

IDAHO ADMINISTRATIVE BULLETIN

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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 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, 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 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.

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 adopted and 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, as well as individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

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 Paragraph 060.02.c.

"ii." refers to Subparagraph 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 "-", (38-0501-0101). 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. 38-0501-0101"

"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).

"0101" 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 2001.

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 CALENDAR YEAR 2001

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
01-1	January, 2001	*November 15, 2000	January 3, 2001	January 24, 2001
01-2	February, 2001	December 20, 2000	February 7, 2001	February 28, 2001
01-3	March, 2001	January 24, 2001	March 7, 2001	March 28, 2001
01-4	April, 2001	February 21, 2001	April 4, 2001	April 25, 2001
01-5	May, 2001	March 21, 2001	May 2, 2001	May 23, 2001
01-6	June, 2001	April 18, 2001	June 6, 2001	June 27, 2001
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01-8	August, 2001	June 20, 2001	August 1, 2001	August 22, 2001
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01-10	October, 2001	**August 22, 2001	October 3, 2001	October 24, 2001
01-11	November, 2001	September 19, 2001	November 7, 2001	November 28, 2001
01-12	December, 2001	October 24, 2001	December 5, 2001	December 26, 2001

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	*November 14, 2001	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
02-4	April, 2002	February 20, 2002	April 3, 2002	April 24, 2002
02-5	May, 2002	March 20, 2002	May 1, 2002	May 22, 2002
02-6	June, 2002	April 17, 2002	June 5, 2002	June 26, 2002
02-7	July, 2002	May 22, 2002	July 3, 2002	July 24, 2002
02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	**August 21, 2002	October 2, 2002	October 23, 2002
02-11	November, 2002	September 18, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

**Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.*

***Last day to submit proposed rules in order to complete rulemaking for review by legislature.*

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THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 2001-07

ESTABLISHING THE IDAHO GEOSPATIAL COMMITTEE

WHEREAS, during the past decade government agencies and private industries have developed increasingly powerful computer systems designed to process and analyze map and other information collectively called Geospatial Information; and

WHEREAS, these systems, referred to as Geospatial Technology, have the potential to significantly increase efficiency and reduce costs to the State for conducting land, water, demographic, social and other natural resource management activities, and are becoming ever more closely linked as component parts of Idaho's information management activities; and

WHEREAS, geospatial products produced and maintained by organizations provide a valuable information infrastructure for public and private entities; and

WHEREAS, Geospatial Technology assists state, federal and local governments in carrying out their mandated responsibilities more efficiently, at reduced costs, with better services to taxpayers as a valuable tool for scientific investigation, resource management and development planning; and

WHEREAS, the related components of Geospatial Technology, together with the computer field in general, are currently in a period of dynamic evolution and growth; and

WHEREAS, it is important to provide channels of communication and cooperation among agencies of the State of Idaho, federal resource management agencies, federal budget agencies, local and tribal governments, private organizations, education institutions and the citizens of Idaho; and

WHEREAS, there is a need to oversee and promote the cooperation and coordination of programs, policies, products, and resources using Geospatial Technology to maximize opportunities and minimize duplication of effort; and

WHEREAS, there is a need to develop and implement policies, guidelines, and standards for producing and sharing Geospatial Information; and

WHEREAS, there is a need to support the ongoing development of a clearinghouse in order to foster the sharing of Geospatial Information; and

WHEREAS, there is a need to provide education, training, and technical support for users of Geospatial Information to support consistency and efficiency; and

WHEREAS, the Idaho Legislature annually appropriates a significant amount of state funds for agency Geospatial Technology activities which could benefit from coordination; and

WHEREAS, Geospatial Technology activities and implementation have a long-term economic benefit to the citizens of Idaho;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order:

1. There is created the Idaho Geospatial Committee.

2. *The purpose of the Idaho Geospatial Committee is to provide policy level direction and promote efficient and effective use of resources for matters related to geographic information. To that end it shall:*
 - a. *Promote cooperation among state, federal, tribal and local agencies, universities and the private sector in addressing geographic data and information needs and services in Idaho;*
 - b. *Review priorities for statewide geographic information needs and assist in the development of projects, plans, policies, standards, priorities and guidelines for geographic information;*
 - c. *Facilitate cooperative and contract arrangements to develop and maintain high-priority geospatial databases and applications programs;*
 - d. *Identify and promote a State geospatial information clearinghouse as a vehicle for sharing information on geospatial technology, programs, policies and resources to maximize opportunities and minimize duplication of effort, and to facilitate the standardization, documentation, distribution and exchange of geographic information; and,*
 - e. *Provide recommendations to ITRMC, the Governor and the Legislature, when appropriate, concerning issues related to geographic information in Idaho.*
3. *The Idaho Geospatial Committee shall receive administrative staff support from the Information Technology Resource Management Council staff.*
4. *The Idaho Geospatial Committee will meet no less than twice annually.*
5. *The Idaho Geospatial Committee will appoint subcommittees consistent with the needs of the Committee to address issues including, but not limited to: the sharing of geospatial information through a geospatial clearinghouse; technical support and education issues related to geospatial technologies in Idaho; and, outreach and liaison with the Federal Geographic Data Committee and the geospatial coordinating committees in neighboring states.*
6. *The Idaho Geospatial Committee shall prepare and submit a report to the Information Technology Resource Management Council by December 30 of each year describing the Committee's activities and achievements of the previous year. Additionally, the annual report due on December 30, 2001, shall include bylaws for this committee, address the need to provide education, training, and technical support for users of geospatial information, and make recommendations with respect to the organizational structure of the subcommittees.*
7. *The Idaho Geospatial Committee shall be composed of no more than sixteen (16) members with knowledge of and interest in the field of geospatial technologies including representatives of: three (3) state agencies, one of whom will serve as chair (appointed by the Chairman of ITRMC), the State Library, and the State GIS Coordinator. Other members may include: the Idaho Federal Framework Coordinator, one (1) representative of the United States Department of Agriculture, one (1) representative of the United States Department of Interior, one (1) Tribal Government representative, one (1) representative of the State University System, two (2) representatives of the public utilities or private businesses active in geospatial technologies, and three (3) representatives from county and municipal governments, at least two (2) who are local government representatives active in geospatial technologies. The Idaho Geospatial Committee's membership shall be selected by the groups they represent and approved by the Information Technology Resource Management Council.*

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on the thirtieth day of April in the year of our Lord two-thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

DIRK KEMPTHORNE
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.04.16 - AGRICULTURE ODOR MANAGEMENT

DOCKET NO. 02-0416-0101

**NOTICE OF INTENT TO PROMULGATE RULES
NEGOTIATED RULEMAKING**

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to propose rules and desires public participation prior to initiating formal rulemaking procedures. This action is authorized by Title 25, Chapter 38, Idaho Code, Section 25-3802.

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

**June 11, 2001, 10:00 a.m. to 12:00 pm
Department of Agriculture, Lower Conference Rooms 1 & 2
2270 Old Penitentiary Road, Boise, Idaho 83712**

The meeting site 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) 332-8540.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to develop rules for the management of agriculture odor. The rules will be developed by Idaho Department of Agriculture, Division of Animal Industries in conjunction with an advisory committee made up of persons having interests in the management of agriculture odor. Title 25, Chapter 38, Idaho Code, will not become effective until July 1, 2001. However, in order to allow as much time as possible for the negotiations, the Division of Animal Industries is beginning the negotiated rulemaking process prior to the statute becoming effective.

The goal of the negotiated rulemaking process will be to develop by consensus the text of recommended rules. If a consensus is reached, a draft of the rules, incorporating the consensus and any other appropriate information, recommendations, or materials, will be transmitted to the Division of Animal Industries for consideration and use in the formal rulemaking process. If a consensus is not attained on particular issues, the negotiated rulemaking process may result in a report specifying those areas on which consensus was and was not reached which will be forwarded to the Division of Animal Industries. At the conclusion of the negotiated rulemaking process, the Division of Animal Industries intends to commence formal rulemaking with the publication of a proposed rule in October of 2001, taking into consideration the results of the negotiated rulemaking process. The final rule is expected to be in place and effective upon the conclusion of the 2002 session of the Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact John Chatburn at (208) 332-8540 or Marv Patten at (208) 332-8550.

Anyone may submit written comments by mail or fax at the address below regarding this proposal to initiate negotiated rulemaking. All written comments must be received by the undersigned on or before June 27, 2001.

DATED this 17th day of April, 2001.

Patrick A. Takasugi, Director
Idaho Department of Agriculture
P.O. Box 790
Boise, Idaho 83701
Phone No. (208) 332-8540
Fax No. (208) 334-4062

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.06.12 - IDAHO STATE DEPARTMENT OF AGRICULTURE RULES
PERTAINING TO THE IDAHO FERTILIZER LAW

DOCKET NO. 02-0612-0002

NOTICE OF CORRECTION TO FINAL RULE

CORRECTION: This notice corrects an error made during the publication of the temporary and proposed rule that was inadvertently missed during the publication of the pending rule. The error was a formatting error and is non-substantive in nature and does not change the text of the rule as approved by the legislature during the 2001 legislative session. The affected subsection of the rule is being corrected and reprinted in this Bulletin following this Notice of Correction to Final Rule. This correction is being done in conjunction with the Office of Administrative Rules.

AUTHORITY: In compliance with Section 67-5228, Idaho Code, notice is hereby given that the Office of Administrative Rules, in conjunction with this agency, is correcting the final rule. The action is authorized pursuant to Section(s) Title 22, Chapter 6, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the nature of the correction being made to the final rule.

This notice corrects an error made during the publication of the temporary and proposed rule that should have been corrected during the publication of the pending rule. The correction is non-substantive in nature and does not change the text of the rule as approved by the legislature during the 2001 legislative session. Text that was published at the end of the table in Subsection 050.04 was published in tabular form and should not have been included in the table. This text has been removed from the table and the corrected format of this subsection is being republished in this Bulletin, as originally submitted by the agency and as approved as a final rule, following this Notice of Correction to Final Rule.

The original text of Subsection 050.04 was published as a temporary and proposed rule in the October 4, 2000 Administrative Bulletin, Volume No. 00-10 on page 75.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this correction, contact Michael E. Cooper, Bureau Chief, Division of Plant Industries, at 332-8620 or Dennis Stevenson, Assistant Rules Coordinator, at 332-1820.

DATED this 25th day of April, 2001.

Rick Thompson
Administrative Rules Coordinator
State Department of Administration
PO Box 83720
Boise, ID 83720-0306
Phone: 332-1820

THE FOLLOWING IS THE CORRECTION TO FINAL RULE
PUBLISHED UNDER DOCKET NO. 02-0612-0002

SECTION 050

050. INVESTIGATIONAL ALLOWANCES.

Subsection 050.04

04. Investigational Allowance For Other Nutrients. Secondary and minor elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

Element	Investigational Allowance
Calcium)	0.2 unit + 5% of guarantee
Magnesium)	0.2 unit + 5% of guarantee
Sulfur)	0.2 unit + 5% of guarantee
Boron)	0.003 unit + 15% of guarantee
Cobalt)	0.0001 unit + 30% of guarantee
Chlorine)	0.005 unit + 10% of guarantee
Copper)	0.005 unit + 10% of guarantee
Iron)	0.005 unit + 10% of guarantee
Manganese)	0.005 unit + 10% of guarantee
Molybdenum)	0.0001 unit + 30% of guarantee
Sodium)	0.005 unit + 10% of guarantee
Zinc)	0.005 unit + 10% of guarantee

The maximum allowance when calculated as specified shall be one (1) unit (one percent (1%)). For dry custom mix fertilizers, an additional five percent (5%) of the guarantee shall be granted in addition to the allowances made above in this Section. (3-30-01)

IDAPA 06 - IDAHO DEPARTMENT OF CORRECTION
06.01.01 - RULES OF THE BOARD OF CORRECTION
DOCKET NO. 06-0101-0101

NOTICE OF PROCLAMATION OF RULEMAKING

EFFECTIVE DATE: In compliance with Section 20-212(1), Idaho Code, this rule is effective 30 days after publication of the rule in the Idaho Administrative Bulletin. The effective date of this rule is July 6, 2001.

AUTHORITY: In compliance with Section 20-212, Idaho Code, notice is hereby given that this agency has initiated rulemaking procedures and is publishing this Notice of Proclamation of Rulemaking and the text of the rule.

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

- 1) Three required major sections were added at the request of the Department of Administration: Section 004, Incorporation by Reference; Section 005, Office, Office Hours, Mailing address and Street address; and Section 006, Public Records Act Compliance.
- 2) The sixth operational unit of the Department has been defined in Section 010, Definitions, Subsection 010.15, to include Human Resource Services.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rules, contact DeAnna Jones at (208) 685-2143.

DATED this 14th day of March, 2001

Michael Johnson, Administrator
Institutional Services
Idaho Department of Correction
1299 North Orchard, Suite 110
Boise, Idaho 83706
(208) 658-2137 (Office) / (208) 327-7404 (Fax)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 06-0101-0101

000. LEGAL AUTHORITY.

01. Sections 9-340B And 9-347, Idaho Code. Pursuant to Section 9-340B, Idaho Code, the Board shall adopt rules that identify certain department records to be exempt from public disclosure. Pursuant to Section 9-347, Idaho Code the Board shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the department, the custodian and the physical location of such documents. ~~(11-5-99)~~(7-6-01)

02. Section 20-209, Idaho Code. Pursuant to Section 20-209, Idaho Code the Board shall have control, direction and management of all correctional facilities and property used in connection with correctional facilities. (11-5-99)

03. Section 20-212, Idaho Code. Pursuant to Section 20-212, Idaho Code the Board shall make all rules necessary to carry out the provisions of Title 20, Chapter 2, Idaho Code, not inconsistent with express statutes or the state constitution. (11-5-99)

04. Section 20-217A, Idaho Code. Pursuant to Section 20-217A, Idaho Code the director shall assume all the authority, powers, functions and duties as may be delegated to him by the Board. (11-5-99)

05. Section 20-244, Idaho Code. Pursuant to Section 20-244, Idaho Code the Board shall make and adopt such rules as they may deem necessary for the government and discipline of the correctional facilities. (11-5-99)

06. Section 18-2510, Idaho Code. Pursuant to Section 18-2510, Idaho Code it is a crime to convey articles, letters, or things into and out of Department facilities contrary to Department procedures, directives and Section 510. (11-5-99)

(BREAK IN CONTINUITY OF SECTIONS)

FORMER SECTION 004 HAS BEEN RENUMBERED TO SECTION 010

004. INCORPORATION BY REFERENCE.
No documents are incorporated by reference in this chapter. (7-6-01)

FORMER SECTION 005 HAS BEEN RENUMBERED TO SECTION 011

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The Board of Correction headquarters are located at the central office location of the Idaho Department of Correction, 1299 North Orchard Avenue, Suite 110, Boise, Idaho 83706. The central office location hours are typically 8 a.m. to 5 p.m. Monday through Friday, excluding holidays. Mail regarding the Board of Correction rules should be directed to the Board of Correction, attention Administrator, Institutional Services Division, 1299 North Orchard Avenue, Suite 110, Boise, Idaho 83706. (7-6-01)

FORMER SECTION 006 HAS BEEN RENUMBERED TO SECTION 012

006. PUBLIC RECORDS ACT COMPLIANCE.
The rules of the Board are subject to, and in compliance with, the Idaho Public Records Act. The rules are maintained by the Department of Correction, and shall be open to the public for inspection and copying at all reasonable times. (7-6-01)

007. -- 009. (RESERVED).

~~004~~10. DEFINITIONS.

01. Administrator. The exempt employee in authority over a division of the Department. (11-5-99)

02. Archival Research. Research requiring access to stored historical data, files, documentation, video or audio tapes, electronically sorted data, or written material. (11-5-99)

03. Attorney Of Record. An attorney appointed by a court or retained by an inmate in a legal action. (11-5-99)

04. Board. The state Board of Correction. (11-5-99)

05. Case Management File. A collection of legal documents, reports, submissions, statements, and support materials used in making decisions about an inmate, parolee, or probationer regarding classification, treatment, programming, management, parole, or clemency decisions. (11-5-99)

- 06. Confidential Mail.** Is mail to or from the president, the governor, the Attorney General or any Assistant or Deputy Attorney General, the Idaho legislature or Congress (except for bulk mailings), the courts, attorneys (except for bulk mailings), the Board, the director, and Department administrators and facility heads. (11-5-99)
- 07. Contact Visiting.** Visiting with an inmate where there are no physical barriers between the visitor and the inmate and the inmate and visitor may be allowed to touch. (11-5-99)
- 08. Contraband.** Any thing of any kind which is prohibited by Board, Department, or facility rules, procedures, or directives. Contraband also includes any thing of any kind which a facility head has not approved for possession by an inmate or which a facility head has not approved to bring in to a facility or on to department property. (11-5-99)
- 09. Contractor.** A person who has entered into a contract with the Board or Department, or a contract with the state of Idaho administered by the Board or Department to provide any service. (11-5-99)
- 10. County Jail.** A detention or holding facility operated by the sheriff of a county. (11-5-99)
- 11. Department.** The state Department of Correction. (11-5-99)
- 12. Department Property.** Real property owned or leased and operated or managed by the Board or Department. (11-5-99)
- 13. Directive.** A sequence of steps within a particular division to implement a procedure. (11-5-99)
- 14. Director.** The director of the Department of Correction. (11-5-99)
- 15. Division.** An operating unit of the Department. The Department divisions are: (11-5-99)
- a. Prisons; (11-5-99)
 - b. Management Services; (11-5-99)
 - c. Field and Community Services; (11-5-99)
 - d. Correctional Industries; ~~and~~ (~~11-5-99~~)(7-6-01)
 - e. Institutional Services; and (~~11-5-99~~)(7-6-01)
 - f. Human Resource Services. (7-6-01)
- 16. Execution.** The carrying out of a sentence of death. (11-5-99)
- 17. Facility.** A building or residence, including the property and land where the building or residence is located, owned or leased and operated or managed by the Board or Department. (11-5-99)
- 18. Facility Head.** The person with primary responsibility to oversee, manage or operate a Department facility. (11-5-99)
- 19. Field Memoranda.** Detailed guidelines to implement directives within a facility or a service unit of a division. (11-5-99)
- 20. General Mail.** All mail other than confidential mail. (11-5-99)
- 21. Health Authority.** The Department employee with primary responsibility to oversee or manage the Department medical services. (11-5-99)

22. **Immediate Family.** The immediate family of an inmate is: (11-5-99)
- a. The mother or father of the inmate, including step parent; (11-5-99)
 - b. The brother or sister of the whole or half (1/2) blood or by adoption or the stepbrother or stepsister of the inmate; (11-5-99)
 - c. The wife or husband of the inmate, as proved by marriage license or other operation of law; (11-5-99)
 - d. The natural child, adopted child or stepchild of the inmate; (11-5-99)
 - e. The grandparents of blood relation to the inmate; or (11-5-99)
 - f. The grandchildren of blood relation to the inmate. (11-5-99)
23. **Intern.** A Student of a recognized college or university who may be involved in a course of study or research project conducted within a facility or service area under the authority of the Board. (11-5-99)
24. **Inmate.** An individual in the physical custody of the Board. (11-5-99)
25. **Inmate Visitor.** A member of the public who is approved to visit with an inmate at a Department facility. (11-5-99)
26. **Legal Assistant.** A person who has been granted permission by the facility head or designee to assist an inmate in a specific legal matter and who is a law student or an employee of an attorney of record, or an employee of a local, state or federal court, or an employee of a legal aid service. (11-5-99)
27. **Literature.** Notices, placards, banners, advertisements, and other writings not generated by the Department for Department distribution. (11-5-99)
28. **Minor.** A individual less than eighteen (18) years old. (11-5-99)
29. **Non-Contact Visiting.** Visiting with an inmate where there are physical barriers between the visitor and the inmate and the inmate and visitor are not allowed to touch. Verbal communication is generally accomplished through telephones, speakers or openings in the physical barrier designed to allow sound to pass. (11-5-99)
30. **Obscene.** Material is considered obscene if it: (11-5-99)
- a. Portrays physical contact of a person with the sexual organs of another by genital-genital, oral-genital, digital-anal, digital-genital, anal-genital contact; (11-5-99)
 - b. Portrays the insertion of foreign objects into the anus or vagina; (11-5-99)
 - c. Portrays the discharge of bodily fluids; (11-5-99)
 - d. Portrays bestiality; (11-5-99)
 - e. Portrays sexual contact with a minor under age eighteen (18) or a person who appears to be under the age of eighteen (18); (11-5-99)
 - f. Portrays violent activity in a sexual context; or (11-5-99)
 - g. Portrays an act where one (1) of the participants appears to be non-consenting to the act. (11-5-99)

31. **Offender.** A person under the legal care, custody, supervision or authority of the Board including a person within or without the state pursuant to agreement with another state or a contractor. (11-5-99)
32. **Parole Commission.** The Idaho Commission of Pardons and Paroles. (11-5-99)
33. **Parolee.** An offender who is released from a facility to a period of supervision upon grant of parole by a paroling authority. (11-5-99)
34. **Penological Interests.** The security, programmatic, and rehabilitative interests of the Board and the Department. (11-5-99)
35. **Person.** An individual, corporation, governmental entity or organization, however organized or constituted. (11-5-99)
36. **Photo Identification.** A state issued driver's license, a state issued identification card displaying a photograph, a military issued identification card displaying a photograph or, a current valid passport. (11-5-99)
37. **Post Order.** A detailed set of guidelines and procedures for each post or area of employee assignment which governs and explains the duties of the employee assigned to the post or area of responsibility. (11-5-99)
38. **Probationer.** An offender who is placed on a period of supervision on probation by a court of competent jurisdiction. (11-5-99)
39. **Procedure.** A sequence of steps or actions to be followed to implement and support a rule or policy. (11-5-99)
40. **Public.** A person in the general public. For purposes of these rules public does not include offenders, contractors, vendors, volunteers, interns, or the employees of the Board, Department or, Parole Commission. (11-5-99)
41. **Public Information Officer.** An employee of the Department designated by the director to be the primary contact person from whom the public and media may request information. (11-5-99)
42. **Research Activities.** Activities which systematically investigate a phenomenon or series of phenomena. (11-5-99)
43. **Research On Human Subjects.** Research requiring access to, and participation of, employees of the Department or offenders. (11-5-99)
44. **Tobacco Products.** Cigarettes, whether packaged or hand rolled, cigars, snuff, chew, or any other variation of a product containing tobacco. (11-5-99)
45. **Vendor.** A person who supplies goods or services to the Board or any operation or facility under the authority of the Board. (11-5-99)
46. **Visiting Staff.** Employees of the Department or the Parole Commission conducting business in the Department central office building on a regular or irregular basis. (11-5-99)
47. **Visitor.** A member of the public as defined herein who is approved to visit a department facility. (11-5-99)
48. **Volunteer.** A person who has volunteered or donated time or services to the Board or a Department operation or facility. (11-5-99)
49. **Work Site.** Any place where inmates may be found when assigned to a work project. (11-5-99)

00511. ABBREVIATIONS.

No abbreviations are used in this chapter.

(7-6-01)

00612. BOARD MEETINGS.

01. Meetings. The Board shall meet at such times and places as they may direct. Meetings shall occur at least quarterly, and may occur more frequently. All business of the Board shall be conducted in compliance with the open meeting law as provided by Sections 67-2340 through 67-2347, Idaho Code. (11-5-99)

02. Yearly Meeting Schedule. The Board may publish a schedule of meetings once per year, which schedule shall be posted in the Department central office. (11-5-99)

03. Agenda. An agenda for each regularly scheduled meeting shall be posted in the Department central office or such other place as the Board may meet at least forty-eight (48) hours prior to the regularly scheduled meeting, except as noted in Subsection 00612.06. (~~11-5-99~~)(7-6-01)

04. Minutes Of Meetings. Summary minutes of each meeting shall be made and shall be available to the public at the Department central office, office of the director. Nothing herein shall be construed to require or allow the disclosure of information concerning the matters discussed in executive session nor any information exempt from disclosure pursuant to Sections 9-335 and 9-340, Idaho Code, or any other exemption provided by law. (11-5-99)

05. Director To Prepare Reports. The Board may order the director to prepare and present such reports and information concerning the operation of the Department as the Board may from time to time require. (11-5-99)

06. Special Meetings. The director or any member of the Board may call for a special meeting of the Board when such meeting becomes necessary to deliberate or decide about some matter requiring attention prior to or in addition to the next regularly scheduled meeting of the Board. An agenda shall be posted at the place of the meeting, or in the Department central office twenty-four (24) hours before such meeting unless the nature of an emergency precludes such notice. (11-5-99)

00713. -- 103. (RESERVED).

104. TOBACCO FREE ENVIRONMENT.

The Department and all of its property, facilities, and vehicles shall be maintained tobacco free. No person shall possess or use tobacco products on or in vehicles or properties owned, leased, rented and operated or managed by the Department. No offender, employee, contractor, volunteer, vendor, or intern shall possess or use tobacco products in or on any Department work site. (11-5-99)

01. Applicability. Section 104 is applicable to all persons, regardless of status as public or non-public as defined in Subsection 00410.40. (~~11-5-99~~)(7-6-01)

02. Exception. Tobacco products may be kept in a securely locked vehicle in a Department parking lot. (11-5-99)

(BREAK IN CONTINUITY OF SECTIONS)

123. PUBLIC VISITS AND TOURS OF FACILITIES.

The Department may allow tours of facilities and property according to procedures approved by the director. Tours will generally take place during normal business hours or at times which ensure the safety and convenience of the facility or Department property. (11-5-99)

01. Persons Subject To Facility Rules And Regulations. All persons touring a facility or Department property are subject to the rules, policies, procedures, directives and field memoranda regarding visitation, which are

to be explained by the guides prior to the beginning of the tour. (11-5-99)

a. All persons touring a facility or Department property may be subject to search. Discovery of any contraband, as defined in Subsection ~~00410.078~~, shall be grounds for immediate termination of the tour and referral to local law enforcement for possible prosecution of a criminal offense. ~~(11-5-99)~~(7-6-01)

b. All persons touring a facility must be at least eighteen (18) years old or if under eighteen (18), must be accompanied by a parent or guardian or have written permission from the parent or guardian, unless approved by the director or designee. (11-5-99)

02. Attendance At Events. Under certain circumstances and with an invitation from a Department employee, an individual may attend athletic games and various other events held at a facility. Attendance shall not interfere with penological interests. (11-5-99)

IDAPA 06 - IDAHO DEPARTMENT OF CORRECTION
06.01.01 - RULES OF THE BOARD OF CORRECTION
DOCKET NO. 06-0101-0102
NOTICE OF PROCLAMATION OF RULEMAKING

EFFECTIVE DATE: In compliance with Section 20-212(1), Idaho Code and through a Proclamation issued by the Board of Correction and signed by the Governor, the effective date of this rule is April 17, 2001.

AUTHORITY: In compliance with Sections 67-5202, 67-5205, 67-5291, 67-5292, and 20-212, Idaho Code, notice is hereby given that this agency has adopted rules by proclamation.

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

Pursuant to recent legislation, the Idaho Board of Correction has amended Subsection 108.02 regarding the Idaho Public Records Act and Department records that are exempt from disclosure. The proclamation is being printed in the Bulletin followed by the text of the rule.

JUSTIFICATION FOR IMMEDIATE ADOPTION BY PROCLAMATION: These rules have been adopted by proclamation in accordance with Section 20-212(1), Idaho Code and have been signed by the Governor who has agreed that they are necessary in order to protect the public health, safety, and welfare that would otherwise be in jeopardy.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation of rulemaking, contact DeAnna Jones at (208) 685-2143.

DATED this 14th day of March, 2001.

Michael Johnson, Administrator
Institutional Services
Idaho Department of Correction
1299 North Orchard, Suite 110
Boise, Idaho 83706
(208) 658-2137 (Office) / (208) 327-7404 (Fax)

Proclamation of Idaho Board of Correction
Idaho Code Section 20-212(1)

Whereas, the current exemption for Idaho Department of Correction public records disclosure, Idaho Code Section 9-340B(3)(a) expires on July 1, 2001;

Whereas, the Idaho Board of Correction recognizes that interested parties outside of the Idaho Department of Correction seek to assist in drafting of Idaho Board of Correction IDAPA Rule 108, sub-section 02, concerning records exempt from disclosure, under the Idaho Public Records Act, pursuant to Idaho Code Section 9-340B(3)(a)(i), effective July 1, 2001;

Whereas, it is the intention of the Idaho Board of Correction to identify interested parties and invite their representatives to participate in a committee to assist in drafting Rule 108, Subsection 02;

Whereas, the publishing schedule for the Department of Administration, Office of Administrative Rules, does not allow sufficient time for Rule 108, Subsection 02 to be drafted and published in order to be effective July 1, 2001;

Whereas, in the absence of a rule that would be effective starting July 1, 2001, concerning records of the Idaho Department of Correction to be exempt from public disclosure, public health, safety and welfare is in jeopardy;

Therefore, in order to meet its obligation to protect information consistent with the public's interest in confidentiality, public safety, security, and habilitation of offenders, the board hereby proclaims the following rule to be in effect upon signature of the Governor of the state of Idaho:

The following records are exempt from disclosure: Records of the Department of Correction to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the Department of Correction, or on parole, or would substantially prejudice or prevent the carrying out of the functions of the Department of Correction, if the public interest in confidentiality clearly outweighs the public interest in disclosure. Records exempt from disclosure shall include, but not be limited to, those containing the names and addresses of witnesses, or victims, or those containing information identifying victims or witnesses.

Be it RESOLVED that the Idaho Board of Correction adopts the above statement as a rule of the Board.

Adopted this 17th day of April, 2001, by:

Ralph Townsend, Chairman
State of Idaho Board of Correction

Dirk Kempthorne, Governor
State of Idaho

THE FOLLOWING IS THE TEXT OF DOCKET NO. 06-0101-0102

108. IDAHO PUBLIC RECORDS ACT.

01. Custodian of Records. The following Department employees are designated as official custodians of department records for purposes of this section: (11-5-99)

- a. The public information officer; (11-5-99)
- b. The central records manager; (11-5-99)
- c. The administrators of the divisions; (11-5-99)
- d. The facility heads; and (11-5-99)
- e. The Department records clerks. (11-5-99)

02. Records Exempt From Disclosure. The ~~Board has determined that the~~ following records are

exempt from disclosure; ~~of certain~~ Records ~~always~~ of the Department of Correction to the extent that disclosure thereof would interfere with the secure and orderly ~~operation~~ conduct of their ~~Department and~~ operations, or the rehabilitation of any person in the custody of the Department of Correction, or on parole, or would substantially prejudice or prevent the carrying out of the functions of the Department of Correction, if the public interest in confidentiality clearly outweighs the public interest in disclosure. ~~Those~~ Records exempt from disclosure shall include, ~~emergency plans, blueprints, facility security procedures, facility post orders, investigation records of inmate requests for protective custody, and investigative records of inmate criminal activity~~ but not be limited to, those containing the names and addresses of witnesses, or victims, or those containing information identifying victims or witnesses. (11-5-99)(4-17-01)

a. Pre-sentence investigation reports, addenda and the information contained in or attached to the reports shall not be disclosed to any person except in compliance with Idaho Rule of Criminal Procedure 32. (11-5-99)

b. Civil commitment records differ in confidentiality from other offender records in that the civilly committed individual may not be convicted of a crime or may be held in a Department facility for reasons other than criminal conviction. Requests for information from the file of a civilly committed individual may be referred to department legal counsel to determine applicability of federal and state statutes pertaining to individual privacy and the public's right to know. (11-5-99)

c. Other records may be designated as exempt from disclosure as provided by law. (11-5-99)

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-0101
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 54-1006, 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 June 20, 2001.

The hearings 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 Board has been approached on several occasions regarding the limitation in sign electrical licensing which allows licensees to perform work on the secondary side of the sign disconnect only when the disconnect is on the sign or not more than two feet from the sign. The Board has determined to amend the rule to remove the two-foot distance limitation and replace it with the "line of sight" requirements found in the National Electrical Code.

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

This rulemaking does not include a fee or charge.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Malmen, Bureau Chief, at (208) 334-2183.

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 June 27, 2001.

DATED this 4th day of April, 2001.

Gary Malmen
Bureau Chief
Division of Building Safety, Electrical Bureau
277 N. 6th
P. O. Box 83720
Boise, ID 83720
Telephone: (208) 334-2183
Facsimile: (208) 334-4891

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0104-0101

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.

The following shall be considered as electrical specialties, the practice of which shall require a special license:

(4-9-79)

01. Elevator, Dumbwaiter, Escalator, Or Moving-Walk Electrical. Any person qualifying for and having in his possession a current elevator electrical license may install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. He shall be employed by a licensed elevator electrical contractor and his installation shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty.

(4-9-79)

02. Sign Electrical. Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within ~~a distance of two (2) feet and in~~ sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty.

~~(4-9-79)~~()

03. Manufacturing Or Assembling Equipment.

(4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty.

(4-5-00)

b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code.

(7-1-94)

04. Limited Energy Electrical License.

(9-17-85)

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC.

(7-1-99)

b. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems.

(7-1-99)

c. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one (1) or two (2) family dwellings shall be required to have a valid limited energy electrical license and must be employed by a licensed limited energy specialty electrical contractor or electrical contractor. The holder of a specialty license may only countersign a contractor's application as a supervising journeyman for work within his specialty.

(7-1-98)

05. Irrigation Sprinkler Electrical. Any person qualifying for and having in his possession, an irrigation system electrical license may install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to

include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license is contingent upon the granting of a specialty electrical license to an employee and whose installations shall be limited to this category. The holder of a specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. (1-1-92)

06. Well Driller And Water Pump Installer Electrical Licenses. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the approved National Electrical Code. He shall be employed by a licensed well driller and water pump installer electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations: (1-14-87)

a. Single or three (3) phase well pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device installed by others. (7-1-98)

b. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (7-1-98)

c. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (1-14-87)

07. Refrigeration, Heating, And Air-Conditioning Electrical Installer. All such installation, maintenance, and repair performed by individuals under this section shall be done in accordance with applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license shall be covered by this category. The holder of such specialty license may not countersign a contractor's license application as a supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (9-17-85)

a. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

b. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

c. Refrigeration, Air-Conditioning and Heating Systems (three-phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

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

15.01.01 - RULES GOVERNING SENIOR SERVICES PROGRAM

DOCKET NO. 15-0101-0101

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2001.

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(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 June 20, 2001.

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:

This rulemaking changes the definition of Support Services Technician to allow them to complete UAI's (assessment of need for 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 protection of the public health, safety or welfare. This change will protect the welfare of seniors by allowing more personnel to conduct assessment needs for services provided to the seniors.

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, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was not published in the Idaho Administrative Bulletin, because it was an informal process, which included a review of the proposed rule with the Area Agency Directors and Commissioners. This rule change was recommended by the Area Agency Directors.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ken Wilkes, Program Operations Manager at 208/334-3833.

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 June 27, 2001.

DATED this April 4, 2001.

Ken Wilkes
Program Operations Manager
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. 15-0101-0101

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).** 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. (4-5-00)
- 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. Case Manager.** A licensed social worker, licensed professional nurse (RN), or Certified Case Manager, or an individual with a BA or BS in a human services field or equivalent and at least one (1) year's experience in service delivery to the service population. (3-30-01)
- 09. Case Management.** Case management is a service provided to older individuals and disabled adults, at the direction of the individual or a family member of the individual, to assess the needs of the person and to arrange, coordinate, and monitor an optimum package of services to meet those needs. Activities of case management include: comprehensive assessment of the individual; development and implementation of a service plan with the individual to mobilize formal and informal resources and services; coordination and monitoring of formal and informal service delivery; and periodic reassessment. (3-30-01)
- 10. 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. (4-5-00)
- 11. Certified Case Manager.** One who has met the requirements for certification as established by the National Academy of Care/Case Managers or other professional association recognized by the Idaho Commission on Aging. (4-5-00)
- 12. Chore Services.** Providing assistance with normal yard work, sidewalk maintenance, heavy cleaning, or minor household maintenance to persons who have functional limitations that prohibit them from performing these tasks. (4-5-00)
- 13. Client.** Person who has met program eligibility requirements for services addressed in this chapter. (7-1-98)
- 14. Cognitive Impairment.** A disability or condition due to mental impairment. (7-1-98)

15. **Congregate Meals.** Meals that meet the requirements of the OAA, as amended, served in a group setting. (7-1-98)
16. **Department.** Department of Health and Welfare. (7-1-98)
17. **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)
18. **Eligible Clients.** Residents of the state of Idaho who are sixty (60) years or older and their spouses. (7-1-98)
19. **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)
20. **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)
21. **Formal Services.** Services provided to clients by a formally organized entity. (7-1-98)
22. **Functional Impairment.** A condition that limits an individual's ability to perform ADLs and IADLs. (7-1-98)
23. **Home-Delivered Meals.** Meals delivered to eligible clients in private homes. These meals shall meet the requirements of the OAA. (7-1-98)
24. **Homemaker.** A person who has successfully completed a basic prescribed training, who, with additional supervision, provides homemaker services. (7-1-98)
25. **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)
26. **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)
27. **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)
28. **Informal Supports.** Those supports provided by church, family, friends, and neighbors, usually at no cost to the client. (7-1-98)
29. **Instrumental Activities Of Daily Living (IADL).** Meal preparation, money management, transportation, shopping, using the telephone, medication management, heavy housework, light housework. (7-1-98)
30. **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)
31. **Medicaid HCBS.** Services approved under the Medicaid Waiver for the aged and disabled. (3-30-01)
32. **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 AAA staffing profiles, and identifies major program accomplishments; and (4-5-00)

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

33. 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)

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

35. 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)

36. Performance-Based Agreements. A written agreement between the ICOA and AAAs which establishes statements of work for services to be performed by the AAA, including output and outcome projections, program review and process for contract termination. (4-5-00)

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

38. Planning And Service Area (PSA). Substate geographical area designated by the ICOA for which an AAA is responsible. (4-5-00)

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

40. Respite. Short-term, intermittent relief provided to caregivers (individuals or families) of a functionally-impaired relative or custodial charge. (4-5-00)

41. 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)

42. 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)

43. 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)

44. Supportive Services Technician. AAA employee working under the supervision of a licensed social worker or case manager assisting with investigation of Adult Protection reports, completion of Sections One and Two of the UAI for services of clients of ICOA funded in-home services, or development and initiation of a SSPs. The employee shall have a High School diploma and at least two (2) years' experience delivering services to the elderly or at-risk populations. ~~Tasks are limited to:~~ (4-5-00)(1-1-01)T

~~a. Re-assessment of clients initially assessed by a case manager; (4-5-00)~~

~~b. Coordination of start-up services using the SSP developed by a case manager; (4-5-00)~~

- ~~e. Follow-up calls to determine care plan progress and minor plan adjustments; (4-5-00)~~
- ~~d. Clerical work in support of case management and adult protection activities; and (4-5-00)~~
- ~~e. Receiving emergency Adult Protection calls for referral to the appropriate legal or other entity. (4-5-00)~~
- ~~f. Follow-up investigative responsibility must remain with the Adult Protection Worker. (4-5-00)~~
- ~~g. The employee shall have a college degree or a high school diploma and at least two (2) years' experience working with elderly or at-risk populations. (4-5-00)~~

45. 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)

46. 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)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO
DOCKET NO. 16-0308-0101

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective dates of the amendment to the temporary rule are July 1, 2001 and November 1, 2000. This pending rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b), 56-209(j) and 56-1004(l), 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 109, the wording was changed to; "The Department will conduct screening prior to TAFI benefit approval." Section 368 additional clarification was made in regards to enhancement payments. Clerical and typographical corrections were made in Sections 111 and 124.

The proposed rule has been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions that have been made to the proposed rule.

The original text of the proposed rule was published in the January 3, 2001 Administrative Bulletin, Volume 01-1, pages 110 through 117.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5818.

DATED this 11th day of April, 2001.

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) 332-7347 fax

IDAPA 16, TITLE 03, Chapter 08

RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 01-1, January 3, 2001, pages 110 through 117.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0308-0101

SECTION 109

109. SUBSTANCE ABUSE SCREENING.

Idaho law requires substance abuse screening for TAFI cash assistance applicants listed in Subsections 109.01 and 109.02. The Department will conduct screening ~~within ten (10) calendar days of the date of application for prior to TAFI benefit approval. Screening results determine a participant's need for substance abuse testing and treatment.~~
(7-1-01)F(7-1-01)T

01. New Applicants. New TAFI applicants, if they are otherwise eligible. (7-1-01)T

02. Persons Reapplying. Persons reapplying for TAFI, ~~after a period of ineligibility,~~ if they are otherwise eligible. (7-1-01)F(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

SECTION 111

111. SUBSTANCE ABUSE SCREENING AND TESTING NOTICE AT APPLICATION.

The Department must provide notice of substance abuse screening and possible testing to each TAFI applicant. The notice must advise the applicant of the factors listed in Subsections 111.01 through 111.08. (7-1-01)T

Subsection 111.03

03. Treatment Requirement. Participants must ~~not~~ enter a substance abuse treatment program and cooperate with treatment, if screening, assessment or testing shows them in need of substance abuse treatment.
(7-1-01)F(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

SECTION 124

124. SUBSTANCE ABUSE TREATMENT.

If substance abuse screening, assessment or testing shows the participant needs substance abuse treatment, the Department shall require the participant to enter a substance abuse treatment program and cooperate with treatment. Treatment shall be provided at no cost to TAFI participants. Treatment shall be community based and gender specific ~~when available~~. The Department shall provide for the participant's transportation and child care needs if necessary.

~~(7-1-01)~~(7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

SECTION 368

368. CAREER ENHANCEMENT SERVICES.

Career Enhancement services may be provided to an individual with dependent children. The individual must have a work-related need, that if unmet, would prevent them from maintaining employment or participate in work programs. Career Enhancement services are non-recurrent, short-term, and designed to deal with a specific crisis situation or episode of need. Career Enhancement payments do not count towards the TAFI twenty-four (24) month time limit. Career Enhancement payments will be paid for only those services identified and authorized in a thirty (30) day period to meet the needs that do not extend beyond a ninety (90) day period. All services provided by Career Enhancement do not have to be identified at the same time, as long as the need is identified and authorized within thirty (30) days of the Service Plan.

~~(11-1-00)~~(11-1-00)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0101

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: This temporary rule is effective February 1, 2001.

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(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 June 20, 2001.

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:

Through a negotiated process with providers, parents and Department staff it was determined that Idaho was lacking in specialized services to meet the needs of the children who have self-injurious, aggressive, severely maladaptive behavior; severe deficits in communications, social interaction and leisure or play skills. Without specialized service, these behaviors will result in health and safety issues to the children and their families. Rule changes have already been made to IDAPA 16.04.11, "Rules Governing Developmental Disability Agencies," (DDA) and IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 560, Health Related Services. A rule change to add a service, Intensive Behavioral Intervention (IBI), to the Rules Governing Medical Assistance for Developmental Disability Agencies will bring all the rules in line to provide behavioral intervention for these intense needs.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with Developmental Disability Agency providers, Parents, Developmental Disability Agencies and Mental Health from Family and Community Services and the Bureau of Medicaid Programs and Resource Management.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Jean Christensen at (208) 364-1828.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before June 27, 2001.

DATED this 20th day of February, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0101

120. REHABILITATIVE SERVICES -- DEVELOPMENTAL DISABILITIES AGENCIES.

The Department will pay for rehabilitative services pursuant to 42 CFR 440.130(d), including medical or remedial services provided by facilities which have entered into a provider agreement with the Department and are licensed as developmental disabilities agencies by the Division of Family and Community Services, Bureau of Developmental Disabilities. Effective July 1, 1995, all recipients not currently receiving services from a Developmental Disabilities Agency shall do so only as part of an Individual Support Plan (ISP) developed by the client and his targeted service coordinator, if one is selected. If the client chooses not to select a targeted service coordinator, the Developmental Disabilities Agency (DDA) must ensure an Individual Program Plan is developed. Clients who are Home and Community Based Services Waiver recipients who want and need DDA services shall develop an ISP with their targeted service coordinator and submit that plan to the Regional ACCESS Unit for authorization. Educational services, other than those "related services" found in 34 CFR 300.13 and provided to all eligibles under the State Medical Plan, are the responsibility of the public schools and are not eligible for Medicaid payments. Covered "related services" include: audiology; psychotherapy services; physician services; developmental and occupational therapy; physical therapy; speech pathology and transportation necessary to obtain other covered services. (3-30-01)

01. Evaluation And Diagnostic Services. Prior to delivery of service, current and accurate comprehensive evaluations or specific skill assessment shall be completed or obtained as necessary to effectively plan the consumer's program. Evaluations and assessments shall reflect the current status of the consumer. (3-30-01)

a. When required medical/social, psychological, speech and hearing, physical, developmental, and occupational therapy evaluations must meet the requirements of IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," with the following exceptions: (3-30-01)

i. For children being served in a Developmental Disabilities Agency under Part C of IDEA (Individuals with Disabilities Education Act), the above evaluations must meet the requirements in Title 16, Chapter 1, Idaho Code, "Early Intervention Services" and the Idaho State Plan for Early services Intervention of the Individuals with Developmental Disabilities Education Act; or (3-30-01)

ii. For children being served in a Developmental Disabilities Agency under Part B of IDEA, the above evaluations must meet Section 33-201, Idaho Code, "School Age," and IDAPA 08.02.03, "Rules Governing Thoroughness". (3-30-01)

b. Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all evaluation or diagnostic services provided in any calendar year. (10-6-88)

02. Treatment Services. Home, community and center based services must be recommended by a physician or other practitioner of the healing arts and provided in accordance with objectives as specified in an ISP submitted to the Regional ACCESS Unit. (3-30-01)

a. The treatment services must meet the requirements of IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," with the following exceptions: (3-30-01)

i. For children being served in a Developmental Disabilities Agency under Part C of IDEA, treatment services must meet the requirements in Title 16, Chapter 01, Idaho Code, "Early Intervention Services" and the Idaho State Plan for Early Intervention of the Individuals with Developmental Disabilities Education Act; or (3-30-01)

ii. For children being served in a Developmental Disabilities Agency under Part B of IDEA, treatment services must meet Section 33-201, Idaho Code, "School Age," and IDAPA 08.02.03, "Rules Governing Thoroughness". (3-30-01)

b. Psychotherapy services limited to a maximum of forty-five (45) hours in a calendar year, and include: (7-1-95)

- i. Individual psychotherapy; (7-1-95)
 - ii. Group psychotherapy; (7-1-95)
 - iii. Family-centered psychotherapy which must include the recipient and one (1) other family member at any given time. (7-1-95)
 - c. Speech and hearing therapy services are limited to two hundred fifty (250) treatment sessions per calendar year. (7-1-95)
 - d. Physical therapy services are limited in accordance with Section 140 of these rules. (3-30-01)
 - e. Developmental and occupational therapy services alone or in combination are limited to a maximum of thirty (30) hours per week. (3-30-01)
 - f. Collateral contact with individuals directly involved with the recipient of service to expand rehabilitative services into the client's living location. Such contacts will be included in the limitations of hours of treatment service reimbursed by Medicaid. Contacts with such persons for the purpose of future placement, interagency and intra-agency case monitoring, staffings and social service activities are not allowable for Medicaid payment. (10-6-88)
 - g. Intensive Behavioral Interventions are individualized, comprehensive, proven interventions used on a short term, one-to-one basis that produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. Intensive Behavioral Intervention is available only to children birth through age twenty-one (21) who have self-injurious, aggressive, or severely maladaptive behavior and severe deficits in the areas of verbal and non-verbal communication; or social interaction; or leisure and play skills. Intensive Behavioral Intervention alone or in combination with developmental and occupational therapy is limited to thirty (30) hours a week and may be delivered for no longer than thirty-six (36) months. (2-1-01)T
 - g~~h~~. Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the recipient is being transported to and from the agency. (3-30-01)
- 03. Optional Services.** (11-22-91)
- a. Consultation for the purpose of prescribing, monitoring, and/or administering medications. These consultations shall be: (11-22-91)
 - i. Provided by a physician or licensed nurse practitioner in direct face-to-face contact with the client; and (11-22-91)
 - ii. Incorporated into the client's Individual Support Plan with the type, amount, and duration of the service specified. (7-1-95)
 - b. Nursing services for the purpose of supervising, monitoring, and/or administering medication within the limits of the Nurse Practice Act, Section 54-1402(d), Idaho Code. These services shall be: (11-22-91)
 - i. Ordered and supervised by a physician; and (11-22-91)
 - ii. Provided by licensed and qualified nursing personnel in direct face-to-face contact with the client; and (11-22-91)
 - iii. Incorporated into the client's Individual Support Plan with the type, amount, and duration of the service specified. (7-1-95)

c. Psychiatric evaluations and services for the purpose of establishing a diagnosis, identifying client strengths and needs, and recommending and/or implementing interventions to address each need. These evaluations and services shall be: (11-22-91)

i. Conducted by a physician in direct face-to-face contact with the client; and (11-22-91)

ii. Incorporated into the client's Individual Support Plan with the type, amount, and duration of service specified. (7-1-95)

04. Requirements For Agencies. Agencies must be licensed as Developmental Disabilities Agencies by the Department. Loss of licensure by an agency will be cause for termination of all Medicaid program payment for services and termination of the agency's provider agreement. (3-30-01)

05. Excluded Services. The following services are excluded for Medicaid payments: (10-6-88)

a. Vocational services; and (10-6-88)

b. Educational services; and (10-6-88)

c. Recreational services. (10-6-88)

06. Payment Procedures. Payment for agency services must be in accordance with rates established by the Department. (3-30-01)

a. Providers of services must accept as payment in full the Department's payment for such services and must not bill a MA recipient for any portion of any charges. (11-10-81)

b. Third party payment resources, such as Medicare and private insurance, must be exhausted before the Department is billed for services provided to an eligible recipient. Proof of billing other third party payors is required. (11-10-81)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0102

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective April 1, 2001.

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(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 June 20, 2001.

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:

IDAPA 16.03.09, Section 081 is being amended to include intestinal transplants under the scope of Idaho Medicaid covered procedures. Coverage coincides with the expansion of the Medicare program, which will cover this procedure effective April 1, 2001.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with physicians requesting this change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Lloyd Forbes at (208) 364-1833.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before June 27, 2001.

DATED this 3rd day of April, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0102

081. ORGAN TRANSPLANTS.

The Department may purchase organ transplant services for bone marrows, kidneys, hearts, intestines, and livers when provided by hospitals approved by the Department Health Care Financing Administration for the Medicare program and that have completed a provider agreement with the Department. The Department may purchase cornea transplants for conditions where such transplants have demonstrated efficacy. ~~(10-1-91)(4-1-01)T~~

01. Heart Or Liver Transplants. Heart or liver transplant surgery will be covered ~~only if the procedure is performed in a transplant facility approved for transplant of the heart or liver by the Health Care Financing Administration for the Medicare program and has completed a provider agreement with the Department.~~ ~~(10-1-91)(4-1-01)T~~

02. Kidney Transplants. Kidney transplantation surgery will be covered only in a renal transplantation facility participating in the Medicare program after meeting the criteria specified in 42 CFR 405 Subpart U. Facilities performing kidney transplants must belong to one (1) of the End Stage Renal Dialysis (ESRD) network area's organizations designated by the Secretary of Health and Human Services for Medicare certification. (10-1-91)

03. Living Kidney Donor Costs. The transplant costs for actual or potential living kidney donors are fully covered by Medicaid and include all reasonable preparatory, operation, and post-operation recovery expenses associated with the donation. Payments for post-operation expenses of a donor will be limited to the period of actual recovery. (10-1-91)

04. Intestinal Transplants. Intestinal transplantation surgery will be covered only for patients with irreversible intestinal failure, and who have failed total parenteral nutrition. ~~(4-1-01)T~~

045. Coverage Limitations. When the need for transplant of a second organ such as a heart, lung, liver, bone marrow, pancreas, or kidney represents the coexistence of significant disease, the organ transplants will not be covered. (10-1-91)

a. Each kidney or lung is considered a single organ for transplant; (10-1-91)

b. Retransplants will be covered only if the original transplant was performed for a covered condition and if the retransplant is performed in a Medicare/Medicaid approved facility; (10-1-91)

c. A liver transplant from a live donor ~~is considered an investigative procedure and~~ will not be covered; ~~(10-1-91)(4-1-01)T~~

d. Multi-organ transplants such as heart/lung or kidney/pancreas and the transplant of artificial hearts or ventricular assist devices are not covered; (10-1-91)

e. Except for cornea transplants, all organ transplants are excluded from MA payment unless preauthorized by the ~~PRO~~ Department or its designee, and performed for the treatment of medical conditions where such transplants have a demonstrated efficacy. ~~(10-1-91)(4-1-01)T~~

056. Noncovered Transplants. Services, supplies, or equipment directly related to a noncovered transplant will be the responsibility of the recipient. (10-1-91)

067. Follow-Up Care. Follow-up care to a recipient who received a covered organ transplant may be provided by a Medicare/Medicaid participating hospital not approved for organ transplantation. (10-1-91)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.14 - RULES GOVERNING THE PREVENTION OF MINORS' ACCESS
TO TOBACCO PRODUCTS

DOCKET NO. 16-0614-0101

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective January 1, 2001.

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 Title 39, Chapter 57 et Seq., Idaho Code.

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

June 18, 2001, at 7:00 p.m
Ameritel Inn-Sepctrum, Arrow Rock Room,
7499 W. Overland, Boise

June 20, 2001, at 7:00 p.m.,
Ameritel Inn, Pebblecreek Room,
1440 Bench Road, Pocatello

June 22, 2001, at 7:00 p.m.
Ameritel Inn, West Meeting Room,
333 W. Ironwood Drive, Coeur d' Alene.

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:

Discussions began in June 2000 between stakeholder groups and the Department of Health and Welfare concerning the prevention of minors' access to tobacco products statutes. The groups gained consensus on several points. The points included the addition of a "no fault" first violation for permittees, a reduction in the fines for further violations, a reduction in permit suspensions for further violations, and a formula for the number of random and unannounced inspections to be conducted each year. Key components for the formula are the number of permittees, the violation rate of the past year, and multiplication factor of ten (10). These changes, along with some clarifying language, formed a bill introduced as S1048. S1048 passed during the first legislative session of the 2001 Legislature and was signed by Governor Kempthorne. These rule changes incorporate changes driven by the passage of S1048 and provide clarifying language for inspection types and protocols.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(l)(b) and 67-5226(l)(c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate to confer a benefit.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. Groups involved were the Idaho PTA, American Heart Association, Coalition for a Healthy Idaho, Idaho Petroleum Marketers Association, and Idaho Retailers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Erica Tucker at (208) 334-0642.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before June 27, 2001.

DATED this 12th day of April, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0614-0101

007. DEFINITIONS.

The terms used in this rule are defined as follows: (4-5-00)

01. Business. Any company, partnership, firm, sole proprietorship, association, corporation, organization, or other legal entity, or a representative of the foregoing entities that sells or distributes tobacco products. Wholesalers' or manufacturers' representatives in the course of their employment are not included in the scope of these rules. (4-5-00)

02. Department. The Department of Health and Welfare or its duly authorized representative. (4-5-00)

03. DHW. Department of Health and Welfare. (4-5-00)

04. Distribute. To give, deliver, sell, offer to give, offer to deliver, offer to sell or cause any person to do the same or hire any person to do the same. (4-5-00)

05. Effective Training. Training must include, at a minimum, the provisions of the law regarding minors' access to tobacco products as indicated on the suggested Employee Training form which is included with the permit provided by the Department and found in Appendix A of these rules. Such training will be presumed effective for purposes of civil penalty actions in the first, second, and third violations within a two (2) year period. (4-5-00)(1-1-01)T

06. Evidence Of Effective Training. Documentation provided by a permittee in response to a violation of this chapter clearly identifying that the permittee had a training program in place at the time of the violation meeting the definition for effective training and had on file a form signed by the employee prior to the violation stating understanding of the tobacco laws dealing with minors and the unlawful purchase of tobacco. (1-1-01)T

067. Minor. A person under eighteen (18) years of age. (4-5-00)

078. Permit. A permit issued by the Department for the sale or distribution of tobacco products. (4-5-00)

089. Permittee. The holder of a valid permit for the sale or distribution of tobacco products. (4-5-00)

0910. Photographic Identification. In all cases the identification must bear a photograph and a date of birth. Verification is not required by these rules if the buyer is known to the seller to be age eighteen (18) or older. Types of identification include: (4-5-00)

a. State, district, territorial, possession, provincial, national or other equivalent government driver's license; or (4-5-00)

- b. Identification card or military identification card; or (4-5-00)
- c. A valid passport. (4-5-00)
- 101. Random Unannounced Inspection.** An inspection of business by a law enforcement agency or by the Department, with or without the assistance of a minor, to monitor compliance of this chapter. (4-5-00)
- a. Random. At any time without a schedule or frequency. (4-5-00)
- b. Unannounced. Without previous notification. (4-5-00)
- 142. Seller.** The person who physically sells or distributes tobacco products. (4-5-00)
- 123. Tobacco Product.** Any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco paper, or smokeless tobacco. (4-5-00)
- 134. Vending Machine.** Any mechanical, electronic or other similar device which, upon the insertion of tokens, money or any other form of payment, dispenses tobacco products. (4-5-00)
- 145. Vendor Assisted Sales.** Any sale or distribution in which the customer has no access to the product except through the assistance of the seller. The seller must physically dispense the tobacco product to the purchaser. A business is exempt from vendor assisted sales if it meets the following criteria: (4-5-00)
- a. Tobacco products comprise at least seventy-five percent (75%) of total merchandise as determined by sales reported to the Idaho State Tax Commission; (4-5-00)
- b. Minors are not allowed in exempt businesses and there is a sign on all entrances prohibiting minors; and (4-5-00)
- c. There must be a separate entrance to the outside air or to a common area not under shared ownership by the exempt business. (4-5-00)
- 156. Violation.** An action contrary to Title 39, Chapter 57, Idaho Code, or IDAPA 16.06.14, "Rules Governing the Prevention of Minors' Access to Tobacco Products". (4-5-00)
- 167. Without A Permit.** A business that has failed to obtain a permit or a business whose permit is suspended or revoked. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICATION FOR PERMIT.

All businesses which sell or distribute tobacco products to the public must obtain a permit issued annually for no charge by the Department of Health and Welfare. (4-5-00)

01. Where To Obtain An Application For Permit. An application can be obtained from the Department of Health and Welfare, Division of Family and Community Services, PO Box 83720, Boise, Idaho, 83720-0036, at no cost to the applicant. Application may be made through online services where available.

~~(4-5-00)~~(1-1-01)T

02. Separate Permits. A separate permit must be obtained for each place of business ~~and for each business that houses a tobacco vending machine.~~ The permit is non-transferable to another person, business, or location. ~~(4-5-00)~~(1-1-01)T

03. Renewal Of Permit. All permits must be renewed annually and are valid for twelve (12) calendar months. (4-5-00)

a. The Department will mail notices of renewal for permits no later than ninety (90) days prior to the expiration date on the permit. (4-5-00)

b. An application for renewal must be submitted annually by each business ~~and for each business housing a vending machine~~ through written application or online services where available. ~~(4-5-00)~~(1-1-01)T

c. A business with multiple sites may submit a single written application to renew the permit at each site, so long as the application is accompanied by a list of business locations and addresses. ~~(4-5-00)~~(1-1-01)T

04. Application For Exemption. Businesses seeking exemption from vendor assisted sales shall submit information to the Department to establish compliance with criteria set forth in Subsections 007.14.a. through 007.14.c. (4-5-00)

021. PERMITTEE RESPONSIBILITIES.

The permittee is responsible for the following: (4-5-00)

01. Possession Of Permit. Each business site must have a permit. (4-5-00)

02. Visibility. The permit must be available upon request at each site ~~and for any vending machine within the business.~~ ~~(4-5-00)~~(1-1-01)T

03. Display Of Sign. Each business may display, at each business site, a sign which states: "State Law Prohibits the Sale of Tobacco Products to Persons Under the Age of Eighteen (18) Years. Proof of Age Required. Anyone Who Sells or Distributes Tobacco to a Minor is Subject to Strict Fines and Penalties. Minors are Subject to Fines and Penalties." (4-5-00)

04. Effective Training. Each permittee is responsible to train employees as to the requirements of Title 39, Chapter 57, Idaho Code, and these rules. (4-5-00)

a. Unless the permittee has its own training program as described in Subsection 021.04.b., the employer must, at a minimum, read to the employee or prospective employee who may be responsible for sale or distribution of tobacco products, or assure the employee or prospective employee has read the information contained on the Employee Training form found in Appendix A of these rules and have him initial each statement, and sign the form indicating an understanding of the provisions of the law governing minors' access to tobacco products. (4-5-00)

b. Permittee may have their own training program but it must contain at least each of the elements listed in the Employee Training form found in Appendix A of these rules and the employee or prospective employee who may be responsible for sale or distribution of tobacco products must affirm in writing their acknowledgment of such training. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

051. CIVIL PENALTIES FOR VIOLATION OF PERMIT.

01. Violations By The Seller. (4-5-00)

a. The seller will receive a one hundred dollar (\$100) fine for each violation. (4-5-00)

b. Each violation will be recorded with the Department and may be accessed by potential employers upon the written consent of the seller as a portion of the training permit documentation. (4-5-00)

- 02. Violations By The Permittee.** (4-5-00)
- a. First violation. (4-5-00)
- i. ~~If~~The permittee ~~provides evidence of effective training, as determined by the Department, shall be notified in writing of the violation and penalties to be levied for further violations.~~ ~~No~~ fine will be imposed. ~~(4-5-00)(1-1-01)T~~
- ii. ~~If the permittee cannot provide evidence of effective training, as determined by the Department, the permittee shall be fined two hundred dollars.~~ ~~(4-5-00)~~
- b. Second violation in a two (2) year period. (4-5-00)
- i. The permittee shall be fined ~~four~~ two hundred dollars (\$~~4~~200). ~~(4-5-00)(1-1-01)T~~
- ii. If the permittee ~~can~~ provides evidence of effective training within ten (10) business days from the date of violation, the ~~permit for that site will not be suspended~~ Department shall waive the fine. ~~(4-5-00)(1-1-01)T~~
- iii. ~~If training is determined by the Department to be ineffective, the permit for that site will be suspended for up to seven (7) days. If the permit for that site is suspended, the permittee must remove all tobacco products from public visibility for the duration of the suspension of the permit. The permittee shall be notified in writing of the penalties to be levied for further violations.~~ ~~(4-5-00)(1-1-01)T~~
- c. Third ~~or subsequent~~ violation in a two (2) year period. ~~(4-5-00)(1-1-01)T~~
- i. The permittee shall be fined ~~one thousand~~ two hundred dollars (\$~~10~~200). ~~(4-5-00)(1-1-01)T~~
- ii. The permit shall be revoked for up to thirty seven (307) days beginning upon the day of notification a date set by the Department of following the third violation. Evidence of effective employee training shall be a mitigating factor in determining the length of the permit suspension. ~~(4-5-00)(1-1-01)T~~
- iii. The permittee must remove all tobacco products from public visibility for the duration of the revocation of the permit. (4-5-00)
- iv. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee shall be fined four hundred dollars (\$400). (1-1-01)T
- d. ~~If a second or subsequent violation occurs prior to notification of the prior citation, there will be no permittee violation recorded for the subsequent violation but the statutory fine will be imposed. Fourth or subsequent violation in a two (2) year period.~~ ~~(4-5-00)(1-1-01)T~~
- i. The permittee shall be fined four hundred dollars (\$400). (1-1-01)T
- ii. The permit shall be revoked until such time as the permittee demonstrates an effective training program to the Department, but in no case shall the revocation be less than thirty (30) days. (1-1-01)T
- 03. Payment Of Fines.** All fine payments must be received by the Department within ten (10) days of the date of the citation. Fine payments should be mailed to, Tobacco Project Office, 450 West State Street, 5th Floor, Boise, ID 83711. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

101. INSPECTIONS.

- 01. Department Random And Unannounced Inspections.** ~~The Department shall conduct two (2)~~

~~random, unannounced inspections per year at every known business location identified as a retailer of tobacco products to the public.~~ The total number of random and unannounced inspections under Section 101 shall be determined by: (4-5-00)(1-1-01)T

a. The number of permittees on the first day of each year multiplied by the percentage of violations for the preceding year multiplied by a factor of ten (10). A calculation checklist is provided under Appendix B; (1-1-01)T

b. In no instance shall the total number of inspections be less than the number of permittees, or exceed twice the number of permittees. (1-1-01)T

c. The Department and the Idaho State Police shall conduct at least one (1), unannounced inspection per year at every known business location identified as a retailer of tobacco products to the public. All additional inspections required to meet the total number specified under Section 101 shall be conducted in a random manner. (1-1-01)T

02. Who Will Inspect. Inspections will be conducted by an adult enforcement officer accompanied by a minor. (4-5-00)

03. Law Enforcement Agency Inspections. (4-5-00)

a. In addition to the inspections set forth in Subsection 101.01, any law enforcement agency may conduct ~~random, unannounced~~ inspections consistent with agency policy and procedure with or without a minor at any business location, at any time, where tobacco products are sold or distributed to the public. (4-5-00)(1-1-01)T

b. Law enforcement agencies conducting ~~random unannounced~~ inspections under Subsection 101.03.a. will report their citations under this chapter results from their inspections to the Department. ~~The~~ All citations will become part of the permittee's permanent record ~~that will be treated as if the inspection were conducted by an enforcement officer from the Department.~~ (4-5-00)(1-1-01)T

04. Complaint Investigation. (1-1-01)T

a. The Department shall refer all written complaints concerning the sale of tobacco products to minors to the appropriate agency for investigation. Investigation activities include, but are not limited to, inspections to determine the compliance with this chapter. (1-1-01)T

b. Inspections conducted as part of the investigation of a written complaint are not included in the overall number of inspections identified under Subsections 101.01 and 101.03. Citations issued during the investigation of a written complaint shall be added to the permittee's permanent record. (1-1-01)T

045. Issuance Of Citation Or Report. (4-5-00)

a. For inspections conducted under Subsection 101.01 Aa representative of the business will be provided with a report, within two (2) business days, after the inspection was conducted and no violations were found; or a representative of the business will be issued a citation within two (2) business days after the random unannounced inspection. (4-5-00)(1-1-01)T

b. For inspections conducted under Subsections 101.03 and 101.04, a representative of the business will be provided with a report, within two (2) business days, after the result of the inspection is received by the Department and no violations were found, or Aa representative of the business will be issued a citation within two (2) business days after the ~~random unannounced inspection~~ result of the inspection is received by the Department. The date the Department provides notification of the citation shall be used for determination of timely payment of fines and all other administrative actions including requests for waivers and request for appeals. (4-5-00)(1-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

**APPENDIX A
EMPLOYEE TRAINING FORM**

The following may be used for training of employees to assure that they are aware of the current law regarding youth access to tobacco products in the State of Idaho. This would constitute "minimum" training required by the employer as indicated in Section 39-5701 et seq., Idaho Code.

Have the employee initial each section and sign at the bottom.

_____ I understand the State law prohibits the sale of ANY tobacco products to persons under ~~the age of~~ 18 years of age and that verification of age is required for any sale of tobacco products

_____ I understand that I am to ask for photo identification from any persons who ~~appears to be under the~~ I do not personally know to be at least 18 years of age ~~of 27~~ and verify their age before a sale of tobacco products.

_____ I understand that sales to anyone under the age of 18 can result in a personal fine to me of at least \$100 for the first offense.

_____ I understand that "tobacco products" includes any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco papers, or smokeless tobacco. (Section 39-5702 (10), Idaho Code)

_____ I understand that this store may be inspected at any time for compliance with the state law regarding "youth access to tobacco products".

_____ I understand that all sales must be "vendor assisted" unless the store in which I work has 75% of the total merchandise available for sale as tobacco products. This store is _____ is not _____ exempted from the vendor assisted requirement. (check one)

_____ I understand that cigarettes **must** be sold only in their original sealed package from the manufacturer. (Section 39-5707, Idaho Code)

_____ I have been given a copy of Section 39-5701 et seq., Idaho Code, and IDAPA 16.06.14, "Rules Governing the Prevention of Minor's Access to Tobacco Products".

I have read and agree to these statements and have had all my questions answered regarding my responsibilities as a seller of tobacco products in the State of Idaho.

By signing this agreement, I consent to having a current or potential employer contact the Department of Health and Welfare to determine if I have received citations for violation Title 39, Chapter 57, Idaho Code.

Printed Name of Employee

Employee's Signature

Witnessed

Date

~~(4-5-00)~~(1-1-01)T

APPENDIX B

RANDOM AND UNANNOUNCED INSPECTION CHECKLIST

Inspection Year _____

1. Number of Permittees as of January 1, 2 _____ :

Multiplied by:

2. Overall Violation Rate for Prior Year (2) (Percentage) _____ X _____ .

3. Multiplied by 10: _____

4. Total of Random and Unannounced Inspections: _____

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.44 - SCHEDULE OF FEES, LICENSES AND MISCELLANEOUS CHARGES
DOCKET NO. 18-0144-0101
NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

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. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Sections 41-211 and 41-401, 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 June 28, 2001.

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 purpose of the rule is to conform the current fee schedule to changes to Chapter 10, Title 41, Idaho Code, which replaced the designations of agents and brokers with a single designation called "producer", and to simplify the existing fee schedule. The temporary and proposed rule replaces references to agents and brokers with "producer", eliminates fees based on lines of business, imposes a single fee for producers and most other licensees, and clarifies language. The rule also deletes references to consultant examination and renewal fees. The fee adjustments are intended to be revenue neutral.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees for license applications by producers, reinsurance intermediaries, and surplus lines brokers have been set at a standard \$80 fee. This represents a fee decrease for the persons included under these categories. Renewal fees for producers, managing general agents, adjusters, administrators and surplus lines brokers have also been set at a standard \$80 fee. This represents an increase for some persons who previously were licensed as agents, and a decrease for brokers and other affected licensees. References to fees for consultants have been eliminated. Fees for duplicate licenses, letters of verification and Department publications are eliminated. Section 41-401, Idaho Code, authorizes the imposition of fees as set forth in this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Genetti, Bureau Chief, (208) 334-4250.

Anyone may submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before June 29, 2001.

Dated this 18th day of April, 2001.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0144-0101

030. **PRODUCER AND MISCELLANEOUS LICENSING FEES.**

01. **Original License Application.** The following fees are due and must be paid with the filing application for original license, ~~and including~~ which fees include the issuance of a license, if issued:

~~(7-1-00)~~(7-1-01)T

- a. Administrators - Three hundred dollars (\$300). (7-1-00)
- b. ~~Agents:~~ Producers – Eighty dollars (\$80). ~~(7-1-00)~~(7-1-01)T
- i. ~~Life and/or disability insurance – Ninety dollars (\$90).~~ (7-1-00)
- ii. ~~Property and/or casualty (general lines) insurance – Ninety dollars (\$90).~~ (7-1-00)
- iii. ~~Motor vehicle physical damage insurance (only) – Ninety dollars (\$90).~~ (7-1-00)
- iv. ~~Transportation ticket-selling insurance (only) – Ninety dollars (\$90).~~ (7-1-00)
- v. ~~Credit life and credit disability insurance (only) – Ninety dollars (\$90).~~ (7-1-00)
- vi. ~~Credit property insurance (only) – Ninety dollars (\$90).~~ (7-1-00)
- vii. ~~Involuntary unemployment insurance (only) – Ninety dollars (\$90).~~ (7-1-00)
- viii. ~~Surety insurance (only) – Ninety dollars (\$90).~~ (7-1-00)
- ix. Designation as a managing general agent - ~~One hundred ninety~~ Eighty dollars (\$~~190~~80). ~~(7-1-00)~~(7-1-01)T
- x. ~~Variable annuity fee – Sixty dollars (\$60).~~ (7-1-00)
- ed. Adjusters - ~~Ninety~~ Eighty dollars (\$~~90~~80). ~~(7-1-00)~~(7-1-01)T
- d. ~~Brokers:~~ (7-1-00)
 - i. ~~Life insurance – Three hundred seventy dollars (\$370).~~ (7-1-00)
 - ii. ~~General lines insurance – Three hundred seventy dollars (\$370).~~ (7-1-00)
- e. Reinsurance intermediary - ~~Three hundred~~ Eighty dollars (\$~~300~~80). ~~(7-1-00)~~(7-1-01)T
- f. Surplus line brokers - ~~Ninety~~ Eighty dollars (\$~~90~~80). ~~(7-1-00)~~(7-1-01)T

02. **Examination Fees.** ~~Application and/or Examination Fees~~ The following fees are due and must be paid in order to take examinations for the following licenses:

~~(7-1-00)~~(7-1-01)T

- a. ~~Agents, Producers and~~ adjusters, ~~brokers, solicitors~~ - application for examination and each time taken, ~~other than as to variable contracts~~ - Sixty dollars (\$60). ~~(7-1-00)~~(7-1-01)T
- b. ~~Consultants:~~ (7-1-00)
- i. ~~Life and Disability – application and each time taken – Ninety dollars (\$90).~~ (7-1-00)

- ~~ii. Property and Casualty application and each time taken - Ninety dollars (\$90). (7-1-00)~~
- ~~03. Temporary License. Temporary license - Ninety dollars (\$90). (7-1-00)~~
- 043. Fingerprint Processing.** Processing fingerprints, where required - Sixty dollars (\$60). (7-1-00)
- 054. License Renewal.** The following fees are due and must be paid for each license in order to Renewal or continuation of each and every license, per license: ~~(7-1-00)(7-1-01)T~~
- a. Adjusters, ~~agents~~ producers (biennial) - ~~Forty Eighty~~ Eighty dollars (\$~~480~~80). ~~(7-1-00)(7-1-01)T~~
- b. Redesignation as managing general agent (annual) - ~~One hundred forty Eighty~~ Eighty dollars (\$~~1480~~80). ~~(7-1-00)(7-1-01)T~~
- c. Administrators (annual) - ~~One hundred forty Eighty~~ Eighty dollars (\$~~1480~~80). ~~(7-1-00)(7-1-01)T~~
- ~~d. Brokers, consultants (biennial) - Seventy dollars (\$70). (7-1-00)~~
- ~~ed. Surplus line brokers (biennial) - Seventy Eighty dollars (\$780). (7-1-00)(7-1-01)T~~
- ~~06. Duplicate License. Duplicate license - administrators, adjusters, agents, brokers, consultants - Fifty dollars (\$50). (7-1-00)~~

(BREAK IN CONTINUITY OF SECTIONS)

040. MISCELLANEOUS FEES.

Miscellaneous fees shall be as follows. (7-1-00)

- 01. Certified Copy.** Certified copy of certificate of authority, license or registration - Fifty dollars (\$50). (7-1-00)
- 02. Solicitation Permit.** Organization and financing of insurer: (7-1-00)
- a. Filing application for solicitation permit - Nine hundred dollars (\$900). (7-1-00)
- b. Issuance of solicitation permit - One hundred eighty dollars (\$180). (7-1-00)
- 03. Certificate Under Seal.** Director's certificate under seal (except for those under Subsection 040.01 of this rule) - Twenty dollars (\$20). (7-1-00)
- 04. Documents Filed.** For each copy of document filed in his office, a reasonable cost as fixed by the director. (7-1-00)
- 05. Life Insurance Valuation.** For valuing life insurance, actual cost of valuation but not to exceed one cent (\$.01) for each one thousand dollars (\$1,000) of insurance. (7-1-00)
- 06. Insurer Service Of Process.** For receiving and forwarding copy of summons or other process served upon the director as process agent of an insurer - Thirty dollars (\$30). (7-1-00)
- 07. Agent Service Of Process.** For receiving and forwarding copy of summons or other process served upon the director as process agent of a nonresident agent, broker or consultant - Thirty dollars (\$30). (7-1-00)
- ~~08. Letter Of Verification. For letters of license verification for agents, brokers, and consultants - Ten~~

dollars (\$10)-		(7-1-00)
09. Publications:		(7-1-00)
a. Newsletter - One dollar (\$1).		(7-1-00)
b. Annual Report - Five dollars (\$5).		(7-1-00)
108. Continuing Education. Filing continuing education applications for approval and certification of subjects of courses (each application) - Twenty-five dollars (\$25).		(7-1-00)
109. Small Employer Health Program. Administrative expenses incurred in implementing and approving Idaho small employer health reinsurance program and plan of operation:		(7-1-00)
a. Initial deposit for program setup, approval and processing - One thousand dollars (\$1,000).		(7-1-00)
b. Any additional reasonable expenses incurred in establishing and maintaining the program.		(7-1-00)
c. Annual filings of Board, pursuant to Section 41-4711(12), Idaho Code - Three hundred dollars (\$300).		(7-1-00)

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.48 - PRIVACY OF CONSUMER FINANCIAL INFORMATION
DOCKET NO. 18-0148-0101
NOTICE OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2001.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 41-211 and 41-1302, Idaho Code, and the Gramm-Leach-Bliley Act of 1999.

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

This new rule will benefit Idaho Consumers by providing protection for nonpublic personal financial information supplied to licensees of the Department of Insurance by requiring notices of privacy policies and providing an opportunity to "opt out" or prohibit licensees from sharing information with certain non-affiliated third parties. The rules also provide exceptions from the notice and non-disclosure requirements relieving licensees from the duty of providing certain notices and enabling licensees to share nonpublic personal financial information with third parties under certain circumstances. The rule also maintains the authority of the Idaho Department of Insurance to regulate entities subject to its jurisdiction concerning privacy thereby preventing federal preemption in this regard.

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; Compliance with deadlines in amendments to governing law or federal programs; and conferring a benefit.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Shad Priest at (208) 334-4250.

Dated this 18th day of April, 2001.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0148-0101

IDAPA 18
TITLE 01
Chapter 48

18.01.48 - PRIVACY OF CONSUMER FINANCIAL INFORMATION

000. LEGAL AUTHORITY.

The statutory authority for this chapter is Title 67, Chapter 52, Idaho Code, and Sections 41-211 and 41-1302, Idaho Code. (7-1-01)T

001. TITLE AND SCOPE.

01. Title. This chapter shall be cited in full as IDAPA 18.01.48, "Privacy of Consumer Financial Information". (7-1-01)T

02. Scope. The purpose of this chapter is to:

a. Implement Title V of the Gramm-Leach-Bliley Act of 1999 ("GLBA") (15 U.S.C. 6801 et seq.), that requires financial institutions, including insurers, to respect the privacy of their customers and to protect the security and confidentiality of those customers' nonpublic personal financial information; (7-1-01)T

b. Establish appropriate consumer privacy standards for insurance licensees; (7-1-01)T

c. Ensure, pursuant to Title V and Section 505 of GLBA (15 U.S.C. Section 6805), that the Director of the Idaho Department of Insurance shall be eligible to override the insurance customer protections prescribed by a federal banking agency; and (7-1-01)T

d. Require, pursuant to 15 U.S.C. Sections 6802 and 6803 of GLBA, that insurers maintain a privacy policy that is clearly communicated to customers and, under certain circumstances to consumers, and that, subject to appropriate exceptions, no "nonpublic personal information" be disclosed to nonaffiliated third parties unless a consumer has been given a chance to "opt out" of having his information disclosed, and that no specific account information be given to direct marketing firms, as provided within the provisions of this rule. (7-1-01)T

03. Applicability. This chapter shall apply only to nonpublic personal information about individuals who obtain financial products or services in this state for personal, family or household purposes. These rules do not apply to information about companies or individuals who obtain financial products or services for business, commercial, or agricultural purposes. If an individual obtains both personal, family or household related products and also products that are for business, commercial, or agricultural purposes, then these rules apply only to the nonpublic personal information obtained or provided in relation to the personal, family or household products. (7-1-01)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (7-1-01)T

003. ADMINISTRATIVE APPEALS.

All hearings before the Director of the Department of Insurance will be held pursuant to Chapter 2, Title 41 and Chapter 52, Title 67, Idaho Code. Any appeal from a decision of the Director can be taken to district court pursuant to Chapter 52, Title 67, Idaho Code and the Idaho Rules of Civil Procedure. (7-1-01)T

004. INCORPORATION BY REFERENCE.

The following documents are herein incorporated by reference and are available at any law library or at the Department of Insurance: (7-1-01)T

01. United States Code. The following portions of the United States Code: (7-1-01)T

a. 12 U.S.C. Section 1843(k); (7-1-01)T

- b. 12 U.S.C. Chapter 21; (7-1-01)T
- c. 12 U.S.C. Section 3401 et seq.; (7-1-01)T
- d. 15 U.S.C. Section 1681a(f) and (d); (7-1-01)T
- e. 15 U.S.C. Sections 6801, 6802, 6803, and 6805; and (7-1-01)T
- f. 31 U.S.C. Chapter 53, Subchapter 11. (7-1-01)T

02. Federal Acts By Popular Name. The following federal popular name acts are referenced generally with or without reference to a specific code provision. (7-1-01)T

- a. Commodity Exchange Act; (7-1-01)T
- b. Farm Credit Act of 1971; and (7-1-01)T
- c. Gramm-Leach-Bliley Act of 1999. (7-1-01)T

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The Idaho Department of Insurance main office is open Monday through Friday excluding legal holidays from 8 a.m. until 5 p.m. and is located at: Joe R. Williams Building, 3rd Floor; 700 W. State Street, Boise Idaho. The mailing address is: P.O. Box 83720; Boise, Idaho 83720-0043. The main telephone number for the Department is 208-334-4250 or 800-721-3272 (in state only). The Department homepage is at www.doi.state.id.us. (7-1-01)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to and in compliance with the Idaho Public Records Act, Sections 9-337 through 9-350, Idaho Code. (7-1-01)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Affiliate. Any company that controls, is controlled by, or is under common control with another company. (7-1-01)T

02. Agent. An individual, firm or corporation appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate for such contracts on its behalf, and if authorized to do so by the insurer, to effectuate, issue and countersign insurance contracts. (7-1-01)T

03. Clear And Conspicuous. That a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. (7-1-01)T

04. Collect. To obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information. (7-1-01)T

05. Company. Any corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization. (7-1-01)T

06. Consumer. An individual who seeks to obtain, obtains, or has obtained an insurance policy, product, or service covering subjects of insurance resident, located, or expressly to be performed in this state from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative, including, but not limited to: (7-1-01)T

a. An individual who provides nonpublic personal information to a licensee in connection with seeking to obtain or obtaining financial, insurance, investment or economic advisory services regardless of whether

- the licensee establishes an ongoing relationship; (7-1-01)T
- b. An applicant for insurance prior to the inception of insurance coverage; (7-1-01)T
 - c. An individual who provides nonpublic personal information to a licensee in order to obtain a determination about whether he may qualify for a loan to be used primarily for personal, family, or household purposes, regardless of whether the loan is extended; (7-1-01)T
 - d. A certificate holder under a group insurance policy; and (7-1-01)T
 - e. An individual is not a licensee's consumer solely because the individual:
 - i. Is a participant or a beneficiary of an employee welfare benefit plan that the licensee sponsors, provides services to, or for which the licensee acts as a trustee or fiduciary; (7-1-01)T
 - ii. Is a beneficiary of a trust for which the licensee is a trustee; (7-1-01)T
 - iii. Has designated the licensee as trustee for a trust; or (7-1-01)T
 - iv. Is a consumer of another financial institution to which the licensee acts as producer for, or provides processing or other services. (7-1-01)T
- 07. Consumer Reporting Agency.** The same meaning as in Section 603(f) of the Federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)). (7-1-01)T
- 08. Control.** For purposes of this chapter, any of the following: (7-1-01)T
- a. Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one (1) or more other persons; (7-1-01)T
 - b. Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or (7-1-01)T
 - c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the director determines. (7-1-01)T
- 09. Customer.** A consumer who has a customer relationship with a licensee. In no event, however, shall a beneficiary or a claimant under a policy of insurance, solely by virtue of his status as a beneficiary or claimant, be deemed to be a customer for the purposes of these rules. (7-1-01)T
- 10. Customer Relationship.** A continuing relationship between a consumer and a licensee under which the licensee provides a financial product or service to the consumer that is to be used primarily for personal, family, or household purposes, including, but not limited to, if the consumer: (7-1-01)T
- a. Is a current policyholder or owner of another product from or through a licensee; (7-1-01)T
 - b. Holds an investment product through a licensee; or (7-1-01)T
 - c. Obtains financial, insurance, investment or economic advisory services from a licensee for a fee. (7-1-01)T
- 11. Financial Product Or Service.** Any product or service that is offered by a licensee pursuant to Title 41, Idaho Code, including, but not limited to a licensee's evaluation or brokerage of information that the licensee collects in connection with a request or an application from a consumer for a financial product or service. (7-1-01)T

12. Financial Institution. Any institution the business of which is engaging in financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. Section 1843(k)). (7-1-01)T

a. Notwithstanding Subsection 010.12.a., the term financial institution does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act. (7-1-01)T

b. Notwithstanding Subsection 010.12.a., the term financial institution does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971. (7-1-01)T

c. Notwithstanding Subsection 010.12.a., the term financial institution does not include institutions chartered by the United States Congress specifically to engage in transactions described in Section 502(e)(1)(C) of the GLBA, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party. (7-1-01)T

13. Licensee. A person licensed, or required to be licensed, or authorized, or required to be authorized, or registered, or required to be registered pursuant to Title 41, Idaho Code; or an unauthorized insurer in regard to the surplus line business conducted pursuant to Title 41, Idaho Code or other covered entities. A licensee who is a producer is subject to all the requirements of these rules, except when the producer is acting as agent for a licensee. In that case, the producer acting as an agent for a licensee is exempt only from the notice requirements, of these rules, and only if such producer does not disclose nonpublic personal information. (7-1-01)T

a. Subject to Subsection 010.13.b., “covered entities” shall include unauthorized insurers who place business through licensed surplus line brokers in this state, but only in regard to the surplus line placements placed pursuant to Chapter 12, Title 41, Idaho Code. (7-1-01)T

b. Licensed surplus line brokers placing business underwritten by covered entities and those covered entities shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in this chapter provided: (7-1-01)T

i. Such licensed surplus line brokers and covered entities do not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Sections 065 and 066 of this chapter, except as permitted by Sections 068, 069, 071, or 072 of this chapter; and (7-1-01)T

ii. At the time the customer relationship is established, a single notice is delivered to the consumer on behalf of all such licensed surplus line brokers and covered entities involved in the provision of a financial product or service to a consumer or customer on which the following is printed in sixteen (16) point type:

PRIVACY NOTICE.

“NEITHER THE U.S. BROKER(S) THAT HANDLED THIS INSURANCE NOR THE INSURER(S) THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF SUCH BROKER(S) OR SUCH INSURER(S) EXCEPT AS PERMITTED BY LAW.” (7-1-01)T

14. Nonaffiliated Third Party. Any person, including, but not limited to, any company that is an affiliate solely by virtue of the licensee’s or its affiliate’s direct or indirect ownership or control of the company conducting: (7-1-01)T

a. Merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) of the Federal Bank Holding Company Act; or (7-1-01)T

b. Insurance company investment activities of the type described in Section 4(k)(4)(I) of the Federal Bank Holding Company Act. (12 U.S.C. Section 1843(k)(4)(H) and (I)), except: (7-1-01)T

i. The licensee’s affiliate; (7-1-01)T

- ii. A person employed jointly by a licensee and any company that is not the licensee's affiliate. Nonaffiliated third party includes the other company that jointly employs the person; or (7-1-01)T
- iii. The licensee's agent. (7-1-01)T
- 15. Nonpublic Personal Information.** Nonpublic personal financial information. (7-1-01)T
- 16. Nonpublic Personal Financial Information.** Personally identifiable financial information; and any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available. (7-1-01)T
- a. Nonpublic personal financial information does not include: (7-1-01)T
- i. Publicly available information; or (7-1-01)T
- ii. Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available information. (7-1-01)T
- b. Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as policy or contract numbers. (7-1-01)T
- 17. Opt Out.** A direction by the consumer that a licensee not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by Sections 065, 067, 068, 069, 071 and 072 of these rules. (7-1-01)T
- 18. Personally Identifiable Financial Information.** Any information: (7-1-01)T
- a. A consumer provides to a licensee to obtain a financial product or service from the licensee; (7-1-01)T
- b. About a consumer resulting from any transaction involving a financial product or service between a licensee and a consumer; or (7-1-01)T
- c. A licensee otherwise obtains about a consumer in connection with providing a financial product or service to that consumer. (7-1-01)T
- 19. Producer.** A person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. (7-1-01)T
- 20. Publicly Available Information.** Any information that the licensee has a reasonable basis to believe is lawfully made available to the general public from: (7-1-01)T
- a. Federal, state, or local government records; (7-1-01)T
- b. Widely distributed media; or (7-1-01)T
- c. Disclosures to the general public that are required to be made by federal, state or local law. (7-1-01)T
- 21. Reasonable Basis.** The licensee has a reasonable basis to believe that information is lawfully made available to the general public because the licensee has taken steps to determine: (7-1-01)T
- a. That the information is of the type that is available to the general public; and (7-1-01)T

b. Whether an individual can direct that the information not be made available to the general public and, if so, that a licensee's consumer has not done so. (7-1-01)T

22. Service Provider. A person who directly or indirectly provides, advertises, or otherwise claims to provide services. (7-1-01)T

011. ABBREVIATIONS.

The following abbreviations are used in this chapter: (7-1-01)T

01. U.S.C. United States Code. (7-1-01)T

02. GLBA. Gramm-Leach-Bliley Act of 1999. (7-1-01)T

012. INITIAL NOTICE REQUIREMENT.

A licensee must provide a clear and conspicuous notice that accurately reflects the licensee's privacy policies and practices to: (7-1-01)T

01. Customer. An individual who becomes a licensee's customer, not later than the time that the licensee establishes a customer relationship, except as provided in Section 016; and (7-1-01)T

02. Consumer. A consumer, before a licensee discloses any nonpublic personal information about the consumer to any nonaffiliated third party, if a licensee makes such a disclosure other than as authorized by Sections 065, 067, 068, 069, 071, and 072. (7-1-01)T

013. WHEN INITIAL NOTICE TO A CONSUMER IS NOT REQUIRED.

A licensee is not required to provide an initial notice to a consumer under Section 012 if the licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 065, 067, 068, 069, 071, and 072, and the licensee does not have a customer relationship with the consumer. (7-1-01)T

014. WHEN A LICENSEE ESTABLISHES A CUSTOMER RELATIONSHIP.

A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship, other than solely as a beneficiary or claimant. A licensee establishes a customer relationship under circumstances including, but not limited to, when the consumer becomes a policyholder. (7-1-01)T

015. EXISTING CUSTOMERS.

When an existing customer obtains a new financial product or service from a licensee that is to be used primarily for personal, family, or household purposes, a licensee satisfies the initial notice requirements of Section 012 as follows: (7-1-01)T

01. New Notice. A licensee may provide a revised policy notice, under Section 033 that covers the customer's new financial product or service; or (7-1-01)T

02. Prior Notice. If the initial, revised, or annual notice that a licensee most recently provided to that customer was accurate with respect to the new financial product or service, a licensee does not need to provide a new privacy notice under Section 012. (7-1-01)T

016. EXCEPTIONS TO ALLOW SUBSEQUENT DELIVERY OF NOTICE.

A licensee may provide the initial notice required by Subsection 012.01 within a reasonable time after the licensee establishes a customer relationship if: (7-1-01)T

01. Not Customer's Election. Establishing the customer relationship is not at the customer's election, including but not limited to if the licensee acquires or is assigned the insurance policy or related records from another financial institution or residual market mechanism and the customer does not have a choice about such acquisition or assignment; (7-1-01)T

02. Delay. Providing notice not later than when the licensee establishes the customer relationship

would substantially delay the customer's transaction, including but not limited to when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service, and the customer agrees to receive the notice at a later time. (7-1-01)T

017. INITIAL NOTICE IN JOINT RELATIONSHIPS.

If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may satisfy the requirements of Section 012 by providing one (1) initial notice to those consumers jointly. (7-1-01)T

018. DELIVERY OF INITIAL NOTICE.

When a licensee is required to deliver an initial privacy notice by Section 012, a licensee must deliver it according to Section 035. If a licensee uses a short-form initial notice for non-customers according to Section 024, the licensee may deliver its privacy notice according to Subsection 024.02. (7-1-01)T

019. ANNUAL PRIVACY NOTICE TO CUSTOMERS REQUIRED.

A licensee must provide a clear and conspicuous notice to a customer that accurately reflects the licensee's privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve (12) consecutive-month period, but the licensee must apply it to the customer on a consistent basis. (7-1-01)T

020. TERMINATION OF CUSTOMER RELATIONSHIP.

A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship. (7-1-01)T

01. Continuing Relationship. A licensee no longer has a continuing relationship with an individual:

(7-1-01)T

a. If the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee; (7-1-01)T

b. If the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, materials required by law or regulation, or promotional materials; (7-1-01)T

c. If the individual's last known address according to the licensee's records is deemed to be invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful; or (7-1-01)T

d. In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later. (7-1-01)T

021. DELIVERY.

When the licensee is required to deliver an annual privacy notice by Section 019, the licensee must deliver it according to Section 035. Such annual notice may be provided by an affiliated licensee, as long as the notice clearly identifies all licensees to which the notice applies or states that it applies to all affiliates of the named licensee, and is accurate with respect to the licensee and other institutions. (7-1-01)T

022. INFORMATION TO BE INCLUDED IN PRIVACY NOTICES.

The initial, annual, and revised privacy notices that a licensee provides under Sections 012, 019, and 033 must include each of the following items of information that applies to the licensee or to the consumers to whom the licensee sends its privacy notice, in addition to any other information the licensee wishes to provide: (7-1-01)T

01. Categories Collected. The categories of nonpublic personal financial information that the licensee

collects; (7-1-01)T

02. Categories Disclosed. The categories of nonpublic personal financial information that the licensee discloses; (7-1-01)T

03. Categories Of Third Parties. The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 068, 069, 071, and 072; (7-1-01)T

04. Categories Of Former Customers. The categories of nonpublic personal financial information about the licensee's former customers that it discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about its former customers, other than those parties to whom it discloses information under Sections, 068, 069, 071, and 072; (7-1-01)T

05. Third Parties Who Perform Services For Licensee. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Sections 065 and 067 (and no other exception applies to that disclosure), a separate statement of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted; (7-1-01)T

06. Opt Out Explanation Regarding Nonaffiliated Third Parties. An explanation of the right under Section 050 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties for marketing purposes, including the methods by which the consumer may exercise those rights at that time; (7-1-01)T

07. Opt Out Explanation Regarding Affiliates. Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the Federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates); (7-1-01)T

08. Policies For Protecting Information. The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and (7-1-01)T

09. Other Disclosures To Nonaffiliated Third Parties. A statement to the effect that the licensee makes disclosures under Section 023, if such disclosures are made. (7-1-01)T

023. DESCRIPTION OF NONAFFILIATED THIRD PARTIES SUBJECT TO EXCEPTIONS.

If a licensee discloses nonpublic personal financial information about a consumer to third parties only as authorized under Sections 068, 069, 071, and 072, the licensee is not required to list those exceptions in the initial or annual privacy notices required by these rules. When describing the categories with respect to those parties, a licensee is only required to state that it makes disclosures to other nonaffiliated third parties as permitted by law. (7-1-01)T

024. SHORT-FORM INITIAL NOTICE WITH OPT OUT NOTICE FOR NON-CUSTOMERS.

The licensee may satisfy the initial notice requirements of these rules for a consumer who is not a customer by providing a short form initial notice at the same time as the licensee delivers an opt out notice as required in Section 035 of these rules. (7-1-01)T

01. Form. A short form initial notice must: (7-1-01)T

a. Be clear and conspicuous; (7-1-01)T

b. State that a licensee's privacy notice is available upon request; and (7-1-01)T

c. Explain a reasonable means by which the consumer may obtain that notice, including but not limited to providing a toll-free telephone number the consumer may call to request the notice or, for a consumer who conducts business in person in the licensee's office, providing notice to the consumer immediately upon request. (7-1-01)T

02. Delivery. The licensee must deliver its short form notice according to Section 035. A licensee is not

required to deliver its privacy notice with its short-form initial notice. A licensee may instead simply provide the consumer with a reasonable means to obtain the licensee's privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee must deliver its privacy notice according to Section 035. (7-1-01)T

025. FUTURE DISCLOSURES.

A licensee's notice may include: (7-1-01)T

01. Future Information. Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and (7-1-01)T

02. Future Parties. Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom it does not currently disclose, nonpublic personal financial information. (7-1-01)T

026. FORM OF OPT OUT NOTICE.

If a licensee is required to provide an opt out notice under Section 050, the licensee must provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under Section 050. The notice must state: (7-1-01)T

01. Disclosure. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party; (7-1-01)T

02. Opt Out Right. That the consumer has the right to opt out of that disclosure; and (7-1-01)T

03. Reasonable Means To Opt Out. A reasonable means by which the consumer may exercise the opt out right, provided that the licensee may require the consumer to opt out through a specific means, as long as the means is reasonable for that consumer. A licensee provides a reasonable means to exercise an opt out right if it: (7-1-01)T

a. Designates check off boxes in a prominent position on the relevant forms with the opt out notice; (7-1-01)T

b. Includes a reply form together with the opt out notice; (7-1-01)T

c. Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; (7-1-01)T

d. Provides a toll-free telephone number that consumers may call to opt out; or (7-1-01)T

e. Provides the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Sections 012 through 018. (7-1-01)T

027. INITIAL NOTICE REQUIRED WHEN OPT OUT NOTICE DELIVERED SUBSEQUENT TO INITIAL NOTICE.

If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 016, the licensee must also include a copy of the initial notice in writing, which writing can be given electronically if the consumer agrees. (7-1-01)T

028. OPT OUT NOTICE IN JOINT RELATIONSHIPS.

If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice must explain how the licensee will treat an opt out direction by a joint consumer. (7-1-01)T

01. Exercise Of Opt Out in Joint Relationships. Any of the joint consumers may exercise the right to opt out. If the licensee permits each joint consumer to opt out separately, the licensee must permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers. A licensee may not require all joint consumers to opt out

before the licensee implements any opt out direction. The licensee may either: (7-1-01)T

- or
- a. Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; (7-1-01)T
 - b. Permit each joint consumer to opt out separately. (7-1-01)T

029. TIME TO COMPLY WITH OPT OUT.

A licensee must comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it. (7-1-01)T

030. CONTINUING RIGHT TO OPT OUT.

A consumer may exercise the right to opt out at any time. (7-1-01)T

031. DURATION OF CONSUMER'S OPT OUT DIRECTION.

A consumer's direction to opt out under Section 026 or 028 is effective until the consumer revokes it in writing, which writing can be given electronically if the consumer agrees. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship. (7-1-01)T

032. DELIVERY OF OPT OUT NOTICE.

When a licensee is required to deliver an opt out notice by Section 026 or 028, the licensee must deliver it according to Section 035. (7-1-01)T

033. REVISED PRIVACY NOTICES.

Except as otherwise authorized in these rules, a licensee shall not, directly, or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer unless: (7-1-01)T

01. Revised Notice. The licensee has provided to the consumer a revised notice that accurately describes the licensee's policies and practices; (7-1-01)T

02. New Opt Out Notice. The licensee has provided to the consumer a new opt out notice; (7-1-01)T

03. Reasonable Opportunity. The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of or, if appropriate, authorize the disclosure; and (7-1-01)T

04. Consumer Does Not Opt Out Or Authorizes Disclosure. The consumer does not opt out or, if appropriate, the consumer authorizes the disclosure. (7-1-01)T

034. DELIVERY OF REVISED NOTICE.

When the licensee is required to deliver a revised privacy notice by Section 033, the licensee must deliver it according to Section 035. (7-1-01)T

035. DELIVERING PRIVACY AND OPT OUT NOTICES.

A licensee must provide any privacy notices and opt out notices, including short-form initial notices, that these rules require so that each consumer can reasonably be expected to receive actual notice in writing, which writing can be given electronically if the consumer agrees. (7-1-01)T

01. Reasonable Expectations. The licensee may reasonably expect that a consumer will receive actual notice if the licensee: (7-1-01)T

- a. Hand-delivers a printed copy of the notice to the consumer; (7-1-01)T
- b. Mails a printed copy of the notice to the last known address of the consumer; (7-1-01)T

c. For the consumer who agrees to be provided with notice electronically, sends the notice to the consumer's most recent electronic mail address; or (7-1-01)T

d. For an isolated transaction with the consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service. (7-1-01)T

02. Unreasonable Expectations. A licensee may not reasonably expect that a consumer will receive actual notice of the licensee's privacy policies and practices if the licensee: (7-1-01)T

a. Only posts a sign in its branch or office or generally publishes advertisements of its privacy policies and practices; or (7-1-01)T

b. Sends the notice via electronic mail to a consumer who does not agree to receive the notice electronically. (7-1-01)T

036. ANNUAL NOTICES ONLY.

A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if: (7-1-01)T

01. Web Posting. The customer agrees to receive notices at the web site, and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or (7-1-01)T

02. Refrain Per Customer Request. The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request. (7-1-01)T

037. ORAL DESCRIPTION OF NOTICE INSUFFICIENT.

A licensee may not provide any notice required by these rules solely by orally explaining the notice, either in person or over the telephone. (7-1-01)T

038. RETENTION OR ACCESSIBILITY OF NOTICES FOR CUSTOMERS.

For customers only, a licensee must provide the initial notice, the annual notice, and the revised notice required by these rules, so that the customer can retain them or obtain them later in writing, which writing can be given electronically if the customer agrees, including, but not limited to, hand-delivering a printed copy of the notice to the customer; mailing a printed copy of the notice to the last known address of the customer upon the request of the customer; or making the licensee's current privacy notice available on a web site (or a link to another web site) or sending the notice to the last known electronic mail address for the customer who agrees to receive the notice electronically or to obtain the notice electronically at the web site. (7-1-01)T

039. JOINT NOTICE WITH OTHER FINANCIAL INSTITUTIONS.

A licensee may provide a joint notice from the licensee and one (1) or more of the licensee's affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. (7-1-01)T

040. JOINT RELATIONSHIPS.

If two (2) or more consumers jointly obtain a financial product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of Sections 012, 019, and 033 respectively, by providing one (1) notice to those consumers jointly. (7-1-01)T

041. NONDISCRIMINATION.

No licensee shall unfairly discriminate against any customer or consumer on the basis of the customer's or consumer's exercise of his right to opt out of the sharing of his nonpublic personal information in the manner provided in these rules. Nothing in Section 041 shall prohibit licensees from engaging in their usual, appropriate, or acceptable method for insurance underwriting. (7-1-01)T

042. -- 049. (RESERVED).

050. LIMITS ON DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION TO NONAFFILIATED THIRD PARTIES.

Except as otherwise authorized in these rules, a licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless: (7-1-01)T

01. Initial Notice Provided. The licensee has provided to the consumer an initial notice as required under Section 012; (7-1-01)T

02. Opt Out Notice Provided. The licensee has provided to the consumer an opt out notice as described in Section 026; (7-1-01)T

03. Reasonable Opportunity Given. The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure. Methods of complying with this provision include, but are not limited to: (7-1-01)T

a. The licensee mails the notices required in Section 050 to the consumer and allows the consumer to opt out by mailing a form, calling a toll free telephone number, or any other reasonable means within thirty (30) days from the date the licensee mailed the notices: (7-1-01)T

b. A customer opens an on-line account with the licensee and agrees to receive the notices required in Section 050 electronically, and the licensee makes the notices available to the customer on its web site, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account; or (7-1-01)T

c. For an isolated transaction, such as providing the consumer with an insurance quote, a licensee provides a reasonable opportunity to opt out if the licensee provides the consumer the notices required in Section 050 at the time of the transaction and requests that the consumer decide, as a necessary act of the transaction, whether to opt out before completing the transaction; and (7-1-01)T

04. No Opt Out. The consumer does not opt out. (7-1-01)T

051. APPLICATION OF OPT OUT TO ALL CONSUMERS AND ALL NONPUBLIC PERSONAL FINANCIAL INFORMATION.

A licensee must comply with Section 050, regardless of whether the licensee and the consumer have established a customer relationship. Unless a licensee complies with Section 050, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that it has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer. (7-1-01)T

052. LIMITS ON INFORMATION A LICENSEE RECEIVES UNDER AN EXCEPTION.

If the licensee receives nonpublic personal information from a nonaffiliated financial institution under an exception of these rules, the licensee's disclosure and use of that information is limited as follows: (7-1-01)T

01. Affiliates. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information; (7-1-01)T

02. Limits On Affiliates' Use. The licensee may disclose the information to its affiliates and agents, but the affiliates and agents may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and (7-1-01)T

03. Applicable Exceptions. The licensee may disclose and use the information pursuant to an exception in Sections 068, 069, 071, or 072, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information. (7-1-01)T

053. LIMITS ON INFORMATION A LICENSEE RECEIVES OUTSIDE OF AN EXCEPTION.

If a licensee receives nonpublic personal information from a nonaffiliated financial institution other than under an

exception in these rules, the licensee may disclose the information only: (7-1-01)T

01. Affiliates. To the affiliates of the financial institution from which the licensee received the information; (7-1-01)T

02. Limits On Affiliates' Use. To the licensee's affiliates and agents, but the licensee's affiliates and agents may, in turn, disclose the information only to the extent that the licensee can disclose the information; and (7-1-01)T

03. Others. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information. (7-1-01)T

054. LIMITS ON INFORMATION A LICENSEE DISCLOSES UNDER AN EXCEPTION.

If the licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 068, 069, 071, or 072, the third party may disclose and use that information only as follows: (7-1-01)T

01. Affiliates. The third party may disclose the information to the licensee's affiliates; (7-1-01)T

02. Limits On Affiliates' Use. The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and (7-1-01)T

03. Activity Within Exception. The third party may disclose and use the information pursuant to an exception in Sections 068, 069, 071, or 072, in the ordinary course of business to carry out the activity covered by the exception under which it received the information. (7-1-01)T

055. LIMITS ON INFORMATION A LICENSEE DISCLOSES OUTSIDE OF AN EXCEPTION.

If a licensee discloses nonpublic personal information to a nonaffiliated third party other than under an exception in Sections 068, 069, 071, or 072, the third party may disclose the information only: (7-1-01)T

01. Affiliates. To the licensee's affiliates; (7-1-01)T

02. Limits On Affiliates' Use. To the third Party's affiliates, but the third Party's affiliates, in turn, may disclose the information only to the extent the third Party can disclose the information; and (7-1-01)T

03. Others. To any other person, if the disclosure would be lawful if the licensee made it directly to that person. (7-1-01)T

056. GENERAL PROHIBITION ON DISCLOSURE OF POLICY, CONTRACT, OR ACCOUNT NUMBERS.

A licensee must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy or contract number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, electronic mail marketing, or other marketing to the consumer. (7-1-01)T

057. EXCEPTIONS TO PROHIBITION.

Section 056 does not apply if the licensee discloses a policy or contract number or similar form of access number or access code: (7-1-01)T

01. Licensee's Products. To the licensee's agent or service provider solely in order to perform marketing for the licensee's products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; (7-1-01)T

02. Special Programs. To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program; or (7-1-01)T

03. Producers. To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services, or to service existing products or business. (7-1-01)T

058. -- 064. (RESERVED).

065. EXCEPTION TO OPT OUT REQUIREMENTS FOR SERVICE PROVIDERS AND JOINT MARKETING.

The opt out requirements of these rules do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for, or functions on behalf of the licensee, if the licensee: (7-1-01)T

01. Initial Notice Provided. Provides the initial notice in accordance with these rules; and (7-1-01)T

02. Third Party Agrees Not To Disclose. Enters into a contract with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 068, 069, 071, or 072 in the ordinary course of business to carry out those purposes. (7-1-01)T

066. SERVICE MAY INCLUDE JOINT MARKETING.

The services performed for a licensee by a nonaffiliated third party under Section 065 may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions. For purposes of Section 066, "joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service. (7-1-01)T

067. DISCLOSURE FOR INSURANCE FUNCTIONS.

A licensee may use and disclose personally identifiable financial information to a person acting on behalf of or at the direction of the licensee to perform the licensee's insurance functions including, but not limited to, claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, rate-making functions, reinsurance, risk management, case management, quality assessment, quality improvement, utilization review, peer review activities, grievance procedures, internal administration of compliance, managerial, and information systems, and policyholder service functions, account administration, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, and as otherwise required or specifically permitted by federal or state law. (7-1-01)T

068. EXCEPTIONS TO NOTICE AND OPT OUT REQUIREMENTS FOR PROCESSING AND SERVICING TRANSACTIONS.

The requirements for initial notice to consumers in Subsection 012.02, the opportunity to opt out, and the application of these rules to service providers and joint marketing do not apply if a licensee discloses nonpublic personal information as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with: (7-1-01)T

01. Financial Product. Servicing or processing a financial product or service requested or authorized by the consumer, including such products or services under consideration by a consumer; (7-1-01)T

02. Account. Maintaining or servicing the consumer's account with the licensee or with another entity; (7-1-01)T

03. Agent Who Agrees Not To Disclose. Transactions involving a person acting as agent of the licensee, provided such agent agrees not to disclose said nonpublic personal information to additional third parties; or (7-1-01)T

04. Securitization Or Secondary Market Sale. A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer. (7-1-01)T

069. EXCEPTIONS FOR THE ADMINISTRATION OF AN EMPLOYER'S BENEFIT PLAN.

The requirements of these rules do not apply if a licensee discloses nonpublic personal financial information to a duly

appointed agent of the licensee or to an employer as necessary to effect, administer, or enforce the employer's benefit plan. (7-1-01)T

070. MEANING OF NECESSARY TO EFFECT, ADMINISTER, OR ENFORCE A TRANSACTION.

As used in Sections 068 and 069, the phrase "necessary to effect, administer, or enforce a transaction" means that the disclosure is: (7-1-01)T

01. Enforce Licensee's Rights. Required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or (7-1-01)T

02. Carry Out Transaction. Required, or is a usual, appropriate, or acceptable method: (7-1-01)T

a. To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product; (7-1-01)T

b. To administer, adjudicate or service benefits or claims relating to the transaction or the product or service business of which it is a part; (7-1-01)T

c. To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker; (7-1-01)T

d. To accrue or recognize incentives or bonuses associated with the transaction that are provided by the licensee or any other party; (7-1-01)T

e. To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes, as they relate to a consumer's insurance account administration: (7-1-01)T

i. Reporting, investigating, preventing fraud or material misrepresentation; (7-1-01)T

ii. Processing premium payments; (7-1-01)T

iii. Processing insurance claims; (7-1-01)T

iv. Administering insurance benefits (including utilization review activities); (7-1-01)T

v. Participating in research projects; or (7-1-01)T

vi. As otherwise required or specifically permitted by federal or state law; or (7-1-01)T

f. In connection with: (7-1-01)T

i. The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or policy or contract number, or by other payment means; (7-1-01)T

ii. The transfer of receivables, accounts, or interests therein; or (7-1-01)T

iii. The audit of debit, credit, or other payment information. (7-1-01)T

071. OTHER EXCEPTIONS TO NOTICE AND OPT OUT REQUIREMENTS.

The requirements for initial notice to consumers in Subsection 012.02, the opportunity to opt out, and the provisions applicable to service providers and joint marketing in these rules do not apply when a licensee discloses nonpublic personal information: (7-1-01)T

01. Consent. With the consent or at the direction of the consumer, provided that the consumer has not

- revoked the consent or direction; (7-1-01)T
- 02. Protect Confidentiality.** To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction; (7-1-01)T
- 03. Prevent Fraud.** To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability; (7-1-01)T
- 04. Risk Control.** For required institutional risk control or for resolving consumer disputes or inquiries; (7-1-01)T
- 05. Beneficial Interest Holders.** To persons holding a legal or beneficial interest relating to the consumer; (7-1-01)T
- 06. Fiduciaries.** To persons acting in a fiduciary or representative capacity on behalf of the consumer; (7-1-01)T
- 07. Rate Advisory Organizations And Others.** To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating the licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors; (7-1-01)T
- 08. As Permitted By Law.** To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter 11 (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, with respect to any person that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety; (7-1-01)T
- 09. Consumer Reporting Agency.** To a consumer reporting agency in accordance with the Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and the fair credit laws of this state, or from a consumer report reported by a consumer reporting agency; (7-1-01)T
- 10. Change In Business.** In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; (7-1-01)T
- 11. Comply With Law Or Legal Process.** To comply with: (7-1-01)T
- a. Federal, state, or local laws, rules and other applicable legal requirements; (7-1-01)T
- b. To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state or local authorities; or (7-1-01)T
- c. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; (7-1-01)T
- 12. Quality Assessment.** In connection with quality assessment evaluations or investigations; (7-1-01)T
- 13. Workers' Compensation Obligations.** Necessary to the performance of the licensee's obligations under any workers' compensation law or contract; (7-1-01)T
- 14. Reinsurer Or Similar Carrier.** To a reinsurance, stop loss or excess loss carrier for the purpose of underwriting, claims adjudication and conducting claim file audits; or (7-1-01)T
- 15. Regulator.** To a state department of insurance that is performing an examination, investigation, or

audit of the licensee or any other person.

(7-1-01)T

072. LICENSEES ACTING AS EMPLOYERS OR PURCHASERS OF INSURANCE.

Nothing in these rules shall be construed as applicable to information disclosures by licensees in connection with the purchase of insurance coverage by the licensee or the arrangement of insurance coverage by the licensee for its employees.

(7-1-01)T

073. -- 075. (RESERVED).

076. NOTICE REQUIREMENT FOR CONSUMERS WHO ARE A LICENSEE'S CUSTOMERS ON THE COMPLIANCE DATE.

By July 1, 2001, the licensee shall have provided an initial notice, as required by Section 012, to consumers who are the licensee's customers on July 1, 2001.

(7-1-01)T

077. TWO YEAR GRANDFATHERING OF SERVICE AGREEMENTS.

Until July 1, 2002, a licensee that has entered into a contract with a nonaffiliated third party to perform services for the licensee or functions on its behalf does not need to satisfy the requirement of Subsection 065.02 which provides that the third party maintain the confidentiality of nonpublic personal information in order to be exempt from the opt out requirements, as long as the licensee entered into the agreement on or before July 1, 2000.

(7-1-01)T

078. -- 999. (RESERVED).

IDAPA 20 - DEPARTMENT OF LANDS

20.03.14 - RULES GOVERNING GRAZING LEASES AND CROPLAND LEASES

DOCKET NO. 20-0314-0101

**NOTICE OF INTENT TO PROMULGATE RULES
NEGOTIATED RULEMAKING**

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency intends to propose rules and desires public comment prior to initiating formal rulemaking procedures. The action is negotiated rulemaking authorized pursuant to Section 58-104, 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 June 20, 2001.

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.

The Idaho Department of Lands will also be holding meetings with interested parties at a date and time to be determined, in addition to any public hearings.

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

These rules govern grazing and cropland leases of state endowment lands managed by the State Board of Land Commissioners by and through the Idaho Department of Lands. The amendments include, but are not limited to: the appeal process, the reclassification of land use, the lease application and cancellation process, the lease adjustment process and grazing management plans.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule contact: Tracy Behrens, Range Management Specialist, Idaho Department of Lands, 954 West Jefferson Street, PO Box 83720, Boise, Idaho 83720-0050; Telephone: (208) 334-0200, Fax: (208) 334-2339.

Persons wishing to participate in the informal negotiated rulemaking may submit written comments to the Idaho Department of Lands, Attn: Range Bureau Chief, PO Box 83720, Boise, Idaho 83720-0050 by June 27, 2001.

DATED this 27th day of April, 2001.

Winston A Wiggins
Acting Director
Idaho Department of Lands
954 West Jefferson Street
PO Box 83720
Boise, Idaho 83720-0050
(208) 334-0200
(208) 334-2339

IDAPA 33 - REAL ESTATE COMMISSION
33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION
DOCKET NO. 33-0101-0101 (REPEAL)
NOTICE OF TEMPORARY RULE AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rules is July 1, 2001.

AUTHORITY: In compliance with Section 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 54-2007, Idaho Code.

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

June 27, 2001 at 1:30 p.m.
The Idaho Real Estate Commission
633 North Fourth Street
Boise, Idaho 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 agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Repeals the existing rules chapter, IDAPA 33.01.01, in its entirety. A new temporary rule to replace this chapter is being adopted under Docket No. 33-0101-0102 and is being published in this Bulletin following this notice.

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 repeal and replacement of the existing rules chapter is necessary to comply with the new law, SB 1051, which codifies most of the existing rules into the licensing statute, Chapter 20, Title 54, Idaho Code.

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 the rulemaking has been undertaken to conform to SB 1051, the existing state statute governing licensure.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donna Jones, (208) 334-3285 ext. 232.

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 June 27, 2001.

DATED this 10th day of April, 2001.

Donna M. Jones, Executive Director
Idaho Real Estate Commission
633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
Phone: (208) 334-3285/Fax: (208) 334-2050

THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 33 - REAL ESTATE COMMISSION
33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION
DOCKET NO. 33-0101-0102 (REWRITE)
NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rules is July 1, 2001.

AUTHORITY: In compliance with Section 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 54-2007, Idaho Code.

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

June 27, 2001 at 1:30 p.m.
The Idaho Real Estate Commission
633 North Fourth Street
Boise, Idaho 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 agency address below.

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

A new chapter is being adopted to replace the existing chapter, IDAPA 33.01.01. The new chapter consists of former rules that were not codified by the new amendments to the statute, SB 1051. No substantive changes from the existing chapter have been made.

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 repeal and replacement of the existing chapter is necessary to comply with the new law, SB 1051, which codifies most of the existing rules into the licensing statute, Chapter 20, Title 54, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking has been undertaken to conform to SB 1051, the existing state statute governing licensure.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Donna Jones, (208) 334-3285 ext. 232.

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 June 27, 2001.

DATED this 10th day of April, 2001.

Donna M. Jones
Executive Director
Idaho Real Estate Commission
633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
Phone: (208) 334-3285/Fax: (208) 334-2050

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0102

IDAPA 33
TITLE 01
Chapter 01

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

000. LEGAL AUTHORITY.

The Rules of the Idaho Real Estate Commission contained herein have been adopted pursuant to Section 54-2007, Idaho Code. Any violation of these rules, or of any provision of Chapter 20, Title 54, shall be sufficient cause for disciplinary action as prescribed in Sections 54-2059 and 54-2060, Idaho Code. (7-1-01)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 33.01.01, "Rules of the Idaho Real Estate Commission," IDAPA 33, Title 01, Chapter 01. (7-1-01)T

02. Scope. These rules contain the requirements for implementation and enforcement of the Real Estate Licensing Law and the Real Estate Brokerage and Representation Act, contained in Chapter 20, Title 54, Idaho Code. (7-1-01)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), this agency has written statements which pertain to the interpretation of the rules of this chapter, or to documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Idaho Real Estate Commission, 633 North 4th Street, Boise, Idaho, 83702. (7-1-01)T

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by IDAPA 33.01.02.000 et seq., "Rules of Practice and Procedure of the Idaho Real Estate Commission." (7-1-01)T

004. INCORPORATION BY REFERENCE.

There are no materials incorporated by reference. (7-1-01)T

005. OFFICE HOURS, MAILING AND PHYSICAL ADDRESS, PHONE NUMBERS.

The office hours for Real Estate Commission are 8 a.m. to 5 p.m., Monday through Friday, excepting state holidays. The Real Estate Commission is located at 633 North 4th Street, Boise, Idaho, 83702. The mailing address is P.O. Box 83720, Boise, Idaho, 83720-0077. The telephone number is (208) 334-3285. (7-1-01)T

006. ELECTRONIC SIGNATURES.

A person's entry of the identification number assigned by the Commission, or approved for the person's use by the Commission, shall constitute the person's signature when transmitted as part of or in connection with an electronic document or procedure in the course of business with the Commission. Any identification number assigned or approved by the Commission shall be unique to the person using it, capable of verification, and conform to all applicable rules, guidelines and policies established by the Commission. (7-1-01)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

As used in these rules, and in the Idaho Real Estate License Law, Chapter 20, Title 54, Idaho Code, the following words or phrases shall have the following meaning: (7-1-01)T

01. Active Licensee. A person who holds a real estate license that has not been inactivated, expired, suspended, terminated or revoked. (7-1-01)T

02. Expired License. The status of a license when the license period has elapsed and the license is not renewed in accordance with Section 54-2018, Idaho Code, and no provisional license is granted as provided by Section 54-2023(7), Idaho Code, and before the license is terminated in accordance with Section 54-2018(3), Idaho Code. (7-1-01)T

03. Inactive Licensee. A person who holds a real estate license which is not expired, suspended, terminated or revoked, and who is not authorized to act as or affiliate with a designated broker. (7-1-01)T

04. Revoked License. A license that has been permanently revoked by issuing authority. (7-1-01)T

05. Surrendered License. A license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint. (7-1-01)T

06. Suspended License. A license that has been temporarily suspended by the issuing authority. (7-1-01)T

011. -- 099. (RESERVED).

RULES 100 THROUGH 199
APPLICATION, LICENSURE AND TERMINATION OF LICENSES

100. LICENCE FEES.

License fees are established as follows. (7-1-01)T

01. Fees For Licensed Individuals. The fees for an initial or renewing license for broker, associate broker, or salesperson shall be two hundred twenty dollars (\$220) per license period, which fees include the twenty dollar (\$20) fee prescribed in Section 54-2070, Idaho Code. (7-1-01)T

02. Fees For Licensed Legal Business Entities. The fee for an initial or renewing license for each legal business entity shall be one hundred dollars (\$100) per license period. (7-1-01)T

101. -- 116. (RESERVED).

117. CERTIFICATION OF MANDATORY ERRORS AND OMISSIONS INSURANCE.

Every licensee, upon obtaining or renewing an active real estate license in the state of Idaho, including nonresident and reciprocal licensees, shall have in effect and maintain a policy of errors and omissions insurance when required by Section 54-2013, Idaho Code, to cover all activities contemplated under Chapter 20, Title 54, Idaho Code and shall certify such coverage to the Commission in the form and manner prescribed by statute and in these rules. (7-1-01)T

01. Certification Of Licensees Under Group Insurance Plan. Licensees covered under the Group Insurance Plan, as provided for in Section 118 of these rules, shall be deemed to have satisfied the certification requirement of Section 117, upon the Commission receiving payment of the appropriate premium and a ten dollar (\$10) administrative fee from the licensee. The effective date of coverage, however, shall be the day of final license approval. (7-1-01)T

02. Certification Of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage, as provided for in Section 119 of these rules, shall provide to the Commission a Certificate of Coverage,

signed by an authorized agent or employee of the insurance carrier, which certificate shall be in a form approved by the Commission. (7-1-01)T

118. GROUP INSURANCE PLAN.

The Commission shall make available to all active licensees, subject to terms and availability from a qualified insurance carrier, a policy of Errors and Omissions Insurance under a Group Plan obtained by the Commission.

(7-1-01)T

01. Qualified Insurance Carrier Defined. For the purposes of Section 118, a “qualified insurance carrier” shall mean an insurance carrier: (7-1-01)T

a. Which, for the entire term of its contract shall provide the Group Plan of errors and omissions insurance contemplated by these rules, maintains an A.M. Best Company rating of B+ or better, and an A.M. Best Financial Size Category of Class VI or higher; (7-1-01)T

b. Which is and will remain for the policy term duly authorized by the Idaho Department of Insurance to do business in the state of Idaho as an insurance carrier; (7-1-01)T

c. Which is and will remain for the policy term qualified and authorized by the Idaho Department of Insurance to write policies of errors and omissions insurance in Idaho of the type contemplated by these rules; (7-1-01)T

d. Which, after competitive bidding, has been notified by the Commission that it is the successful bidder for the Group Plan to provide the errors and omissions insurance contemplated by these rules; and (7-1-01)T

e. Which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, these rules and the Idaho Real Estate License Law. (7-1-01)T

02. Right To Cancel. The group policy obtained by the Commission under these rules shall be available to all active licensees with no right on the part of the carrier to cancel any licensee. (7-1-01)T

03. Approved Policy. The group policy obtained by the Commission shall cover all activities contemplated under Chapter 20, Title 54, Idaho Code, shall be subject to such terms and conditions as are customary in the insurance industry for policies of errors and omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Insurance Department, and which are contained in a policy of insurance which has been approved by the Department of Insurance; provided, however, that said Group Plan shall provide, at a minimum, the following terms and conditions: (7-1-01)T

a. Not less than one hundred thousand dollars (\$100,000) limit liability coverage for each occurrence, not including costs of investigation and defense; (7-1-01)T

b. An annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense; (7-1-01)T

c. The minimum coverage requirements of Subsection 118.03 shall apply to each individual licensee; (7-1-01)T

d. A deductible amount of not greater than three thousand five hundred dollars (\$3,500), which shall include costs of investigation and defense; (7-1-01)T

e. A reasonable premium not to exceed the maximum premium set forth in Section 54-2013, Idaho Code; (7-1-01)T

f. A policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent, or, if an annually renewable policy, a statement of the policy period, and in either case, the policy shall provide for continuous coverage during the policy period; (7-1-01)T

g. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; and (7-1-01)T

h. Prior acts coverage shall be offered to licensees with continuous past coverage. (7-1-01)T

04. Standard Of Group Policy Determined. For the purposes of these rules and the fulfillment of the Commission's obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of any group policy of errors and omissions insurance to be issued to the state of Idaho pursuant to these rules shall be conclusive proof that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of Idaho law and the rules of the Idaho Insurance Department with respect to such policies of insurance. (7-1-01)T

119. INDEPENDENTLY OBTAINED ERRORS AND OMISSIONS INSURANCE.

Licensees may obtain errors and omissions insurance independently of the Group Policy available through the Commission, subject, however, to the terms and conditions set forth in these rules. (7-1-01)T

01. "Independently Obtained" Insurance Defined. The term "independently obtained" insurance shall mean a policy of errors and omissions insurance issued to each individual licensee or issued to the firm with which the licensee is affiliated and which shall provide, at a minimum, all of the following terms and conditions: (7-1-01)T

a. Covers all activities contemplated under Chapter 20, Title 54, Idaho Code, under such terms and conditions as are customary in the insurance industry for policies of errors and omissions insurance, which are otherwise permissible under Idaho law and the rules of the Idaho Department of Insurance, and which are contained in a policy of errors and omissions insurance which has been approved by the Idaho Department of Insurance; (7-1-01)T

b. If an "individual" policy specifies not less than one hundred thousand dollars (\$100,000) limit liability coverage for each occurrence, not including costs of investigation and defense; (7-1-01)T

c. If a "firm" policy specifies not less than five hundred thousand dollars (\$500,000) limit liability coverage for each occurrence, not including costs of investigation and defense; (7-1-01)T

d. If an "individual" policy, an annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense; (7-1-01)T

e. If a "firm" policy, an annual aggregate limit of not less than one million dollars (\$1,000,000), not including costs of investigation and defense; (7-1-01)T

f. If an "individual" policy, the minimum coverage limits specified in Subsection 119.01 shall be available to each licensee; (7-1-01)T

g. If a "firm" policy, the minimum coverage limits specified in Subsection 119.01 shall apply to the firm; (7-1-01)T

h. An extended reporting period per insured of at least ninety (90) days following termination of the policy period; (7-1-01)T

i. No policy of errors and omissions insurance shall be deemed "independently obtained" for purposes of this rule unless the insurance company specifically agrees in writing that it will not terminate, cancel, lapse, fail or refuse to renew or modify such policy without the company first providing the Commission and the licensee with thirty (30) days' written notice; (7-1-01)T

j. Contains a policy period equal to each licensee's two (2) year license renewal date or the prorated equivalent and which provided for continuous coverage during said policy period, or, if an annually renewable policy, a statement of the policy period and, in either case, the agreement of the insurance carrier that it will not modify, terminate, cancel, lapse or not renew the policy without first providing the Commission and licensee thirty (30) days

written notice; and (7-1-01)T

k. Prior acts coverage shall be offered to licensees with continuous past coverage. (7-1-01)T

02. Approval By Department of Insurance. For the purposes of these rules and the fulfillment of the licensees' obligations under Idaho Real Estate License Law, approval by the Idaho Department of Insurance of a policy of independently obtained errors and omissions insurance covering the licensee shall create a presumption that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of the law and rules of the Idaho Department of Insurance with respect to such policies of insurance. Approval by the Department of Insurance, however, does not create any presumption of equivalency in coverage as required by Idaho Real Estate License Law and these rules. (7-1-01)T

03. Carrier Issuing Independent Policy. A carrier issuing an independent policy shall meet all of the requirements of a qualified carrier set forth in Subsections 118.01.a. through 118.01.c. and shall maintain an A.M. Best Company rating of B+ or better and an A.M. Best Financial Size Category of Class VI or higher. (7-1-01)T

120. CERTIFICATION A PREREQUISITE FOR LICENSE ISSUANCE OR RENEWAL.

No applicant for an original active license or for renewal of an active license shall be issued such active license unless proper payment of insurance premiums and any fees have been received by the Commission if the licensee is with the Group Plan, or unless he has first filed with the Commission the Certificate of independently obtained coverage required by Subsection 117.02. (7-1-01)T

121. FAILURE TO MAINTAIN INSURANCE.

Failure of a licensee to obtain and maintain insurance through the Group Plan or failure to file the certificate of independently obtained coverage required by Subsection 117.02 shall result in inactivation of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license. Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under Section 67-5254, Idaho Code. (7-1-01)T

01. Notice Of Noncompliance. Within five (5) working days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by certified mail to the licensee's business or residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) days in which to comply with the law and these rules regarding errors and omissions insurance. Failure to comply at the end of ten (10) days shall result in the license being automatically inactivated. (7-1-01)T

02. Reactivation. Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of any required documents and fees. (7-1-01)T

03. Failure To Maintain Insurance. Failure of a licensee to maintain errors and omissions insurance or failure of a licensee to submit or cause to be submitted a certificate of coverage as required by Section 54-2013, Idaho Code, and in accordance with these rules and while engaging in the business of real estate broker or real estate sales person, as defined in Sections 54-2002 and 54-2004, Idaho Code, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in Sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines. (7-1-01)T

122. FALSIFICATION OF CERTIFICATES.

Any licensee who, acting alone or in concert with others, wilfully or knowingly causes or allows a certificate of coverage to be filed with the Commission which is false, fraudulent, or misleading, shall be subject to disciplinary action, including but not limited to suspension or revocation of license, in accordance with Chapter 52, Title 67, Idaho Code; provided, however, that nothing herein shall entitle such licensee to notice and hearing on the automatic

inactivation of license provided for in Subsection 121.01.

(7-1-01)T

123. -- 199. (RESERVED).

RULES 200 THROUGH 299 - OFFICE OPERATIONS

200. BRANCH OFFICES.

The wall licenses of each licensee conducting business from any licensed branch office shall be prominently displayed in the branch office at all times. (7-1-01)T

201. -- 299. (RESERVED).

RULES 300 THROUGH 399 - BUSINESS CONDUCT

300. DISPUTES CONCERNING COMMISSIONS AND FEES.

The Idaho Real Estate Commission shall not be involved in the resolution of disputes between licensees or between licensees and buyers and sellers concerning matters of commissions or fees. (7-1-01)T

301. PRICE FIXING.

The Idaho Real Estate Commission neither recommends nor recognizes any agreement to fix or impose uniform rates of commission on any real estate transaction by licensed real estate brokers. (7-1-01)T

302. TITLE OPINIONS.

No real estate broker or sales associate shall pass judgment upon or give an opinion with respect to the merchantability of the title to property in any transaction. (7-1-01)T

303. LEGAL OPINIONS.

A broker or sales associate shall not discourage any party to a real estate transaction from seeking the advice of an attorney. (7-1-01)T

304. OFFICE OPERATIONS AND BROKER SUPERVISION.

A designated broker is required to adequately supervise the activities of licensees and unlicensed personnel for whom he is responsible. The following factors will be among those used to determine adequacy of supervision; however, the Commission is not limited to making a determination on these factors alone, but will examine all pertinent evidence. (7-1-01)T

01. Designated Broker Physically Available To Supervise. Was the designated broker physically available to supervise? (7-1-01)T

02. Experience Level Of The Licensed Associate. What was the experience level of the licensed associate? (7-1-01)T

03. Designated Broker Contracted To Avoid Supervisory Responsibility. Has the designated broker contracted to avoid supervisory responsibility? (7-1-01)T

04. Types Of Activity. What types of activity were licensed sales associates or unlicensed personnel engaged in? (7-1-01)T

05. Established Written Or Oral Policies And Procedures. Had the designated broker established written or oral policies and procedures? (7-1-01)T

06. Determine That Policies And Procedures Are Being Properly Implemented. Does the designated broker hold regular staff meetings and follow-up meetings to determine that policies and procedures are

being properly implemented?

(7-1-01)T

07. Corrective Or Remedial Action. What corrective or remedial action does the designated broker take if a misdeed of a sales associate or unlicensed personnel is discovered?

(7-1-01)T

305. -- 999. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-0102
NOTICE OF TEMPORARY RULE

EFFECTIVE DATE: These temporary rules are effective January 1, 2001.

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. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the temporary rule:

Property Tax Rule 130 - Equalization By Category--Identification And Reappraisal is being amended as a temporary rule because of legislation passed by the 2001 Legislature. House Bill 378 is retroactive to January 1, 2001 and adds Section 63-602EE, Idaho Code, exempting certain tangible personal property that is agricultural machinery and equipment. Rule 130 is being amended to delete Category 58 used by counties to report this equipment and Category 68 to include equipment not exclusively used for agriculture.

Property Tax Rule 645 - Land Actively Devoted To Agriculture Defined is being amended as a temporary rule because of legislation passed by the 2001 Legislature. House Bill No. 55 is retroactive to January 1, 2001, and amends Section 63-604, Idaho Code, to add nursery stock to be included in land actively devoted to agriculture. Rule 645 is being amended to clarify the term "land used to produce nursery stock".

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: Statutory timing requires the rule be adopted as a temporary rule retroactive to January 1, 2001.

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

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because nature of the rule is conferring a benefit and the time constraints of having the benefits in effect for the year 2001.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning these temporary rules, contact Alan Dornfest at (208) 334-7530.

DATED this 11th day of April, 2001.

Alan Dornfest, Tax Policy Specialist Supervisor
State Tax Commission
800 Park, Plaza IV, P.O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0102

130. EQUALIZATION BY CATEGORY -- IDENTIFICATION AND REAPPRAISAL (Rule 130).

Sections 63-109 and 63-315, Idaho Code. Property shall be identified for assessment purposes in the categories outlined below. These categories are to be used on the current year's assessment notice, assessment roll and abstract.

~~(3-30-01)~~(4-11-01)T

01. Category 1 - Irrigated Agricultural Land. Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This irrigated land must be capable of and normally producing harvestable crops and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

02. Category 2 - Irrigated Grazing Land. Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

03. Category 3 - Non-irrigated Agricultural Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This non-irrigated land must be capable of and normally producing harvestable crops without man-made irrigation and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

04. Category 4 - Meadow Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

05. Category 5 - Dry Grazing Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

06. Category 6 - Productivity Forestland. All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forest land under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code.

(3-30-01)

07. Category 7 - Bare Forestland. All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

08. Category 8 - Reforestation Land. Repealed. Effective July 1, 1995, see 1995 Session Laws, Chapter 173.

(3-30-01)

09. Category 9 - Patented Mineral Land. All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code.

(3-30-01)

10. Category 10 - Homesite Land. Land being utilized for homesites on categories 1 through 9.

(3-23-94)

11. Category 11 - Recreational Land. Land used in conjunction with recreation but not individual homesites.

(3-23-94)

12. **Category 12 - Rural Residential Tracts.** Rural residential land not in a properly recorded subdivision. (3-23-94)
13. **Category 13 - Rural Commercial Tracts.** Rural commercial land not in a properly recorded subdivision. (3-23-94)
14. **Category 14 - Rural Industrial Tracts.** Rural industrial land not in a properly recorded subdivision. (3-23-94)
15. **Category 15 - Rural Residential Subdivisions.** Rural residential land in a properly recorded subdivision. (3-23-94)
16. **Category 16 - Rural Commercial Subdivisions.** Rural commercial land in a properly recorded subdivision. (3-23-94)
17. **Category 17 - Rural Industrial Subdivisions.** Rural industrial land in a properly recorded subdivision. (3-23-94)
18. **Category 18 - Other Land.** Land not compatible with other categories. (4-5-95)
19. **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)
20. **Category 20 - Residential Lots Or Acreages.** Land inside city limits zoned residential. (3-30-01)
21. **Category 21 - Commercial Lots Or Acreages.** Land inside city limits zoned commercial. (3-30-01)
22. **Category 22 - Industrial Lots Or Acreages.** Land inside city limits zoned industrial. (3-30-01)
23. **Category 25 - Common Areas.** Land and improvements not included in individual property assessments. (4-5-95)
24. **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)
25. **Category 27 - Commercial Or Industrial Condominiums.** Land and improvements included in individual assessments of condominiums in areas zoned commercial or industrial. (3-23-94)
26. **Category 30 - Improvements.** Other than residential, located on category 20. (3-23-94)
27. **Category 31 - Improvements.** Residential improvements located on category 10. (3-30-01)
28. **Category 32 - Improvements.** Other than residential, located on categories 1 through 12 and 15. (3-23-94)
29. **Category 33 - Improvements.** Located on category 11. (3-23-94)
30. **Category 34 - Improvements.** Residential in nature, located on category 12. (3-23-94)
31. **Category 35 - Improvements.** Commercial in nature, located on category 13. (3-23-94)
32. **Category 36 - Improvements.** Industrial in nature, located on category 14. (3-23-94)
33. **Category 37 - Improvements.** Residential in nature, located on category 15. (3-23-94)

- 34. Category 38 - Improvements.** Commercial in nature, located on category 16. (3-23-94)
- 35. Category 39 - Improvements.** Industrial in nature, located on category 17. (3-23-94)
- 36. Category 40 - Improvements.** Located on category 18. (3-23-94)
- 37. Category 41 - Improvements.** Residential in nature, located on category 20. (3-23-94)
- 38. Category 42 - Improvements.** Commercial in nature, located on category 21. (3-23-94)
- 39. Category 43 - Improvements.** Industrial in nature, located on category 22. (3-23-94)
- 40. Category 44 - Improvements.** Taxable improvements located on otherwise exempt property under the same ownership. (3-23-94)
- 41. Category 45 - Utility Systems.** Locally assessed utility systems not under the jurisdiction of the State Tax Commission. (3-30-01)
- 42. 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. (4-5-00)
- 43. Category 47 - Improvements To Manufactured Housing.** Additions not typically moved with manufactured housing. (3-23-94)
- 44. Category 48 - Manufactured Housing.** Manufactured housing on which a statement of intent to declare as real property has been filed. (3-23-94)
- 45. Category 55 - Boats Or Aircraft.** Unlicensed watercraft or unregistered aircraft. (3-23-94)
- 46. 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)
- 47. Category 57 - Equities In State Property.** Property purchased from the state under contract. (4-5-95)
- ~~**48. Category 58 - Farm Machinery, Tools, And Equipment.** Unlicensed farm or ranch machinery, shop tools, or equipment not assessed as real property. (3-23-94)~~
- ~~**49. 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)~~
- ~~**50. Category 60 - Improvements On Railroad Rights-Of-Way.** Improvements located on railroad rights-of-way under separate ownership. (3-23-94)~~
- ~~**51. Category 61 - Improvements By Lessee Other Than Category 62.** Improvements made by the tenant or lessee to landlord's property. (3-23-94)~~
- ~~**52. 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)~~
- ~~**53. Category 63 - Logging Machinery, Tools, And Equipment.** Unlicensed logging machinery, shop tools, and equipment not assessed as real property. (3-23-94)~~

- ~~543.~~ **Category 64 - Mining Machinery, Tools, And Equipment.** Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-23-94)
- ~~554.~~ **Category 65 - Manufactured Housing.** Manufactured housing not considered real property located on exempt, rented or leased land. (4-5-00)
- ~~565.~~ **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. See Section 63-2802, Idaho Code, and Rule 982 of these rules. (3-30-01)
- ~~576.~~ **Category 67 - Operating Property.** Property assessed by the State Tax Commission. (3-30-01)
- ~~587.~~ **Category 68 - Other Miscellaneous Machinery, Tools, And Equipment.** Unlicensed machinery, tools, and equipment not used in ~~agriculture~~, construction, logging, ~~or mining~~, or not used exclusively in agriculture. ~~(3-23-94)~~(1-1-01)T
- ~~598.~~ **Category 69 - Recreational Vehicles.** Unlicensed recreational vehicles. (3-23-94)
- ~~6059.~~ **Category 70 - Reservations And Easements.** Reservations, including mineral rights reserved divide ownership of property rights. Easements convey use but not ownership. (3-23-94)
- ~~610.~~ **Category 71 - Signs And Signboards.** Signs and signboards, their bases and supports. (3-23-94)
- ~~621.~~ **Category 72 - Tanks, Cylinders, Vessels.** Containers. (3-23-94)
- ~~632.~~ **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)

645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED (Rule 645).
Section 63-604, Idaho Code. (1-1-01)T

- 01. Definitions.** The following definitions apply for the implementation of the exemption for the speculative value portion of agricultural land. (7-1-99)
- a. **Homesite.** The “homesite” is that portion of land, contiguous with but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes. (7-1-99)
- b. **Associated Site Improvements.** The “associated site improvements” include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)
- c. **Nursery Stock.** Nursery stock is defined in Section 22-2302, Idaho Code. (1-1-01)T
- d. **Land Used to Produce Nursery Stock.** Land used by an agricultural enterprise to promote or support the promotion of nursery stock growth or propagation, not land devoted primarily to selling nursery stock or related products. This term also includes land under any container used to grow or propagate nursery stock. This term does not include land used for parking lots or for buildings sites used primarily to sell nursery stock or related items or areas not primarily used for the nurturing, growth or propagation of nursery stock. (1-1-01)T
- e. **Speculative Value Exemption.** The “speculative value exemption” is the exemption allowed on land actively devoted to agriculture. (7-1-99)

02. Homesite Assessment. Effective January 1, 1999, each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year. (7-1-99)

a. Accepted Assessment Procedures. Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states. (7-1-99)

b. Appropriate Market and Comparable Selection. The appropriate market is the market most similar to the homesite and improvements, located on the homesite. In applying the sales comparison approach, the appraiser should select comparables having actual or potential residential use. (7-1-99)

c. Assigning Category. The value of the homesite will be listed in Category 10. (7-1-99)

d. Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. (7-1-99)

03. Valuing Qualifying Agricultural Land, Excluding The Homesite. The assessor shall value ~~the~~ qualifying agricultural land, excluding the homesite, on the following basis: ~~(7-1-99)~~(1-1-01)T

a. Land Used for Personal Use or Pleasure. Any land, regardless of size, utilized for the grazing of animals kept primarily for personal use or pleasure and not a portion of a profit making agricultural enterprise, shall be valued at market value using appraisal procedures identified in Subsection 645.02 and shall not qualify for the speculative value exemption. (3-30-01)

b. Land in a Subdivision with Restrictions Prohibiting Agriculture Use. Land in a subdivision with restrictions prohibiting agricultural use shall be valued at market value using appraisal procedures identified in Subsection 645.02 and shall not qualify for the speculative value exemption. (3-30-01)

c. Land, Five (5) Acres or Less. Land parcels of five (5) acres or less shall be presumed nonagricultural, shall be valued at market value using appraisal procedures identified in Subsection 645.02 of these rules, and shall not qualify for the speculative value exemption. If the owner produces evidence that the land has been devoted to agricultural use for the last three (3) growing seasons and it agriculturally produced for sale or home consumption fifteen percent (15%) or more of the owner's or lessee's annual gross income or it produced gross revenue in the immediate preceding year of one thousand dollars (\$1,000) or more, the land actively devoted to agriculture, shall qualify for the speculative value exemption. For parcels of five (5) acres or less income is measured by production of crops, nursery stock, grazing, or net income from sale of livestock. Income shall be estimated from crop prices at harvest or nursery stock prices at sale. The use of the land and the income received in the prior year must be certified with the assessor by March 15, each year. ~~(3-30-01)~~(1-1-01)T

d. Lease Income Considered. Lease income may be considered in determining income qualifications only if the lease terms are defined, the carrying capacity is shown, and the rent is consistent with market rent. (7-1-99)

e. Land, More Than Five (5) Acres. Land parcels of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, timber, or grazing, or in a cropland retirement or rotation program, as part of a profit making agricultural enterprise, shall qualify for the speculative portion of value of agricultural land exemption. Land not annually meeting any of these requirements shall be valued at market value using appraisal procedures identified in Subsection 645.02 and shall not qualify. Application for agricultural classification must be filed with the assessor by March 15. A successful application need only be filed once where the ownership and qualifying conditions remain unchanged in subsequent years. ~~(3-30-01)~~(1-1-01)T

04. Effective Date. Beginning with the assessment rolls for 2001 and each year thereafter, land actively devoted to agriculture and eligible for the speculative value exemption includes "land used to produce nursery stock" as defined in Subsection 645.01. (1-1-01)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
LEGISLATIVE CHANGES AFFECTING THE ADMINISTRATIVE RULES OF THE
DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0100-0002

NOTICE OF CORRECTION

CORRECTION: This notice is being published to correct an error that was made in the May 2, 2001, Volume 01-5 Idaho Administrative Bulletin. Docket No. 58-0100-0002 was inadvertently listed in the Omnibus Notice of Legislative Action on Administrative Rules as having been approved by the legislature during the 2001 legislative session as a final rule. This docket was not submitted for review and approval to the legislature during the 2001 session and should not have been listed in the Omnibus Notice. This correction is being done in conjunction with the Office of Administrative Rules.

AUTHORITY: In compliance with Section 67-5228, Idaho Code, notice is hereby given that the Office of Administrative Rules, in conjunction with this agency, is correcting this publication error. The action is authorized by Chapters 1, 36, 44, 58, 72, 76, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the nature of the correction being made:

This notice corrects an error made in the Omnibus Notice of Legislative Action on Administrative Rules that published in the May 2, 2001, Volume 01-5, Idaho Administrative Bulletin. The error, made on page 20, inadvertently listed Docket No. 58-0100-0002 as having been approved as a final rule during the 2001 legislative session and that it published as a pending rule in the January 4, 2001, Volume 01-1, Idaho Administrative Bulletin. This is incorrect and Docket No. 58-0100-0002 was not reviewed and approved as a final rule. The docket has not been adopted as a pending rule by DEQ and has no force and effect.

The text of the proposed rule of Docket No 58-0100-0002 was published in the August 2, 2000 Idaho Administrative Bulletin, Volume No. 00-8 on pages 131 through 148.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this correction, contact Paula Gradwohl (208) 373-0418, pgradwoh@deq.state.id.us or Dennis Stevenson, Assistant Rules Coordinator, at (208) 332-1820.

DATED this 4th day of May, 2001.

Rick Thompson
Administrative Rules Coordinator
State Department of Administration
PO Box 83720
Boise, ID 83720-0306
Phone: 332-1820

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

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0104

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. 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.

MEETING SCHEDULE: Persons interested in discussing the preliminary draft may attend the following meeting:

June 22, 2001, 10:00 am
Department of Environmental Quality, Conference Room C
1410 N. Hilton, Boise, Idaho

PARTICIPATION BY CONFERENCE CALL: Those interested in participating in the meeting by conference call may contact Phyllis Heitman at 373-0502 or pheitman@deq.state.id.us by June 15, 2001.

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, to the agency address below.

PRELIMINARY DRAFT: By June 15, 2001, DEQ will make available a preliminary draft of the rule. The preliminary draft can be obtained on or after that date at www2.state.id.us/deq/rules/58-0101-0104.htm or by contacting Phyllis Heitman at (208)373-0502 or pheitman@deq.state.id.us.

DESCRIPTIVE SUMMARY: This rulemaking will establish a fee structure for exemption review, permits to construct (PTCs) and Tier II operating permits. The purpose of the rulemaking is to stabilize the level of funding for the DEQ air quality permitting program by supporting the costs of issuing permits to construct and Tier II operating permits. Collection of the fees is authorized by Sections 39-115(3) and 39-119, Idaho Code.

All stationary sources required to obtain construction and/or operating permits may be affected by the fee. Special interest groups or members of the public interested in a more effective permitting process are encouraged to participate.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments on the preliminary draft by mail, fax or e-mail to the address below. DEQ will consider all written comments received by the undersigned on or before June 27, 2001.

At the conclusion of the negotiated rulemaking process, DEQ intends to publish a proposed rule for public comment. Using and taking into consideration public comment, DEQ will then present the rule to the Board of Environmental Quality for adoption of a pending rule in November 2001.

Dated this 11th day of May, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

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Bulletin Summary of Proposed Rulemakings

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 07 - DIVISION OF BUILDING SAFETY 277 N. 6th, Boise, ID 83720

Docket No. **07-0104-0101**, Rules Governing Electrical Specialty Licensing. Removes the two-foot distance limitation in sign electrical licensing and replaces it with the "line of sight" requirements found in the National Electrical Code to allow licensees to perform work on the secondary side of the sign disconnect. Comment By: 6/27/01.

IDAPA 15 - OFFICE OF THE GOVERNOR IDAHO COMMISSION ON AGING PO Box 83720, Boise, ID 83720-0007

Docket No. **15-0101-0101**, Rules Governing Senior Services Program. Changes the definition of Support Services Technician to allow them to complete UAIs (assessment of need for services). Comment By: 6/27/01.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

Docket No. **16-0309-0101**, Rules Governing the Medical Assistance Program. Adds a specialized service, Intensive Behavioral Intervention (IBI), to provide behavioral intervention for children who have self-injurious, aggressive, severely maladaptive behavior; severe deficits in communications, social interaction and leisure or play skills. Comment By: 6/27/01.

Docket No. **16-0309-0102**, Rules Governing the Medical Assistance Program. Includes intestinal transplants under the scope of Idaho Medicaid covered procedures and is effective April 1, 2001. Comment By: 6/27/01.

Docket No. **16-0416-0101**, Rules Governing Prevention of Minors' Access to Tobacco Products. Changes conform to statutory changes; provides clarifying language for inspection types and protocols; adds a "no fault" first violation for permittees, a reduction in the fines and permit suspensions for further violations, and a formula for the number of random and unannounced inspections to be conducted each year. Comment By: 6/27/01.

IDAPA 18 - DEPARTMENT OF INSURANCE PO Box 83720, Boise, ID 83720-0043

Docket No. **18-0144-0101**, Schedule of Fees, Licenses and Miscellaneous Charges. Conforms to the current fee schedule set in statute; simplifies the existing fee schedule; replaces references to agents and brokers with "producer", eliminates fees based on lines of business; imposes a single fee for producers and most other licensees; clarifies language; and deletes references to consultant examination and renewal fees. Comment By: 6/29/01.

IDAPA 33 - IDAHO REAL ESTATE COMMISSION 633 N. 4th St., Boise, ID 83702

Docket No. **33-0101-0101**, Rules Governing the Idaho Real Estate Commission. Repeal of chapter. Comment By: 6/27/01.

Docket No. **33-0101-0102**, Rules Governing the Idaho Real Estate Commission. Rewrite of chapter. Comment By: 6/27/01.

Please refer to the Idaho Administrative Bulletin, **June 6, 2001, Volume 01-6** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

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The Idaho Administrative Bulletin and Administrative Code are available on-line at: **<http://www2.state.id.us/adm/adminrules/>**

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

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