962).

01. Productivity Formula. Taxation under the provisions of Section 63-1705, Idaho Code, shall not include timber inventory in addition to the productivity value since the value of timber growing on the land is included in the productivity formula. The productivity formula used to determine the forest value shall be as follows:

STEP 1 :	(MAI) MEAN ANNUAL GROWTH INCREMENT MULTIPLIED BY THE (SV) STUMPAGE VALUE
STEP 2 :	ADD OTHER AGRICULTURAL RELATED INCOME
STEP 3 :	MINUS COSTS
STEP 4 :	THE SUM OF STEPS 1 - 3 DIVIDED BY THE CAPITALIZATION RATE
$\frac{\text{MAI} \times \text{SV} + \text{other agricultural related income} - \text{costs}}{\text{Capitalization Rate}}$	
KEY:	
MAI = Mean Annual Growth Increment, board feet/acre/year	
SV = Stumpage Value, preceding five (5) year rolling average value of timber harvested within the forest value zone from state timber sales or the best available data for the same five (5) year period.	
Other Agricultural Related Income = Grazing income from the forest land.	
Costs = Annualized expenses directly related to producing the forest crop, including, but not limited to the establishment, maintenance, improvement, and management of the crop over the rotation period, including the forest protection fee currently charged by the Idaho Department of Lands.	
Capitalization Rate = Shall be the five (5) year rolling average from the Spokane office of the Farm Credit Service determined in accordance with the procedures described in Section 63-1705(4), Idaho Code.	

(7-1-99)()

02. Forest Valuation Zones. The state shall be divided into four (4) forest valuation zones:

- (7-1-99)
- a. ZONE 1 - Boundary, Bonner, Kootenai counties. (7-1-97)
- b. ZONE 2 - Benewah, Shoshone, Latah, Clearwater, Nez Perce, Lewis, Idaho counties. (7-1-97)
- c. ZONE 3 - Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore, Camas, Blaine, Gooding, Lincoln, Jerome, Minidoka counties. (7-1-97)
- d. ZONE 4 - The remaining nineteen (19) counties. (7-1-97)

03. Classification Of Forest Lands. Forest valuation Zones 1 and 2: There shall be three (3) separate productivity classes of forest land poor, medium, and good. These broad classes are related in the following manner by definition to the "Meyer and Haig Tables". These classes apply to forest land which may or may not be stocked with commercial or young growth timber. (7-1-99)

- a. Poor productivity class is defined as forest land having a mean annual increment, MAI, of one

hundred (100) board feet per acre per year, based on an eighty (80) year rotation and sixty-five percent (65%) of normal stocking by the end of the rotation period. This productivity class includes western white pine site index 35-45 and ponderosa pine site index 45-80. One hundred (100) board feet per acre MAI shall be used in the productivity formula. (7-1-93)

b. Medium productivity class is defined as forest land having a mean annual increment, MAI, of two hundred twenty-five (225) board feet per acre per year, based on an eighty (80) year rotation and sixty-five percent (65%) of normal stocking by the end of the rotation period. This productivity class includes western white pine site index 46-60 and ponderosa pine site index 81-110. Two hundred twenty-five (225) board feet per acre MAI shall be used in the productivity formula. (7-1-93)

c. Good productivity class is defined as forest land having a mean annual increment, MAI, of three hundred fifty (350) board feet per acre per year, based on an eighty (80) year rotation and sixty-five percent (65%) of normal stocking by the end of the rotation period. This productivity class includes western white pine site index 61 and above and ponderosa pine site index 111 and above. Three hundred fifty (350) board feet per acre MAI shall be used in the productivity formula. (7-1-93)

d. Forest land shall be stratified into areas of similar productive potential using the habitat typing methodology described in Forest Habitat Types of Northern Idaho: A Second Approximation, 1991 edition. Within these stratified areas, site index trees will be selected and measured that will identify the site index to be used to place the land in one (1) of the three (3) productivity classes listed above. (7-1-97)

e. Forest valuation Zones 3 and 4: Criteria shall be the same as that used in Zones 1 and 2 with the following adjustments made for lower moisture levels. Poor productivity class, one hundred (100) board feet per acre MAI shall be used in the productivity formula. Medium productivity class, two hundred thirteen (213) board feet per acre MAI shall be used in the productivity formula. Good productivity class, three hundred twenty (320) board feet per acre MAI shall be used in the productivity formula. (7-1-93)

04. Recommended Mean Annual Growth Increments. The recommended MAI's to be used in the productivity formulas for the appropriate forest valuation zones are according to the best available information and subject to change upon receipt of updated information. The MAI's shall be considered as midpoints of a class in the following manner:

MIDPOINT	
Zones 1 and 2:	
Poor	38 - 100 - 162 board feet per acre
Medium	163- 225 - 286 board feet per acre
Good	287 - 350 and greater board feet per acre
Zones 3 and 4:	
Poor	44 - 100 - 156 board feet per acre
Medium	157 - 213 - 268 board feet per acre
Good	269 - 320 and greater board feet per acre

(7-1-99)

05. Deficient Areas. Lakes, solid rock bluffs, talus slopes, and continuously flooded swampy areas, larger than five contiguous acres in size which can be identified on aerial photos shall be valued at forty percent (40%) of the poor bare land value as defined in Section 63-1706, Idaho Code. These areas are defined as being incapable of growing trees. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

965. -- 99981. (RESERVED).

585982. GUIDE TO REPORTING NET PROFITS OF MINES (Rule 585982).

Sections 63-2801, 63-2802 and 63-2803, Idaho Code.

()

01. ~~Revenues Included In Amount To Be Reported.~~ The only items which are proper revenues TO BE INCLUDED within the net profits reported for ad valorem taxation amount of are the moneys or their equivalent received from the sale of minerals or mined metals ~~extracted from the Earth during the calendar year immediately preceding the current tax year~~ shall be reported by the owner of the mine or mining claim. If there is no sale, but minerals or mined metals are shipped to a smelter or other facility, an amount of money equivalent to that which would have been received from sale of the shipped minerals or mined metals shall be reported. Moneys received from rents, commissaries, discounts on purchases, and investments are ~~NOT TO BE INCLUDED~~ not to be included. The A separate annual net profit statement shall be filed ~~between January 1 and May 1, each year with the assessor of the county in which the mine(s) or mineral or metal deposits are located by the owner of mines or mining claims, for each mine or mining claim located in any county in Idaho.~~ The statement filed with any county assessor shall not include amounts received pursuant to mines or mining claims located outside the county. The person, corporation, or association engaged in mining owner shall complete the statement on forms prescribed by the State Tax Commission using as a guide the following allowable deductions to arrive at net profit. None of the nondeductible items can be claimed. (7-1-93)()

02. Additional Allowable Deductions. In addition to deductions specified in Section 63-2802, Idaho Code, the following expenditures can be subtracted from the amount of money or equivalent to be reported. (7-1-93)()

a. ~~The actual expenditure of money and labor in and about extracting the metals and minerals from the mine, transporting same to mill, concentrators, or reduction works, reduction thereof and conversion into money, or its equivalent. Expenditures for necessary labor, machinery, and supplies needed and used in mining operations. Improvements necessary in and about the mine for reducing ores and for the construction of mills and reduction works.~~ (7-1-93)

ba. Expenses for Social Security, worker's compensation, insurance provided by the employer for the benefit of employees at the mine, forest fire fighting, fire and water protection, first aid and safety devices, mine rescue materials, experimental work reasonably connected with reduction of the ores. (7-1-93)()

eb. ~~Deductions~~ Expenses for improvements can be only for made during the year immediately preceding the current tax year filing of annual net profits statement. (7-1-93)()

c. Expenses for reclamation or remediation not previously deducted, including payments into a sinking fund mandated by law for reclaiming or remediating the mining site. ()

03. Nondeductible Items. In addition to expenditures specified as nondeductible pursuant to Section 63-2802, Idaho Code, the following expenditures can not be subtracted from the amount of money to be reported. (7-1-93)()

a. ~~Taxes. Federal, State and county, state corporation license, federal income, capital stock, war facilities~~ local taxes and license fees. (7-1-93)()

b. ~~Depreciation, depletion, royalties, and donations, including allotments to schools for experimental work, war work, and aid.~~ (7-1-93)()

c. ~~Insurance. No deduction for insurance except as listed in Subsection 585.02.ba.~~ (7-1-93)()

d. ~~Construction and repairs, and operation of Dwellings for employees, boarding and bunkhouses, community buildings, such as halls, schools, swimming pools, ball parks, commissaries, including water, fuel, heat~~

and light and recreational facilities.

(7-1-93)()

e. ~~Miscellaneous administrative and other expenses. Periodicals, tax service; assessment work, other mining claims; director's salaries and expenses; secretaries' salaries and expenses; corporation organization expense; appraisals, property insurance; maintenance of offices in other states; Secret Service, strike breakers, guns; subscriptions to mine organizations and societies; expenses entered on books with no detail attached; publication of meetings, financial statements; audits; political; burial expense; stock transfer costs; advertising; premium on surety bonds; legal retainers and litigation; and traveling expenses to outside properties, conventions, hearings. Miscellaneous administrative and other expenses not related to labor, machinery or supplies needed for mining, reducing ores, construction of mills and reduction works, transporting ore and extracting metals and minerals from ore.~~

(7-1-93)()

983. -- 999. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9903
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

Property Tax Administrative Rules relating to urban renewal districts, taxing districts and revenue allocation areas are being amended to address the following issues: 1) Distribution of revenue and how it relates to school districts; 2) Occupancy tax and allocation; 3) Boundaries and mapping issues; 4) Budget, levy and split values along with base increments; 5) Descriptions for urban renewal and revenue allocations purposes; 6) Timing of reports and operator statements. During the process of amending rules, several existing rules were renumbered and one rule was divided into several rules relating to specific subjects. The following rules were amended with the new rule number(s) in parentheses immediately after the current number: Rule 240 (Rule 223); Rule 317; Rule 350 (Rule 804); Rule 404; Rule 550 (Rule 225); Rule 802 (Rules 800, 801, 802, and 803).

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 rulemaking was not conducted because the proposed changes are 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 rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-9903

219. -- 2282. (RESERVED).

~~240223~~. DESCRIPTION OF PROPERTY (Rule ~~240223~~).

01. Description Of Property. For assessment purposes property shall be described in the tax number book by parcel number, tax number, initial letters, or abbreviation. The description must be indexed to the metes and bounds or other recorded legal description. These records must be provided to the county auditor and treasurer. (7-1-93)

02. Notices. Parcel numbers, tax numbers, initial letters, and abbreviations are not acceptable for notice of tax sale, delinquency certificates, or foreclosure proceedings. Such notices must carry a full and accurate legal description, and either: (7-1-93)

a. A street address or other information useful in locating the property; or (7-1-93)

b. The name and telephone number of a person, firm, or business office from whom information concerning the location of the property may be obtained. Section 63-310025, Idaho Code. (7-1-93)()

03. Parcel Number. A parcel number is the tax number when a legal description is entered in the tax number book opposite the parcel number and this book is filed with the county clerk. (7-1-93)

~~224~~. (RESERVED).

~~550225~~. DOCUMENTATION FOR TAXING DISTRICTS OR URBAN RENEWAL DISTRICTS CONTAINING REVENUE ALLOCATION AREAS (RAAs) NEWLY ORGANIZED OR ALTERED (Rule 550225). Sections 50-2907 and 63-215, Idaho Code. ()

01. Documentation To Be Filed For Newly Created Or Altered Taxing Districts Or Urban Renewal Districts Containing Revenue Allocation Areas (RAAs). The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than ten (10) days following the effective date of any action creating, altering, or dissolving a new taxing district, urban renewal district, or municipal boundary or altering an existing district or municipal revenue allocation area (RAA) boundary. (7-1-93)()

a. A legal description which plainly and clearly defines the boundary of a the new or altered taxing district or RAA contained in an urban renewal municipality, or the altered portion of an existing district or municipality with a copy of the ordinance or order effecting the formation or alteration. (7-1-93)()

b. A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (7-1-93)()

c. A copy of the ordinance or order effecting the formation or alteration. ()

02. Documentation To Be Filed For Dissolved Taxing Districts, Urban Renewal Districts, And RAAs. No later than ten (10) days following the effective date of any action dissolving a taxing district, urban renewal district or RAA, a copy of the ordinance or order effecting the dissolution shall be filed with the county assessor, county recorder and the State Tax Commission. ()

023. Legal Description. Legal description means a narrative which describes, by metes and bounds, a definite boundary of an area of land that can be mapped on a tax code area map, and shall include: (7-1-93)

a. Section, township, range, and meridian. (7-1-93)

b. An initial point, being a government surveyed corner, such as a section corner, quarter corner, ~~meander corner~~, or mineral survey corner. (7-1-93)()

c. A true point of beginning, defined by bearings and distances from the initial point, that begins the new or altered taxing district or RAA. (7-1-93)()

d. Bearings and distances that continuously define an area boundary with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from closure requirements of this subsection may be approved ~~when verified documentation is provided by the State Tax Commission~~ if the description is sufficiently certain and accurate to ensure that property is assigned to the proper tax code area. Such variations may include: ()

i. ~~When boundaries which~~ follow mountain ranges, rivers, highways, lakes, canals, ~~etc.~~, and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000 or, if not available, at scale 1:62,500; or ()

ii. ~~when~~ References to cardinal directions, government survey distances, and section or aliquot part corners are used and modern survey information is not available; or ()

iii. References to recorded subdivision or townsite plats, with copies of such plats; or ()

iv. ~~when~~ Legislatively established boundaries are defined by reference to Idaho Code, a duplication and reference to that sections of the code shall be provided. (7-1-93)()

e. The legal description to annex to an taxing district, or RAA shall duplicate the existing metes and bounds of the ~~existing~~ district or RAA, or shall reference the former legal description as, "formerly known as," unless the existing district or RAA can be clearly identified. (7-1-93)()

034. Map Prepared In A Draftsman-like Manner. Map prepared in a draftsmanlike manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: ()

a. Section, township, range, and meridian identifications. ()

b. North arrow, bar scale, and title block. ()

c. District name and ordinance number or order date. ()

d. Bearing and distance annotation between boundary points. ()

e. Clearly defined boundary lines of the newly formed ~~district~~ or altered taxing district, or RAA together with reference to the existing boundary where contiguous. ~~District boundaries delineated on recorded surveys, engineer drawings, or U.S. Geological Survey Quadrangle maps are also acceptable. General hunting and fishing, city street, or nonsealed maps will not be accepted.~~ (7-1-93)()

05. Digital Map. Digital map information may be submitted in addition to the hard copy maps in Subsection 225.04. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. ()

046. Contiguous. Contiguous means being in actual contact or touching along a boundary or at a point. (7-1-93)

057. Deadline For Completion. December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (7-1-93)()

06. Alteration Of Boundary. Any district altering its boundary during the year shall provide to the

~~Commission a complete legal description of the new district including all alterations, by January 10 of the following year.~~ (7-1-93)

078. Approval Of Property Tax Levy Or Revenue Allocation. ~~For the purpose of levying property taxes or receiving revenue allocations No property tax levy newly formed or altered taxing district, or RAA shall be approved considered formed or altered by the State Tax Commission if it for any newly formed district or altered portion of an existing district:~~ (7-1-93)()

a. ~~That f~~Fails to provide the correct documentation plainly and clearly designating the boundaries of such district; or (7-1-93)()

b. ~~Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or~~ ()

~~bc.~~ ~~Whose~~ Has boundaries which overlap with like districts. (7-1-93)()

09. Notification Of Approval Or Disapproval. The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to the urban renewal agency, auditor and assessor of all involved counties. In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. Such letter shall be sent by the State Tax Commission within thirty (30) days of receipt of the document to which the disapproval relates, but not later than January 24. ()

0810. One Uniform System. The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. (7-1-93)()

0911. Tax Code Areas. Each tax code area shall have a separate tax code area number which shall be initiated or changed only by the State Tax Commission. (7-1-93)()

102. Furnished By The State Tax Commission. The State Tax Commission will furnish annually, without charge, one (1) set of updated tax code area maps, a listing of taxing districts included in each tax code area, and a list of changes in taxing district boundaries to the county assessor, recorder, and treasurer. There shall be a charge for all other tax code area maps. (7-1-93)()

~~226. -- 228.~~ **(RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

~~230. -- 239.~~ **(RESERVED).**

~~241-30. -- 249.~~ **(RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (Rule 317).

01. Manufactured Housing. Occupancy tax shall apply to industrial structures and new manufactured housing. Used manufactured housing is not subject to the occupancy tax. (3-23-94)

02. Value Prorated Monthly. The value for occupancy tax purposes shall be prorated at least monthly. (3-23-94)

03. Market Value. The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax shall not be included in the assessed value of any taxing district, but must be declared in the certified budget. (3-23-94)

04. Allocation To Urban Renewal Agencies. Beginning with any distribution of occupancy tax resulting from occupancy taxes levied after approval of levies for the year 2000, the revenue shall be allocated to any applicable school district and urban renewal agency. The revenue distribution to any applicable school district must be satisfied prior to the distribution to the urban renewal agency. Only the occupancy tax revenue from properties within the revenue allocation area shall be distributed in this manner. School districts shall be allocated an amount of occupancy tax equal to four tenths of one percent (0.4%) of the prorated value of property subject to occupancy tax, provided that such property is located within the school district and within the revenue allocation area of an urban renewal agency. ()

(BREAK IN CONTINUITY OF SECTIONS)

330. -- 34950. (RESERVED).

350. TAX LEVY -- CERTIFICATION -- URBAN RENEWAL DISTRICTS (Rule 350).

01. Budget Certification. ~~The certification required shall be made to each board of county commissioners representing each county in which the district is located. The certification shall be on a form prescribed by the Tax Commission.~~ (7-1-97)

02. Cross Reference. ~~Additional certification of full market value by taxing district is required as specified in PTR 635.~~ (3-23-94)

03. Levy Computation For Taxing Districts Encompassing Revenue Allocation Areas Within Urban Renewal Districts. ~~Beginning in 1997, the property tax levy for any taxing district or unit which includes all or part of a revenue allocation area (RAA) in an urban renewal district, as defined in Chapter 29, Title 50, Idaho Code shall be computed as described in the following subsections.~~ (7-1-97)

a. ~~The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under section 50-2903, Idaho Code. The taxable value of each category of property in a parcel for the year immediately preceding the year the RAA is established is to be summed to establish initial base year value for each parcel. If a parcel's legal description has changed prior to computing initial base year value, the value that best reflects the prior year's taxable value of the parcel's current legal description must be determined and will constitute the initial base year value for such parcel.~~ (7-1-97)

b. ~~The dollar amount certified for the property tax portion of the budget of the taxing district or unit shall be divided by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. The "increment value" is the difference between the current equalized value of each parcel of taxable property in the taxing district or unit and that parcel's current base value. Each parcel's current base value shall be adjusted by category. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made.~~ (7-1-97)

e. ~~Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel's legal description. This adjustment shall be calculated as described in the following subsections.~~ (7-1-97)

i. ~~When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value.~~ (7-1-97)

- ~~ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (7-1-97)~~
- ~~iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 350.03.i. and then the value of the combination will be calculated as set forth in Subsection 350.03.ii. (7-1-97)~~
- ~~d. For operating property, the original base value shall be allocated to the RAA on the same basis as is used to allocate operating property to taxing districts and units. The operating property base value shall be adjusted as required under section 50-2903, Idaho Code. (7-1-97)~~
- ~~e. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. Base values are to be adjusted downward for properties becoming exempt and upwards for exempt properties becoming taxable. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. (7-1-97)~~
- ~~f. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (7-1-97)~~
 - ~~i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (7-1-97)~~
 - ~~ii. For personal property, all of the personal property associated with one parcel is physically removed from the RAA. (7-1-97)~~
 - ~~iii. For operating property, any of the property under a given ownership is removed from the RAA. (7-1-97)~~
 - ~~g. The increment value shall not be included in the calculation of the levy of any taxing district or unit. (7-1-97)~~

(BREAK IN CONTINUITY OF SECTIONS)

404. OPERATOR'S STATEMENT -- CONTENTS (Rule 404).

01. Operator's Statement. In the operator's statement, the number of miles of railroad track, electrical and telephone wire, pipeline, etc., must be reported to the hundredth mile in decimal form (0.00) in each taxing district or taxing authority and must be reported by the uniform tax code area method. (7-1-99)

02. Tax Code Area Maps. By February 15 of each year, the State Tax Commission shall send to all companies having operating property within the state of Idaho, except private railcar fleets, a list of all changes in tax code area boundary lines. In case the State Tax Commission receives additional information, such lists may be sent by March 1. Every day that the tax code area map deadline is extended beyond February 15 allows for an automatic operator's statement extension equal to the delay. The reporting company shall review the list of changes to identify any tax code areas, within which any of the company's operating property is located. The reporting company shall report, under Subsection 404.01, based on these identified tax code areas. The State Tax Commission shall provide the tax code areas maps to the reporting company at cost. (7-1-99)(____)

03. Reporting Of Mileage. The following procedures apply for reporting mileage. (7-1-99)

a. Railroads. The railroad track mileage shall be reported by the name of the main line and branch lines with the track mileage for the main line and branch lines reported as Main Track Miles. Track miles consisting of passing track, yard switching, spurs, sidings, etc., shall be reported as Secondary Track Miles. (7-1-99)

b. Electric Power Companies. Transmission and distribution lines shall be defined based on the "Uniform System of Accounts" published by the Federal Energy Regulatory Commission. Cooperative electrical associations may include lines designed to accommodate thirty-four thousand five hundred (34,500) volts or more as transmission or distribution lines. Transmission or distribution lines shall be reported by single linear wire mile. (7-1-99)

c. Telephone Companies. All telephone wire mileage shall be reported on a single linear wire mile basis, and include any ground wires. (7-1-99)

d. Natural Gas and Water Distribution Companies. All natural gas and water distribution companies shall report pipeline miles on a three (3) inch comparison basis. For example, a company with five (5) miles of six (6) inch pipe will report ten (10) pipeline miles: five (5) times six (6) divided by three (3) equals ten (10) miles. (7-1-99)

e. Transmission Pipelines. Transmission pipelines are reported in actual pipe sizes, without adjustment, because the pipe is normally uniform in size over long distances. (7-1-99)

04. Situs Property. Situs property includes microwave stations and radio relay towers. This property is not apportioned on the basis of mileage. The investment in this property shall be reported in the tax code area, within which it is located. (7-1-99)

05. Record Of Property Ownership. The following procedures apply for maintaining records of operating property ownership. (7-1-99)

a. STC Form R. A record of each property owned, leased, or otherwise operated by each railroad, private railcar fleet or public utility shall be maintained by the State Tax Commission, the appropriate railroad, private railcar fleet or public utility, and the appropriate county assessor's office. Each record shall be maintained on a form identified as STC Form R. The State Tax Commission shall send a copy of each STC Form R to the appropriate company and the appropriate county assessor's office. (7-1-99)

b. Identification of Operating Property and Nonoperating Property. The State Tax Commission shall identify which property is operating property and which property is nonoperating property. (7-1-99)

c. Filing of Property Ownership by Railroad Companies. Each railroad company shall file the original railroad right-of-way maps with the State Tax Commission. Each railroad shall file an STC Form R, only, for property that is acquired, leased, or transferred between operating and nonoperating status, or sold during the prior year. (7-1-99)

06. Filing Date For Operator's Statement. By April 30 each year, each railroad, private railcar fleet, and or public utility company operating in Idaho shall file information pertinent to the company's ownership and operation with the State Tax Commission. This information must be reliable for preparing an estimate of market value. For each company submitting a written request for an extension on or before April 30, the State Tax Commission may grant an extension of the filing date until May 31. An automatic extension beyond April 30, may be granted as set out in Subsection 404.02. (7-1-99)()

(BREAK IN CONTINUITY OF SECTIONS)

5540. -- 579. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

710. -- ~~801-799~~. (RESERVED).

800. BUDGET CERTIFICATION RELATING TO OPERATING PROPERTY ANNEXATION VALUE (Rule 800).

Section 63-802, Idaho Code. ()

01. "Appropriate County Auditor" Defined. The "appropriate county auditor" is the county auditor of each county within which any taxing district with an annexation is located. ()

02. 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. ()

03. Corrected Annexation Values For Operating Properties. If any annexation values reported pursuant to Subsection 800.02 require correction, the State Tax Commission shall report such corrections on or before the first Monday of September. The State Tax Commission shall send these values to the appropriate county auditor. ()

04. 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 Subsection 800.02 or the corrected values pursuant to Subsection 800.03, the appropriate county auditor shall send these values to the affected taxing districts or units. ()

801. LIMITATION ON BUDGET REQUESTS -- SPECIAL PLANT FACILITIES FUND LEVY PROVISIONS (Rule 801).

Section 63-802, Idaho Code. For any school or library district with a plant facilities fund created pursuant to Section 33-804, Idaho Code, the amount of property tax to be budgeted for said fund in any year cannot exceed four tenths of one percent (0.4%) multiplied by the market value for assessment purposes of the taxing district as of December 31 or the year prior to the first year in which a plant facilities fund levy is made. ()

802. ~~LIMITATION ON BUDGET REQUESTS~~ BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION (Rule 802).

Sections 63-802 and 63-301A 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. **Definitions.** (7-1-98)()

02a. ~~"Change Classification of Land Use Change classification."~~ "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)()

b. "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 Rule 327 of these rules. ()

032. New Construction Roll Listing. "Listing" shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, including qualifying new construction within any revenue allocation area within any urban renewal district encompassed by the taxing district or unit. 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. (7-1-99)

053. 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)

064. 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. In the case of partially completed property previously reported on the property roll, but subsequently exempt pursuant to Section 63-602W, Idaho Code, the increase in value to be reported on the new construction roll following loss of this exemption shall be the difference between previously reported new construction roll value and the taxable value for the year in which the occupied property is first entered on the property roll. If any of this difference is attributable to inflation, such value shall not be included on the new construction roll. (7-1-99)

Example: Assume a partially completed, never occupied residential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 1997. The improvement was occupied February 2, 1998. Assume the ten thousand dollars (\$10,000) value was on the 1997 new construction roll. Assume that in 1999 the improvement is assessed at ninety thousand dollars (\$90,000) and a forty-five thousand dollars (\$45,000) homeowner's exemption is then deducted. Assume there has been no inflation. The amount that can be reported on the 1999 new construction roll is calculated as follows:

1999 Value (before homeowner's exemption)	\$90,000
1999 Homeowner's Exemption	<45,000>
1999 Taxable Value (after homeowner's exemption)	\$45,000
1997 Value Already Reported on New Construction Roll	<10,000>
1999 New Construction Roll Value (this improvement)	\$35,000

(7-1-99)

085. Change In Exemption Status. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W, Idaho Code. (7-1-99)

046. Corrected New Construction Roll. The values shown on the listing required in Subsection 802.03 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. (7-1-99)

~~**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 Rule 327 of these rules. (7-1-99)~~

~~**09. 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. (7-1-98)

~~10. **Corrected Annexation Values For Operating Properties.** If any annexation values reported pursuant to Subsection 802.09 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". (7-1-99)~~

~~11. **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 Subsection 802.09 or the corrected values pursuant to Subsection 802.10, the "appropriate county auditor" shall send these values to the affected taxing districts or units. (7-1-99)~~

~~12. **"Appropriate County Auditor" Defined.** For Subsections 802.09, 802.10, and 802.11, the "appropriate county auditor" is each county auditor of each county within which any annexed areas are located. (7-1-99)~~

~~803. --808. **(RESERVED) BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (Rule 803).**
Section 63-803, Idaho Code. ()~~

~~01. **Definitions.** ()~~

~~a. **"Dollar Certification Form" (L-2 Form).** The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy provided in Section 63-809, Idaho Code. ()~~

~~b. **"Prior Year's Market Value for Assessment Purposes."** Prior year's market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code, and for fire districts, pursuant to Section 31-1420(3), Idaho Code. ()~~

~~02. **Budget Certification.** The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located. The certification shall be on a form prescribed by the State Tax Commission. ()~~

~~03. **Budget Requested Documents.** Each Board of County Commissioners shall submit to the State Tax Commission 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. The Board 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. Each taxing district certifying a budget request to finance the ad valorem portion of its annual budget shall complete the State Tax Commission's L-2 Form. ()~~

~~04. **L-2 Form Contents.** Each taxing district or unit completing an L-2 Form shall include the following information on this form. ()~~

~~a. **"Department or fund."** Identify the department or fund for which the taxing district is requesting a budget for the current tax year. ()~~

~~b. **"Total approved budget."** List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is~~

set, regardless of whether funds are to be raised from property tax. ()

c. "Cash forward." List any money brought forward from a prior year to help fund the approved budget. Cash forward is the difference between the total approved budget and the sum of amounts reported as "state and other funds" and "balance to be levied on". ()

d. "State and other funds." List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. ()

e. "Balance to be levied on." Report the amount of money included in the total approved budget to be derived from property tax. ()

f. Other information. Provide the following additional information. ()

i. The name of the taxing district or authority: ()

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code: ()

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district: ()

iv. For a fire district with a population greater than twenty-five hundred (2500), a signature certifying such. ()

v. For a hospital district which has held a public hearing, a signature certifying such action. ()

804. TAX LEVY -- CERTIFICATION -- URBAN RENEWAL DISTRICTS (Rule 804).

01. Definitions. ()

a. "Urban renewal district." An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. ()

b. "Revenue allocation area (RAA)." A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are to be determined. Revenue allocation areas (RAAs) are not taxing districts. ()

c. "Current Base value." The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. ()

d. "Initial Base value." The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. ()

e. "Increment value." The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel's current base value, provided such difference is a positive value. ()

02. Establishing and Adjusting Base and Increment Values. ()

a. Establishing initial base value. If a parcel's legal description has changed prior to computing initial base year value, the value that best reflects the prior year's taxable value of the parcel's current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as

defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll.

()

b. Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel's initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000).

()

i. Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar (\$1,000) decrease in value in Category 21 and a one thousand dollar (\$1,000) increase in Category 42 value. There is no change in the base value for the parcel.

()

ii. Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars (\$3,000) decrease in value in Category 21 and a one thousand dollars (\$1,000) increase in Category 42 value. The base value decreases two thousand dollars (\$2,000) to ninety-eight thousand dollars (\$98,000).

()

iii. Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars (\$98,000), the value of the parcel increases by five thousand dollars (\$5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars (\$98,000).

()

c. Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel's legal description. This adjustment shall be calculated as described in the following subsections.

()

i. When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value.

()

ii. When a parcel has been combined with another parcel, the most recent base year values are added together.

()

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii.

()

d. Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections.

()

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established.

()

ii. Partially exempt parcels. When a partially exempt parcel within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that if this parcel had not been actively devoted to agriculture at that time, the taxable value would have been fifteen hundred dollars (\$1500). After five (5) years, this parcel is no longer used for farming, loses its partial exemption, and becomes reclassified as

industrial land with a value of ten thousand dollars (\$10,000). The base value within the RAA would be adjusted upwards by one thousand dollars (\$1,000), the difference between fifteen hundred dollars (\$1500) and five hundred (\$500). ()

iii. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the original value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars (\$20,000). Three (3) years later, an improvement valued at one hundred thousand dollars (\$100,000) was added. The land at this later date had a value of thirty thousand dollars (\$30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by twenty thousand dollars (\$20,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by twenty thousand dollars (\$20,000). ()

e. Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. ()

i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). ()

ii. For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA. ()

iii. For operating property, any of the property under a given ownership is removed from the RAA. ()

f. Adjustments to increment values. Decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). ()

g. Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. ()

03. Levy Computation For Taxing Districts Encompassing RAAs Within Urban Renewal Districts. The property tax levy for any taxing district or unit which includes all or part of an RAA in an urban renewal district shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the taxing district or unit by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's budget by eighty-five million dollars (\$85,000,000). ()

04. Modification Of An Urban Renewal Plan. When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. ()

a. Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for the consolidated RAA. ()

b. Modification by annexation. If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. ()

05. Allocation To School Districts. In the case of school districts, the budget limited by Section 63-802, Idaho Code, shall not include the allocation pursuant to Section 50-2908, Idaho Code. Said allocation shall be computed for any school district by multiplying the school district's urban renewal increment as defined in Rule 329 of these rules by four tenths of one percent (0.4%) pursuant to Section 33-1002, Idaho Code. ()

06. Cross Reference. The county auditor shall certify the full market value by taxing district as specified in Rule 635 of these rules. ()

805. -- 808. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-9901
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Sections, 63-105 and 63-2427 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

Rule 105 - Licensed Gaseous Fuels Distributor's Report is being amended to require receipt books, decals and other information necessary to reconcile gaseous fuels permits at the end of the reporting period. The rule is also being amended to clarify what information is required for a gaseous fuels permit.

Rule 141 - Reporting And Calculation Of Line Flush Allowance is being promulgated to specify the reporting, calculation and form required to receive a refund for the special fuels tax when tax-paid undyed diesel fuel is mixed with dyed diesel fuel when the fuel delivery truck's pressurized lines are flushed.

Rule 290 - Nontaxable Special Fuels Used In Motor Vehicles is being amended to clarify eligibility and reporting requirements for refunds of special fuels users. Calculation procedures for non taxable miles and power-take-off allowances in this rule are being deleted and placed into a new Rule 292.

Rule 292 - Calculation Of Refunds For Nontaxable Uses Of Motor Fuels in Motor Vehicles is being promulgated with language from Rule 290 to specify how to calculate refunds for nontaxable miles and power-take-off allowances.

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 amendments to the Motor Fuels Taxes are non-controversial.

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 rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July, 1999

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-9901

105. LICENSED GASEOUS FUELS DISTRIBUTOR'S REPORTS (Rule 105).

01. **Monthly Reports.** Every licensed gaseous fuels distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. 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. (7-1-99)

- a. ~~The total gross taxable gallons of gaseous fuels sold must be reported on a receipt schedule;~~ (7-1-99)
- ba. The ~~gross total~~ taxable gallons of gaseous fuels sold; (7-1-99)()
- e. ~~The net taxable gallons;~~ (7-1-99)
- db. The taxable gallons after deduction of a two percent (2%) allowance. See Rule 140 of these rules; (7-1-99)()
- ec. The tax computation; (7-1-99)
- fd. The bad debt amounts, ~~refer to if any.~~ See Rule 140 of these rules; (7-1-99)()
- ge. The gaseous fuels permit fees (Attach to the report the yellow copy of the receipt for each gaseous fuels permit sold during that month); and (7-1-99)()
- hf. The net tax due; (7-1-99)()
- g. A receipt schedule reporting the total number of taxable gallons of gaseous fuels sold must be attached to the distributor's report. ()

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 together with the payment of any tax, annual gaseous fuels permit fees, penalty or interest 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. (7-1-99)

03. **Failure To Collect And Remit Tax And Permit Fees.** Any gaseous fuels distributor required to collect the tax or permit fee imposed by Section 63-2424, Idaho Code, who fails to collect such tax or permit fee, or any gaseous fuels distributor required to remit the tax or permit fee pursuant to this section who fails to make such remittance shall be liable to the State Tax Commission for the amount of tax or permit fee not collected or remitted plus any applicable penalty or interest. The State Tax Commission may collect such amounts in the manner provided in Section 63-2434, Idaho Code. (7-1-99)

04. **Receipt Of Gaseous Fuels.** The special fuels tax is not imposed on gaseous fuels when the fuels are received in Idaho. (7-1-99)()

05. **Gaseous Fuels.** Propane ~~or~~ and natural gas ~~will be~~ are presumed to be tax-exempt fuels unless delivered into the supply tank of a licensed, or required to be licensed, motor vehicle. (7-1-99)()

06. **Annual Fees For Gaseous Fuels Permits.** Persons operating vehicles powered by gaseous fuels may ~~buy pay~~ pay an annual ~~fee for a~~ fee for a gaseous fuels permit instead of paying the special fuel taxes ~~on at the purchase of time propane or natural gas is purchased.~~ Gaseous fuels distributors who sell these permits ~~must shall~~ shall issue a permit that will be in the form of a decal to be displayed in a conspicuous spot visible ~~on~~ from the outside of the permitted

vehicle. The fees for gaseous fuels permits are based on the gross vehicle weight of the vehicles and are set by Rule 115 of these rules as is mandated by Section 63-2424(2), Idaho Code. The gaseous fuels permit is valid for the annual permit period of July 1 through June 30 of the following year. The annual permit period displayed on the decal will be the year in which the decal expires. (7-1-99)()

07. Documentation Of Untaxed Sales Of Gaseous Fuels Into Motor Vehicles. Gaseous fuels delivered into the fuel supply tank of a licensed, or required to be licensed, motor vehicle are taxable except for: (7-1-99)

a. Government. Gaseous 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. (7-1-99)

b. ~~Motor vehicles displaying valid annual gaseous fuels permits~~ Gaseous Fuels Decal. Gaseous fuels dispensed into the fuel supply tank of a motor vehicle displaying a valid Gaseous 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" must be recorded on the sales document. (7-1-99)()

08. Completion Of Gaseous Fuels Receipt Book(s). The following information is required to be recorded by a gaseous fuels distributor in his gaseous fuels receipt book for each gaseous fuels permit (decal) sold: ()

- a. The date: ()
- b. The amount: ()
- c. One of the following weight classes: ()
 - i. Zero - eight thousand pounds (0 - 8,000 lbs.), or ()
 - ii. Eight thousand one - sixteen thousand pounds (8,001 - 16,000 lbs.), or ()
 - iii. Sixteen thousand one - twenty-six thousand pounds (16,001 - 26,000 lbs.), or ()
 - iv. Twenty-six thousand one pounds (26,001 lbs.) and over. ()
- d. The current month: ()
- e. The annual permit period: ()
- f. The customer's name and vehicle license plate number: ()
- g. The name and license number of the gaseous fuels distributor who is selling the permit; and ()
- h. The signature of the salesperson. ()

09. Annual Reconciliation Of Gaseous Fuels Receipt Books And Decals. A distributor who sells gaseous fuels permits must reconcile its account with the State Tax Commission for the annual permit period ending June 30, by July 31, of the same year. Distributors may begin ordering decals and receipt books in May for the upcoming annual permit period. The following is required to be received by the State Tax Commission for reconciliation: ()

- a. All unused/unsold gaseous fuels decals: ()
- b. All voided receipts (white and yellow copies) not previously submitted with the distributor report;

- - c. All receipt books (pink copies must be intact); and
 - d. A completed gaseous fuels reconciliation form which includes:
 - i. The number of decals ordered for the annual permit period;
 - ii. The number of decals sold for the annual permit period;
 - iii. The balance of decals at the end of the annual permit period; and
 - iv. The number, if any, of decals lost or destroyed. If decals are lost or destroyed, a statement describing the circumstances of the loss or destruction must accompany the distributor's gaseous fuels permit reconciliation.
- 10. Assessment For Unaccounted For Decals.** Two hundred and eight dollars (\$208) will be assessed for each decal not accounted for during the annual reconciliation, unless there is clear and convincing evidence the decal was destroyed or mutilated.

(BREAK IN CONTINUITY OF SECTIONS)

141.--149. ~~(RESERVED)~~ REPORTING AND CALCULATION OF LINE FLUSH ALLOWANCE (Rule 141).

01. Eligibility. Any licensed or unlicensed fuel distributor may use the Line Flush Allowance worksheet to calculate a refund of special fuels tax if the distributor delivers both dyed and clear diesel fuel to customers from the same fuel delivery truck. These "mixed" deliveries may cause clear, tax-paid, diesel fuel to be contaminated with red dye. This fuel must then be put into the truck's dyed diesel fuel tank. This situation occurs when:

- a. Dyed diesel fuel is used to flush clear diesel fuel from the truck's pressurized line; or
- b. Clear diesel fuel is used to flush dyed diesel fuel from the truck's pressurized line.

02. Calculation Methods. Two (2) methods are available to calculate the total nontaxable gallons used to flush lines for the filing period. Both methods may be used throughout the filing period, but only one (1) method may be used to account for each separate flush. Check the box on the worksheet to indicate the methodology used to calculate non-taxable gallons. The two (2) methods are:

- a. A standard allowance of five (5) gallons multiplied by the number of flushes; or
- b. The actual gallons used to flush the lines.

03. Records Required. Records supporting this claim should not be submitted with this claim, but must be retained by the claimant. All fuels tax refund claims are subject to review and/or audit by the Idaho State Tax Commission. The fuel distributor must keep records in accordance with one (1) or both of the methodologies that follow:

- a. Standard allowance. Logs prepared by the delivery truck driver indicating the truck number, date, number of flushes, and the type of each flush, and/or
- b. Actual gallons. Delivery tickets or totalizer log readings for each flush.

- 04. Calculation of Line Flush Allowance.** The line flush allowance worksheet contains the following elements: ()
- a. Total number of times the pressurized line was flushed during the filing period. ()
 - b. Number of times the line was flushed using the standard allowance. ()
 - c. Number of gallons to be claimed using the standard allowance (Subsection 141.04.b. times five (5) gallons per flush). ()
 - d. Number of times the line was flushed using actual gallons. ()
 - e. Number of gallons to be claimed using actual gallons (Delivery tickets/totalizer log readings). ()
 - f. Nontaxable gallons to be reported on Form 75. (Add Subsections 141.04.c. and 141.04.e. Enter the total nontaxable gallons in the Refund Section under Undyed Diesel Fuel on the Form 75). ()

142. -- 149. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

290. RECORDS REQUIRED FOR INTRASTATE SPECIAL FUELS USERS CLAIMING REFUNDS FOR NONTAXABLE SPECIAL FUELS USED IN MOTOR VEHICLES. (Rule 290.)

01. Refund Claims, Required Records. Special fuel users, except IFTA carriers licensees, must file a Form 75 with the relevant supplemental worksheet to claim a fuels tax refund. The records following information is required to document qualify for a refund request are as follows: except for claims based only on the power take-off allowances provided for in Rule 292 of these rules. (7-1-99)()

a. Total miles. The total miles traveled should be included for motor vehicles which have nontaxable uses of special fuels. Special fuel users who qualify to use one of the "Standard MPGs" found in Subsection 290.02-g- of this rules need only record and report Idaho taxable miles. (7-1-99)()

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. (7-1-98)

c. Actual Miles per gallon. The miles per gallon shall be computed by dividing gallons reported determined according to Subsection 290.01.b. of this rule into the number of miles reported determined 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. ()

d. Statutory miles per gallon. 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: (7-1-98)()

i. Four (4) miles traveled by vehicles over forty thousand (40,000) pounds gross registered vehicle weight; or (7-1-98)

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 (7-1-98)

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 (7-1-98)

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 (7-1-98)

v. Sixteen (16) miles traveled by vehicles six thousand (6,000) pounds or less gross registered vehicle weight. (7-1-98)

de. 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. (7-1-98)

ef. 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. ~~and 290.01.d. of this rule~~ into the total taxable miles in Idaho according to Subsection 290.01.de. ~~of this rule.~~ (7-1-98)()

~~**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. (7-1-98)~~

~~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. (7-1-98)~~

~~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: (7-1-98)~~

~~i. The cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them, and (7-1-98)~~

~~ii. They operate motor vehicles that weigh over twenty-six thousand (26,000) pounds maximum gross weight on that roadway. (7-1-98)~~

~~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. (7-1-98)~~

~~e. Power Take Off (PTO) and Auxiliary Engine 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 PTO or auxiliary engine allowances are turning a vehicle mounted cement mixer or off loading product. Total gallons of fuel may be reduced when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the motor vehicle. No reduction of total gallons of gasoline is allowed when gasoline is used by the motor vehicle's main engine even to operate the motor vehicle's PTO unit. The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (7-1-99)~~

~~i. Gasoline/fuel oil: 1.5 gallons per 10,000 gallons pumped; (7-1-98)~~

- ii. Bulk cement: 4 gallons per 22.5 tons pumped; (7-1-98)
 - iii. Concrete: 1 gallon per 5 cubic yards; (7-1-98)
 - iv. Refrigeration Unit (Reefer): .75 gallon per hour; (7-1-98)
 - v. Tree length timber: .0503 gallon/ton; 19.88 tons/gallon; 3.46 gallons/hour. (7-1-99)
 - vi. Garbage Compaction: 25% of total fuel consumed. (7-1-99)
 - vii. Carpet Cleaning: .75 gallons/hour (7-1-99)
- 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 PTO or auxiliary engine allowance. (7-1-99)
- e. PTO or auxiliary engine 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. A request for a PTO or auxiliary engine allowance greater than those listed in Subsection 290.02.c. of this rule must also be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed PTO or auxiliary engine allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. Taxpayers must send requests for approval to: (7-1-99)

FUELS TAX POLICY SPECIALIST
TAX POLICY SECTION
IDAHO TAX COMMISSION-
P. O. BOX 36
BOISE, ID 83722
(208) 334-7530

- f. PTO or auxiliary engine 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 PTO or auxiliary engine 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 with the relevant supplemental worksheet. (7-1-99)
- i. The IFTA licensee must recompute the total fuel consumed in all jurisdictions by deducting the gallons allowed for the PTO or auxiliary engine 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. (7-1-99)
- 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 PTO or auxiliary engine 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. (7-1-99)

§02. Alternative Refund Calculation For Special Fuels Users Engaged In Certain Industries. A special rule may be applied for motor vehicles, except IFTA carriers licensees, 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 Subsections 290.01.c. and 290.01.d. 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:

Logging	4.3 MPG
Agricultural	4.5 MPG
Sand, gravel & rock hauling	4.0 MPG
Construction	4.4 MPG

(7-1-99)()

03. Actual MPG Calculation. 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 or statutory MPG provided in Subsection 290.01.d. (7-1-98)()

04. Claims Subject To Review Or Audit. All fuels tax refund claims are subject to review or audit by the State Tax Commission. ()

291.--299. (RESERVED).

292. CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES. (RULE 292).

01. Fuel Records Required For Refund Claims. 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. Records must be kept as described in Rule 290.01 of these rules. ()

02. Nontaxable Miles Defined. 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 292.03. 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. ()

03. Additional Nontaxable Roadways. Roadways defined in Section 63-2401, Idaho Code, include 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. If the special fuels user is not using the "standard MPG" for its industry found in Subsection 290.02, the special fuels user must maintain records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision. Special fuels users may exclude from total taxable miles traveled in Idaho the miles traveled on these roadways when computing their special fuels tax liability or refund if: ()

a. The cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them or if the special fuel user is a subcontractor of a prime contractor required by contract to bear the primary cost of maintaining the roadway; and ()

b. They operate motor vehicles that weigh over twenty-six thousand (26,000) pounds maximum gross weight on that roadway. ()

04. Calculation. Determine the number of taxable miles driven in Idaho following the procedure established in Rule 290.01 of these rules. Divide this number by the actual MPG, the statutory MPG established by Rule 290.01 of these rules, or the industry standard MPG provided by Rule 290.02 of these rules. Subtract this number of gallons from the total Idaho tax-paid gallons purchased for the subject vehicles. ()

05. Power-Take-Off And Auxiliary Engine Allowances (Allowances). Power take-off (PTO)

allowances are available for special fuels powered vehicles. Auxiliary engine allowances are available for both special fuels and gasoline powered vehicles. ()

a. Standard Allowances For Special Fuels. Nontaxable gallons of special fuels may be claimed 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 allowances are turning a vehicle-mounted cement mixer or off-loading product. ()

b. Standard Allowances For Gasoline. Nontaxable gallons of gasoline may be claimed when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the motor vehicle. No claim for gasoline is allowed when gasoline is used by the motor vehicle's main engine even to operate the motor vehicle's PTO unit. ()

c. Rates For Standard Allowances. 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: 1.5 gallons per 10,000 gallons pumped; ()

ii. Bulk cement: 4 gallons per 22.5 tons pumped; ()

iii. Concrete: 1 gallon per 5 cubic yards; ()

iv. Refrigeration Unit (Reefer): .75 gallons per hour; ()

v. Tree length timber: .0503 gallon/ton; 19.88 tons/gallon; 3.46 gallons/hour; ()

vi. Garbage Compaction: 25% of total fuel consumed; ()

vii. Carpet Cleaning: .75 gallons/hour. ()

06. Non- Standard Allowances. A request for an allowance not listed in Subsection 292.05 or greater than those listed must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed 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
IDAHO STATE TAX COMMISSION
P. O. BOX 36
BOISE, ID 83722-0036

The Idaho State Tax Commission may request additional information or documentation as needed in order to make a determination on the request. ()

07. Nontaxable Gallons of Fuel Claimed By Non-IFTA Licensees. The nontaxable gallons of fuel claimed by non-IFTA licensees may be the allowance gallons listed in Subsections 292.05 and 292.06 and/or the gallons calculated under Subsection 292.04. Only actual MPGs, computed by adjusting total fuel as defined in Subsection 292.01 by the allowance gallons, may be used to calculate a fuels tax refund based on both nontaxable miles and allowances. Fuels tax refunds based solely on an allowance may be calculated without regard to mileage and fuel consumption (MPG) information. ()

08. IFTA Licensees Qualifying For Power Take-Off (PTO) And Auxiliary Engine Allowances (Allowances). Allowances listed in Subsection 292.05 or established as provided in Subsection 292.06 may be granted for IFTA licensees by recomputing the total gallons of fuel consumed in all jurisdictions. IFTA licensees claiming refunds of Idaho fuels tax resulting from the allowances established in Subsections 292.05 and 292.06, must file the claim on an Idaho Fuels Use Report Form 75 with the relevant supplemental worksheet. ()

a. The IFTA licensee must recompute the total taxable fuel for Idaho by deducting the gallons

determined by the allowances in all jurisdictions from the total number of gallons of fleet fuel consumed that was reported on the IFTA return. 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. ()

b. Additionally, a copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to review and audit, therefore, adequate documentation must be retained by the licensee. ()

c. IFTA licensees that used an assumed MPG when preparing their original IFTA return may not claim any additional refund. ()

293. -- 299. (RESERVED).

APPENDIX A

**IDAHO DIESEL/PROPANE FUEL
TAX EXEMPTION CERTIFICATE**

Company Name: _____ Date: _____

Address: _____

~~The undersigned purchaser hereby certifies that diesel/propane fuel ordered by the purchaser will be delivered into stationary bulk storage tanks with a capacity of fifty five (55) gallons or more.~~

~~The purchaser certifies the diesel fuel's intended use is primarily (more than fifty percent (50%)) for purposes other than propelling a motor vehicle designed for operation or required to be licensed for operation upon public roadways maintained by any government entity. (See IDAPA 35.01.05.220.05.)~~

~~Describe the diesel fuels intended off-road use.~~

~~If any portion of the fuel purchased under this certificate is used on public roadways or used for a purpose other than as stated in this certificate, then the purchaser assumes all responsibility for payment of any tax due to the state of Idaho.~~

~~Purchaser agrees to notify in writing,~~

~~if at any time the primary use of the fuel becomes subject to fuels tax.~~ (Special Fuel Dealer Name)

~~Purchaser will be prepared to verify by satisfactory evidence the purpose for which purchaser used the product bought under this certification.~~

~~Purchaser understands that any fraudulent use of this certificate to buy any fuel free to tax may subject purchaser to civil or criminal penalties.~~

Customer Account No. _____ Phone No. _____
Account Name (print): _____
Address: _____ City: _____
Signature: _____ Title: _____

APPENDIX B
KEYLOCK/CARDLOCK CUSTOMER AFFIDAVIT

Customer Name: Acct. No. _____

Business Name (dba): _____

Address: _____

City: _____ State: _____ Zip Code: _____

~~THIS FORM MAY BE USED TO PURCHASE EXEMPT DIESEL/PROPANE FUEL ONLY FOR THE USES SPECIFIED BELOW.~~

~~I certify, under penalty of perjury, that I purchase diesel fuel from the keylock/cardlock system of _____ in containers for a use that is not taxable by the state of Idaho under Idaho Code, Title 63 or in the fuel tank of equipment which is not required by Idaho law to be licensed. Specific equipment is as follows:~~

~~--OR--~~

~~I certify, under penalty of perjury, that I purchase propane fuel from the keylock/cardlock system of _____ in cylinders or the fuel tank of equipment which is not required by Idaho law to be licensed or a licensed vehicle which displays a valid gaseous fuels decal. Specific equipment is as follows:~~

~~--OR--~~

~~I certify, under penalty of perjury, that the diesel, propane, or natural gas that I purchase from the keylock/cardlock of _____ is for use in vehicles over sixteen thousand (16,000) pounds gross weight which are owned or leased and operated by the state of Idaho or other exempt state or local government.~~

~~--OR--~~

~~I certify, under penalty of perjury, that the diesel, propane, or natural gas that I purchase from the keylock/cardlock of _____ is for use in vehicles owned or leased and operated by the federal government.~~

~~I, the undersigned, further agree that if any taxable use of such fuel should arise from my purchases, I will assume responsibility for payment of such taxes.~~

Signature Date

IDAPA 35 - STATE TAX COMMISSION
35.02.01 - RULES GOVERNING ADMINISTRATION AND ENFORCEMENT
DOCKET NO. 35-0201-9901
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

Rule 110 - Declaratory Rulings – is being amended because the Attorney General's Administrative Rules do not adequately address the needs of taxpayers seeking declaratory rulings on applications of the law. The rule identifies why the Attorney General's Administrative Rules do not apply.

Rule 325 - Notice Of Deficiency -- Protest Procedures – is being amended to specify that the Tax Commission may issue a decision 42 days after the date the notification of the right to request a hearing is mailed to the taxpayer if the taxpayer does not request a hearing, requests a hearing but does not schedule a date for the hearing, or schedules a hearing but later cancels the hearing and does not reschedule the hearing. Applicable code reference is being added to the title.

Rule 702 - Disclosure Of Information -- Third Parties - is being amended to add other identifying numbers to the information required to be included in the written authorization to disclose information.

Rule 704 - Disclosure Of Information -- Government Agencies And Officials - is being amended to correct the reference to the Department of Employment that is now known as the Department of Labor. The Department of Transportation is being added to the list of agencies with whom there is an exchange of information allowed. Applicable code references are being added to the title.

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 rulemaking 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 rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-9901

110. DECLARATORY RULINGS (Rule 110).

Sections 67-5232 and 67-5255, Idaho Code.

(3-20-97)

01. Findings Pursuant To Section 67-5206, Idaho Code.

()

a. The Tax Commission finds that the Attorney General's Administrative Rules on declaratory rulings found at IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 400 through 402 do not adequately address the needs of taxpayers seeking a declaratory ruling on applications of the tax law. The Attorney General's Administrative Rules do not:

()

i. Protect taxpayer confidentiality;

()

ii. Define the taxpayer's right to rely on the ruling; or

()

iii. Identify the circumstances justifying the denial or withdrawal of a ruling.

()

b. Accordingly, this rule will govern declaratory rulings issued by the Tax Commission.

()

042. Filing A Petition.

(3-20-97)

a. Any person, group, or other association may file a written petition with the Tax Commission asking for an interpretation or determination as to the applicability of a statute, rule, or order issued by the Tax Commission to the party filing the petition. To obtain the determination the petitioner's tax liability must be directly affected by the determination or the petitioner must demonstrate a direct financial interest in the determination sought. (3-20-97)

b. A petition must be submitted to the Tax Commission in writing and contain an express statement that it is intended to be a petition for a declaratory ruling pursuant to this rule or the Administrative Procedure Act. (3-20-97)

023. Tax Commission's Response To Petition. After receiving a petition, the Tax Commission shall:

(3-20-97)

a. Issue a written declaratory ruling;

(3-20-97)

b. Require the petitioner to submit additional facts, evidence, or information as the Tax Commission deems necessary to make a declaratory ruling; or (3-20-97)

c. Decline to make a declaratory ruling. The Tax Commission shall decline to make a declaratory ruling in the following circumstances: (3-20-97)

i. The identity of the taxpayer is not disclosed;

(3-20-97)

ii. The request fails to include sufficient facts, evidence, or other information on which a declaratory ruling may be based; (3-20-97)

iii. The issue on which a declaratory ruling is sought is the subject of pending litigation or administrative appeal; (3-20-97)

iv. The petitioner is not a person directly affected by a resolution of the issue presented; or (3-20-97)

v. It appears there are other good or compelling reasons why a declaratory ruling should not be made. (3-20-97)

034. Factual Circumstances. A declaratory ruling applies only to the factual circumstances as submitted by the petitioner and applies only to the petitioner seeking the declaratory ruling. The declaratory ruling may not be relied on by a person not named as a petitioner. The declaratory ruling is void if the facts changed significantly, all relevant facts were not disclosed at the time of the petition, or the facts were not accurately represented to the Tax Commission. If the statutory provisions or administrative rules affecting the declaratory ruling are amended by the legislature or the Tax Commission, the declaratory ruling is void as of the date of the amendment to the statute or rule. (3-20-97)

045. Withdrawal Of Ruling. If after issuing a declaratory ruling the Tax Commission believes the declaratory ruling is erroneous, it may withdraw the declaratory ruling by giving written notice to the petitioner at his last known address. If the petitioner has relied on the declaratory ruling in good faith, the Tax Commission may not assess any tax liability accruing between the dates the declaratory ruling was issued and its withdrawal. (3-20-97)

056. Confidentiality. Declaratory rulings by the Tax Commission are information subject to the confidentiality requirements of Sections 63-3076 and 63-3077, Idaho Code and Rule 700 of these rules. Factual, financial, or other information relating to a taxpayer is not public record and may not be disclosed to any person except as provided by Sections 63-3076 and 63-3077, Idaho Code, or as authorized by the taxpayer. (3-20-97)

067. Appeals. Sections 67-5270 through 67-5279, Idaho Code, govern the judicial review of declaratory rulings. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

325. NOTICE OF DEFICIENCY -- PROTEST PROCEDURES (Rule 325). Sections 63-3045 and 63-3045B, Idaho Code. (3-20-97)()

01. In General. Once a perfected protest has been filed with the Tax Commission, the taxpayer may: (3-20-97)

a. Request a hearing; (3-20-97)

b. Submit additional documents; or (3-20-97)

c. Request a final decision from the Tax Commission. (3-20-97)

02. Hearings. A Commissioner or other person designated by the Tax Commission shall conduct a hearing in the form of an informal conference. If the taxpayer chooses to be represented by another person, a valid power of attorney form must be provided to the Tax Commission. The taxpayer has the right to be accompanied by another person, however, the Tax Commission may limit the number of people accompanying the taxpayer. If a protestant fails to comply with a summons or subpoena or fails to appear for the informal conference, the Tax Commission may issue a decision without further hearing. (3-20-97)

03. Submission Of Additional Documents. A taxpayer may submit additional statements, documents, or other materials he desires to have the Tax Commission consider before deciding the protest. If the one hundred eighty (180) day period for issuing a final decision has begun, the Tax Commission may require that a taxpayer execute an extension of the one hundred eighty (180) day period before the additional information or documentation will be considered. The one hundred eighty (180) day period is provided by Section 63-3045B, Idaho Code. (3-20-97)

04. Request For A Final Decision. A request for a final decision must be in a letter addressed to the employee or agent of the Tax Commission from whom the acknowledgment of the protest was received or to the individual subsequently assigned to resolve the protest. The request must be the sole subject of the letter and must clearly identify the taxpayer and the Notice of Deficiency. (3-20-97)

05. Simultaneous Request For A Final Decision And A Hearing. If the taxpayer makes a simultaneous request for both a final decision and a hearing, the Tax Commission shall treat this as a request for a hearing. The one hundred eighty (180) day period begins when the hearing concludes. (3-20-97)

06. Issues. Redetermination of any tax or refund due is not limited to the specific issue or issues protested for the taxable year, unless limited by Section 63-3068(f), Idaho Code. (3-20-97)

07. Amended Return After Audit. An amended return will be accepted for a taxable year for which a protest is pending only in the following circumstances: (3-20-97)

- a. The taxpayer demonstrates that the changes on the amended return are unrelated to issues examined in the audit; (3-20-97)
- b. The changes are the result of federal audit adjustments; or (3-20-97)
- c. The amended return is submitted as part of the procedure for resolving the protest. (3-20-97)

08. Failure To Schedule A Hearing. The Tax Commission may issue a decision after forty-two (42) days from the date the notification of right to request a hearing is mailed to the taxpayer; if ()

- a. The taxpayer does not request a hearing; ()
- b. The taxpayer requests a hearing but does not schedule a date for the hearing; or ()
- c. A hearing is scheduled but later cancelled by the taxpayer and the taxpayer does not reschedule. ()

(BREAK IN CONTINUITY OF SECTIONS)

702. DISCLOSURE OF INFORMATION -- THIRD PARTIES (Rule 702). Sections 63-3076 and 63-3077, Idaho Code. (3-20-97)

01. In General. The Tax Commission may not disclose returns or return information about a taxpayer to any person other than that taxpayer or an authorized representative of the taxpayer except as provided by statute or rule. (3-20-97)

02. Written Authorization To Disclose Information. (3-20-97)

- a. The Tax Commission may disclose a taxpayer's returns or return information to a person designated in writing by that taxpayer. (3-20-97)
- b. The written authorization must contain: (3-20-97)
 - i. The taxpayer's name, address and social security number, ~~or~~ employer identification number, or other identifying number that relates to the returns or return information to be disclosed; (~~3-20-97~~)()
 - ii. The name and address of the person to whom disclosure is authorized; (3-20-97)
 - iii. Language indicating the taxpayer's consent to disclosure of information; (3-20-97)
 - iv. The tax period or periods for which disclosure may be made; and (3-20-97)
 - v. The signature of the taxpayer, or if the taxpayer is a corporation or other business organization or an

entity other than an individual, the signature of an authorized employee or officer of the taxpayer. (3-20-97)

c. A written complaint or inquiry by a taxpayer to an elected official of the executive or legislative branches of state or federal government relating to the Tax Commission's actions or positions relating to that taxpayer is an authorization for the Tax Commission to disclose information relevant to the complaint or inquiry to the official, or the official's delegate. (3-20-97)

03. Audits Or Investigations. Tax Commission employees and authorized agents may make inquiries of any person or any employee of a person to collect or ascertain any tax liability, to determine the correctness of a return or return information, or for any other purpose relating to the Tax Commission's duties of administering or enforcing Idaho tax laws. Disclosures necessary to these inquiries are authorized. (3-20-97)

04. Testimony In Judicial Or Administrative Proceedings. If a Tax Commissioner, Tax Commission employee or agent is required to appear in court in an action where the Commission, employee or agent is not a party or where taxation is not in issue, by subpoena or otherwise, he may appear but shall refuse to testify without written authorization from the taxpayer, and may object to his appearance on the basis of this rule and Section 63-3076, Idaho Code. Information requested in a subpoena issued by a United States Grand Jury shall be provided. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS. (Rule 704). Sections 63-2442, 63-3077, 63-3077A, and 63-3077B, and 63-3634A, Idaho Code. (3-20-97)()

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies Or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange Of Information. Information may be exchanged between the ~~state of Idaho Tax Commission~~ and: (3-20-97)()

a. The Internal Revenue Service, as allowed by Section 63-3077(a), Idaho Code; (3-20-97)()

b. Other states, if reciprocal provisions for information exchanges are granted ~~the state of Idaho~~, under Section 63-3077(a), Idaho Code; (3-20-97)()

c. County assessors, limited to information relating to the taxpayer's residence or domicile, Section 63-3077(d), Idaho Code; (3-20-97)

d. Department of ~~Employment~~ Labor, as allowed by Section 63-3077A, Idaho Code; (3-20-97)()

e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; ~~and~~ (3-20-97)()

f. Multistate Tax Commission, as allowed by Section 63-3077(a), Idaho Code; ~~and~~ (3-20-97)()

g. Department of Transportation, relating to fuels tax as allowed by Section 63-2442, Idaho Code, and relating to residency information as allowed by Section 63-3634A, Idaho Code. ()

IDAPA 46 - BOARD OF VETERINARY MEDICAL EXAMINERS
46.01.01 - RULES OF THE IDAHO STATE BOARD OF VETERINARY MEDICAL EXAMINERS
DOCKET NO. 46-0101-9901
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-2105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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:

The rulemaking is necessary to clarify and update existing rules to accurately reflect current practices and standards. The rule change identifies labeling requirements for dispensing drugs, medications, and controlled substances; defines unprofessional conduct; and clarifies renewal, reactivation, and reinstatement requirements.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because much of this rule-making is housekeeping in nature. The issues that are not housekeeping are straight forward: adding clarification to existing disciplinary provisions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sheila Jensen, Administrative Secretary, at (208)332-8588.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July, 1999.

Sheila Jensen
Administrative Secretary
Idaho State Board of Veterinary Medical Examiners
2270 Old Penitentiary Road
Boise, Idaho 83707
(208)332-8588 (Telephone)
(208)334-4062 (Facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 46-0101-9901

002. WRITTEN INTERPRETATIONS.

~~There are no written interpretations of these rules.~~ In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this

agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Board of Veterinary Medicine office. (7-1-97)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. LICENSE.

01. Qualifications For License. Applicants for license to practice veterinary medicine and surgery in Idaho shall be of good moral character and reputation and have: (7-1-97)

a. Graduated from an approved school of veterinary medicine or the veterinary department of a university, approval based on the list of approved schools by the Council of Education of the American Veterinary Medical Association Section 54-2103(24), Idaho Code; or (3-18-99)

b. In compliance with Section 54-2107(3), Idaho Code, the board will accept as eligible for licensure, any graduate of a veterinary school, college or university outside of the United States and Canada that fulfills the requirements for foreign veterinary graduates as set forth by current American Veterinary Medical Association standards. The board hereby incorporates by reference and adopts the current Educational Commission for Foreign Veterinary Graduates of the AVMA's "Information for Graduates of Colleges of Veterinary Medicine Outside the U.S. and Canada" as amended as the requirements for foreign veterinary graduate's of the AVMA's "Information for Graduates of Colleges of Veterinary Medicine Outside the U.S. and Canada" as amended as the requirements for foreign veterinary graduates. (Copies of this publication are on file at the State Law Library and the board office.) A graduate enrolled with in the AVMA foreign graduate program would be considered a student as defined by Section 54-2104(2)(b), Idaho Code. (3-18-99)(____)

02. Application. Application for license may be obtained from the board office. (7-1-97)

03. Examination. The national licensing examinations developed by the National Board Examination Committee for Veterinary Medicine, or its designees, and the state jurisprudence examination as prepared by the Board. (3-18-99)

a. National licensing examinations developed by the National Board Examination Committee, or its designee, that include, but are not limited to: (3-18-99)

i. National Board Examination (NBE) and Clinical Competency Test (CCT), which may be taken at any time and as many times as necessary; (3-18-99)

ii. As of November 1, 2000, the North American Veterinary Licensing Examination (NAVLE), which may be taken at any time and as many times as necessary. (3-18-99)(____)

b. The jurisprudence examination, as prepared by the board or its designee, and which may be taken more than once, at three (3) month intervals. (3-18-99)

i. The jurisprudence exam will consist of twenty-five (25) to fifty (50) questions on the Idaho veterinary law and rules, and will be an open book exam. (7-1-97)

ii. The jurisprudence exam, a copy of Title 54, Chapter 21, Idaho Code, and a copy of the rules of the board, IDAPA 46.01.01, shall be sent to each applicant along with the application for licensure. (3-18-99)

04. Passing Score. (7-1-97)

a. A passing score for the national licensing examinations shall be calculated and reported by the American Association of Veterinary State Boards or its designated test vendor. If such a score is not available, the

passing score shall be as reported by the American Association of Veterinary State Boards or its designated test vendor and shall be considered equal to or greater than one point five (1.5) standard deviation below the mean score of the examination. (3-18-99)

b. A passing score for the jurisprudence examination shall be ninety percent (90%) or such score as deemed appropriate by the board. All application materials and fees shall be at the board office, with the exception of the Clinical Competency Examination results when an applicant is applying for a temporary permit or specialty license, before the jurisprudence examination shall be graded. (3-18-99)

05. Review Of Examination. (7-1-97)

a. An applicant wishing to review the results of the jurisprudence examination shall make a written request to the board within thirty (30) days of receipt of the jurisprudence examination results. (7-1-97)

b. The review shall be conducted no later than sixty (60) days from the date of the written request, shall not exceed two (2) hours in length, and no written materials or any reproductions shall be removed from the review premises. (7-1-97)

c. The review shall take place at the office of the board during normal business hours. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

012. LICENSE RENEWAL/RETURN TO ACTIVE STATUS.

01. Renewal. An "active" or "inactive" veterinary license may be renewed by submission of the completed and signed annual renewal form prescribed by the board, submission of a continuing education report as outlined in Subsection 015.03.d. for the appropriate hours of continuing education, and payment of ~~the annual renewal fee and any other~~ all applicable fees as established by the board. (7-1-97)()

042. Reinstatement Return To "Active" License Status. A veterinarian whose license is on inactive status shall not practice veterinary medicine and surgery in this state. A licensee may convert from "inactive" license status to "active" license status by: (7-1-97)()

a. Making written application to the board on an application form prescribed by the board. (7-1-97)

b. Providing thirty (30) hours of continuing education credits earned in the three (3) fiscal years (July 1 to June 30) prior to activation of an "inactive" license. (3-18-99)

c. Providing verification of active veterinary practice in another state for the past five (5) years or by providing verification of passing scores on the national licensing examinations developed by the National Board Examination Committee for Veterinary Medicine, or their designee. These include, but are not limited to, passing scores on the National Board Examination (NBE) and Clinical Competency Test (CCT) or, as of November 1, 2000, the North American Veterinary Licensing Examination (NAVLE) taken within the past five (5) years. (3-18-99)()

d. Taking and passing the jurisprudence exam with a score of ninety percent (90%) or better. (3-18-99)

e. Providing two (2) affidavits of moral character from veterinarians currently licensed in any state and issued during the past calendar year. (7-1-97)

f. Providing verification of license in good standing from the licensing board in any state where a license is or has been held or from the American Association of Veterinary State Board's Veterinary Information Verifying Agency (VIVA). (7-1-97)()

g. Paying all applicable fees. ()

02. Reinstatement Of Expired Licenses. Licenses expiring prior to July 1, 1995 may be reinstated anytime prior to five (5) years from their expiration date by: (7-1-97)

a. ~~Making application to the board to reinstate the expired license.~~ (7-1-97)

b. ~~Paying the late fee and back renewal fees as prescribed by the board for up to five (5) years.~~ (7-1-97)

e. ~~Providing thirty (30) hours of continuing education earned during the past three (3) fiscal years (July 1 to June 30).~~ (3-18-99)

d. ~~Providing verification of active veterinary practice in another state for the past five (5) years or by providing verification of a passing score on the Clinical Competency Examination or, as of November 2000, other national licensing examinations developed by the National Board Examination Committee for Veterinary Medicine, or its designee, taken within the past five (5) years.~~ (3-18-99)

e. ~~Taking and passing the jurisprudence exam with a score of ninety percent (90%) or better.~~ (3-18-99)

f. ~~Providing two (2) affidavits of moral character from veterinarians currently licensed in any state and issued during the past calendar year.~~ (7-1-97)

g. ~~Providing verification of license in good standing from the licensing board in any state where a license is or has been held.~~ (7-1-97)

03. Late Renewal. Any Within thirty (30) days of the date a license expires due to nonrenewal received within thirty (30) days of the expiration date, the license may be reinstated by paying the established late fee, and the active or inactive renewal fee, and by fulfilling the requirements of Section 54-2112, Idaho Code. Once a license has expired, a veterinarian may not practice veterinary medicine until the license has been reinstated or until the veterinarian has applied for and received a new license. (7-1-97)()

04. Change of Address. It is the responsibility of each licensed veterinarian to notify the board office of any change of address. Failure to receive a renewal form from the board shall not constitute an excuse for failure to pay the renewal fee and fulfill the requirements of Section 54-2112, Idaho Code. ()

045. Military Waiver. License renewal fees for licensees on active duty with the armed services of the United States may be waived one (1) time, not to exceed the longer of three (3) years or the duration of a national emergency. (3-18-99)

013. TEMPORARY PERMITS.

Temporary permits shall be consecutively numbered beginning with the number one (1) and all numbers shall be prefixed with the letters VT. (7-1-97)

01. Supervision. For the purpose of temporary permits, supervision shall mean the same as professional supervision and the supervising veterinarian shall be individually responsible and liable for the performance of the acts and omissions performed by the temporary licensee. (7-1-97)

02. Licensing Requirements. For new graduates or currently practicing veterinarians licensed in another state, licensing requirements for a temporary permit shall be the same as for a new licensee. For applicants who have not taken the Clinical Competency Test, the licensing requirements for a temporary permit shall be the same as for a new license, with the exception of an additional year in which to take and pass the Clinical Competency Examination Test. (7-1-97)()

03. Responsibility. Nothing herein shall be construed to relieve the temporary licensee of any

responsibility or liability for any of their own acts and omissions. (7-1-97)

04. Expiration. For new graduates or currently practicing veterinarians licensed in another state, a temporary permit shall be valid until the next license review by the board. For applicants who have not taken the Clinical Competency Test, a temporary permit shall be valid for no more than one (1) year. ()

(BREAK IN CONTINUITY OF SECTIONS)

151. UNPROFESSIONAL CONDUCT.

The Idaho Board of Veterinary Medicine hereby incorporates by reference and adopts the current "Principles of Veterinary Medical Ethics, Opinions and Reports of the Judicial Council of the American Veterinary Medical Association"; ~~1993 Revision~~ and Section 152, Code of Professional Conduct, of this chapter as the definition of ethical and professional conduct for licensed veterinarians. (Idaho Code 54-2113, subsection 3). (Copies of the current "Principles of Veterinary Medical Ethics, Opinions and Reports of the Judicial Council of the American Veterinary Medical Association, ~~1993 Revision~~" and board rule Section 152, Code of Professional Conduct of this chapter are on file with at the State Law Library and the board office.) Any violation of the Principles of the Veterinary Medical Ethics or Code of Professional Conduct shall constitute unprofessional conduct. Unprofessional conduct includes but is not limited to: (7-1-97)()

01. Violations Of The Principles Of Veterinary Medical Ethics. Any violation of the Principles of Veterinary Medical Ethics. ()

02. Violations Of The Code Of Professional Conduct. Any violation of the Code of Professional Conduct. ()

03. Unsanitary Methods Or Procedures. Failure to apply sanitary methods or procedures in the treatment of any animal, contrary to the rules adopted by the board. ()

04. Association With Illegal Practitioners. Shall include but not be limited to: ()

a. Having a professional relationship or connection with, lending one's name to, or otherwise aiding and abetting any illegal or unlicensed practice or practitioner of veterinary medicine and the various branches thereof; ()

b. Rendering professional service in association with a person who is not licensed and does not hold a temporary permit; or ()

c. Sharing fees with any person, except a licensed veterinarian, for services actually performed. ()

05. False Testimony. Swearing falsely in any testimony or affidavits relating to, or in the course of, the practice of veterinary medicine, surgery or dentistry. ()

06. Gross Ignorance, Incompetence Or Inefficiency. In determining gross ignorance, incompetence or inefficiency in the profession, the board may take into account all relevant factors and practices including, but not limited to, the practices generally and currently followed and accepted by the persons licensed to practice veterinary medicine in this state, the current teaching at accredited veterinary schools, relevant technical reports published in recognized veterinary medical journals, and the desirability of reasonable experimentation in the furtherance of the art of veterinary medicine. ()

07. Improper Supervision. Permitting, allowing, causing or directing any unqualified individual to perform a duty, task or procedure which they are not qualified to perform. ()

08. Association With Others. Accepting fees from the providers of animal services or products when

referring clients to such providers. ()

(BREAK IN CONTINUITY OF SECTIONS)

153. STANDARDS OF PRACTICE.

Veterinarians shall adhere to the guidelines for professional behavior set forth in the Principles of Veterinary Medical Ethics, Opinions and Reports of the Judicial Council incorporated by reference, rule Section 152, Code of Professional Conduct, and the board's standards of practice as defined by rule. Standards of practice include but are not limited to: (7-1-97)

01. Practice Procedures. (7-1-97)

a. A licensed veterinarian shall exercise the degree of care, skill, and diligence in treating patients that is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in the community in which he practices. (7-1-97)

b. When the primary objective is to protect the animal patient's health and a professionally acceptable immunization procedure is being sought, a "clinical examination" of the animal by the veterinarian is required prior to each and every immunization procedure, except in the practice of large animal medicine where mass immunizations of animal herds is involved or when immunization is performed by the animal patient's owner. For the purpose of this subsection the definition of "Owner" in addition to ownership as defined by the laws of the ownership of property, non-profit organizations dedicated to the care and treatment of animals shall be considered the owners of animals in their custody if such organizations are the primary care giver for the animal or if the true owner of such animal cannot be immediately determined. (7-1-97)()

c. A veterinarian shall establish a valid veterinarian/client/patient relationship as defined by rule Section 150, prior to ~~the dispensing, using, prescriptioning, or sale~~ selling of any controlled substance or legend drug, or the prescribing of an extra-label use of any drug. (7-1-97)()

d. A veterinarian dispensing any drug or medicine shall dispense such drug or medicine in good faith and shall, except in the case of any drugs and medicines that are in containers that bear a label of the manufacturer with information describing their contents and that are in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, affix to the container containing the drug or medicine a label indicating: ()

i. The date on which such drug or medicine is dispensed; ()

ii. The name of the owner; ()

iii. The last name of the person dispensing such drug or medicine; ()

iv. Directions for use thereof, including dosage and quantity; and ()

v. The proprietary or generic name of the drug or medicine. ()

02. Construction Standards. (7-1-97)

a. All premises shall meet the minimum requirements of construction, sanitation and cleanliness of the county health department in which the premise is located. (7-1-97)

b. All buildings and grounds shall conform to local building and zoning regulations. (7-1-97)

c. Fire prevention measures shall conform to state and local codes. (7-1-97)

d. All facilities shall provide for the effective separation of contagious and noncontagious cases. (7-1-97)

e. Animals shall not be placed in cages or kennels with other breeds or species which are incompatible with the animal in question. Animals shall not be overcrowded in a cage or kennel. (7-1-97)

03. Equipment Standards. (7-1-97)

a. All facilities shall be equipped with or have access to adequate diagnostic and therapeutic equipment and supplies to enable the veterinarian to provide the services offered. Adequacy of equipment and supplies will be consistent with and determined by the standards of veterinary medicine practiced by average members of the veterinary medical profession in the community. (7-1-97)

b. All facilities and equipment used shall meet the manufacturers' label requirements for the storage of biologicals and supplies requiring temperature control. (7-1-97)

c. All facilities offering surgical services shall have properly sterilized surgical supplies and instruments. Autoclave equipment shall be properly utilized in those facilities where major surgery is conducted. (7-1-97)

d. All facilities shall have an adequate power supply to operate all equipment necessary to perform the services offered. (7-1-97)

04. Facility Sanitation Standards. (7-1-97)

a. All facilities shall meet the requirements of the state department of health and local health departments pertaining to sewage, waste disposal, and the disposal of dead animals. (7-1-97)

b. All areas of the building and grounds shall be kept free of refuse. (7-1-97)

c. All facilities shall maintain a sanitary environment to avoid sources and transmission of infection including a means to isolate animals with a highly communicable disease. (7-1-97)

d. Floors, counter-tops, table-tops, sinks, and similar equipment shall be maintained in a clean and sanitary condition. (7-1-97)

e. Examination tables, surgery tables and all indoor, as well as outdoor, small animal compartments shall be constructed of sealed or non-porous material and cleaned and disinfected after each animal use. (~~7-1-97~~)()

f. All animal compartments shall be cleaned and disinfected at least once a day when in use, and be constructed in a manner to reasonably prevent injury to and/or loss of confinement for the animal. (7-1-97)

g. Large animal compartments shall be cleaned at least once daily when in use. If communicable disease is present, the enclosure shall be disinfected after each use. (7-1-97)

05. Surgical Standards. (7-1-97)

a. Surgical areas for aseptic procedures shall be either a separate room or have the capacity to be separated during use. (7-1-97)

b. Surgical areas shall be provided with emergency lighting. (7-1-97)

c. In the surgical areas, temperature and ventilation shall be maintained at adequate levels to ensure the animal's comfort, safety and sanitation. (7-1-97)

d. All surgical areas shall be equipped with adequate resuscitation equipment. (7-1-97)

06. Anesthesia Standards. (7-1-97)

- a. All anesthetized animals shall be monitored and under supervision at all times and observed until at least the swallowing reflex has returned. (7-1-97)
- b. If gas anesthesia is used, all anesthesia areas shall be equipped with an adequate waste gases discharge system to ensure the safety of humans and animals. (7-1-97)
- c. Anesthesia areas shall be equipped with an adequate ventilation systems ~~to that~~ to that ensure the safety of humans and animals. (7-1-97)()
- ~~d. When controlled substances and legend drugs are dispensed, all containers shall be properly labeled with the clinic's name, address and phone number; drug name and quantity; size of drug; and shall be stored and dispensed in accordance with the requirements of the Uniform Controlled Substances Law and Rules. When dispensing controlled substances and legend drugs, all containers shall be labeled with the name of the client and patient as well as show directions for use. (7-1-97)~~

154. RECORD KEEPING STANDARDS.

Every veterinarian shall maintain daily medical records of the animals treated. These records shall be readily retrievable to be inspected, duplicated, or submitted when requested by the board. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (e.g., herd, litter, flock) treated by a veterinarian. (7-1-97)

- 01. Medical Records.** Medical records shall include but not be limited to: (7-1-97)
- a. Name, address and phone number of the animal's owner or other caretaker. (7-1-97)
- b. Name and description, sex (if readily determinable), breed and age of animal; or description of group. (7-1-97)
- c. Dates (beginning and ending) of custody of the animal. (7-1-97)
- d. A short history of the animal's condition as it pertains to the animal's medical status. (7-1-97)
- e. Results and notation of examination, (i.e. temperature, pulse and respiration rate, laboratory data, etc.) condition, diagnosis suspected. (7-1-97)
- f. All medications, treatments, prescriptions or prophylaxis given, including amount and frequency for both inpatient and outpatient care. (7-1-97)
- g. Diagnostic and laboratory tests or techniques utilized, and results of each. (7-1-97)
- 02. Consent Forms.** Signed consent forms by the patient's owner or other care giver for treatment, surgery, anesthesia, and euthanasia for each animal shall be maintained on file with the practitioner. (7-1-97)()
- 03. Preoperative/Postoperative Instructions.** Instructions for preoperative and postoperative home-care shall be provided. (7-1-97)
- 04. Treatment Records.** Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment the veterinarian personally performed and which treatments were directed to a technician or assistant to perform. (7-1-97)
- 05. Ownership Of Medical Records.** Medical records are the physical property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, may receive in a timely manner a copy of the patient's medical record, upon the request of the patient's owner or other caretaker. (7-1-97)
- 06. Radiograph Identification And Ownership.** All radiographs shall be labeled in the emulsion film

to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation. A radiograph is the property of the veterinarian who originally ordered it to be prepared, and it shall be released upon the request of another veterinarian who has the authorization of the owner of the animal to whom it pertains and such radiographs shall be returned to the veterinarian who originally ordered it to be prepared within a reasonable time. (7-1-97)

07. Statement Of Charges. A veterinarian shall make available to each client a statement of charges. (7-1-97)

08. Controlled Substances. (7-1-97)

a. Records shall be kept which account for all dispensed controlled substances. The records shall comply with all federal and state laws. All information required by statute shall be recorded in the patient record along with the initials of the veterinarian who authorized the dispensing of the controlled substances. (7-1-97)

b. A separate inventory record shall be kept for each controlled substance by name and strength. The record shall include: (7-1-97)

i. Records of the receipt, which include all information required by federal law, the date of the receipt, the amount received, the source of receipt, and the invoice number. (7-1-97)

ii. Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal law. (7-1-97)

c. When controlled substances are dispensed, all containers shall be properly labeled with: ()

i. The clinic's name, address, and phone number: ()

ii. Drug name and quantity: ()

iii. Size of drug; and ()

iv. Shall be stored and dispensed in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. ()

d. When dispensing controlled substances, all containers shall be labeled with: ()

i. The name of the client and patient; and ()

ii. The directions for use, including dosage and quantity. ()

IDAPA 56 - IDAHO RANGELAND RESOURCES COMMISSION
56.01.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO
RANGELAND RESOURCES COMMISSION

DOCKET NO. 56-0101-9901

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 58-1408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 1999.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for the proposed rulemaking.

This proposed rule establishes rules of administrative procedure for the Idaho Rangeland Resources Commission.

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

No fee or charge imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the simple nature of the rules being adopted.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this temporary rule, contact Gretchen Hyde, Director, at (208)398-7002.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 1999.

DATED this 21st day of July 1999.

Gretchen Hyde, Director
Idaho Rangeland Resources Commission
P. O. Box 126
Emmett, ID 83617
(208) 398-7002 (Telephone)
(208) 398-7002 (Facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 56-0101-9901

IDAPA 56
TITLE 01
Chapter 01

56.01.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE
IDAHO RANGELAND RESOURCES COMMISSION

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Chapter 14, Title 58, Idaho Code. ()

001. TITLE AND SCOPE.

The title of this chapter is "Rules of Administrative Procedure of the Idaho Rangeland Resources Commission," and cited as IDAPA 56.01.01. These rules set forth the practices and procedures for the activities of the Rangeland Resources Commission. ()

002. WRITTEN INTERPRETATIONS.

Written interpretations of these rules, if any, are available from the Commission business office. ()

003. ADMINISTRATIVE APPEALS.

The provisions of IDAPA 04.01.01, "Idaho Rules of Administrative Procedure of the Office of the Attorney General," shall govern all contested cases filed pursuant to the provisions of Chapter 52, Title 67, Idaho Code. ()

004. DEFINITIONS.

As used in this chapter: ()

01. Commission. The Idaho Rangeland Resources Commission. ()

02. Fees. The amount to be paid by all owners of dry grazing land within the state of Idaho, all permittees or owners of domestic cattle and sheep utilizing Idaho state grazing lands, and all permittees or owners of domestic cattle and sheep utilizing United States forest service or bureau of land management lands within the state of Idaho. ()

03. Fee Year. The twelve-month period, January 1 through December 31, of any year. ()

04. Fiscal Year. The twelve-month period, July 1 through June 30, of any year. ()

005. OFFICE ADDRESS.

The mailing address of the Commission is P.O. Box 126, Emmett, Idaho, 83617. The telephone number of the business office is (208) 398-7002. ()

006. COMMUNICATIONS.

All written communications and documents concerning any matter covered by these rules shall be addressed to the chair at the business office of the Commission. All communications and documents are deemed to be officially received only when delivered to the business office of the Commission. ()

007. RECORD.

An official record shall be kept of all official proceedings before the Commission and reduced to writing. Such record shall be available for public inspection at the business office of the Commission. ()

008. PUBLIC RECORDS.

The Commission shall comply with the procedures set forth in the Public Records Act, Chapter 9, Title 3 of the Idaho Code. The fee for providing public records shall not exceed the amounts allowed by the Public Records Act. ()

009. MEETINGS.

01. Quarterly Meetings. The Commission shall hold regular quarterly meetings. Special meetings of the Commission may be called by either the chair or upon the call of any three (3) members of the Commission. ()

02. Quorum. A quorum of the Commission shall be three (3) members. A majority vote of Commission members present will be considered the action of the Commission as a whole. The Commission chair (or person acting in that capacity) will count as a Commission member for purposes of a quorum, but will vote only to break a tie. ()

010. -- 099. (RESERVED).

100. NOMINATIONS, VACANCIES AND TERMS.

01. Chair And Vice-Chair. At its last meeting of each fiscal year, the Commission shall nominate and elect, by majority vote, a chair to serve as presiding officer at all Commission meetings. The Commission may also nominate and elect, by majority vote, a vice-chair to fulfill the duties of the chair in the event that the chair is unable to attend a meeting of the Commission. ()

02. Nominations. Written nominations to be submitted by the Idaho Cattle Association, Idaho Wool Growers Association, and the Idaho Rangeland Committee for expiring terms or vacancies in expired terms on the Commission must be in writing and shall be received by the Commission no later than April 1 of the year in which the term expires. The Commission shall forward the names of all qualified nominees to the Governor. ()

03. Terms. Terms of elected officers shall be for a period of twelve (12) months and shall begin on July 1 of the year of election. A commissioner may serve as an officer for as many terms as elected. ()

101. -- 199. (RESERVED).

200. FEES.

01. Owner Fees. The amount of the fee to be paid by all owners of dry grazing land is based on the total number of acres of dry grazing land that an individual owned during the preceding calendar year (January through December). The amount is calculated by adding together all of the acreage titled in the owner's name, regardless of the number or size of individual parcels, and multiplying by two cents (\$.02) per acre. The Commission will utilize this amount for purposes of determining whether the minimum assessment amount has been met. ()

02. User Fees. The amount of fee to be assessed of individuals or other entities that utilize grazing lands of the state of Idaho, the United States forest service or the bureau of land management. The amount of these fees will be calculated by multiplying the animal unit month and/or land use statistics, which the state or federal entities will provide, by ten cents (\$.10) per month. ()

03. Fee Refund. Requests for fee refunds must be in writing addressed to the Commission by the individual, partnership, corporation or other entity that paid the fee, or by the authorized legal representative of the individual or entity and mailed within thirty (30) days of the payment of the fees. ()

04. Minimum Assessment. During its first regular meeting of each year, the Commission will set the minimum assessment amount for that year. The amount of the minimum assessment will be within the Commission's sole discretion. ()

201. BILLING.

01. Fee Invoices. The Commission will cooperate with other state and federal agencies in the calculation of fees and issuance of fee invoices and other assessments provided for in the statute. ()

02. Payment. Payment of any fees or assessments is due within thirty (30) days of the date of the issuance of the fee invoice or assessment notice. ()

202. EXEMPTION AFFIDAVITS.

Owners of private grazing lands seeking exemption from payment of owner fees must file affidavits within thirty (30) days of the date of the issuance of the fee invoice or assessment notice. An affidavit seeking exemption must only be filed one (1) time. Filed affidavits will remain in force and effect until revoked in writing. ()

203. -- 999. (RESERVED).

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Bulletin Summary of Proposed Rulemaking

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 02 – DEPARTMENT OF AGRICULTURE P.O. Box 790, Boise, ID 83701-790

Docket No. **02-0631-9901**, Noxious Weed Free Forage and Straw Certification Rules. Renames rules to include noxious weed free; deletes obsolete provisions on certification of forage pellets and for "transit load tags"; clarifies certification of baled and cubed forage or straw; and establishes a fee schedule that may be charged by certifying agent. Comment By: 9/22/99.

IDAPA 10 – BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS 600 S. Orchard, Suite A, Boise, ID 83705-1242

Docket No. **10-0101-9901**, Rules of Procedure. Changes the title of Executive Secretary to Executive Director; establishes the equivalency of graduation from an approved engineering curriculum; requirements to be considered "exceptional" under statute to qualify for waiver of the fundamentals of engineering examination; and requirement for evaluation of foreign engineering degrees. Comment By: 9/22/99.

Docket No. **10-0102-9901**, Rules of Professional Responsibility. Changes the title of Executive Secretary to Executive Director. Comment By: 9/22/99.

IDAPA 11 – DEPARTMENT OF LAW ENFORCEMENT P.O. Box 1177, Meridian, ID 83680-1177

Docket No. **11-0402-9901**, Rules Governing Simulcasting, Idaho Racing Commission. Implements regulations governing the health and welfare of racing greyhounds in jurisdictions whose races are transmitted to Idaho facilities for pari-mutuel wagering. Comment By: 9/22/99.

IDAPA 15 – OFFICE OF THE GOVERNOR - IDAHO COMMISSION ON AGING 3380 Americana Terrace, Suite 120, PO Box 83720, Boise, ID 83720-0007

Docket No. **15-0101-9901**, Rules Governing Senior Services Program. Changes definitions for the following terms: Area Agency on Aging, Certified Care Manager, chore services, and Respite; adds statement of work, program review, and processes for termination to "Performance-Based Agreement" definition; removes caregiver from general eligibility requirements for senior services and adds them to eligibility requirements for Respite only; clarifies requirement for client assessments by listing services for which the UAI is required; clarifies that Dept. of Health and Welfare determines eligibility for PCS services; eliminates pre-screening component of the UAI; changes references from "care coordination" to "case management". Comment By: 9/22/99.

Docket No. **15-0102-9901**, Rules Governing Area Agency Adult Protection Services. Requires area agencies to provide adult protective services as a direct service, with no option for waiver. Comment By: 9/22/99.

Docket No. **15-0120-9901**, Rules Governing Area Agency on Aging (AAA) Operations. Each area agency on aging shall submit an area plan and an annual update by May 15 of each year. Comment By: 9/22/99.

Docket No. **15-0121-9901**, Rules Governing Older Americans Act Services. Clarifies the role and responsibilities of

Information and Assistance services as they relate to Adult Protection and case management services. Comment By: 9/22/99.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
P. O. Box 83720, Boise, ID 83720-0036**

Docket No. **16-0105-9901**, Rules and Standards for Hazardous Waste. Updates rules so that they are consistent with revisions to the federal RCRA regulations; makes corrections to federal regulation citations; updates requirements of Section 997, Confidentiality of Records. Comment By: 9/22/99.

Docket No. **16-0107-9901**, Rules for Construction and Operation of Public Swimming Pools in Idaho. Proposed repeal of existing chapter. Comment By: 9/22/99.

Docket No. **16-0109-9901**, Rules Regulating Swine and Poultry Facilities. New chapter establishes permit process for swine and poultry facilities having the one-time animal unit capacity of 2,000; provides for submission of an application containing specified information, sets performance standards for liquid storage impoundments, sets out an application procedure, and provides for general permit conditions and specific permit conditions. Comment By: 10/1/99.

Docket No. **16-0204-9901**, Rules Governing Emergency Medical Services Account III Grants. New chapter specifies eligibility criteria, application process, and distribution methodology to be used by the EMS Bureau in the award of these grants. Comment By: 9/22/99.

Docket No. **16-0214-9901**, Rules Governing Construction and Operation of Public Swimming Pools in Idaho. Chapter rewrite changes swimming pool classifications; addresses geothermal swimming pools' unique water problems; the concerns of the industry on lifeguard and responsible person requirements; and the need of the industry to have engineering and architectural self certification for new construction. Comment By: 9/22/99.

Docket No. **16-0305-9903**, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled. Decreases payment levels for AABD; updates names of cited rule chapters that have changed; exempts transfers of participant's assets by a spouse, after the participant's Medicaid eligibility is established, from the asset transfer penalty. Comment By: 9/22/99.

Docket No. **16-0309-9906**, Rules Governing Medical Assistance. Adds assistive and augmentative communication devices as an element of Medical assistance provided through Medicaid and allows individuals that meet specified medical needs criteria to receive these devices. Comment By: 9/22/99.

Docket No. **16-0310-9903**, Rules Governing Medicaid Provider Reimbursement in Idaho. Defines "on-site" and clarifies other rules. Comment By: 9/22/99.

**IDAPA 19 – BOARD OF DENTISTRY
708 ½ W. Franklin St., Boise, ID 83702**

Docket No. **19-0101-9901**, Rules of the Idaho State Board of Dentistry. Provides clarification that a dentist must possess an anesthesia permit when utilizing the services of other anesthesia personnel. Comment By: 9/22/99.

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS
P.O. Box 83720, Boise, ID 83720-0050**

Docket No. **20-0201-9901**, Rules Pertaining to the Idaho Forest Practices Act. Proposes specific requirements for road construction on steep slopes to prevent soil erosion and protect water quality; clarifies road abandonment standards to address roads that may be used in the future or those that will be permanently closed. Comment By: 9/22/99.

**IDAPA 25 – OUTFITTERS AND GUIDES LICENSING BOARD
1365 North Orchard, Suite 172, Boise, ID 83706**

Docket No. **25-0101-9902**, Rules of the Outfitters and Guides Licensing Board. Provides for a float lead boatman to qualify on a specific reach of a river section instead of an entire section and extends the float time on the river applied for; reduces the number of float boats on section SA4B of the Salmon River; provides for the license amendment procedure. Comment By: 9/25/99.

**IDAPA 26 – IDAHO DEPARTMENT OF PARKS AND RECREATION
P.O. Box 83720, Boise, ID 83720-0065**

Docket No. **26-0120-9901**, Rules Governing the Administration of Parks and Recreation Areas and Facilities. Establishes fees and rules for use of lands and facilities administered by the Department and procedures for obtaining individual and group use reservations. Comment By: 9/22/99.

Docket No. **26-0124-9901**, Rules Governing the Administration of the Sawtooth National Recreation Area Special Plate Funds. Establishes procedures for administration of special plate funds including project application, eligibility, review, award and management. Comment By: 9/22/99.

**IDAPA 27 – IDAHO BOARD OF PHARMACY
280 N. 8th St., Ste. 204, Boise, ID 83702**

Docket No. **27-0101-9902**, Rules of the Board of Pharmacy. Establishes parameters for proper use of pharmacy technicians; allows for Board oversight and discipline of pharmacy technicians, and responsible pharmacists and pharmacies, where technicians act improperly; and establishes mechanism for annual registration. Comment By: 9/22/99.

Docket No. **27-0101-9903**, Rules of the Board of Pharmacy. Allows return of Unit Dose packaged drugs by Licensed Skilled Nursing Care Facilities and Hospitals; and allows storage, for an indefinite period, of non-prescription over-the-counter drugs by Licensed Skilled Nursing Care Facilities.

**IDAPA 35 – IDAHO STATE TAX COMMISSION
800 Park, Plaza IV, P.O. Box 36, Boise, ID 83722**

Docket No. **35-0101-9901**, Income Tax Administrative Rules. Changes clarify that safe harbor exception to being considered a resident applies to individuals in the military; delete references to "nonresident" and replace with "individual"; clarify when Idaho lottery prizes are not exempt; allow new deduction for married individuals who claim the standard deduction; clarify that for installment sales, the determination of whether the property meets the required holding period is made using the law applicable for the year of the sale; clarify that contributions to a medical savings account each year are limited to the amount deductible for that year; change the number of years for net operating loss carryback periods from 3 years to 2 years and the carry forward periods from 15 years to 20 years; clarify that multistate partnerships apply the principles set by Idaho Code when determining Idaho taxable income; adopt MTC regulations that address net gains from liquid assets and the calculation of the sales factor; clarify the calculation of the dividends elimination of Foreign Sales Corporations (FSC) when a water's edge election is made; specify requirement of rounding on documents; allow a pass-through entity to pay income tax for an electing individual partner or shareholder; provide the payment date for quarterly filers; delete unnecessary information regarding the federal Form W-4. Comment By: 9/22/99.

Docket No. **35-0102-9902**, Idaho State Sales and Use Tax Rules. Changes clarify that sales of computer software maintenance agreements are taxable; clarify rental/ lease trade-ins as applied for sales and use tax; clarify that certain sales of admissions by qualifying non-profit organizations are no longer taxable; clarify when motor vehicles and household goods purchased by non-residents are taxable; define recreational facility and difference between use fees admission fees. Comment By: 8/25/99.

Docket No. **35-0103-9902**, Property Tax Administrative Rules. Removes numerous obsolete rules and rewrites some definitions and citations; requires the person claiming the exemption prove eligibility for the exemption; adds clarification to Category 46 and Category 65 on manufactured housing property; allows for apportionment of homeowner's exemption and circuit breaker benefits, in special situations, when a husband and wife maintain separate primary residences; and deletes that owner occupancy is a requirement to qualify for the exemption and to better

define the terms residential improvements and residential property. Comment By: 9/22/99.

Docket No. **35-0103-9903**, Property Tax Administrative Rules. Addresses distribution of revenue and how it relates to school districts, occupancy tax and allocation; boundaries and mapping issues, budget, levy and split values along with base increments, descriptions for urban renewal and revenue allocations purposes, and timing of reports and operator statements. Comment By: 9/22/99.

Docket No. **35-0105-9901**, Motor Fuels Tax Administrative Rules. Requires receipt books, decals and other information necessary to reconcile gaseous fuels permits at end of the reporting period and clarifies information requirements for gaseous fuels permit; specifies reporting, calculation and form required to receive a refund for the special fuels tax when tax-paid undyed diesel fuel is mixed with dyed diesel fuel; clarifies eligibility and reporting requirements for refunds of special fuels users and calculation procedures for non taxable miles and power-take-off allowances. Comment By: 9/22/99.

Docket No. **35-0201-9901**, Administration and Enforcement Rules. Clarifies declaratory rulings provisions; specifies that Tax Commission may issue a decision 42 days after the date the notification of the right to request a hearing is mailed to the taxpayer; adds other identifying numbers to the information required to be included in the written authorization to disclose information. Comment By: 9/22/99.

**IDAPA 46 – IDAHO STATE BOARD OF VETERINARY MEDICINE
2270 Old Penitentiary Road, Boise, Idaho 83707**

Docket No. **46-0101-9901**. Rules Governing the Board of Veterinary Medical Examiners. Clarifies rules to accurately reflect current practices and standards; identifies labeling requirements for dispensing drugs, medications, and controlled substances; defines unprofessional conduct; and clarifies renewal, reactivation, and reinstatement requirements. Comment By: 9/22/99.

**IDAPA 56 – IDAHO RANGELAND RESOURCES COMMISSION
P. O. Box 126, Emmett, ID 83617**

Docket No. **56-0101-9901**, Rules of Administrative Procedure of the Idaho Rangeland Resources Commission. Establishes rules of administrative procedure for the Idaho Rangeland Resources Commission. Comment By: 9/22/99.

PUBLIC HEARINGS - Public Hearings have been scheduled for the following dockets:

Department of Health and Welfare

Docket No. **16-0101-9905**, Rules for the Control of Air Pollution in Idaho.

Docket No. **16-0109-9901**, Rules Regulating Swine and Poultry Facilities.

Docket No. **16-0319-9901**, Rules Governing Certified Family Homes.

Docket No. **16-0322-9901**, Rules for Licensed Residential and Assisted Living Facilities in Idaho.

Department of Insurance

Docket No. **18-0154-9902**, Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

Please refer to the Idaho Administrative Bulletin, **September 1, 1999, Volume 99-9** for notices and text of all rulemakings, public hearing schedules, governor's executives orders, and agency contact names.

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