

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 monthly compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of 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 Rulemaking Notice published in the Bulletin. 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 rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin **04-1** refers to the first Bulletin issued in calendar year **2004**; Bulletin **05-1** refers to the first Bulletin issued in calendar year **2005**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **04-1** refers to **January** 2004; Volume No. **04-2** refers to **February** 2004; and so forth. Example: The Bulletin published in **January** 2005 is cited as Volume **05-1**. The **December** 2004 Bulletin is cited as Volume **04-12**.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

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

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate - Negotiated Rulemaking" in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein 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. This notice must include:

- a) the specific statutory authority (from Idaho Code) 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 as provided in Section 67-5222, Idaho Code; 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. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULEMAKING

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

- a) 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. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

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

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

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it become 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 Rulemaking". This includes:

- a) a statement giving 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;*
- 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 change 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 Rulemaking" is published.

FINAL RULEMAKING

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

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 an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the 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 that 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, Twin Falls, Lewiston and East Bonner County 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 83720-00306, telephone (208) 332-1820.

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

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

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

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

<http://www2.state.id.us/adm/adminrules/>

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 38.07.01.200.02.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 Administrations's Division of Purchasing*

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

*"**200**." refers to Major Section 200, "Content of the Invitation to Bid"*

*"**02**." refers to Subsection 200.02.*

*"**c**." refers to Subsection 200.02.c.*

*"**ii**." refers to Subsection 200.02.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 "-", (38-0501-0401). 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. 38-0501-0401"

"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**).

"0401" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2004.

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 of a rule 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."

The citation may also include the IDAPA, Title, or Chapter number, 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 rule.

"01" denotes the Chapter number of the rule.

: "201" references the main Section number of the rule that the citation refers to.

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 38.04.041, "Rules Governing Capitol Mall Parking."

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2005

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
05-1	January 2005	*November 19, 2004	January 5, 2005	January 26, 2005
05-2	February 2005	January 5, 2005	February 2, 2005	February 23, 2005
05-3	March 2005	February 2, 2005	March 2, 2005	March 23, 2005
05-4	April 2005	March 2, 2005	April 6, 2005	April 27, 2005
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05-12	December 2005	November 2, 2005	December 7, 2005	December 28, 2005

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06-1	January 2006	*November 16, 2005	January 4, 2006	January 25, 2006
06-2	February 2006	January 4, 2006	February 1, 2006	February 22, 2006
06-3	March 2006	February 1, 2006	March 1, 2006	March 22, 2006
06-4	April 2006	March 1, 2006	April 5, 2006	April 26, 2006
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06-8	August 2006	June 30, 2006	August 2, 2006	August 23, 2006
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06-10	October 2006	**August 23, 2006	October 4, 2006	October 25, 2006
06-11	November 2006	October 4, 2006	November 1, 2006	November 22, 2006
06-12	December 2006	November 1, 2006	December 6, 2006	December 27, 2006

****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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IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0501

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code, and Section 72-803 of the Idaho Code.

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

Date:	October 11, 2005	October 12, 2005	October 18, 2005
Time:	3:00 p.m.	4:00 p.m.	4:00 p.m.
Location:	Industrial Commission 317 Main Street Boise, ID	Industrial Commission 1411 Fall Ave East, Ste 915 Twin Falls, ID	Shilo Inn Suites 702 W. Appleway Ave Coeur d'Alene, ID
Date:	October 19, 2005	November 1, 2005	
Time:	4:00 p.m.	4:00 p.m.	
Location:	Idaho Commerce & Labor 1158 Idaho Street Lewiston, ID	Ameritel Inn Spectrum 2501 S. 25th Street East Idaho Falls, ID	

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:

Proposes using the Resource-Based Relative Value Scale (RBRVS) and the Relative Value Unit (RVU) assigned for all medical services with a Physicians' Current Procedural Terminology (CPT) code. A Conversion Factor for various categories of CPT coded services is proposed. Unnecessary language is proposed to be deleted from the rule.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is in response to legislative changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mindy Montgomery, Director, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 2, 2005.

DATED this 8th day of September, 2005.

Mindy Montgomery, Director
Industrial Commission
317 Main St., Boise, ID 83702
PO Box 83720, Boise, ID 83720-0041
Phone: (208) 334-6000 / Fax: (208) 334-2321

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0208-0501

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby ~~substitutes~~ adopts the following ~~for the January 28, 1975 amendment to the "Rules and Regulations Governing Charges for Medical Services Provided under the Idaho Workers' Compensation Law," dated May 2, 1973~~ rule for determining acceptable charges for medical services provided under the Idaho Workers' Compensation Law: (6-1-92)(____)

~~01. **Acceptable Charges Under the Idaho Workers' Compensation Law.** Payors shall pay a Provider's reasonable charge for Medical Services furnished to industrially injured patients.~~ (6-1-92)

021. Definitions. Words and terms used in this rule are defined in the subsections which follow. (6-1-92)

a. "Provider" means any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical services related to the treatment of an industrially injured patient which are compensable under Idaho's Workers' Compensation Law. (6-1-92)(____)

b. "Payor" means the legal entity responsible for paying medical benefits under Idaho's Workers' Compensation Law. (6-1-92)

c. "Medical Services" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, ~~facilities~~ facility, equipment and ~~supplies~~ supply. (7-1-95)(____)

d. "Reasonable;" ~~except as provided in Subsections 031.02.g. and 031.02.h.,~~ means a charge does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined below. (7-1-95)(____)

e. "Usual" means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (7-1-95)(____)

f. "Customary" means a charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (7-1-95)(____)

~~**g.** *Provided, however, that for medical services which are not represented by CPT codes, reasonableness of charges shall be determined based on all relevant evidence available, including industry standards, invoices and catalog prices.*~~ (7-1-95)

~~**h.** *Provided, further, that where a Medical Service is one that is exceptional, unusual, variable, rarely provided, or so new that a determination cannot be made as to whether the charge for the Medical Service meets the criteria of Subsections 031.02.d. through 031.02.f. above, or where the Industrial Commission staff determines that its database is statistically unreliable, reasonableness of charges shall be determined based on all relevant evidence available.*~~ (7-1-95)

02. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services calculated in accordance with this rule or as billed by the provider, whichever is less. (____)

a. Adoption of Standard. The Commission hereby adopts the current Resource-Based Relative Value Scale (RBRVS), published annually by the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for

medical services provided under the Idaho Workers' Compensation Law. ()

b. Conversion Factors. The following conversion factors shall be applied to the Relative Value Unit (RVU) found in the current RBRVS for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended: ()

<u>CPT CODE:</u>	<u>DESCRIPTION:</u>	<u>CONVERSION FACTOR:</u>
<u>00000 to 09999</u>	<u>Anesthesiology</u>	<u>\$58.19</u>
<u>10000 to 69999:</u>	<u>Surgery:</u>	
<u>10000 to 19999</u>	<u>Integumentary System</u>	<u>\$ 63.63</u>
<u>20000 to 29999</u>	<u>Musculoskeletal System</u>	<u>\$123.00</u>
<u>30000 to 39999</u>	<u>Respiratory/Cardiovascular</u>	<u>\$123.00</u>
<u>40000 to 49999</u>	<u>Digestive System</u>	<u>\$ 95.00</u>
<u>50000 to 59999</u>	<u>Urinary/Genital</u>	<u>\$ 71.00</u>
<u>60000 to 69999</u>	<u>Endocrine/Nervous/Eye</u>	<u>\$133.00</u>
<u>70000 to 79999</u>	<u>Radiology & Nuclear Medicine</u>	<u>\$111.25</u>
<u>80000 to 89999</u>	<u>Pathology</u>	<u>\$ 94.00</u>
<u>90000 to 96999</u>	<u>General Medicine (Part 1)</u>	<u>\$ 73.00</u>
<u>97000 to 98999</u>	<u>Physical Medicine</u>	<u>\$ 63.00</u>
<u>99000 to 99199</u>	<u>General Medicine (Part 2)</u>	<u>\$ 73.00</u>
<u>99200 to 99499</u>	<u>Evaluation and Management</u>	<u>\$ 63.63</u>
<u>99500 to 99999</u>	<u>General Medicine (Part 3)</u>	<u>\$ 73.00</u>

()

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units currently assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Codes 01995 and 01996. ()

d. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year. The Commission shall determine the adjustment, which shall equal the percent change in the all item consumer price index for the west urban area, as published by the U.S. Department of Labor, for the twelve (12) month period ending with December of the prior year. ()

e. Services Without CPT Code. The acceptable charge for medical services that do not have a CPT code will be the reasonable charge for that service, based upon the usual and customary charge and other relevant factors, as determined by the Commission. ()

032. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.

01. Authority and Definitions. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule augmenting IDAPA 17.02.08.031 ~~(formerly 17.01.03.803.A, which became effective June 1, 1992)~~. The definitions set forth in IDAPA 17.02.08.031 are incorporated by reference

as if fully set forth herein.

~~(1-1-93)~~()

02. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. (1-1-93)

03. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of Medical Services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the Medical Service was provided, the diagnosis, if any, and the amount of the charge or charges. (1-1-93)

a. CPT and ICD Coding. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, for the year in which the service was performed and using current International Classification of Diseases (ICD) diagnostic coding, as well. (7-1-95)

b. Contact Person. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. (1-1-93)

c. Report to Accompany Bill. If required by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04.322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 032.04 and 032.06, below, shall not begin to run until the Payor receives the Report. (7-1-95)

04. Prompt Payment. If the Payor acknowledges liability for the claim and does not send a Preliminary Objection to, or Request for Clarification of, any charge, as provided in Subsection 032.06, below, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder. (1-1-93)

05. Partial Payment. If the Payor acknowledges liability for the claim and, pursuant to Subsection 032.06 below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection and/or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder. (7-1-95)

06. Preliminary Objections and Requests for Clarification. (1-1-93)

a. Preliminary Objection. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. (1-1-93)

b. Request for Clarification. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. (1-1-93)

c. Provider Contact. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual the Provider may contact regarding the Preliminary Objection or Request for Clarification. (1-1-93)

d. Failure of Payor to Object or Request. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill and/or a Request for Clarification within thirty (30) calendar days of receipt of the bill, it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (1-1-93)

- 07. Provider Reply to Preliminary Objection and/or Request for Clarification.** (1-1-93)
- a.** Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection and/or Request for Clarification. (1-1-93)
- b.** Failure of Provider to Reply to Preliminary Objection. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (1-1-93)
- c.** Failure of Provider to Reply to Request for Clarification. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (1-1-93)
- 08. Payor Shall Pay or Issue Final Objection.** The Payor shall pay the Provider's bill in whole or in part and/or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (1-1-93)
- 09. Failure of Payor to Finally Object.** Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (1-1-93)
- 10. Investigation of Claim Compensability.** Where a Payor is investigating the compensability of a claim as to which a Provider has submitted a bill, the Payor must send a Notice of Investigation of Claim Compensability to the Provider and the Patient within fifteen (15) calendar days of receipt of the Provider's bill. The Payor shall complete its investigation of claim compensability and notify the Commission, the Provider and the Patient of its determination within thirty (30) calendar days of the date the Notice of Investigation of Claim Compensability is sent. Where a Payor does not timely notify the Commission, the Provider and the Patient of its determination, the Payor shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (1-1-93)
- a.** Single Objection Sufficient. A single objection stating that liability has been denied shall be sufficient for each Provider from whom a bill is received. (1-1-93)
- b.** Effect of Commission Determination of Claim Compensability. The thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall recommence running on the date of entry of a final Commission order determining that the claim is compensable. (1-1-93)
- c.** Effect of Determination of Compensability. If the Payor, absent a Commission determination of claim compensability, concludes that it is liable for a claim, the thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall begin running on the date the Payor notifies the Commission, Provider and Patient that it accepts liability for the claim. (1-1-93)
- 11. Dispute Resolution Process.** If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors as Referenced in IDAPA 17.02.08.031 and 032-(formerly 17.01.03.803.a. and 803.b.). (1-1-93)(____)
- ~~**12. Requirements Regarding Disputes Arising Before the Effective Date of This Rule.** (1-1-93)~~
- ~~**a.** Written Demand Required. If, prior to January 1, 1993, a Payor notifies or has notified a Provider that it does not intend to fully pay any charge for Medical Services incurred prior to January 1, 1993, the Provider seeking payment for such charge must send a written Demand for Payment to the Payor no later than January 31, 1993. (Note: Should the matter ultimately proceed to the dispute resolution phase set forth in the Judicial Rule, the Commission will resolve the dispute by applying the administrative rule which was in effect at the time the charge was incurred. Hence, if the charge in dispute was incurred prior to June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA~~

~~17.01.03.803, then in effect. However, if the charge in dispute was incurred on or after June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA 17.02.08.031, now in effect.) (1-1-93)~~

~~**b.** All Provisions of this Rule Will Apply. Such a Demand shall substitute for the bill and Report referenced in Subsection 032.03 above, and must contain all the information required by that section. Service of a timely Demand for Payment will bring the other provisions of this rule into operation. (1-1-93)~~

~~**e.** Failure of Provider to Make Written Demand. Providers failing to make a written Demand for Payment within thirty (30) calendar days of the effective date of this rule shall be forever barred from invoking the Dispute Resolution Process set forth in the applicable Judicial Rule. Demands and/or billings submitted previously either to the Payor or to the Commission will not suffice. (1-1-93)~~

IDAPA 20 - DEPARTMENT OF LANDS

20.03.02 - RULES GOVERNING EXPLORATION AND SURFACE MINING IN IDAHO

DOCKET NO. 20-0302-0502 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the State Board of Land Commissioners ("Land Board") has adopted a temporary rule and the Idaho Department of Lands ("IDL") is commencing proposed rulemaking. The action is authorized pursuant to Section 58-104, Idaho Code.

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

Tuesday, October 18, 2005
6:00 to 8:30 p.m.
Idaho Department of Lands
3780 Industrial Avenue South
Coeur d'Alene, Idaho

Thursday, October 20, 2005
6:00 to 8:30 p.m.
2nd Floor Courtroom, Borah Building
304 North 8th Street
Boise, Idaho

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

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

IDL conducted negotiated rulemaking to promulgate temporary rules pertaining to permanent closure of cyanidation facilities and permanent closure performance bond requirements to implement the provisions of Senate Bill 1169, which amended Idaho Code Title 47, Chapter 15. The amendments contained in SB 1169 require IDL to review and approve permanent closure plans for cyanidation facilities, and to establish permanent closure bond requirements. SB 1169 directed IDL and the Department of Environmental Quality (DEQ) to promulgate temporary rules by August 1, 2005. To ensure consistency among IDL's and DEQ's rules regarding permanent closure requirements, IDL conducted the negotiated rulemaking in coordination with DEQ.

In conjunction with members of the regulated community and other interested parties, IDL initiated negotiated rulemaking to establish temporary/proposed rules pertaining to permanent closure of cyanidation facilities and performance bond requirements for permanent closure plans. Issues addressed in the temporary rules include, but are not limited to, definitions pertaining to the operation and permanent closure of cyanidation facilities, application and performance bond requirements for permanent closure of cyanidation facilities, requirements for permanent closure cost estimates, application fees, and provisions for approving or rejecting an application. The State Board of Land Commissioners adopted the temporary rule at its regular meeting on July 12, 2005.

Issues addressed in the proposed rule will include the negotiated temporary rule text and other amendments to IDL's "Rules Governing Exploration and Surface Mining in Idaho." The latter include, but are not limited to, correction of internal citation cross-references; clarification and/or simplification of language in the current rule; deletion of redundant text; deletion of statutory language from the rules and replacing it with appropriate citations to Idaho Code; and other miscellaneous technical corrections.

In addition to the negotiated temporary rule, substantive changes to IDAPA 20.03.02 include, provisions that will allow operators of cyanidation facilities to apply to file permanent closure bonds in phases that coincide with phased construction, operation, and closure of cyanidation facilities; inclusion of requirements for nonpoint source control and best management practices to protect groundwater, as well as surface water, from nonpoint source sediment or other pollutants that may enter surface or ground waters from mining operations; and a provision allowing the director to request a geotechnical analysis and report for pit walls if there is a potential for the wall to fail, regardless of height.

The proposed rule text is in legislative format. Language IDL proposes to add is underlined. Language IDL proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

After consideration of public comments, IDL intends to present the final proposal to the Land Board for adoption of a

pending rule in November 2005. The pending rule will become final upon the conclusion of the 2006 session of the Idaho Legislature if approved by the Legislature.

FEE SUMMARY: The following is a specific description of the fees being imposed by these rules.

Amendments to Section 47-1506(g), Idaho Code, authorized the Land Board to require a reasonable fee for reviewing and approving a permanent closure plan. The fee may include the cost to employ a qualified independent party to verify the accuracy of the cost estimate to complete permanent closure, which will be prepared for and submitted to IDL by an operator of a cyanidation facility. IDL will seek assistance from the DEQ and/or qualified consultants to provide the specialized technical expertise necessary for permanent closure plan review. These consultations will be necessary to ensure that appropriate measures are in place, prior to approval of a permanent closure plan, to protect public health, safety, and welfare.

The proposed rule will require an operator of a cyanidation facility to pay an application processing and review fee and a permanent closure cost estimate verification fee. The minimum amount of the processing and review fee will be \$5,000 or, upon agreement between IDL and an operator, a sum equal to IDL's estimated reasonable costs to review a permanent closure application if IDL estimates the cost will be more than \$5,000. The permanent closure cost estimate verification fee will be a sum equal to the reasonable estimated costs for a qualified independent party to review a permanent closure cost estimate.

The application fees apply only to applications for permanent closure of cyanidation facilities; operators engaged in surface mining operations are not required to pay an application fee.

FISCAL IMPACT: No negative impact occurs from this rulemaking; this provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rules pertaining to permanent closure of cyanidation facilities was drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. The scope of rule negotiations included application requirements for permanent closure of cyanidation facilities, the application fee, procedures for application processing and review, permanent closure requirements, and bonding provisions. Subsequent discussions were held to address concerns regarding the proposed amendments to the reclamation rules for exploration and surface mining operations, and to refine or clarify certain provisions in the negotiated temporary rules. The Notice of Intent to Promulgate Rules-Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 6, 2005, Volume 05-4, Page 16.

GENERAL INFORMATION: For more information on IDL's programs and activities, visit IDL's web site at www2.state.id.us/lands/.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rule, contact Eric Wilson at (208)334-3488, ewilson@idl.state.id.us.

Anyone may submit written comments regarding this proposed rule by mail, fax, or e-mail to the address below. IDL will consider all written comments received by the undersigned on or before October 26, 2005.

DATED this 23rd day of August, 2005.

Winston A Wiggins
Director
Idaho Department of Lands
954 W. Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
Phone (208)334-0200
Fax (208)334-2339

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0302-0502

20.03.02 - RULES GOVERNING EXPLORATION, AND SURFACE MINING
~~IN IDAHO,~~ AND CLOSURE OF CYANIDATION FACILITIES

000. LEGAL AUTHORITY.

The following rules are promulgated by the Idaho State Board of Land Commissioners ("board") pursuant to the Idaho Surface Mining Act, Title 47, Chapter 15 ("act chapter"), Idaho Code, and in the event of any conflict between these rules and the act, the latter shall be controlling. authorizes the Idaho State Board of Land Commissioners ("board") to promulgate rules pertaining to mineral exploration; surface mining operations; reclamation of lands affected by exploration and surface mining operations, including review and approval of reclamation and permanent closure plans; requirements for performance bonds for reclamation and permanent closure, and to establish a reasonable fee for reviewing and approving permanent closure plans for cyanidation facilities, including the reasonable cost to employ a qualified independent party, acceptable to the applicant and the board, to review permanent closure plans and to verify the accuracy of cost estimates to complete permanent closure. The board has delegated to the director of the Department of Lands ("department") the duties and powers under the ~~act~~ chapter and these rules, ~~provided that~~ the board ~~shall~~ retains responsibility for administrative review. (11-1-89)(____)

001. TITLE AND SCOPE.

01. Purpose. ~~It is the purpose of these rules to provide for the protection of the public health, safety, and welfare, through measures to reclaim the surface of all the lands within the state disturbed by exploration operations and surface mining operations and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, aquatic resources, and reduce soil erosion. It is also the purpose of these rules to implement the State of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to exploration operations and surface mining operations on lands within the state. These rules are not intended to require reclamation activities in addition to those required by the act.~~ Title. These rules shall be cited as IDAPA 20.03.02, "Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities," IDAPA 20, Title 03, Chapter 02. (11-1-89)(____)

02. Purpose. These rules are intended to provide for the protection of public health, safety, and welfare, by ensuring that all the lands within the state disturbed by exploration and surface mining operations are properly reclaimed and ensuring the proper permanent closure of cyanidation facilities. The requirements and procedures established in these rules are intended to conserve natural resources; aid in the protection of wildlife, domestic animals, and aquatic resources; and reduce soil erosion. It is also the purpose of these rules to implement the State of Idaho's antidegradation policy as set forth in Executive Order No. 88-23 as it pertains to exploration and surface mining operations and cyanidation facilities operating in the state. These rules are not intended to require reclamation or permanent closure activities in addition to those required by the chapter. (____)

023. Scope. ~~In general,~~ These rules establish: (11-1-89)(____)

a. Requirements for exploration ~~operations~~; (11-1-89)(____)

b. Procedures for approval of a surface mining reclamation plan, including an operating plan, when required by Section 47-1506(b), Idaho Code; (7-1-98)

c. Procedures for approval of a permanent closure plan for cyanidation facilities; (____)

ed. Requirements for performance bonds for postmining reclamation to be posted prior to beginning surface mining operations; (11-1-89)

e. Requirements for performance bonds for permanent closure of cyanidation facilities to be posted prior to beginning the construction and operation of a cyanide ore-processing facility; (____)

- ~~df.~~ Reclamation requirements lands disturbed by exploration and surface mining operations; and (11-1-89)(____)
- ~~g.~~ Permanent closure requirements for cyanidation facilities; and (____)
- ~~eh.~~ Procedures for ensuring compliance with ~~the Idaho Surface Mining Act~~ the chapter and these rules. (11-1-89)(____)

034. Other Laws. Operators engaged in Exploration, operations and surface mining operations, and operation of a cyanidation facility shall comply with all applicable laws and rules and regulations and laws of the state of Idaho including, but not limited to the following: (11-1-89)(____)

a. Idaho water quality standards and waste water treatment requirements established in ~~(Title 39, Chapter 1, Idaho Code); IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements"; and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code) and rules promulgated pursuant thereto as IDAPA 58.01.11, "Ground Water Quality Rule," administered by the Idaho Department of Environmental Quality ("DEQ").~~ (11-1-89)(____)

b. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, "Rules and Standards for Hazardous Waste" and IDAPA 58.01.06, "Solid Waste Management Rules," administered by the DEQ. (____)

~~bc.~~ Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ, IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation". (11-1-89)(____)

~~ed.~~ Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (11-1-89)

~~de.~~ Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules ~~as~~ promulgated and administered by the Idaho Department of Water Resources. (11-1-89)(____)

045. Applicability. These rules are to be read and applied in conjunction with the chapter. These rules apply to all exploration, surface mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership, with the following exceptions: (7-1-93)(____)

a. ~~These rules apply to surface mining operations or exploration operations conducted on all lands within the state, regardless of ownership, commenced after the effective date of these rules. Provided further that these rules shall in no way affect, alter, or modify the terms or conditions of any approved reclamation plan or previously approved amendment thereto; or a performance bond filed for reclamation obtained prior to January 1, 1997. If unless there is a material change in circumstances arises and is regulated in accordance with Subsection 090.01, then the operator shall submit that requires a supplemental reclamation plan. All public or governmental agencies who extract minerals to be used by or for the benefit of such agency must comply with these rules.~~ (7-1-98)(____)

b. These rules shall not apply to: (____)

i. Any surface mining operations performed prior to May 31, 1972, and further, an operator shall not be required to perform such reclamation activities as to any pit or overburden pile as it existed prior to May 31, 1972; (____)

ii. Mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act, nor to surface disturbances resulting from underground mining. (____)

iii. Extraction of minerals from within the right-of-way of a public highway by a public or

governmental agency for maintenance, repair or construction of a public highway, provided the affected land is an integral part of such highway. ()

c. Sand and gravel mining operations in state-owned beds of navigable lakes, rivers or streams shall constitute an approved surface mining plan for the purpose of these rules if they are covered by a valid lease granted by the board in accordance with Title 47, Chapter 7, Idaho Code and IDAPA 20.03.05, "Rules Governing Riverbed Mineral Leasing," and a valid mineral lease bond; have a valid stream channel alteration permit issued by the Idaho Department of Water Resources; and have a plan of operation for the mineral lease approved by the department. ()

bd. Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which ~~disturb more than two (2) acres, shall comply with the provisions of Section 069;~~ (7-1-98)()

i. Disturb more than two (2) acres shall comply with the provisions of Section 069; or ()

ii. Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which ~~d~~Disturb less than two (2) acres, are exempt from provisions of Section 069, but must are only required to comply with Subsections 060.06.a., ~~060.06.b., and through~~ 060.06.c. (7-1-98)()

d. Extraction of minerals from within the right of way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway shall not be deemed surface mining operations under these rules, provided that the affected land is an integral part of the public highway. (7-1-98)

e. These rules do not apply to any surface mining operations performed prior to May 31, 1972, and further, an operator shall not be required to perform such reclamation activities as to any pit or overburden pile as it existed prior to May 31, 1972. However, if an operator elects to re-affect an area mined prior to May 31, 1972, the newly disturbed lands shall be subject to the act and these rules. (11-1-89)

f. These rules do not apply to surface mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act, nor to surface disturbances caused by an underground mining operation. (11-1-89)

g. Sand and gravel mining operations in state owned beds of navigable lakes, rivers, or streams shall constitute an approved surface mining plan for the purpose of these rules, if they: (11-1-89)

i. Are covered by a valid lease granted by the board in accordance with the board's "Rules Governing Riverbed Mineral Leasing," (IDAPA 20.03.05); (11-1-89)

ii. Have a valid stream channel alteration permit issued by the Department of Water Resources; (11-1-89)

iii. Have a plan of operation for the mineral lease approved by the Department of Lands; and (11-1-89)

iv. Are covered by a valid mineral lease bond. (11-1-89)

e. A cyanidation facility with a permit approved by the DEQ prior to July 1, 2005, shall be subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005; however, if there is a material modification or material expansion to a cyanidation facility after July 1, 2005, these rules shall apply to the modification or expansion. ()

002. (RESERVED) WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the department has written statements which pertain to the interpretation of the rules of this chapter. The document is available for public inspection and copying at cost at

the Department of Lands, 954 West Jefferson Street, Boise, Idaho 83720-0050.

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003. ADMINISTRATIVE APPEALS.

If an operator fails to comply with the provisions of the chapter or these rules, the director may notify the operator of such noncompliance and endeavor to remedy any alleged violation in accordance with Section 47-1513, Idaho Code. If the director determines that administrative action is necessary to correct any alleged violations, up to and including forfeiture of a reclamation or permanent closure bond, he shall follow the procedures established in Section 47-1513, Idaho Code.

()

~~**01. Notice of Non-Compliance.** Whenever the director becomes aware that an operator has not complied with the provisions of the act or these rules, the director shall notify the operator in writing of this non-compliance and through conference with the operator seek to remedy the non-compliance. Any period set by the parties for correction of a violation shall be binding.~~

~~(11-1-89)~~

~~**02. Administrative Complaint.** In the event of the failure of any conference, conciliation, and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt, signed by the operator, an officer of a corporate operator, or the designated agent of the operator, shall constitute service.~~

~~(11-1-89)~~

~~**03. Answer and Hearing.** The operator shall be required to answer the formal complaint and request a hearing before a hearing officer appointed by the director within thirty (30) days of receipt of the complaint if matters asserted in the complaint are disputed. The hearing shall be held at a time not less than thirty (30) days after the date the operator requests such a hearing. The board shall issue subpoenas at the request of the director and at the request of the charged operator. The hearing will be conducted in accordance with Sections 67-5209 through 67-5213, Idaho Code, and these rules.~~

~~(11-1-89)~~

~~**04. Order.** The hearing officer shall enter an order in accordance with Sections 67-5212, Idaho Code, which, if adverse to the operator, shall designate a time period within which prescribed corrective action, if any, should be taken. The designated time period shall be sufficient to allow a reasonably diligent operator to correct any violation. Procedure for appeal of an order is outlined in Section 160.~~

~~(11-1-89)~~

~~**05. Compliance With Order.** Upon the operator's compliance with the order, the director will consider the matter resolved and shall take no further action with respect to such noncompliance.~~

~~(11-1-89)~~

~~**06. Default by Operator.** If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the director may proceed to cancel the reclamation plan and forfeit the bond in the amount necessary to reclaim affected lands.~~

~~(11-1-89)~~

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into this rule.

()

005. INCLUSIVE GENDER.

For all sections and subsections of these rules, the terms and references used in the masculine include the feminine and vice versa, as appropriate.

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006. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 954 West Jefferson Street, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200.

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007. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code.

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~~0048~~. -- 009. (RESERVED).

010. DEFINITIONS.

~~01.~~ Act. The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code. (11-1-89)

~~021.~~ **Affected Land.** The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site. (11-1-89)

~~032.~~ **Approximate Previous Contour.** A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)

~~043.~~ **Best Management Practices (“BMPs”).** Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals. Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (11-1-89)()

~~054.~~ **Board.** The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (11-1-89)

~~05.~~ **Chapter.** The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code. ()

~~06.~~ **Cyanidation.** The method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction. ()

~~07.~~ **Cyanidation Facility.** That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water. ()

~~078.~~ **Department.** The Idaho Department of Lands. Its business address is 954 West Jefferson Street, Boise, Idaho 83720. (7-1-98)

~~069.~~ **DEQ.** The Department of Environmental Quality. (11-1-89)

~~0810.~~ **Director.** The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be designated by the director. (11-1-89)

~~11.~~ **Discharge.** With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. ()

~~0912.~~ **Exploration Drill Holes.** Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

~~103.~~ **Exploration Operations.** Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)

~~114.~~ **Exploration Roads.** Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

125. Exploration Trenches. Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

136. Final Order of the Board. A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (11-1-89)

17. Groundwater. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ()

148. Hearing Officer. That person selected by the board to hear proceedings under Section 47-1513, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)

19. Land Application. With regard to cyanidation facilities, a process or activity involving application of process water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. ()

1520. Material Change. ()

a. For surface mining, A change which deviates from the approved reclamation plan and causes one (1) of the following to occur: (7-1-98)()

ei. Results in a substantial adverse affect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities or pit walls; (7-1-98)

bii. Substantially modifies surface water management, not to include routine implementation and maintenance of best management practices BMPs; (7-1-98)()

ei. Exceeds the permitted acreage; or (7-1-98)

di. Increases overall estimated reclamation costs by more than fifteen percent (15%). (7-1-98)

b. For cyanidation facilities, a change which causes one (1) of the following to occur: ()

i. A circumstance that results in a substantial adverse effect to the geotechnical stability of the cyanidation facilities; ()

ii. A circumstance that necessitates a substantial change in the water management plan. ()

iii. A significant increase in Increases overall estimated permanent closure costs by more than fifteen percent (15%). ()

21. Material Modification or Material Expansion. With regard to cyanidation facilities: ()

a. The addition of a new beneficiation process, or a significant change in the capacity of an existing beneficiation process, which was not identified in the original application and that significantly increases the potential to degrade the waters of the state. Such process could include, but is not limited to, heap leaching and process components for milling; or ()

b. A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or ()

c. A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. ()

d. For a cyanidation facility with an existing permit that did not actively add cyanide after January 1,

2005. reclamation and closure related activities shall not be considered to be material modifications or material expansions of the cyanidation facility. ()

22. Material Stabilization. Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria. ()

~~16~~23. Mine Panel. That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)

~~17~~24. Mined Area. Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)

~~18~~25. Mineral. Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)

~~19~~26. Mineral Stockpile. Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)

~~20~~27. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)

28. Neutralization. Treatment of process waters such that discharge or final disposal of those waters does not, or shall not violate all applicable standards and criteria. ()

~~21~~29. Operator. Any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including but not limited to every public or governmental agency engaged in surface mining or exploration operations, or engaged in the operation and/or permanent closure of a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the ~~act~~ chapter. (11-1-89)()

~~22~~30. Overburden. Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)

~~23~~31. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. (11-1-89)

~~24~~32. Peak. A projecting point of overburden. (11-1-89)

33. Permanent Closure. Those activities which result in neutralization, material stabilization, and decontamination of cyanidation facilities and/or facilities' final reclamation. ()

34. Permanent Closure Plan. A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter, in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions. ()

35. Permit. When used without qualification, any written authorization by the Department of Environmental Quality, issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," governing the location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation

facility or a material expansion or material modification to a cyanidation facility. ()

36. Pilot Facility. ()

a. A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the beneficiation process to determine: ()

i. The feasibility of metals recovery from an ore; or ()

ii. The optimum operating conditions for a predetermined process to extract values from an ore. ()

b. A pilot or testing cyanidation facility operated for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. ()

2537. Pit. An excavation created by the extraction of minerals or overburden during surface mining operations. (11-1-89)

38. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use, or for any other reason, may impact the surface or ground waters of the state. ()

39. Post Closure. The period of time after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. ()

40. Process Waters. Any liquids which are intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. ()

2641. Reclamation. The process of restoring an area affected by a surface mining operation to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (11-1-89)

2742. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)

2843. Ridge. A lengthened elevation of overburden. (11-1-89)

2944. Road. A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)

45. Small Cyanidation Processing Facility. A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted cyanidation facility. No person or operator may concurrently hold more than one (1) small cyanidation processing facility permit, if located within ten (10) miles of each other. ()

3046. Surface Mine. An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)

3147. Surface Mining Operations. The activities performed on a surface mine in the extraction of

minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, 1) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or 2) which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)

~~3248.~~ **Surface Waters.** The surface waters of the state of Idaho. (11-1-89)

~~3349.~~ **Tailings Pond.** An area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)

50. Treatment. With regard to cyanidation facilities, any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. ()

51. Water Balance. An inventory and accounting process capable of being reconciled that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. ()

52. Water Management Plan. A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state, unless permitted or otherwise approved by the DEQ. ()

53. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. For the purposes of these rules, and in accordance with Section 39-3602(31), Idaho Code, these waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. ()

54. Weak Acid Dissociable (WAD) Cyanide. The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500-CN- I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. ()

011. -- 049. (RESERVED).

050. ADMINISTRATION.
The ~~D~~department ~~of Lands~~ shall administer these rules under the direction of the director. (~~11-1-89~~)()

051. -- 059. (RESERVED).

060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.

01. Diligence. All reclamation activities required to be conducted on exploration sites shall be performed in a good, workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, or trench, within one (1) year after abandonment thereof. (11-1-89)

02. When Exploration Is Surface Mining. Exploration operations may under some circumstances constitute "surface mining operations" (see Subsection 010.~~3046~~). (~~11-1-89~~)()

03. Notification. Any operator desiring to conduct exploration ~~within the state of Idaho~~ using motorized earth-moving equipment to locate minerals for immediate or ultimate sale, ~~in either the natural or~~

~~processed state~~, shall notify the department by certified mail within seven (7) days after beginning exploration operations. (11-1-89)(____)

04. Contents of Notification. The ~~letter~~ notification shall include ~~the following~~: (11-1-89)(____)

- a. The name and address of the operator; (11-1-89)
- b. The legal description of the exploration ~~operation~~ and its starting and estimated completion date; and (11-1-89)(____)
- c. The anticipated size of the exploration ~~operation~~ and the general method of operation. (11-1-89)(____)

05. Confidentiality. ~~The letter~~ Any such notification shall be treated as confidential in accord with Section 180. (11-1-89)(____)

06. Exploration Reclamation (Less Than Two Acres). Every operator who conducts exploration ~~operations~~ affecting less than two (2) acres shall: (11-1-89)(____)

- a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)
- b. Conduct revegetation activities in accordance with Subsection 140.101. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. (11-1-89)(____)

c. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification. (____)

ed. If water runoff from exploration ~~operations~~ causes siltation of surface waters in ~~excess of that which amounts more than~~ normally results from runoff, the operator shall ~~prepare~~ reclaim affected lands and adjoining lands under his control as is necessary to re-establish ~~conditions of runoff water existing conditions that existed~~ prior to ~~commencement of starting~~ exploration ~~operations~~, or as is necessary to meet state water quality standards, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard unless baseline data is provided to rebut the presumption. (11-1-89)(____)

07. Exploration Reclamation (More Than Two Acres). Reclamation ~~required for~~ of lands where exploration ~~operations affecting~~ has affected more than two (2) acres shall be completed as set forth in Subsection 060.06 and the following additional requirements: (11-1-89)(____)

a. ~~Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on federal mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification.~~ (11-1-89)

b. ~~If water runoff from affected lands results in siltation of surface waters in excess of that which normally results from runoff, the operator shall prepare affected lands and adjoining lands under the operator's control as is necessary to meet state water quality standards, or to re-establish conditions of runoff water quality prior to commencing exploration operations, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard, unless baseline data is provided to rebut the presumption.~~ (11-1-89)

ea. Abandoned exploration roads shall be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or ~~section of~~ road segment be left for a specific purpose and not be cross-ditched or revegetated; ~~if such request or petition is approved, If the director approves the petition,~~ the operator cannot thereafter be required to conduct reclamation activities with respect to that

given road or ~~section of~~ road segment. (11-1-89)(____)

~~d.~~ The operator shall conduct revegetation activities in accordance with Subsection 140.10. (11-1-89)

~~eb.~~ Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)

~~fc.~~ Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)

~~gd.~~ Overburden piles shall be reasonably prepared to control erosion. (11-1-89)

~~he.~~ Abandoned lands affected by ~~an~~ exploration ~~operation~~ shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration ~~operation~~, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon. (11-1-89)(____)

~~if.~~ Any water containment structure created in connection with exploration ~~operations~~, shall be reasonably prepared so as not to constitute a hazard to humans ~~or animals~~ life. (11-1-89)(____)

08. Additional Reclamation. The operator and the director may agree, in writing, ~~to do any act with respect to~~ complete additional reclamation ~~above and~~ beyond the requirements ~~set forth~~ established in the chapter and these rules. (11-1-89)(____)

061. -- 068. (RESERVED).

069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.

01. Approval Required. Approval of a reclamation plan by the department is required even if approval of such plan has been or will be obtained from a federal agency. (____)

042. No Operator Shall Conduct Surface Mining Operations. No operator shall conduct surface mining operations, ~~as defined in these rules~~, on any lands in the state ~~of Idaho~~ until the surface mining reclamation plan has been approved by the director, and the ~~department has received~~ operator has filed a bond ~~meeting that meets~~ the requirements of the chapter and these rules. (7-1-98)(____)

023. Application Package. The operator must submit five (5) complete copies of the ~~surface mining~~ application package, for each separate surface mine or mine panel, before the reclamation plan will be ~~granted approval~~ approved. Separate surface mines are individual, physically disconnected operations. ~~The~~ A complete application package consists of: (7-1-98)(____)

a. An application provided by the director; (7-1-98)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.03; (7-1-98)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.04. ~~The map and reclamation plan may be combined on one (1) sheet if practical;~~ and (7-1-98)(____)

d. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency ~~requiring that requires an action or actions~~ to be taken to prevent environmental damage, both the operator and the authorized agent will be notified as well ~~as the operator~~. (7-1-98)(____)

034. Map Requirements ~~of Maps~~. A vicinity map shall be prepared on standard United States

Geological Survey; (“USGS”) seven and one-half (7.5) minute quadrangle maps; or equivalent. A map of the proposed surface mining operation site shall be of sufficient scale to ~~adequately~~ show ~~the following~~:

(7-1-98)(____)

a. The location of existing roads, access, and main haulage roads to be constructed or reconstructed; in ~~conducting~~ conjunction with the surface mining operation; ~~along with~~ and the approximate dates for construction, reconstruction, and abandonment;

(7-1-98)(____)

b. The approximate location; and ~~the~~ names, if known, of drainages, streams, creeks, or water bodies ~~of water~~ within one thousand (1,000) feet of the surface mining operation;

(7-1-98)(____)

c. The approximate boundaries of the lands to be utilized in the surface mining operations, including a legal description to the quarter-quarter section;

(7-1-98)(____)

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations ~~following approval of a surface mining reclamation plan~~;

(7-1-98)(____)

e. The currently planned storage locations of fuel, equipment maintenance products, ~~and~~ wastes, and chemicals; ~~which that~~ will be utilized in the surface mining operation;

(7-1-98)(____)

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds ~~which that~~ will be utilized ~~in surface mining operations~~;

(7-1-98)(____)

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (7-1-98)

h. A surface and mineral control or ownership map of appropriate scale for boundary identification; (7-1-98)

~~i. On a map, operators shall identify the best management practices which will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation;~~ (7-1-98)

045. Requirements for Reclamation Plan Requirements. A ~~r~~ Reclamation plans must be submitted in map and narrative form and include the following: (7-1-98)(____)

a. Where surface waters are likely to be impacted; and when requested by the director, ~~the operator shall provide~~ document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters; and the ~~best management practices~~ BMPs the operator will ~~take~~ use to control such ~~nonpoint source~~ impacts during surface mining and reclamation; (7-1-98)(____)

b. Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; (7-1-98)(____)

c. Roads to be reclaimed; (7-1-98)

d. A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (7-1-98)

e. The planned reclamation of wash plant or sediment ponds; (7-1-98)(____)

f. A drainage control map which identifies the location of BMPs that will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation activities. (____)

05- Approval Required. Approval of a reclamation plan must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (7-1-98)

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE MINING OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.

01. Reclamation Plan Approval Required. ~~Approval of a reclamation plan by the department is required even if approval of such plan has been or will be obtained from a federal agency. No operator shall conduct surface mining operations, as defined in these rules, on any lands in the state of Idaho until the surface mining reclamation plan has been approved by the director, and the department has received a operator has filed the required performance bond meeting the requirements of these rules. Any operator who is not required to submit an operating plan for a surface mining operation to an entity of the federal government shall submit to the board, as part of the reclamation plan, an operating plan with regards to that surface mining operation. No operator who is required to submit an operating plan for a surface mining operation to an entity of the federal government shall be required to submit all operating plans to the board. This provision shall apply to all lands, regardless of surface or mineral ownership, covered by the operating plan submitted to the entity of the federal government.~~ (7-1-98)(____)

02. Application Package. The operator must submit five (5) complete copies of the ~~surface mining~~ application package; for each separate surface mine or mine panel; before the reclamation plan will be ~~granted approval~~ approved. Separate surface mines are individual, physically disconnected operations. ~~The A~~ complete application package consists of: (11-1-89)(____)

~~a. An application provided by the director~~ All items and information required under Section 069 of these rules; (11-1-89)(____)

~~b. A map or maps of the proposed mining operation which includes the information required under Subsection 070.03;~~ Any additional information required by Subsection 070.04; and (11-1-89)(____)

~~c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 070.04. The map and reclamation plan may be combined on one (1) sheet if practical;~~ An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsections 070.05 and 070.06 of these rules. (11-1-89)(____)

~~d. An operating plan, if required, in map and narrative form which includes the information required under Subsections 070.05 and 070.06.~~ (7-1-98)

~~e. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the operator.~~ (11-1-89)

03. Map Requirements of Maps. ~~Vicinity maps shall be prepared on standard United States Geological Survey, seven and one half (7.5) minute quadrangle maps, or equivalent. Maps of the proposed surface mining operation site shall be of sufficient scale to adequately show the following: Maps shall be prepared in accordance with Subsection 069.04 of these rules.~~ (11-1-89)(____)

~~a. The location of existing roads, access, and main haulage roads to be constructed or reconstructed, in conducting the surface mining operation, along with approximate dates for construction, reconstruction, and abandonment;~~ (11-1-89)

~~b. The approximate location, and the names, if known, of all streams, creeks, or bodies of water within one thousand (1,000) feet of the surface mining operation;~~ (11-1-89)

~~c. The approximate boundaries of the lands to be utilized in the surface mining operations, including legal description to the quarter-quarter section;~~ (11-1-89)

~~d. The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations following approval of a surface mining reclamation plan;~~ (11-1-89)

~~e. The currently planned location of all tailings ponds and other ancillary structures including storage locations for fuel; equipment maintenance products and wastes; and chemicals; which will be utilized in the surface mining operation; (7-1-98)~~

~~f. The currently planned location and configuration of pits, mineral stockpiles, and overburden disposal areas, and topsoils/growth medium storage which will be utilized in surface mining operations; (7-1-98)~~

~~g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (11-1-89)~~

~~h. A surface and mineral control or ownership map of appropriate scale for boundary identification. (11-1-89)~~

04. Reclamation Plan Requirements for Reclamation Plan. ~~A reclamation plan must be submitted in map and narrative form and include all of the information required under Subsection 069.05 and the following additional information: (11-1-89)(____)~~

~~a. Scaled cross-sections by length and height, showing planned surface profiles before and after mining and reclamation; (11-1-89)~~

~~b. On a drainage control map, show the best management practices to be utilized to minimize erosion on affected lands; (11-1-89)~~

~~c. Roads to be reclaimed; (11-1-89)~~

~~d. A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (11-1-89)~~

ea. The planned reclamation of tailings or sediment ponds; and (11-1-89)

fb. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs. (11-1-89)

~~g. Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the operator will take to control such nonpoint source impacts during surface mining and reclamation. (7-1-98)~~

hc. A description of foreseeable, site-specific impacts from acid rock drainage and the ~~best management practices~~ BMPs that will be used to mitigate ~~the any~~ impacts, ~~if any~~, from such acid rock drainage. (7-1-98)(____)

d. Other pertinent information the department has determined is necessary to ensure that the operator will comply with the requirements of the chapter. (____)

05. Operating Plan Requirements for Operating Plan. A complete operating plan shall consist of: (7-1-98)(____)

a. Maps showing: ~~the location of existing roads and anticipated access and main haulage roads planned to be constructed for surface mining operations.~~ (7-1-98)(____)

i. The location of existing roads and anticipated access and principal haul roads planned to be constructed for surface mining operations. (____)

bii. The boundaries and acreage of the affected lands ~~to be utilized in the process of surface mining operations.~~ (7-1-98)(____)

~~eiii. Maps showing~~ The planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operation. (7-1-98)(____)

~~d~~iv. The location and, if known, the names of all streams, creeks, or water bodies of water within the area where surface mining operations shall take place area of the affected lands. (7-1-98)(____)

e. The drainage adjacent to the area where the surface is being utilized by surface mining operations. (7-1-98)

~~f~~vi. The approximate boundaries and acreage of the lands that will become affected during the first year of construction of surface mining operations. (7-1-98)(____)

~~g~~b. If an operator proposes to utilize coarse and durable rock armor are proposed to be used for reclamation of mine facilities, the director may, after considering the type, size, and potential environmental impact of the facility, require the operator to verify the quantities, size, class, and durability of the materials which will be used for final reclamation and armoring. The operator may also be required to specify their plans to schedule, handle, and/or stockpile the coarse and durable materials to ensure that adequate quantities of these materials are available during reclamation. to include additional information in the operating plan. Such information may include, but is not limited to, one (1) or more of the following: (7-1-98)(____)

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. (____)

ii. A description of how the coarse and durable materials will be handled and/or stockpiled, including a schedule for such activities that will ensure adequate quantities are available during reclamation. (____)

~~h~~c. If an operator proposes to construct waste rock or overburden storage facilities, or excavate pit walls in excess of one hundred (100) feet high, and failure of the facilities or pit would reasonable be expected to adversely impact adjacent surface waters or adjacent private or state lands, The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by a registered an engineer registered in the state of Idaho, which shows these features would be constructed to meet accepted safety standards: that (1) any waste rock or overburden stockpiles, (2) any pit walls proposed to be more than one hundred (100) feet high, or (3) any pit walls where geologic conditions could lead to failure of the wall regardless of the height will be constructed in a manner that is consistent with industry standards to minimize the potential for failure. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, The analysis may be required to consider the long-term strength stability of the stored materials and rock these structures, the potential for groundwater buildup accumulation, and the expected seismic accelerations at the site. (7-1-98)(____)

~~06.~~ Approval Required. Approval of a reclamation plan must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (11-1-89)

071. APPLICATION PROCEDURE AND REQUIREMENTS FOR PERMANENT CLOSURE OF CYANIDATION FACILITIES.

01. Permanent Closure Plan Approval Required. No operator shall construct or operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed a bond, as required by these rules. (____)

02. Permanent Closure Plan Requirements. A permanent closure plan shall: (____)

a. Identify the current owner of the cyanidation facility and the party responsible for the permanent closure and the long-term care and maintenance of the cyanidation facility; (____)

b. Include a timeline showing: (____)

i. The schedule to complete permanent closure activities, including neutralization of process waters

and material stabilization, and the time period for which the operator shall be responsible for post-closure activities; and ()

ii. If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. ()

c. Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; ()

d. Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan shall be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. ()

e. Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. ()

f. Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and groundwaters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must be signed and stamped by a professional engineer registered in the state of Idaho; ()

g. Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; ()

h. Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. ()

i. Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; ()

j. Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; ()

k. Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: ()

i. Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed bond release schedule; ()

ii. Be based upon the assumption that permanent closure activities will be completed by a third party whose services are contracted for by the board as a result of a bond forfeiture under Section 47-1513, Idaho Code, and include: ()

(1) All direct and indirect costs expected to be incurred by a third party including, but not limited to, mobilization, labor, materials, equipment, engineering, and demobilization costs; and ()

(2) An amount acceptable to the department but not to exceed ten percent (10%) of the total estimated

closure costs, which is intended to cover costs the department will incur in association with contract administration. ()

l. If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: ()

i. Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and ()

ii. Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. ()

m. Provide any additional information that may be required by the department to ensure compliance with the objectives of the permanent closure plan and the requirements of the chapter. ()

03. Preapplication Conference. Prospective applicants are encouraged to meet with the department well in advance of preparing and submitting an application package to discuss the anticipated application requirements and application procedures, and to arrange for a visit or visits to the proposed location of the cyanidation facility. The preapplication conference may trigger a period of collaborative effort between the department, the DEQ, and the applicant in developing checklists to be used by the agencies in reviewing an application for completion, accuracy, and protectiveness. ()

04. Application Package for Permanent Closure. An application and its contents submitted to the department shall be used to determine whether an applicant can complete all permanent closure activities in conformance with all applicable state laws. An application must provide information in sufficient detail to allow the director to make necessary application review decisions regarding cyanidation facility closure and protection of public health, safety, and welfare, in accordance with the chapter. Five (5) copies of the application package must be submitted to the department. A complete application package for an operator proposing to use cyanidation shall consist of: ()

a. A department application form completed, signed, and dated by the applicant. This form shall contain the following information: ()

i. Name, location, and mailing address of the cyanidation facility; ()

ii. Name, mailing address, and phone number of the operator. An out-of-state operator shall designate an in-state agent authorized to act on his behalf. In case of an emergency that requires actions to prevent environmental damage, both the operator and his agent will be notified; ()

iii. Land ownership status (federal, state, private or public); ()

iv. The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and ()

v. The legal structure (corporation, partnership, etc.) and primary place of business of the operator. ()

b. Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; ()

c. A permanent closure plan as prescribed in Subsection 071.02; ()

d. The DEQ application and supporting materials; ()

e. The five thousand dollar (\$5,000) application processing and review fee, as defined in Subsection 071.05.a. ()

05. Application fee. The application fee shall consist of two (2) parts: ()

a. Processing and review fee. ()

i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the department's review; the assumptions on which the department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, and travel expenses and any other direct expenses the department expects to incur, and indirect expenses equal to ten percent (10%) of the department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. ()

ii. If the department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the department's estimate, or may commence negotiations with the department to establish a reasonable fee. ()

iii. If, within twenty (20) days from issuance of the department's estimate, the department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the board. The board shall: ()

(1) Review the department's estimate; ()

(2) Conduct a hearing where the applicant is allowed to give testimony to the board concerning the department's estimate; and ()

(3) Establish the amount of the application review and processing fee. ()

iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the board's decision or withdraw the application. ()

v. Nothing in this section shall extend the time in which the board must act on a plan submitted. ()

b. Permanent closure cost estimate verification fee. ()

i. Pursuant to Sections 47-1506(g) and 47-1513(j), Idaho Code, the department may employ a qualified independent party, acceptable to the operator and the board, to verify the accuracy of the permanent closure cost estimate. ()

ii. The applicant shall be solely responsible for paying the department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost estimate. The applicant may participate in the department's processes for identifying qualified parties and selecting a party to perform this work. ()

iii. If a federal agency has responsibility to establish the bond amount for permanent closure of a cyanidation facility on federal land, the department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. ()

071. -- 079. (RESERVED).

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION TO PERFORM SURFACE MINING, RECLAMATION, AND ORE PROCESSING USING CYANIDE.

01. Return of Application. *Within thirty (30) days after receipt by the department, an application for a surface mining reclamation plan may be returned for correction and resubmission if either the reclamation plan or mine map(s) are incomplete. Return of an application by the director shall constitute a rejection pursuant to Section 47-1507(b), Idaho Code.* (11-1-89)()

a. Surface mining reclamation. Within thirty (30) days after receipt of a reclamation plan by the department, an application for surface mining reclamation may be returned for correction and resubmission if either the reclamation plan or mine map(s) are incomplete. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ()

b. Permanent closure plans for cyanidation facilities. Within thirty (30) days after receipt of a permanent closure plan by the department, an application for permanent closure of a cyanidation facility may be returned for correction and resubmission, if the permanent closure plan does not meet the requirements of Section 071 of these rules. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ()

02. Agency Notification and Comments.

a. Nonconfidential materials submitted under Sections 069, ~~and~~ 070, and 071 shall be forwarded by the director to the ~~Idaho~~ Departments of Water Resources, Environmental Quality (~~DEQ~~), and Fish and Game for review and comment. ~~Such review and comment shall not extend the legal time limit for the director to notify the applicant of a decision on the application.~~ The director may decide not to circulate applications submitted under Section 069 if the director determines the impacts of ~~such~~ the proposed activities are minor and do not involve surface waters. The director may provide public notice on receipt of a reclamation plan or permanent closure plan. In addition, ~~a copy of an application~~ nonconfidential contents of an application will be provided to individuals who request the information in writing, as required by the Idaho Public Records Act. (7-1-98)()

03. ~~Notification of Cities and Counties.~~ Upon receipt of a proposed reclamation plan or amended or supplemental reclamation plan, the director shall notify the cities and counties in which the surface mining operation is proposed. The notice shall include the name and address of the operator and shall describe the procedure and the schedule by which the plan may be approved or denied. This notification requirement shall not apply to exploration operations. (7-1-98)

a. ~~Cities and counties may review the nonconfidential portions of the plan at the department's office and may provide comments to the director concerning the plan. Nothing in this section shall extend the time limit for the board to deliver to the operator a notice of rejection or approval of the plan or affect the confidentiality provisions of Idaho Code Title 47, Chapter 15.~~ (7-1-98)

b. ~~No city or county shall enact or adopt any ordinance, rule or resolution to regulate exploration or surface mining operations in this state which conflicts with any provision of this chapter or the rules promulgated thereunder. This subpart shall not affect the planning and zoning authorities available to cities and counties pursuant to Idaho Code Title 67, Chapter 65.~~ Upon receipt of a complete application for reclamation of surface-mined areas or permanent closure of a cyanidation facility, the director shall provide notice to the cities and counties where the surface mining or cyanidation facility operation is proposed, in accordance with Section 47-1505(7), Idaho Code. The notice shall include the name and address of the operator, the procedure and schedule for the department's review, and an invitation to review nonconfidential portions of the application, if requested in writing. Such notice will be provided upon receipt of a reclamation plan, a permanent closure plan, or an amended or supplemental plan for an existing operation, or an amended cost estimate to complete permanent closure of a cyanidation facility, if required under the chapter and these rules. (7-1-98)()

043. Decision on Application in Sixty Days Reclamation Plans. ~~The director must notify the applicant in writing of approval or denial within sixty (60) days of receipt of the application, unless prevented from inspecting the proposed surface mining site as provided in Subsection 080.10. If the director fails to deliver a notice of approval or denial within this time period, the application shall be deemed to comply with these rules, and the applicant may proceed, with bonding requirements under Section 120, as though approval for the application had been received.~~ Pursuant to Sections 47-1507 and 47-1508, Idaho Code, following review of a new reclamation plan or an amended or supplemental reclamation plan, the director shall: (7-1-98)()

05a. Approval. ~~Following review of an application for approval of a new reclamation plan, or for amendment of an existing plan, the director shall approve the application if it meets the requirements of the rules, the act, and other pertinent laws and regulations, and shall deliver written notice of the decision to the operator.~~

Operations may then commence after the bonding requirements of Section 120 are met. (H-1-89)()

i. Within sixty (60) days of receipt of an application that complies with Subsection 070.04 of these rules, the department shall provide written notice to the applicant that the reclamation plan or any amendment(s) or supplementary plan(s) to an approved reclamation plan is approved or denied and, if approved, the amount of the reclamation bond required; or ()

ii. If the director does not take action within sixty (60) days, a reclamation plan or any amendments or supplementary plans thereof shall be deemed to comply with the chapter, unless the sixty (60) day time period is extended pursuant to Section 47-1512(c), Idaho Code. ()

iii. The operator and director may agree, in writing, to implement additional actions with respect to reclamation that extend beyond the requirements set forth in these rules. ()

~~**06b.** Inspections. *If the director deems a field inspection of the proposed surface mining operations site necessary in processing an application, the applicant will be contacted and asked that he or his duly authorized employee or agent be present. The applicant shall make such persons available for the purpose of inspection. This rule shall not prevent the department from making an inspection of the site if the applicant does not appear. The director may determine that an inspection of the proposed surface mining site location is necessary if the inspection will provide additional information or otherwise aid in processing of the application.*~~ (H-1-89)()

i. If the director decides to perform an inspection, the applicant will be contacted and asked that he or an authorized employee or agent be present. This rule shall not prevent the department from making an inspection of the site if the applicant does not appear. ()

ii. If weather conditions preclude an inspection of a proposed surface mining operation, the director shall provide written notice to the applicant that review of the reclamation plan or an amended or supplementary plan has been suspended until weather conditions permit an inspection, and that the schedule for a decision shall be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1512(c), Idaho Code. ()

04. Decision on Cyanidation Facility Permanent Closure Plans. Pursuant to Sections 47-1507 and 47-1508, Idaho Code, following review of a complete application, the director shall: ()

a. Coordination with DEQ. Initiate a coordinated interagency review of the application by providing a notice in writing to the DEQ director that the department has received an application for permanent closure of a cyanidation facility; ()

b. Approval. ()

i. Within one-hundred eighty (180) days of receipt of an application that complies with Subsection 071.04 of these rules, the department shall provide written notice to the applicant that the permanent closure plan is approved or denied and, if approved, the amount of the permanent closure bond required; or ()

ii. If the director does not take action within one-hundred eighty (180) days, a permanent closure plan, or any amendments or supplementary plans thereof, shall be deemed to comply with the provisions of the chapter, unless the one hundred eighty (180) day time period shall be extended in accordance with Section 47-1512(d), Idaho Code. ()

c. Inspections. The director may determine that it is necessary to inspect the proposed cyanidation facility location if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director determines to inspect the site, the applicant will be contacted and asked that he or an authorized employee or agent be present. The department may proceed with an inspection if the applicant or his designated employee or agent does not appear. ()

ii. If weather conditions preclude an inspection of the proposed cyanidation facility, the director shall provide written notice to the applicant that processing of the application has been suspended until weather conditions permit an inspection, and that the schedule for a decision shall be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1512(d), Idaho Code. ()

075. Nonpoint Source Pollution. When the director determines, after consultation with the DEQ, that there is a reasonable potential for nonpoint source pollution of adjacent surface and ground waters, the director shall ~~request, and require~~ the operator ~~shall to~~ provide ~~to the director~~, baseline preproject surface and ground water monitoring information, and furnish ~~ongoing~~ additional monitoring data during the life of the project. This provision shall not require any additional baseline preproject ~~surface water~~ monitoring information or ongoing monitoring data where such ~~information or~~ data ~~is~~ are already required to be provided ~~pursuant to~~ under any federal or state law and is available to the director. (11-1-89)()

06. Permanent Closure Plan Approval. ()

a. The department may condition its approval on issuance of a permit by the DEQ for the cyanidation facility. ()

b. Except for the concurrent and additional permanent closure requirements that may be established in a permit issued by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," an approved permanent closure plan shall define the nature and extent of the operator's obligation under the chapter. ()

c. The permanent closure plan, as approved by the department in coordination with the DEQ, shall be incorporated by reference into the cyanidation facility permit issued by DEQ as a permit condition and shall be enforceable as such. The operator shall ensure that closure complies with the approved plan and any additional permanent closure requirements as outlined in the permit issued by DEQ. ()

d. No sooner than one hundred and twenty (120) days after an application for a permanent closure plan has been submitted to the department, the applicant may submit a reclamation plan as required by Section 070 of these rules. The department will review and approve the reclamation plan in accordance with Subsection 080. ()

e. Approval of a permanent closure plan by the department is required even if approval of such plan has been or will be obtained from an appropriate federal agency. ()

087. Reasons for Denial of an Application. If the director rejects an application, the director ~~must also~~ shall deliver in writing to the applicant a statement of the reasons the application ~~was~~ has been rejected, the factual findings upon which the rejection ~~was~~ is based ~~(if applicable)~~, a statement of the applicable statute(s) and rule(s) involved, the manner in which the application failed to fulfill the requirements of these rules, and the action that must be taken or conditions that must be satisfied ~~in order~~ to meet the requirements of the chapter and these rules. The applicant may ~~then~~ submit an amended application ~~which will be processed as described in Section 080~~ in accordance with Sections 069, 070 or 071 for review and, if appropriate, approval by the department. The director shall deny a reclamation plan, permanent closure plan, or any amendments or supplementary plans thereof if: (11-1-89)()

a. The application is inaccurate or incomplete; ()

b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure to protect public safety, health, and welfare, in accordance with the scope and intent of these rules, or to protect beneficial uses of the waters of the state, as determined by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation" and other DEQ rules cited therein. ()

098. Public Hearing. The director may, ~~at his discretion~~, call a public hearing to determine whether a proposed application complies with the chapter and these rules. ~~The~~ A hearing shall be conducted ~~according to~~ in accordance with Section 110. ~~A hearing may not cause the director's action on a plan to extend beyond sixty (60) days from time the plan was received by the director.~~ (11-1-89)()

~~10. Notification of Decision. The applicant will be notified in writing of the director's decision to approve or reject the application within sixty (60) days of its receipt. If weather conditions prevent the director from inspecting the proposed surface mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The director's decision upon the application must be given to the applicant in writing within thirty (30) days of the date that weather conditions permit inspection. If the director fails to take action within the statutory time limits, the plan shall be deemed to comply with the act and the operator may commence operations upon furnishing a bond to the department that meets the requirements of these rules. (11-1-89)~~

~~11. Approved Plan. Notice of approval shall constitute an approval of the reclamation plan and such approved plan shall govern and determine the nature and extent of the reclamation obligations of the operator. A bond in accord with Section 120 must be received by the department before mining operations can begin. (11-1-89)~~

~~1209. Referral to Board. The director may refer the decision concerning approval or rejection of an application to the board. This action will not operate to extend the time allowed the director period for review and decision under these rules a decision to approve or deny an application. (11-1-89)(____)~~

~~13. Additional Reclamation. The operator and the director may agree, in writing, to do any act with respect to reclamation above and beyond the requirements set forth in these rules. (11-1-89)~~

~~1410. Appeal of Final Order. Any final order of the board regarding an application for approval of a surface mining reclamation plan or for permanent closure of a cyanidation facility may be appealed pursuant to Subsection 160.07 as set forth in Section 47-1514, Idaho Code. (11-1-89)(____)~~

081. -- 089. (RESERVED).

090. AMENDING AN APPROVED RECLAMATION PLAN.

01. Application Cause for Reclamation Plan Amendment. In the event ~~that a material change arises which the operator, or the director believes require a change in the reclamation plan, the operator will submit an application to amend the plan and state the reasons therefor~~ circumstances arise that necessitate amendments to an approved reclamation plan, the operator shall submit an application to amend the plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved reclamation plan. If the director identifies a material change which the director he believes requires a change in the reclamation plan, the director must deliver in writing, to the operator, a detailed statement identifying the material change. The director must also identify in writing, and the action(s) that must be taken necessary to amend the plan and address the material changes. (7-1-98)(____)

02. Review of Amendment. The director will process an application to amend a plan in accordance with Sections 080 and Section 110; ~~provided, however, that no (1) land; or (2) aspect or provision of an approved reclamation plan; that would not be affected by the proposed amendment, shall be subject to such the amendment, or to review or reapproval in connection with the processing of an the application, for such an amendment; nor may~~ Approval of an amendment to the reclamation plan shall not be conditioned upon the performance of any actions not required by the approved reclamation plan or the proposed amendment itself, unless the operator agrees to perform that such actions. (11-1-89)(____)

03. Minor Amendments. Minor amendments to an approved reclamation plan may be made by agreement between the director and the operator, if the amendment is consistent with the overall objectives of the approved reclamation plan and so long as water quality standards will be met and existing beneficial uses will be protected. (11-1-89)

091. AMENDING AN APPROVED PERMANENT CLOSURE PLAN.

01. Cause for Permanent Closure Plan Amendment. In the event circumstances arise that necessitate amendments to an approved permanent closure plan, the operator shall submit an application to amend the permanent closure plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved permanent closure plan. Circumstances that could require a permanent

closure plan to be amended include: ()

a. A material modification or material expansion in the cyanidation facility design or operation for which the approved permanent closure plan is no longer adequate. ()

b. Conditions substantially different from those anticipated in the original permit for which the approved permanent closure plan is no longer adequate. ()

c. A material change as defined in Subsections 010.20.b.i. and 010.20.b.ii. of these rules. ()

02. Modifications at an Operator's Request. Requests from an operator to modify a permanent closure plan shall be submitted to the department in writing. The director shall process an application for amendment in accordance with Section 080. An application to amend a permanent closure plan shall include: ()

a. A written description of the circumstances that necessitate the amendment; ()

b. Data supporting the request; ()

c. The proposed amendment; ()

d. A description of how the amendment will impact the estimated cost to complete permanent closure pursuant to the chapter; ()

e. A cost estimate to implement the amended permanent closure plan, prepared in accordance with Subsection 071.02 of these rules; and ()

f. Payment of a reasonable fee as may be determined by the director in accordance with Section 47-1512, Idaho Code. ()

03. Modification at Request of Director. If, following consultation with the DEQ, the director determines that cause exists to amend the permanent closure plan the director shall notify the operator in writing of his determination and explain the circumstances that have arisen which require the permanent closure plan to be amended. Within thirty (30) days or as agreed by the operator and the department, the operator shall submit an application to amend the permanent closure plan in accordance with Subsection 091.02. ()

04. Minor Amendments. Minor amendments to an approved permanent closure plan may be made by agreement between the director and the operator, if the amendment is consistent with the overall objectives of the approved permanent closure plan and so long as water quality standards will be met and existing beneficial uses will be protected. ()

~~097.2.~~ -- 099. (RESERVED).

100. DEVIATION FROM AN APPROVED RECLAMATION PLAN.

01. Unforeseen Events. If a surface mining operator finds that unforeseen events or unexpected conditions require immediate change from an approved plan, the operator may continue surface mining in accordance with the procedures dictated by the changed conditions, pending submission and approval of an amended plan, even though operations do not comply with the ~~currently~~ approved reclamation plan on file with the department. This shall not excuse the operator from complying with the ~~reclamation~~ requirements ~~and best management practices~~ of Sections 140 and ~~bond requirements of Section~~ 120. (11-1-89)()

02. Notification. The operator shall notify the director, ~~shall be notified in writing,~~ within ten (10) days of the discovery of ~~events or unexpected~~ conditions that require deviation from the approved plan. A proposed amendment to the plan ~~will~~ shall be submitted by the operator ~~to the director~~ within thirty (30) days of the discovery of ~~the unforeseen events or unexpected~~ those conditions. (11-1-89)()

101. -- 109. (RESERVED).

110. PUBLIC HEARING.

01. Call for a Hearing. A public hearing called by the director following receipt of a complete application submitted in accordance with Sections 069, 070, or 071 shall be conducted in accordance with Section 47-1507(d), Idaho Code. The director may call for a hearing following his preliminary review of an application for a new operation or a supplemental application of an existing operation when one (1) or more of the following circumstances arises: ()

01a. Public Concern. ~~The director may call for a public hearing following the preliminary review of the application and any concern registered with the director by~~ The public, potentially affected landowners, or any governmental entity, ~~which~~ or any other interested parties who may be affected by the operations proposed under the chapter have registered, in writing, a concern with the director regarding the proposed operations or cyanidation facility. The sole purpose of the public hearing under this subsection shall be to gather written and oral statements comments as to whether the proposed reclamation plan or permanent closure plan meets the requirements of the ~~act~~ chapter and these rules. (11-1-89)()

02b. Agency Concern. ~~The director shall call for a public hearing when~~ The director determines, after consultation with the Departments of Water Resources, ~~Environmental Quality~~ (DEQ), the Department of Fish and Game, and affected Indian tribes ~~(pursuant to Subsection 080.07)~~, that the proposed surface mining or cyanidation facility operations ~~can~~ could reasonably be expected to significantly degrade adjacent surface and/or ground waters or otherwise threaten public health, safety or welfare. A The purpose of a public hearing held under this subsection will be ~~conducted~~ to receive written and oral comments on the measures the operator ~~will~~ is proposing to use to protect surface and/or ground water quality from nonpoint source ~~water~~ pollution. (7-1-98)()

032. Consolidation. If the director determines that a hearing should be held, ~~under Subsections 110.01, 110.02, and 120.01, the director~~ he shall order that such proceedings be consolidated. The applicant and the public must be advised of the specific subjects to be discussed at the hearing at least twenty (20) days prior to the hearing. The department will coordinate with the DEQ, as appropriate, for any hearings relating to permanent closure of a cyanidation facility to streamline application processing. (7-1-98)()

043. Hearing Location. A hearing shall be held in the locality of the proposed surface mine or a proposed cyanidation facility at a reasonably convenient time and place for public participation. The director may call for more than one hearing when conditions warrant. (11-1-89)()

054. Notice of Hearing. The director shall ~~give~~ provide at least twenty (20) days' advance notice of the date, time, and place of the hearing ~~to the applicant, to~~ federal, state, and local governmental agencies, ~~and~~ Indian tribes ~~which~~ who may have an interest in the decision; as shown on the application, and the public; to all persons ~~petitioning who petitioned for the a hearing, if any;~~ and to any person identified by the applicant ~~pursuant to~~ under Subsection 070.02.e. as an legal owner of the ~~specific acreage to~~ land that will likely be affected by the ~~reclamation plan~~ proposed operations. Notice to the applicant must be sent by certified mail and postmarked not less than twenty (20) days before the scheduled ~~date of the~~ public hearing date. (11-1-89)()

065. Publication of Notice. The director shall provide at least twenty (20) days advance notice to the general public of the date, time, and place of the hearing. A newspaper advertisement will be placed once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. (11-1-89)

a. In the event a hearing is ordered under ~~Subsection 110.03~~, the notice ~~to the public~~ shall describe the ~~potentially significant surface water quality degradation and shall contain the operator's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing shall be discussed at the public hearing.~~ (11-1-89)()

i. The potentially significant surface water quality impacts from the proposed surface mining operation and the operator's description of the measures that will be used to prevent degradation of adjacent surface and ground waters from nonpoint sources of pollution; or ()

ii. The objectives of a permanent closure plan that have been submitted for review. ()

b. A copy of the application shall be placed for review in a public place in the local area of the proposed surface mining operation or cyanidation facility, in the closest ~~D~~department *of Lands*² area office, and the ~~D~~department's *of Lands* administrative offices in Boise. (11-1-89)()

076. Hearing Officer. The hearing shall be conducted by the director or his designated representative. Both oral and written testimony will be accepted. Proceedings of the hearing will be ~~tape~~ recorded on audio tape and, ~~if requested~~, a verbatim transcript will be prepared. (11-1-89)()

087. Consideration of Hearing Record. The department shall consider the hearing record when reviewing reclamation plans or permanent closure plans for final approval or rejection. (11-1-89)()

111. COMPLETION OF PERMANENT CLOSURE.

01. Implementation of a Permanent Closure Plan. Unless otherwise specified in the approved permanent closure plan, an operator must begin implementation of the approved permanent closure plan. ()

a. Within one (1) year of the final addition of new cyanide to the ore process circuit for small cyanidation processing or pilot facilities; or ()

b. Within two (2) years of the final addition of new cyanide to the ore process circuit for all other cyanidation facilities; or ()

c. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. ()

02. Submittal of a Permanent Closure Report. The operator shall submit a permanent closure report to the department for review and approval. A permanent closure report shall be of sufficient detail for the directors of the department and DEQ to issue a determination that permanent closure, as defined by Subsection 010.33, has been achieved. The permanent closure report shall address: ()

a. The effectiveness of material stabilization. ()

b. The effectiveness of the water management plan and the adequacy of the monitoring plan. ()

c. The final configuration of the cyanidation facility and its operational/closure status. ()

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated reasonable cost to complete those activities. ()

e. The operational/closure status of any land application site of the cyanidation facilities. ()

f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short- and long-term discharge of pollutants from the cyanidation facility, unless otherwise permitted. ()

g. The short- and long-term water quality trends in surface and ground water through the statistical analysis of the existing monitoring data pursuant to the ore-processing by cyanidation permit. ()

h. Ownership and responsibility for the site upon permanent closure during the defined post-closure period. ()

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed cyanidation facilities. ()

j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules.

()

112. DECISION TO APPROVE OR DISAPPROVE OF A PERMANENT CLOSURE REPORT.

01. Receipt of a Permanent Closure Report. Within sixty (60) days of receipt of a permanent closure report, the director shall issue to the operator a director's determination of approval or disapproval of the permanent closure report. ()

02. Permanent Closure Report Is Disapproved. The director's determination to approve or disapprove a permanent closure report shall be based on the permanent closure report's demonstration that permanent closure has resulted in long-term neutralization of process waters and material stabilization. If a permanent closure report is disapproved, the director shall provide in writing identification of: ()

- a.** Errors or inaccuracies in the permanent closure report. ()
- b.** Issues or details which require additional clarification. ()
- c.** Failures to fully implement the approved permanent closure plans. ()
- d.** Failures to ensure protection for public health, safety, and welfare or to prevent degradation of waters of the state. ()
- e.** Outstanding violations or other noncompliance issues. ()
- f.** Other issues supporting the department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. ()

113. -- 119. (RESERVED).

120. PERFORMANCE BOND REQUIREMENTS FOR SURFACE MINING.

01. Submittal of Bond Before Surface Mining. Prior to beginning any surface mining on a mine panel covered by a plan, an operator shall submit to the director, on a surface mining reclamation bond form, a performance bond meeting the requirements of this rule. The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent. No performance bond shall exceed two thousand five hundred (\$2,500) for a given acre of affected land ~~except as provided by the rules. A performance bond in excess of two thousand five hundred (\$2,500) for any given acres of affected land may be required by the board only when the following conditions have been met unless:~~ (7-1-98)()

a. The board has determined that such performance bond is necessary to meet the requirements of Sections ~~060, 068, 069, 070, and 140~~ 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code. (7-1-98)()

b. The board has delivered to the operator, in writing, a notice setting forth the reasons ~~the director~~ it believes such ~~performance~~ bond is necessary. (7-1-98)

c. The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed bond, as provided by Section 47-1512(c), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. ~~The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived in writing, by the operator. Any hearing shall not extend the period of time limit in which the board must act on a plan submitted.~~ (7-1-98)()

02. Mining Operation Conducted by Public or Government. Notwithstanding any other provision of law to the contrary, the bonding provisions of the chapter and these rules shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (7-1-98)()

03. Limits. Only surface mining reclamation bonds obtained ~~subsequent to~~ after January 1, 1997, may be assessed at actual costs plus ten percent (10%), not to exceed two thousand five hundred dollars (\$2,500) per acre except as provided by ~~Subsection 120.01~~ the chapter, or if a material change ~~arises in accordance to Subsection 090.01~~ as defined by Subsection 010.20 of these rules. Any revision to the amount, term and conditions of a performance bond due to a material change ~~in the reclamation plan~~ shall apply only to the affected lands covered by the material change ~~in the reclamation plan~~. (7-1-98)(____)

04. Annual Bond Review. At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A ~~correlative commensurate~~ increase in the bond will be required for an increase in affected acreage. Any additional bond required shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice from the department that an additional bond amount is required. In no event shall surface mining operations be conducted that would affect additional acreage until the appropriate bond form and bond has been with the department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.07 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation. (11-1-89)(____)

~~a. The bond shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice that additional bond is required, but in no event shall surface mining operations be conducted that would affect such additional acreage until the appropriate bond form has been submitted. Acreage on which reclamation is complete shall be reported in accord with Subsection 120.09 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation.~~ (7-1-98)

b05. Bond Provided to the Federal Government. Any bond provided to the federal government that also meets the requirements of ~~this~~ Section 120 shall be sufficient for the purposes of these rules. (11-1-89)(____)

~~05. Form of Performance Bond.~~ (11-1-89)

~~a. Corporate Surety Bond. This is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, on a surface mine bond form supplied by the director. The bond is to be conditioned that the operator shall faithfully perform all requirements of these rules in effect as of the date of approval of the reclamation plan, and will be payable to the state of Idaho.~~ (11-1-89)

~~b. Collateral Bond. This is an indemnity agreement executed by or for the operator, and payable to the state of Idaho, pledging cash deposits, governmental securities, or negotiable certificates of deposit of any financial institution authorized to do business in Idaho. Collateral bonds shall be subject to the following conditions:~~ (11-1-89)

~~i. The director shall obtain possession, and upon receipt of such collateral bonds, deposit such cash or securities with the state treasurer to hold in trust for the purpose of bonding reclamation performance;~~ (11-1-89)

~~ii. The director shall value collateral at its current market value, not face value;~~ (11-1-89)

~~iii. Certificates of deposit shall be issued or assigned to the state of Idaho, in writing, and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the operator, or other person which posted the collateral bond;~~ (11-1-89)

~~iv. Amount of an individual certificate shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors;~~ (11-1-89)

~~v. Financial institutions issuing such certificates shall waive all rights of set-off or liens which it has or might have against such certificates;~~ (11-1-89)

~~vi. Any such certificates shall be automatically renewable; and~~ (11-1-89)

~~vii. The certificates of deposit shall be of sufficient amount to ensure that the director would be able to~~

~~liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal.~~ (11-1-89)

~~e. Letters of Credit.~~ (11-1-89)

~~i. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer, which states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit.~~ (11-1-89)

~~ii. All credits shall be irrevocable and prepared in a format prescribed by the director;~~ (11-1-89)

~~iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho; and~~ (11-1-89)

~~iv. The account party on all credits must be identical to the entity identified on the surface mining reclamation plan as the party obligated to do the reclamation.~~ (11-1-89)

~~06. **Blanket Bond.** Where an operator is involved in numerous surface operations, the director may accept a blanket bond in lieu of separate bonds under approved plans. The amount of such bond shall comply with other applicable provisions of Section 120 and shall be equal to the total of the penalties of the separate bonds being combined into a single bond. The bonded principal shall be liable for an amount not to exceed the approved bond rate per affected acre multiplied by the number of affected acres should action be taken against the bond under Subsection 120.11.~~ (7-1-98)

~~07. **Notice of Cancellation.** Any surety company cancelling a bond shall give the department at least ninety (90) days notice prior to cancellation. The director shall not release a surety from liability under an existing bond until the operator has submitted to the director an acceptable replacement bond or reclaimed the site. Replacement bonds shall cover any liability accrued against the bonded principal on the surface mined area covered by the previous bond. If an operator fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the director, whichever is later, the director may issue a cease and desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until such replacement has been made.~~ (11-1-89)

~~08. **Revocation of Surety License.** If a surety's Idaho business license is suspended or revoked, the operator shall, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the operator fails to secure such substitute surety, the director may issue a cease and desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until a substitution has been made.~~ (11-1-89)

~~09. **Bond Reduction.**~~ (11-1-89)

~~a. Upon finding that any land bonded under a reclamation plan will not be affected by mining, the operator shall notify the director. The amount of the bond shall be reduced by the amount being held to reclaim those lands.~~ (11-1-89)

~~b. Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection.~~ (11-1-89)

~~10. **Bond Release.** Upon completion of the reclamation specified in the plan, the operator shall notify the director of his desire to secure release from bonding. When the director has verified that the requirements of the reclamation plan have been met as stated in the plan, the bond shall be released.~~ (11-1-89)

~~a. Any request for bond release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection.~~ (11-1-89)

~~b. If the director finds that a specific portion of the reclamation has been satisfactorily completed, the~~

bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (11-1-89)

i. Sixty percent (60%) of the bond may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved reclamation plan; and (11-1-89)

ii. After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the department may release an additional twenty-five percent (25%) of the bond. (11-1-89)

c. The remaining bond shall not be released: (11-1-89)

i. As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of surface mining operations; (11-1-89)

ii. Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and bond by a new operator; and (11-1-89)

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and bond by a new operator. (11-1-89)

~~11. **Criteria for Forfeiture.** A bond may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation in accord with the approved reclamation plan and the applicable requirements of these rules. (11-1-89)~~

~~1208. **Cooperative Agreements.** The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the bond and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)~~

~~1309. **Bonding Rate.** An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)~~

~~140. **Liabilities for Unbonded Reclamation Costs.** An operator who: (11-1-89)~~

~~a. Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)~~

~~b. Does not furnish a bond required by these rules; and (11-1-89)~~

~~c. Is not required to furnish a bond by these rules, but fails to reclaim; is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty shall be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site shall be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty shall be in addition to those described in Subsection 160.06. (11-1-89)~~

121. PERFORMANCE BOND REQUIREMENTS FOR CYANIDATION FACILITIES.

01. Submittal of Bond Before Operating a Cyanidation Facility. Prior to beginning construction or operation of a cyanidation facility, but no later than ninety (90) days after approval of a permanent closure plan, an

operator shall submit to the director, on a permanent closure plan bond form, a performance bond meeting the requirements of Section 47-1512(a)(2), Idaho Code. The performance bond shall be in an amount equal to the total costs estimated under subsection 071.02.k. of these rules plus ten percent (10%). Upon application to the department, the operator may apply and the director may approve bonding for each phase of closure on an incremental basis. If the department authorizes phased bonding, then bonding may increase incrementally commensurate with the additional permanent closure liability. After construction and operation of the initial phase of a cyanidation facility has commenced and after filing by an operator of the initial permanent closure bond, an operator shall not construct any component of a subsequent phase or phases of the subject cyanidation facility before filing the additional permanent closure bond amount that may be required by the board. If phased bonding is not authorized, the operator shall be required to file the bond amount required to complete permanent closure of all planned phases prior to any construction. ()

02. Limits. The board may require a bond in excess of five million dollars (\$5,000,000) if the following conditions have been met: ()

a. The board has determined that such a performance bond is necessary to meet the requirements of the chapter: ()

b. The board has delivered to the operator, in writing, a notice explaining the reasons such a performance bond is necessary; and ()

c. The operator is allowed to give testimony to the board concerning the amount of the proposed bond, as provided by Section 47-1512(d)(3), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. ()

03. Other Government Agency Bonds. Upon a finding by the director that the bond amount established by a federal agency is inadequate because it has not included one (1) or more permanent closure tasks required by the state, the department may require the operator to file an additional bond amount, as necessary, to satisfy the requirements of the chapter. ()

04. Bond Review. The department shall periodically review all performance bonds filed for permanent closure to determine their sufficiency to complete the work required by an approved permanent closure plan. ()

a. Once every three (3) years, the operator shall submit an updated permanent closure cost estimate to the department for review. The director will review the updated estimate to determine whether the existing bond amount is adequate to implement the permanent closure plan, as approved by the department. Any resulting change in the bond amount does not in and of itself require an amendment to the permanent closure plan as may be required by Section 091 of these rules. The director will review the estimate to determine whether the existing bond amount is adequate to complete permanent closure of the cyanidation facility. ()

b. When the director determines that there has been a material change in the estimated reasonable costs to complete permanent closure: ()

i. The director shall notify the operator in writing of his intent to reevaluate the performance bond amount. Within a reasonable time period determined by the department, the operator shall provide to the department a revised cost estimate to complete permanent closure as approved by the department. ()

ii. Within thirty (30) days of receipt of the revised cost estimate the director shall notify the operator in writing of his determination of bond adequacy. ()

iii. Within ninety (90) days of notification of the director's assessment, the operator shall make the appropriate adjustment to the bond or the director will reduce the bond as appropriate. ()

c. The department may conduct an internal review of the amount of each bond annually to determine whether it is adequate to complete permanent closure. ()

d. For bond reviews conducted pursuant to Subsections 121.04.a. and 121.04.b., the director may

employ a qualified independent party to verify the accuracy of the revised estimated costs to complete permanent closure. The qualified independent party shall be employed and the operator shall pay a reasonable fee pursuant to Subsection 071.05.b. ()

05. Bond Reduction. A performance bond for permanent closure may be reduced if, during the department's review of the performance bond pursuant to Subsection 121.04, the estimated costs to complete permanent closure of the subject cyanidation facility will be lower than the amount bonded at that time. ()

06. Bond Release. ()

a. A bond filed for permanent closure of a cyanidation facility shall be released according to the schedule in the permanent closure plan. The schedule shall include provisions for the release of the post closure monitoring and maintenance portions of the bond. The schedule may be adjusted to reflect the operator's performance of permanent closure activities and their demonstrated effectiveness. ()

b. Upon completion of an activity required by an approved permanent closure plan, the operator may request in writing a bond reduction for that activity. When the director, in consultation with DEQ, has verified that the activity meets the requirements of the permanent closure plan, the bond shall be reduced by an amount to reflect the activity completed. ()

c. Upon the director's determination that all activities specified in the permanent closure plan have been successfully completed, the department will release the balance remaining after partial bond releases, in accordance with Section 47-1512(i), Idaho Code. ()

07. Liabilities for Unbonded Permanent Closure Costs. An operator who is in violation of the chapter or any provision of these rules may be subject to civil penalties under Section 47-1513(f), Idaho Code. ()

122. FORM OF PERFORMANCE BOND.

01. Corporate Surety Bond. A corporate surety bond is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, filed on the appropriate bond form supplied by the director. The bond shall be payable to the state of Idaho and conditioned to require the operator to faithfully perform all requirements of the chapter, and the rules in effect on the date that a reclamation plan or a permanent closure plan was approved by the department. ()

02. Collateral Bond. A collateral bond is an indemnity agreement executed by or for the operator, payable to the state of Idaho, pledging cash deposits, government securities or negotiable certificates of deposit of any financial institution authorized to do business in the state. Collateral bonds shall be subject to the following conditions. ()

a. The director shall obtain possession of a collateral bond and, upon receipt, deposit it with the state treasurer to hold it in trust for the purpose of bonding reclamation or permanent closure performance. ()

b. The director shall value the collateral at its current market value, not its face value. ()

c. Certificates of deposit shall be issued or assigned, in writing, to the state of Idaho and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the operator or another person who posted the collateral bond. ()

d. Amount of an individual certificate shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors. ()

e. Financial institutions issuing such certificates shall waive all rights of set-off or liens which it has or might have against such certificates. ()

f. Certificates of deposit shall be automatically renewable. ()

g. Certificates of deposit shall be of sufficient amount to ensure that the director could liquidate them before maturity upon forfeiture for the required bond amount, including any penalty for early withdrawal. ()

03. Letters of Credit. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer. A letter of credit states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit. Letters of credit shall be subject to the following conditions. ()

a. All credits shall be irrevocable and prepared in a format prescribed by the director. ()

b. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho. ()

c. The account party on all credits must be identical to the entity identified in the reclamation plan or in the permanent closure plan and on the cyanidation facility permit as the party obligated to complete reclamation or permanent closure. ()

04. Blanket Bond. Where an operator is involved in more than one (1) surface mining operation permitted by the department or more than one (1) cyanidation facility operation permitted by the DEQ and for which a permanent closure bond is required, the director may accept a blanket bond in lieu of separate reclamation or permanent closure bonds under the approved plans. The amount of such bond shall be equal to the total of the requirements of the separate bonds being combined into a single bond, as determined pursuant to Section 47-1512, Idaho Code, and in accordance with Sections 120 and 121 of these rules. The bonded principal shall be liable for an amount no more than the bond filed for completion of reclamation activities or permanent closure activities if the department takes action against the bond pursuant to Section 47-1513, Idaho Code and Section 123 of these rules. ()

05. Notice of Cancellation. Any notice of cancellation by a surety company shall comply with the provisions of Section 47-1512(f), Idaho Code. ()

06. Revocation of Surety License. If a surety's Idaho business license is suspended or revoked, the operator shall comply with the provisions of Section 47-1512(g), Idaho Code. ()

123. FORFEITURE OF BOND. A bond may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation or has not conducted permanent closure in accord with an approved plan and the applicable requirements of these rules. ()

~~124.~~ -- 129. (RESERVED).

130. TRANSFER OF APPROVED PLANS.

01. Reclamation Plans. A ~~surface mining~~ reclamation plan may be transferred from one (1) operator to another after the department's approval. To complete a transfer, the new applicant must file a notarized assumption of reclamation plan form as prescribed by the department. The new operator then shall be responsible for the past operator's obligations under the ~~act~~ chapter, these rules, and the reclamation plan. When a replacement bond is submitted relative to an approved surface mining reclamation plan, the following rider must be filed with the department as part of the replacement bond before the existing bond will be released: "[Surety company or principal] understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with surface mining reclamation plan ~~№~~: [number], both prior to and subsequent to the date of this rider." (11-1-89)()

02. Permanent Closure Plans. An approved permanent closure plan permit may be transferred to a new operator if he provides written notice to the director that includes a specific date for transfer of permanent closure responsibility, coverage, and liability between the old and new operators no later than ten (10) days after the date of closure. An operator shall be required to provide such notice at the same time he provides notice to the DEQ as required IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation". To complete a transfer, the new applicant

must:

()

a. File a notarized assumption of permanent closure plan form as prescribed by the department; and ()

b. File a replacement permanent closure bond on a form approved by the department must be filed with the department as part of the replacement bond before the existing bond will be released. The following rider must be filed as part of the replacement bond before the existing bond will be released: “[Surety company or principal] understands and expressly agrees that the liability under this bond shall extend to all acts for which permanent closure activities must be completed in connection with permanent closure plan [number], both prior to and subsequent to the date of this rider.” ()

131. -- 139. (RESERVED).

140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION ~~INTRODUCTION~~ AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.

The use of the word “shall” with respect to any practice, act, or result specified in this rule means that employment of such practice, doing of such act, or the attainment of such result is mandated by these rules. The use of the word “should” with respect to any act or result specified in these rules means that the utilization of such practice, the doing of such act, or the attainment of such result is advisable and will constitute compliance with these rules, but does not mandate utilization of such practice, the doing of such act, or the attainment of such result if other acceptable practices, acts, or results are available. Enumeration of a practice, act, or result in Section 140 shall not be construed to require its specific inclusion in a reclamation ~~plan submitted for approval under Subsection 070.04 or~~ permanent closure plan. (11-1-89)()

01. Nonpoint Source ~~Sediment~~ Control. (11-1-89)()

a. Appropriate ~~best management practices~~ BMPs for nonpoint source ~~sediment~~ controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations or permanent closure activities. Operators shall utilize ~~best management practices~~ BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent ~~surface~~ waters of the state, but shall not be required to do more than is necessary to preserve the condition of ~~water~~ runoff from the affected land or the cyanidation facility prior to ~~commencement of the subject conducting any exploration, surface mining or exploration operations or cyanidation facility operations~~. These measures shall be among the first to be taken, if necessary, to protect water quality. State water quality standards, including protection of existing beneficial uses, shall be the standard that must be achieved by ~~best management practices~~ BMPs unless the operator can show, and the director determines, that a lesser standard ~~of surface water quality had~~ existed; in the area to be affected; prior to the commencement of the subject surface mining or exploration operations. ~~In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to:~~ (11-1-89)()

i. ~~Keeping the disturbed area to a minimum at any given time through progressive reclamation;~~ (11-1-89)

ii. ~~Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration;~~ (11-1-89)

iii. ~~Retaining sediment within the disturbed area;~~ (11-1-89)

iv. ~~Diverting surface runoff around the disturbed area;~~ (11-1-89)

v. ~~Routing runoff through the disturbed area using protected channels or pipes so as not to increase~~

~~sediment load;~~ (11-1-89)

~~vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and~~ (11-1-89)

~~vii. Use of adequate sediment ponds, with or without chemical treatment.~~ (11-1-89)

b. If ~~best management practices~~ the BMPs utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such ~~best management practices~~ BMPs to meet the controlling, ~~standard of surface water quality as determined by the director under Subsection 140.01.a., or as water quality standards are adjusted pursuant to~~ water quality as set forth in current laws, rules, and regulations. (11-1-89)()

02. Sediment Control. In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: ()

i. Keeping the disturbed area to a minimum at any given time through progressive reclamation; ()

ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()

iii. Retaining sediment within the disturbed area; ()

iv. Diverting surface runoff around the disturbed area; ()

v. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; ()

~~vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and~~ ()

~~vii. Use of adequate sediment ponds, with or without chemical treatment.~~ ()

023. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the operator shall be required to meet ~~the controlling standard of the applicable~~ surface water quality established in Subsection 140.01.a. standards on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (11-1-89)()

034. Overburden/Topsoil. To aid in the revegetation of affected lands where surface mining operations result in the removal of substantial amounts of overburden; including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (11-1-89)()

a. Overburden/Topsoil Removal. (11-1-89)

i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)

ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require ~~best management practices~~ BMPs necessary to prevent violation of water quality standards; and (11-1-89)(____)

iii. Where the operator can show that an overburden material other than topsoil is ~~equally~~ conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (11-1-89)(____)

b. Topsoil Storage. Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion, including, but not limited to, silt fences, chemical binders, seeding, and mulching. (11-1-89)

c. Overburden Storage. Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. (7-1-98)

d. Topsoil Placement. Abandoned affected lands shall be ~~topped~~ covered with topsoil or other type of overburden that is conducive to ~~the~~ plant growth, ~~of vegetation to the extent such materials are readily available, in order~~ to achieve a ~~general~~ stable uniform thickness ~~to the extent that such materials are reasonably available from the mine~~. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. (11-1-89)(____)

e. Fill. Backfill and fill materials should be compacted in a manner to ensure stability. (7-1-98)(____)

045. Roads. (11-1-89)

a. Roads shall be constructed to minimize soil erosion. ~~Such construction, which~~ may require, but ~~is~~ not ~~be~~ limited to, restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (11-1-89)(____)

b. All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)

c. Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (11-1-89)

d. Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)

e. Roads ~~which that~~ will not be recontoured to approximate original contours upon abandonment shall be cross-ditched and revegetated, as necessary, to control erosion. (7-1-98)(____)

f. Roads; that are not abandoned, ~~which are to~~ and continue ~~in~~ to be used under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.042-~~aa~~. until the successor assumes control. (11-1-89)(____)

05. Backfilling and Grading. (11-1-89)

a. Every operator who conducts surface mining or cyanidation facility operations which disturb less than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 140.101. ~~For showing discovery on federal mining claims, unless~~

~~otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification.~~ (11-1-89)(____)

b. An operator who conducts surface mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state ~~of Idaho. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification.~~ (7-1-98)(____)

c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. (7-1-98)

d. After the disturbed area has been graded, slopes will be measured for ~~compliance~~ consistency with the approved reclamation plan or the permanent closure plan. (11-1-89)(____)

~~067.~~ **Disposal of Waste in Areas Other Than Mine Excavation.** Waste material not used ~~in~~ to backfilling mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (11-1-89)(____)

a. The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. (11-1-89)

b. All surface water flows within the disposal area shall be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures shall be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

c. The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. (11-1-89)

d. The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state ~~of Idaho.~~ (7-1-98)(____)

e. Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. (11-1-89)

f. The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.101. (11-1-89)(____)

~~078.~~ **Settling Ponds; Minimum Criteria.** (11-1-89)

a. Sediment Storage Volume. Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (11-1-89)

b. Water Detention Time. Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. (11-1-89)

c. Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds shall be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-

1710 through 42-1721, Idaho Code, and Safety of Dams Rules, where applicable. (11-1-89)

089. Tailings Impoundments. All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will not constitute a hazard to human or animal life. (11-1-89)

a. Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. (11-1-89)

b. Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accordance with Subsection 140.034. (~~11-1-89~~)()

c. Abandonment and Decommissioning of Tailings Impoundments: (~~11-1-89~~)()

i. Dewatering: Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (~~11-1-89~~)()

ii. Control of surface waters: Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures shall be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding structure. (~~11-1-89~~)()

iii. Detoxification: Hazardous chemical residues within the tailings pond shall be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. (~~11-1-89~~)()

iv. Reclamation: ~~Following~~ After implementing the required dewatering, detoxification, and surface drainage control measures ~~operations~~, the reservoir and impounding structure shall be ~~retopped~~ covered with ~~stockpiled~~ topsoils or other ~~soils~~ material conducive to plant growth, and placed in accordance with Subsection 140.04.d. Where such soils are limited in quantity or not available, and upon approval by the department, physical or chemical methods ~~of~~ for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.101, unless ~~otherwise~~ specified in the reclamation plan otherwise. (~~11-1-89~~)()

d. ~~Tailings~~ When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs after ~~abandonment of~~ the mining operation has ceased, shall be required at the time the operator requests termination of the reclamation plan, to conform with ~~the Idaho Dam Safety Act,~~ Sections 42-1710 through 42-1721, Idaho Code (i.e., the Idaho Dam Safety Act), if applicable. (~~11-1-89~~)()

0910. Permanent Cessation and Time Limits for Planting. (11-1-89)

a. Seeding and planting of affected lands and/or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (~~11-1-89~~)()

b. Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation shall begin within one (1) year after the surface mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. (11-1-89)

c. An operator shall be presumed to have permanently ceased surface mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or

overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for surface mining operations and desires to defer final reclamation until after its subsequent use, the operator shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for surface mining operations will not be continued within a reasonable period of time, the director shall proceed as though the surface mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (11-1-89)

101. Revegetation Activities. (11-1-89)

a. The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands or on a closed cyanidation facility prior to surface mining or cyanidation facility operations, respectively. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan or permanent closure. (7-1-98)(____)

b. ~~Standards for Success of Revegetation. Revegetative success, u~~Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the surface mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. (11-1-89)(____)

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (11-1-89)

ii. For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area; (11-1-89)

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation or permanent closure plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (11-1-89)(____)

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation. (11-1-89)

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the surface mining or cyanidation facility operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and (11-1-89)(____)

vi. Vegetative cover shall not be less than that required to control erosion. (11-1-89)

c. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (11-1-89)

d. By mutual agreement of the director, the landowner, and the operator, a site may be converted to a

different, more desirable, or more economically suitable habitat. ~~(11-1-89)~~(____)

e. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (11-1-89)

f. The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (11-1-89)

g. Reforestation: Tree stocking of forestlands should meet the following criteria: ~~(11-1-89)~~(____)

i. Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands; (11-1-89)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (11-1-89)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (11-1-89)

h. Revegetation is not required on the following areas: (11-1-89)

i. Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (11-1-89)

ii. Any mined area or overburden stockpiles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; ~~(11-1-89)~~(____)

iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage run-off from adjoining lands; ~~(11-1-89)~~(____)

iv. Any mineral stockpile; (11-1-89)

v. Any exploration trench which will become a part of ~~any~~ a pit or an overburden disposal area; and ~~(11-1-89)~~(____)

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)

i. Mulching: Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. ~~(7-1-98)~~(____)

142. Petroleum-Based Products and Chemicals. All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway. ~~(7-1-98)~~(____)

141. -- 149. (RESERVED).

150. TERMINATION OF A PLAN.

01. Terminate Upon Request of the Operator. A reclamation plan shall terminate upon request of the operator, upon ~~completion of a determination by the director that~~ all reclamation activity has been completed to the standards specified in the plan, and final inspection, and following final approval by the director. Upon termination, the director will release the remaining bond, notify the operator, and any authority to operate under the plan conduct any surface mining operations shall terminate. (11-1-89)(____)

02. Terminate a Permanent Closure Plan. The director shall terminate a permanent closure plan upon request of the operator, provided all the provisions and objectives of the permanent closure plan have been met, as determined by the director under Sections 111 and 112 of these rules. Upon a determination that permanent closure has been completed in accordance with the approved permanent closure plan and upon consultation with the DEQ that the operator's request to terminate a plan should be approved, the director will notify the operator that any authority to continue cyanidation operations shall cease and he will release the balance of the permanent closure bond in accordance with Subsection 121.06. (____)

151. -- 159. (RESERVED).

160. ENFORCEMENT AND FAILURE TO COMPLY.

01. Right of Inspection. Authorized officers of the ~~Department of Lands, upon presentation of appropriate credentials,~~ shall have the right to enter upon lands affected by or proposed to be affected by exploration, ~~or~~ surface mining or cyanidation facility operations to determine compliance with ~~these rules~~ the provisions of the chapter. Inspections shall be conducted at reasonable times in the presence of the operator or his authorized employee or representative. The operator shall make such a person available for the purpose of inspection. This rule shall not prevent the department from making an inspection of the site if the operator fails to make a representative available on request. (11-1-89)(____)

02. Bond Forfeiture. Upon request ~~of~~ by the director, the attorney general may institute proceedings to have the bond ~~of an operator forfeited~~ for reclamation or permanent closure forfeited for violation of an order entered pursuant to Section ~~003~~ 47-1513, Idaho Code and these rules. (11-1-89)(____)

~~03. Satisfaction of Obligations. The forfeiture of a reclamation bond shall fully satisfy all obligations of the operator to reclaim affected lands except as provided in Subsection 160.05.~~ (11-1-89)

043. Civil Penalty. ~~If the violation is committed by a~~ An unbonded operator, or an operator who violates these rules by performing an act which is not included ~~the~~ in an approved reclamation plan ~~and or an approved permanent closure plan that~~ is not subsequently approved by the department, ~~the operator~~ shall be subject to a civil penalty as ~~provided in~~ authorized by Section 47-1513(c), Idaho Code. ~~The amount of such a penalty shall be the anticipated cost of reasonable reclamation of affected lands as determined by the director.~~ (11-1-89)(____)

054. Injunctive Procedures. The director may seek injunctive relief and proceed with legal action, if necessary, to enjoin a surface mine operator or cyanidation facility operator who violates the provisions of the chapter, these rules, or the terms of an existing approved reclamation or permanent closure plan. Any such action shall follow the procedures established in Section 47-1513, Idaho Code. (11-1-89)(____)

~~a. The director may seek injunctive relief, as provided by Section 47-1513, Idaho Code, against any operator who is conducting surface mining or exploration operations without having a required reclamation bond or an approved reclamation plan. The director may proceed by legal action to recover the anticipated cost of performing the reclamation activities required by the Surface Mining Act if the operator has no bond on file to cover this cost.~~ (11-1-89)

~~b. The director may seek injunctive relief to enjoin a surface mining operation for the operator's violation of the terms of an existing approved plan and if immediate and irreparable injury, loss, or damage to the state may be expected to occur.~~ (11-1-89)

~~e. The director shall request the court to terminate any injunction when he determines that all~~

~~conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the department to pursue civil penalties for these violations in accordance with Subsections 160.06 and 160.07.~~

~~(11-1-89)~~

~~06. Civil Penalty.~~

~~(11-1-89)~~

~~a. Following notice to an operator of noncompliance in accord with Section 003, in addition to the penalty established in Subsection 160.04, any operator: (1) who violates any of the provisions of the act or these rules, or; (2) who fails to perform duties imposed by these provisions, or; (3) who violates any order pursuant to the provisions of these rules, shall be liable to a civil penalty of not less than five hundred (\$500) or more than two thousand five hundred (\$2,500) for each day a violation continues after notice from the director that such violation has occurred. In addition, the director may seek injunctive relief against the operator to enjoin the operator from continuing such violation.~~

~~(11-1-89)~~

~~b. Willful Violation. Any person who willfully and knowingly falsifies any records, plans, information, or other data required by these rules, or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both.~~

~~(11-1-89)~~

~~075. Procedure for Appeals of Final Order. An operator dissatisfied with a final order of the board may within sixty (60) days after receiving the order, file an appeal in accordance with Section 47-1514, Idaho Code.~~

~~(11-1-89)()~~

~~a. Any operator not satisfied with any final order of the board regarding these rules, may, within sixty (60) days after receiving the order, appeal to the district court of the state of Idaho for the county wherein the operator resides or has a place of business, or where the land affected by the order is located. The appeal shall be initiated by filing with the clerk of such court two (2) copies of the notice of appeal, together with two (2) copies of the complaint against the board. The complaint shall describe the prior proceedings before the board, director, or hearing officer and shall state the grounds upon which the operator believes he is entitled to relief.~~

~~(11-1-89)~~

~~b. A copy of the operator's summons and complaint shall be delivered to the attorney general or his or her authorized representative. Upon receiving a notice of appeal and complaint, the board shall prepare, certify, and file in said court, a true copy of any decision, findings of fact, or conclusions of law, or order, together with any pleading upon which the case was heard and submitted to the board, director, or hearing officer. The board shall, upon order of the court, provide transcripts of any record, including all exhibits and testimony, of any proceedings in the matter before the board or any of its subordinates. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits. As such, this includes, but is not limited to, the rights of appeal to the Supreme Court of the state of Idaho.~~

~~(11-1-89)~~

~~e. When the director or the board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings.~~

~~(11-1-89)~~

~~d. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the board determines that an operator has not complied with the provisions of these rules, the board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides. The board may request the court to issue an appropriate order to remedy any alleged violation. The right to appeal to the Supreme Court of the state of Idaho shall be available as in other civil suits.~~

~~(11-1-89)~~

161. -- 169. (RESERVED).

170. COMPUTATION OF TIME.

Computation of time ~~for these rules~~ will be based on calendar days. In computing any period of time prescribed ~~time~~ by the chapter, the day on which the designated period of time begins is ~~not included~~ excluded. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday ~~on which~~ when the department is not open for

business. In such a case, the time period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. (H-1-89)(____)

171. -- 179. (RESERVED).

180. PUBLIC AND CONFIDENTIALITY OF INFORMATION.

01. Information Subject to Disclosure. Information obtained by the department pursuant to the chapter and these rules is subject to disclosure under Title 9, Chapter 3, Idaho Code ("Public Records Act"). (____)

02. Public Inspection. Except as provided in Section 180 or Title 9, Chapter 3, Idaho Code, information obtained by or submitted to the department pursuant to these rules will be available to the public for inspection and copying during normal office hours. Anyone who requests assistance from the department to collect, copy or mail public information must tender, in advance, the reasonable cost of those services. (____)

013. Nondisclosure Information Not Subject to Public Inspection. Notice of exploration as required under Section 060 and any materials submitted to the board, the director, or the department as confidential shall not be disclosed by the board, director, or department employees to any person other than the board, director, and employees of the department without the written permission of the operator. (H-1-89)(____)

024. Use by Board. Any plans, documents, or materials submitted as confidential and held as such shall not prohibit the board, director, or department from using ~~all~~ the information ~~available to it~~ in any administrative hearing or judicial proceeding ~~brought under~~ initiated pursuant to Section 47-1514, Idaho Code. (H-1-89)(____)

035. BMPs. An operator shall not unreasonably designate as confidential portions of reclamation or permanent closure plans which detail proposed ~~best management practices~~ BMPs to meet state water quality standards and protect existing beneficial uses of ~~surface~~ surface waters of the state. (H-1-89)(____)

181. -- 189. (RESERVED).

190. DEPOSIT OF FORFEITURES AND DAMAGES.

All penalties, forfeitures, and civil damages collected ~~under the provisions of these rules~~ pursuant to the chapter, shall be deposited with the state treasurer in: ~~a special~~ (____)

01. Surface Mine Reclamation Fund. The surface mine reclamation fund to be used by the director for surface-mined land reclamation purposes; or (H-1-89)(____)

02. Cyanidation Facility Closure Fund. The cyanidation facility closure fund to be used by the director to complete permanent closure activities and to administer the permanent closure provisions of the chapter. (____)

191. -- 199. (RESERVED).

200. COMPLIANCE OF EXISTING RECLAMATION PLANS.

These rules, upon their adoption, shall apply as appropriate to all existing surface mining operations, but shall not affect the validity or modify the duties, terms, or conditions of any existing approved reclamation plan or impose any additional obligations with respect to reclamation upon any operator conducting surface mining operations pursuant to a reclamation plan approved prior to adoption of these rules unless amended under Section 090. (7-1-98)(____)

IDAPA 22 - BOARD OF MEDICINE

22.01.01 - RULES OF THE BOARD OF MEDICINE FOR LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC SURGERY IN IDAHO

DOCKET NUMBER 22-0101-0501 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1806 (2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

The rule change eliminates outdated language and references, removes language and time periods related to old state examinations, rewrites sections in simple language, adds rules for the new volunteer license, and adds and clarifies the grounds for discipline.

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

The fee schedule is simplified, the fee for outdated state examination is eliminated and the zero fees for a volunteer license are added.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

Dedicated fund agency - no impact on state general fund. No negative impact on agency dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because rule change is required due to change in legislation and elimination of outdated or inaccurate references. Discipline sections added for clarity and as required by changes in Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Idaho state Board of Medicine, (208) 327-7000.

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 October 26, 2005

DATED this 10th day of August, 2005.

Nancy M. Kerr
Executive Director
Idaho State Board of Medicine
1755 Westgate Drive
PO Box 83720
Boise, Idaho 83720-0058
(208) 327-7000
Fax (208) 327-7005

THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0101-0501

006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, ~~Statehouse Mail~~ P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) ~~377~~327-7005. The Board's web site is www.bom.state.id.us. The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST. ~~(5-3-03)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Medical Practice Act. Title 54, Chapter 18, Idaho Code. (7-1-93)()

02. Board. The Idaho State Board of Medicine. (7-1-93)

03. Acceptable School of Medicine. A medical school located within the United States or Canada and designated as an approved medical school by the Liaison Committee on Medical Education, or a school of osteopathy located within the United States and designated as an approved school of osteopathy by the American Osteopathic Association, or a medical school acceptable to the Board. (7-1-93)

04. License to Practice Medicine. A license issued by the Board to practice medicine and surgery; ~~or a license to practice osteopathic medicine and surgery and a license to practice osteopathic medicine in Idaho. A license to practice osteopathic medicine is limited to those areas of medicine in which they were authorized to practice prior to the combining of the Board of Medicine and the Osteopathic Board.~~ (7-1-93)()

05. Applicant. Any person seeking a license to practice medicine from the Board. (7-1-93)

06. Original Certificate or Document. ~~Unless otherwise specified, s~~Shall mean either the original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board or a Board approved credential verification service. (7-1-93)()

011. -- 049. (RESERVED).

050. GENERAL QUALIFICATIONS FOR LICENSURE.

01. Residence. No period of residence in Idaho shall be required of any applicant. (7-1-93)

02. Character. The Board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code; provided the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. (7-1-93)

~~**051. Licensure By Written Examination.**~~

~~**043. Application.** Each applicant must have graduated from an acceptable school of medicine, passed an examination acceptable to the Board and completed one (1) year of postgraduate training approved by the Liaison Committee Accreditation Council for on Graduate Medical Education, the American Osteopathic Association or the Board, and shall submit completed written application to the Board on forms prescribed by the Board ~~seventy-five (75) days prior to the written examination date~~, together with the nonrefundable application and examination fees and shall submit full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the~~

~~Idaho Department of Law Enforcement to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database.~~ The application form shall be verified and shall require the following: (5-3-03)(____)

a. The education background of the applicant including his college education, medical school education and postgraduate training; (7-1-93)

b. A certificate of graduation from an acceptable school of medicine, and evidence of satisfactory completion of postgraduate training; (7-1-93)

c. The disclosure of any criminal charges, convictions or guilty pleas against the applicant other than minor traffic offenses; (7-1-93)

d. The current mental and physical condition of the applicant, together with disclosure of any previous physical or mental illness which impacts the applicant's ability to practice medicine; (3-30-01)

e. The disclosure of any past or pending medical malpractice actions against the applicant, and the settlements, if any, of such claims; (7-1-93)

f. The disclosure of any disciplinary action by any state board of medicine, medical society, professional society, hospital or institution staff; (7-1-93)

g. The disclosure of the refusal to issue or renew a license to practice medicine by any ~~other~~ state, Canadian or foreign licensing authority; (7-1-93)(____)

h. References to include two (2) letters of recommendation signed by licensed physicians who have known the applicant professionally for at least one (1) year; (7-1-93)(____)

i. An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than ~~three~~ four inches tall by three inches wide (~~3 1/4~~ x 3"), taken not more than one (1) year prior to the date of the application; (7-1-93)(____)

j. A certified copy of a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database; (5-3-03)

k. ~~Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency.~~ The employment history and relevant practice locations of the applicant; (7-1-93)(____)

l. Each state in which the applicant has applied for a license to practice medicine; (____)

m. Each state wherein the applicant is licensed to practice medicine. (____)

n. Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency. (____)

024. Examination. Each applicant must pass an examination ~~conducted by or~~ acceptable to the Board, within the time period recommended by the examination authority, which shall thoroughly test the applicant's fitness to practice medicine. If an applicant fails to pass the examination on two (2) separate occasions, ~~the applicant shall not be eligible to take the examination for at least one (1) year, and before taking the examination again,~~ the applicant must make a showing to the Board that he has successfully engaged in a course of study for the purpose of improving his ability to engage in the practice of medicine may be required to be interviewed, evaluated or examined by the Board. Applicants who fail two (2) separate examinations in another state, territory, or district of the United States or Canada, must make the same showing of successful completion of a course of study prior to examination for licensure. (7-1-93)(____)

035. Interview. Each applicant may be personally interviewed by the Board or a designated committee of the Board. The interview shall include a review of the applicant's qualifications and professional credentials. (3-30-01)

046. Applicants. All applicants must ~~appear to be examined or receive~~ complete their license application within one (1) year unless extended by the Board after filing an application for extension. Unless extended, applications that remain on file for more than one (1) year will be considered null and void and a new application and new fees will be required as if filing for the first time. (~~7-1-93~~)()

07. Health Care Standards. In reviewing the application or conducting the applicant's interview, the Board shall determine whether the applicant possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. If the Board is unable to reach such a conclusion through the application and interview, it shall conduct further inquiry, to establish such qualifications. ()

a. Upon inquiry, if further examination is required, the Board may require passage of the Special Purpose Examination (SPEX) administered by the Federation of State Medical Boards of the United States (FSMB), a post licensure assessment conducted by the Federation of State Medical Boards, or a evaluation by an independent agency approved by the Board to evaluate physician competence. ()

b. The Board will require further inquiry when in its judgment the need is apparent, including but not limited to the following circumstances: ()

i. Graduate of a foreign medical school not accredited by the Liaison Committee on Medical Education; ()

ii. Applicant whose background investigation reveals evidence of impairment, competency deficit, or disciplinary action by another licensing or regulatory agency; ()

iii. An applicant has not been in active medical practice for a period exceeding one (1) year, or when practice has been significantly interrupted; ()

iv. An applicant has not written a recognized examination intended to determine ability to practice medicine within a period of five (5) years preceding application; ()

v. An applicant whose initial licensure was issued on the basis of an examination not recognized by the Board; or ()

vi. When there is any reason whatsoever to question the identity of the applicant. ()

c. Recommendations of the assessment and or evaluation acceptable to the Board related to the ability of the applicant to practice medicine and surgery will be considered by the Board in its decision whether to issue a license and the Board may limit, condition, or restrict a license based on the Board's determination and the recommendation of the assessment or evaluation. ()

0521. LICENSURE ~~BY WRITTEN EXAMINATION~~ FOR GRADUATES OF MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES AND CANADA.

01. Foreign Graduate. In addition to meeting the requirements of Section ~~051050~~, graduates of medical schools located outside of the United States and Canada must submit to the Board: (~~3-19-99~~)()

a. An original certificate from the Educational Commission for Foreign Medical ~~School~~ Graduates (ECFMG) or must submit documentation that the applicant has passed the examination either administered or recognized by the Educational Commission for Foreign Medical ~~School~~ Graduates; and IDAPA 22.01.01. (~~7-1-93~~)()

b. Evidence directly from the foreign medical school which establishes to the satisfaction of the Board

that the foreign medical school meets the standards for medical educational facilities set forth in Subsection ~~052051.02~~; and ~~(3-19-99)~~(____)

c. An Affidavit from the foreign medical school that to its knowledge no state of the United States has refused to license its graduates on the grounds that the school fails to meet reasonable standards for medical education facilities. (7-1-93)

d. A complete transcript from the medical school showing the courses taken and grades received including an English translation of the documents provided. (5-3-03)

02. Requirements. A foreign medical school must meet and comply with the following requirements: (7-1-93)

a. The degree issued must be comparable to the degrees issued by medical schools located within the United States or Canada. (7-1-93)

b. If the foreign medical school issued its first M.D. degrees after 1975, the school must provide ~~a site visit or~~ documented evidence ~~of equivalent evaluation efforts~~ of degree equivalency acceptable to the Board ~~is required~~. ~~(3-30-01)~~(____)

c. If the foreign medical school issued valid degrees prior to 1975, the Board, in its discretion may require ~~a site visit~~ documented evidence of degree equivalency. ~~(3-30-01)~~(____)

~~**d.** A site visit of the school, when required, must be financed by the school. The visiting team shall consist of at least one (1) member of the Board; one (1) consultant, a clinical medical educator acceptable to the Board; one (1) consultant, a basic science educator acceptable to the Board; such administrative support personnel as deemed necessary. The school will be required to pay consultant fees and expenses. (7-1-93)~~

~~**e.** The Board may waive the site visit requirement if: (7-1-93)~~

~~**i.** Information assembled by a similarly or comparably constituted site visit team is available from another state licensing board; or (7-1-93)~~

~~**ii.** In the case of review for renewal of approval. (7-1-93)~~

~~**f.** All schools approved by the Board will be subject to review of approval as deemed necessary by the Board, taking into consideration need and feasibility. (7-1-93)~~

~~**g.** The Board will review all available information in considering approval, including investigative reports by other states, national and international agencies, and may consider the comparative performance of graduates with those of other schools on standard examination. (7-1-93)~~

03. Postgraduate Training. The foreign medical school graduate must submit documentation that the applicant has satisfactorily completed three (3) years of progressive postgraduate training in a program which is located in the United States or Canada, which is approved for such training by the ~~Liaison Committee on Accreditation Council for~~ Graduate Medical Education and which is conducted under the direction of an acceptable school of medicine; provided however, applicants who do not have an ECFMG certificate must also submit documentation that their three (3) years of postgraduate training included at least one (1) academic year of supervised clinical training conducted under the direction of an acceptable school of medicine. ~~(7-1-93)~~(____)

04. ECFMG. The certificate from the Educational Commission for Foreign Medical ~~School~~ Graduates is not required if the applicant holds a license to practice medicine which was issued prior to 1958 in one (1) of the states of the United States and which was obtained by written examination. ~~(7-1-93)~~(____)

05. English Language. The foreign medical student applicant must be able to speak, write and read the English language. (7-1-93)

0532. GRADUATES OF UNAPPROVED MEDICAL SCHOOLS LOCATED OUTSIDE THE UNITED STATES OR CANADA.

Graduates of schools located outside the United States or Canada that do not meet the requirements of ~~Subsections 052.01 and 052.02~~051 shall meet three (3) of the following requirements. ~~(5-3-03)(____)~~

01. Hold Valid Certificate. Hold a valid certificate issued by ECFMG. (5-3-03)

02. Three Years of Completed Post Graduate Training. Completed three (3) years of progressive post graduate training in an American Council ~~or~~ for Graduate Medical Education (ACGME) or American Osteopathic Association (AOA) approved program. ~~(5-3-03)(____)~~

03. Hold Board Certification. Hold board certification by a speciality board approved by the American Board of Medical Specialities or the AOA. (5-3-03)

04. Have Five Years Unrestricted Practice. Provide evidence of five (5) years of unrestricted practice as a licensee of any United States or Canadian jurisdiction. (5-3-03)

0543. -- 075. (RESERVED).

~~076. LICENSURE BY ENDORSEMENT.~~

~~**01. Endorsement.** A license to practice medicine may be granted by endorsement without written examination to an applicant (including an applicant who has graduated from a foreign medical school) who submits a completed written application to the Board on forms furnished by the Board, together with the necessary application fee. The application form shall be verified and in addition to the information required by Section 051 or Subsection 052.02, as applicable, the following additional information shall be required: (3-19-99)~~

~~**a.** The employment history and practice location of the applicant; (7-1-93)~~

~~**b.** Each state in which the applicant has applied for a license to practice medicine; (7-1-93)~~

~~**c.** Each state wherein the applicant is licensed to practice medicine. (7-1-93)~~

~~**02. Qualifications.** The applicant must also have any one (1) of the following qualifications: (7-1-93)~~

~~**a.** The applicant is a diplomat of the National Board of Medical Examiners or the National Board of Examiners for Osteopathic Physicians and Surgeons; (7-1-93)~~

~~**b.** The applicant holds a valid, unrevoked, unsuspended license to practice medicine and surgery, or osteopathic medicine and surgery in a state, territory or district of the United States or Canada obtained after an equivalent written examination as required by Subsection 051.02; (3-19-99)~~

~~**c.** The applicant has earned a D.O. degree issued after January 1, 1963, and holds a valid, unrevoked, unsuspended license to practice osteopathic medicine and surgery in an unlimited state, territory or district of the United States, which in the Board's opinion maintains standards equivalent to Idaho. The term "unlimited state" means a state where a composite examining board exists, where medical doctors and osteopaths take the same examination, and where a license to practice osteopathy includes authorization to practice unlimited medicine and surgery, these requirements being in effect at the time of licensure. (7-1-93)~~

~~**03. Interview.** Each applicant may be personally interviewed by the Board or a designated committee of the Board. The interview shall include a review of the applicant's qualifications and professional credentials. (3-30-01)~~

~~**04. Health Care Standards.** In reviewing the application or conducting the applicant's interview, the Board shall determine whether the applicant possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. If the Board is unable to reach such a conclusion through the application and interview, it shall conduct further written or oral examination, or both, to establish such~~

~~qualifications. (7-1-93)~~

~~a. If further written examination is required, the Board may require passage of Part 2 of the Federation Licensing Examination (FLEX) or the Specialty Purpose Examination (SPEX) prepared by the Federation of State Medical Boards of the United States. (7-1-93)~~

~~b. If further oral examination is required, the Board may utilize either of two (2) oral examinations: (7-1-93)~~

~~i. A test administered by a member of the Board testing responses to clinical situations; or (7-1-93)~~

~~ii. A test prepared by a physician practicing in the appropriate specialty, consisting of no less than twelve (12) questions selected to determine current clinical awareness. (7-1-93)~~

~~e. The Board will require further written or oral examination when in its judgement the need is apparent, including but not limited to the following circumstances: (7-1-93)~~

~~i. Graduate of a foreign medical school not accredited by the Liaison Committee on Medical Education; (7-1-93)~~

~~ii. Applicant whose background investigation reveals evidence of impairment or competency deficit; (7-1-93)~~

~~iii. When the applicant has not been in active practice for a period exceeding one (1) year, or when practice has been significantly interrupted; (7-1-93)~~

~~iv. When the applicant has not written a recognized examination intended to determine ability to practice medicine within a period of five (5) years preceding application; (7-1-93)~~

~~v. When the applicant received initial licensure on the basis of an examination not listed in Section 051 of this policy; or (3-19-99)~~

~~vi. When there is any reason whatsoever to question the identity of the applicant. (7-1-93)~~

~~d. Oral Examinations will be administered by at least two (2) physicians, licensed in Idaho, at least one (1) a member of the Board. (7-1-93)~~

~~05. Failure to Pass Examination. (7-1-93)~~

~~a. When an applicant fails to pass the oral examination, he may be offered an opportunity to take a current clinical written examination acceptable to the Board. (7-1-93)~~

~~b. When an applicant fails to achieve a passing score in the clinical written examination, he may be offered an opportunity to write the Federation Licensing Examination, whether or not he has previously written this examination. (7-1-93)~~

~~e. Each applicant who has failed a licensing examination, a current competency written examination, or the Board oral examination, will be required to appear for a personal interview with the Board at a regularly scheduled meeting. (7-1-93)~~

0776. TEMPORARY LICENSE.

01. Application for Temporary Licensure. Any applicant eligible to be licensed without ~~written examination or inquiry~~ pursuant to Section ~~076050~~, except a volunteer license applicant, may apply for a temporary license to practice medicine; ~~however, any applicant who has failed to receive a passing grade in any written examination before a state, territorial or district licensing agency or before the National Board of Medical Examiners or the National Board of Examiners for Osteopathic Physicians and Surgeons is not eligible to apply for or to receive~~

~~a temporary license provided he has met all requirements of Section 050 or Section 051 of these rules, submitted all required application forms and fees, has no history of disciplinary action, limitation, pending investigation or restriction on any license to practice and is only awaiting the criminal background check outcome. (3-19-99)(____)~~

02. File Completed Application. All applicants for a temporary license shall file a completed written application in accordance with Section ~~076 and shall file~~ 050 and or Section 051 along with ~~the Board an application for a~~ the required temporary license fee and regular license fee. ~~The temporary license application shall require a showing by the applicant of the necessity and need for such a license. (3-19-99)(____)~~

03. Board Member Temporary License. ~~The chairman or designated member of the Board shall review the application for a temporary license and the application required by Section 076 and may interview the applicant. If he is of the opinion that the applicant possesses qualifications and credentials for a permanent license without written examination, and the applicant for the temporary license has made a showing of circumstances requiring immediate action that cannot be delayed, he may approve issuance of a temporary license. The temporary license shall bear the word "temporary" and will show the date of issuance and the date of expiration. The temporary license expiration date may be~~ Temporary licenses shall expire in one hundred twenty (120) days unless extended by the Board or its designated representative upon a showing of good cause. ~~(5-3-03)(____)~~

0787. INACTIVE LICENSE.

01. Converted License. ~~Any license issued by the Board may be converted to an inactive license on the condition that the licensee will not engage in the practice of medicine in this state. An inactive license fee shall be collected by the Board. (7-1-93)~~

021. Issuance of Inactive License. Any applicant who is entitled to be issued a license to practice medicine, except a volunteer license, may be issued, upon request, an inactive license to practice medicine on the condition that he will not engage in the practice of medicine in this state. An inactive license fee shall be collected by the Board. ~~(7-1-93)(____)~~

03. Annually Renewed Inactive License Renewal. Inactive licenses shall be issued for a period of not less than one (1) year or more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee. The inactive license certificate shall set forth its date of expiration. ~~(3-30-01)(____)~~

04. Inactive to Active License. An inactive license may be converted to an active license to practice medicine by application to the Board and payment of required fees. Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview. ~~(7-1-93)~~

0798. LICENSES.

01. Licensure Expiration. Each license to practice medicine shall be issued for a period of not less than one (1) year or more than five (5) years. Each license shall set forth its expiration date on the face of the certificate. Prorated fees may be assessed by the Board to bring the expiration date of the license within the next occurring license renewal period. The Board may condition the issuance of such a license for the full term upon the occurrence of events specified by the Board and the Board may extend a license for an intermediate period of time. ~~(3-30-01)(____)~~

02. Renewal. Each license to practice medicine may be renewed prior to its expiration date by the payment of a renewal fee to the Board and by completion of a renewal form provided by the Board. In order to be eligible for a renewal, a licensee must provide a current address to the Board and must notify the Board of any change of address ~~during~~ prior to the renewal period. Licenses not renewed by their ~~termination~~ expiration date shall be canceled. ~~(4-2-93)(____)~~

03. Reinstatement. Licenses canceled for nonpayment of renewal fees may be reinstated by filing a reinstatement application on forms prescribed by the Board and upon payment of a reinstatement fee and applicable renewal fees for the period the license was lapsed. ~~(3-30-01)(____)~~

04. Relicensure. Persons whose licenses have been canceled for a period of more than five (5) years, shall be required to make application to the Board as new applicants for licensure. (7-1-93)

08079. CONTINUING MEDICAL EDUCATION (CME) REQUIRED.

01. Purpose. The purpose of practice relevant CME is to enhance competence, performance, understanding of current standards of care, and patient outcomes. (5-3-03)

02. Renewal. Each person licensed to practice medicine and surgery or osteopathic medicine or surgery in Idaho shall complete no less than forty (40) hours of practice relevant, Category 1, CME every two (2) years. (5-3-03)

03. Approved Programs. All education offered by institutions or organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME) and reciprocating organizations or the American Osteopathic Association (AOA) are considered approved. (5-3-03)

04. Verification of Compliance. Licensees shall, at license renewal, provide a signed statement to the Board indicating compliance. The board, in its discretion, may require such additional evidence as is necessary to verify compliance. (5-3-03)

05. Alternate Compliance. The board may accept certification or recertification by a member of the American Board of Medical Specialties, the American Osteopathic Association Bureau of Professional Education, or the Royal College of Physicians and Surgeons of Canada in lieu of compliance with continuing education requirements during the cycle in which the certification or recertification is granted. The board may also grant an exemption for full time participation in a residency or fellowship training at a professionally accredited institution. (5-3-03)

06. Penalties for Noncompliance. The board may condition, limit, suspend, or refuse to renew the license of any person whom the board determines has failed to comply with the continuing education requirements of this chapter. (5-3-03)

080. VOLUNTEER LICENSE.

01. License. Upon completion of an application and verification of qualifications, the Board may issue a volunteer license to a physician who is retired from active practice for the purpose of providing medical service to people who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular medical treatment. ()

02. Retired Defined. A physician previously holding a license to practice medicine and surgery and osteopathic medicine and surgery in Idaho or another state shall be considered retired if, prior to the date of the application for a volunteer's license, he has: ()

a. Surrendered or allowed his license with active status to expire with the intent of ceasing active practice for remuneration or; ()

b. Converted his active license to an inactive status with the intention of ceasing to actively practice for remuneration or; ()

c. Converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice of medicine. ()

03. Eligibility. A physician whose license has been restricted, suspended, revoked surrendered, resigned, converted, allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action shall not be eligible for a volunteer license. The volunteer license cannot be converted to a license with active, inactive or temporary status. ()

04. Application. The application for a volunteer license shall include the requirements listed in Section

050 of these rules and: ()

a. Verification that the applicant held an active license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer license. ()

b. The Board may at its discretion issue a volunteer license to a physician who has not held an active license in good standing for greater than five (5) years if the applicant has completed an examination acceptable to the board that demonstrates the applicant possesses the knowledge and skills required to practice. ()

c. A notarized statement from the applicant on a form prescribed by the board, that the applicant will not provide any physician services to any person other than those permitted by the license and that the applicant will not accept any amount or form of remuneration, other than as reimbursement for the amount of actual expenses incurred as a volunteer physician, for any physician services provided under the authority of a volunteer's license. ()

d. A completed self query of the National Practitioner Databank submitted to the Board. ()

05. Expiration. The volunteer license shall be valid until the expiration date printed on the license and may be renewed in accordance with these rules. ()

06. Discipline. The volunteer license is subject to discipline in accordance with Section 54-1814, Idaho Code, and these rules. ()

081. -- 099. (RESERVED).

100. FEES. -- TABLE.

01. ~~Fixed~~ Fees -- Table. Fees by the Board ~~shall be fixed~~ are as follows:

Fixed Fees -- Table	
Written Examination and Application Fee plus costs of the examination.	\$300
Licensure by Endorsement Fee	\$400
Temporary License	\$100
Reinstatement License Fee plus total of renewal fees not paid by applicant	\$100
Inactive License Renewal Fee	\$75
Renewal of License to Practice Medicine Fee	\$200
Reactivation License Fee	\$100
Oral Examination Fee	\$100
Duplicate Wallet License	\$10
Duplicate Wall License	\$25
Volunteer License Application Fee	\$0
Volunteer License Renewal Fee	\$0

~~(3-19-99)~~()

02. Administrative Fees for Services. Administrative fees for services shall be billed on the basis of time and cost. (7-1-93)

101. ADDITIONAL GROUNDS FOR SUSPENSION, REVOCATION OR DISCIPLINARY SANCTIONS.

01. Discipline. In addition to the statutory grounds for medical discipline set forth in Idaho Code, Section 54-1814, every person licensed to practice medicine or registered as an extern, intern, resident or physician's assistant is subject to discipline by the board upon any of the following grounds: (7-1-93)

02. Unethical Advertising. Advertising the practice of medicine in any unethical or unprofessional manner, includes but is not limited to: (7-1-93)

a. Using advertising or representations likely to deceive, defraud or harm the public. (7-1-93)

b. Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her at his or her direction in the treatment of any disease or other condition of the body or mind. (7-1-93)

03. Standard of Care. Providing health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, includes but is not limited to: (7-1-93)

a. Being found mentally incompetent or insane by any court of competent jurisdiction. (7-1-93)

b. Engaging in practice or behavior that demonstrates a manifest incapacity or incompetence to practice medicine. (7-1-93)

c. Allowing another person or organization to use his or her license to practice medicine. (7-1-93)

d. Prescribing, selling, administering, distributing or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to himself or herself or to a spouse, child or stepchild. (3-19-99)

e. Violating any state or federal law or regulation relating to controlled substances. (7-1-93)

f. Directly promoting surgical procedures or laboratory tests that are unnecessary and not medically indicated. (7-1-93)

g. Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)

h. Failing to maintain adequate records. Adequate patient records means legible records that contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care. ()

04. Conduct. Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient, includes but is not limited to: (7-1-93)

a. Obtaining any fee by fraud, deceit or misrepresentation. (7-1-93)

b. Employing abusive billing practices. (7-1-93)

c. Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)

d. Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of medicine. (7-1-93)

i. Consent of the patient shall not be a defense. (3-19-99)

ii. Section 101 does not apply to sexual contact between a medical care provider and the provider's spouse or a person in a domestic relationship who is also a patient. (3-19-99)

iii. A former patient includes a patient for whom the physician has provided medical services or prescriptions within the last twelve (12) months. (3-19-99)

iv. Sexual or romantic relationships with former patients beyond that period of time may also be a violation if the physician uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient. (3-19-99)

e. Accepting any reimbursement for service, beyond actual expenses, while providing physician services under a volunteer license. ()

f. Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient, Board or Committee on Professional Discipline member, Board staff, hearing officer or witness in an attempt to influence the outcome of a disciplinary proceeding, investigation or other legal action. ()

102. Effective Date.

The rules found in IDAPA 22.01.01, "Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery," were effective July 15, 1980, and the remainder of these rules were effective March 15, 1978 and thereafter. Certain amendments became effective on February 28, 1986; September 15, 1987; March 24, 1989; March 15, 1991; and April 2, 1993. (7-1-93)

1032. -- 999. (RESERVED).

IDAPA 22 - BOARD OF MEDICINE

22.01.05 - RULES GOVERNING LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

DOCKET NO. 22-0105-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2206; 54-2207; 54-2213; 54-2214; 54-2215; 54-2217; 54-2218; 54-2219; and 54-2220, 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 October 19, 2005.

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 proposed rule changes are necessary to carry out statutory provisions of House Bills 191 and 192 as adopted by the 2005 Legislature and changes in the "Physical Therapy Practice Act", Title 54, Chapter 22, Idaho Code. The proposed rule changes amend the existing language relating to the practice of physical therapy to define the term "physical therapy licensure board"; remove language referencing an advisory committee; provide for a physical therapy licensure board; provide for continuing education requirements for renewal of active licenses; require proof of completion of continuing education requirements; and make other changes to update and clarify rules.

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

N/A. The fee schedule has not been changed. Authority for imposition of the existing fees is found in Section 54-2213(2), Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rule making: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted, however, members of the Physical Therapy Advisory Committee and representatives from the Idaho Physical Therapy Association participated in the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

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 October 26, 2005.

DATED this 5th day of August, 2005.

Nancy M. Kerr
Executive Director
Idaho State Board of Medicine
PO Box 83720
Boise, Idaho 83720-0058
Telephone (208) 327-7000
Fax (208) 327-7005

Physical Address: 1755 Westgate Drive
Suite 140
Boise, Idaho 83704

THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0105-0501

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 5).

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, ~~Statehouse Mail~~ P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) ~~377327~~-7005. The Board's web address is The Board's web address is www.bom.state.id.us. The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST.

(3-13-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

01. Board. The Idaho State Board of Medicine. (3-13-02)

02. ~~Committee~~ Licensure Board. The Physical Therapy ~~Advisory Committee~~ Licensure Board. (3-13-02)(____)

03. Director. The executive director of the Idaho State Board of Medicine. (3-13-02)

04. Licensee. ~~Persons~~ An individual licensed in accordance with Title 54, Chapter 22, Idaho Code. (3-13-02)(____)

05. Physical Therapist. An ~~person~~ individual who meets all the requirements of Title 54, Chapter 22, Idaho Code, holds an active license and who engages in the practice of physical therapy. (3-13-02)(____)

06. Physical Therapist Assistant. An ~~person~~ individual who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (3-13-02)(____)

07. Practice of Physical Therapy. The exercise of the profession of physical therapy by a ~~person~~ licensee who engages in the following health care activities: (3-13-02)(____)

a. Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations, and disability or other health and movement related conditions in order to determine a diagnosis for physical therapy and prognosis for physical therapy, plan of therapeutic intervention, and to assess the ongoing effects of intervention. (3-13-02)

b. Alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include, but are not limited to: therapeutic exercise; functional mobility training in self-care and in-home, community or work reintegration; manual therapy; assistive, adaptive, protective and supportive devices and equipment; bronchopulmonary hygiene; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient related instruction; and to reduce the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations. The practice of physical therapy shall not include the use of radiology, surgery or medical diagnosis of disease. (3-13-02)

c. Engaging in administration, consultation, testing, education and research as related to ~~Subsection 010.07.a. and 010.07.b. of Title 54, Chapter 22, Idaho Code, and~~ these rules. (3-13-02)(____)

08. Supportive Personnel. An ~~person~~ individual, or ~~persons~~ individuals, who are neither a physical therapist or a physical therapist assistant, but who are employed by and/or trained under the direction of a licensed physical therapist to perform designated non-treatment patient related tasks and routine physical therapy tasks.

(3-13-02)()

09. Non-Treatment Patient Related Tasks. Actions and procedures related to patient care that do not involve direct patient treatment or direct personal supervision, but do require a level of supervision not less than general supervision, including, but not limited to: treatment area preparation and clean-up, equipment set-up, heat and cold pack preparation, preparation of a patient for treatment by a physical therapist or physical therapist assistant, transportation of patients to and from treatment, and assistance to a physical therapist or physical therapist assistant when such assistance is requested by a physical therapist or physical therapist assistant when safety and effective treatment would so require.

(3-13-02)

10. Routine Physical Therapy Tasks. Actions and procedures within the scope of practice of physical therapy, which do not require the special skills or training of a physical therapist or physical therapist assistant, rendered directly to a patient by supportive personnel at the request of and under the direct personal supervision of a physical therapist or physical therapist assistant.

(3-13-02)

11. Testing. (3-13-02)

a. Standard methods and techniques used in the practice of physical therapy to gather data about individuals including: (3-13-02)

- i. Electrodiagnostic and electrophysiological measurements; (3-13-02)
- ii. Assessment or evaluation of muscle strength, force, endurance and tone; (3-13-02)
- iii. Reflexes; (3-13-02)
- iv. Automatic reactions; (3-13-02)
- v. Posture and body mechanics; (3-13-02)
- vi. Movement skill and accuracy; (3-13-02)
- vii. Joint range of motion and stability; (3-13-02)
- viii. Sensation; (3-13-02)
- ix. Perception; (3-13-02)
- x. Peripheral nerve function integrity; (3-13-02)
- xi. Locomotor skills; (3-13-02)
- xii. Fit, function and comfort of prosthetic, orthotic, and other assistive devices; (3-13-02)
- xiii. Limb volume, symmetry, length and circumference; (3-13-02)
- xiv. Clinical evaluation of cardiac and respiratory status to include adequacy of pulses, noninvasive assessment of peripheral circulation, thoracic excursion, vital capacity, and breathing patterns; (3-13-02)
- xv. Vital signs such as pulse, respiratory rate, and blood pressure; (3-13-02)
- xvi. Activities of daily living; and the physical environment of the home and work place; and (3-13-02)
- xvii. Pain patterns, localization and modifying factors; and (3-13-02)

- xviii. Photosensitivity. (3-13-02)
- b. Specifically excluded are the ordering of electromyographic study, electrocardiography, thermography, invasive vascular study, selective injection tests, or complex cardiac or respiratory function studies without consultation and direction of a physician. (3-13-02)
12. **Individuals.** Human beings. (3-13-02)
13. **Functional Mobility Training.** Includes gait training, locomotion training, and posture training. (3-13-02)
14. **Manual Therapy.** Skilled hand movements to mobilize or manipulate soft tissues and joints for the purpose of: (3-13-02)
- a. Modulating pain, increasing range of motion, reducing or eliminating soft tissue swelling, inflammation or restriction; (3-13-02)
- b. Inducing relaxation; (3-13-02)
- c. Improving contractile and non-contractile tissue extensibility; and (3-13-02)
- d. Improving pulmonary function. (3-13-02)
15. **Physical Agents or Modalities.** Thermal, acoustic, radiant, mechanical, or electrical energy used to produce physiologic changes in tissues. (3-13-02)
16. **General Supervision.** A physical therapist's availability at least by means of telecommunications, which does not require a physical therapist to be on the premises where physical therapy is being provided, for the direction of a physical therapist assistant. (3-13-02)
17. **Direct Supervision.** A physical therapist's or physical therapist assistant's physical presence and availability to render direction in person and on the premises where physical therapy is being provided. (3-13-02)
18. **Direct Personal Supervision.** A physical therapist's or physical therapist assistant's direct and continuous physical presence and availability to render direction, in person and on the premises where physical therapy is being provided. The physical therapist or physical therapist assistant must have direct contact with the patient during each session and assess patient response to delegated treatment. (3-13-02)
19. **Telecommunications.** Any means of transferring audio, video, or data information from a distant location for direction of the treatment plan of care. (3-13-02)
20. **Supervising Physical Therapist.** ~~The~~ A licensed physical therapist who developed and recorded the initial plan of care and/or who has maintained regular treatment sessions with a patient; ~~or~~ ~~Such~~ physical therapist's designation of another licensed physical therapist; if the physical therapist who developed and recorded the initial plan of care or maintained regular treatment sessions is not available to provide direction at least by means of telecommunications. (~~3-13-02~~)()
21. **Licensure.** The act of acquiring legal certification to practice in Idaho as a physical therapist or physical therapist assistant in accordance with Title 54, Chapter 22, Idaho Code, and these rules. (~~3-13-02~~)()
22. **Nationally Accredited School.** A school or course of physical therapy or physical therapist assistant with a curriculum approved by: (3-13-02)
- a. The American Physical Therapy Association (APTA) from 1926 to 1936; or the APTA Accreditation Commission; or (3-13-02)

- b.** The Council on Medical Education and Hospitals of the American Medical Association from 1936 to 1960; or (3-13-02)
- c.** An Accrediting agency recognized by the U.S. Commissioner of Education, the Council on Postsecondary Accreditation, or both. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

016. SUPERVISION (RULE 16).

A physical therapist shall supervise and be responsible for patient care given by physical therapist assistants, supportive personnel, physical therapy students, and physical therapist assistant students. (3-13-02)

01. Procedures and Interventions Performed Exclusively by Physical Therapist. The following procedures and interventions shall be performed exclusively by a physical therapist: (3-13-02)

- a.** Interpretation of a referral for physical therapy if a referral has been received. (3-13-02)
- b.** Performance of the initial patient evaluation and problem identification including a diagnosis for physical therapy and a prognosis for physical therapy. (3-13-02)
- c.** Development or modification of a treatment plan of care which is based on the initial evaluation and which includes long-term and short-term physical therapy treatment goals. (3-13-02)
- d.** Assessment of the competence of physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel to perform assigned procedures, interventions and routine tasks. (3-13-02)
- e.** Selection and delegation of appropriate portions of treatment procedures, interventions and routine physical therapy tasks to the physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel. (3-13-02)
- f.** Performance of a re-evaluation when any change in a patient's condition occurs that is not consistent with the physical therapy treatment plan of care, patient's anticipated progress, and physical therapy treatment goals. (3-13-02)
- g.** Performance and documentation of a discharge evaluation and summary of the physical therapy treatment plan. (3-13-02)

02. Supervision of a Physical Therapist Assistant. A physical therapist assistant shall be supervised by a physical therapist by no less standard than general supervision. (3-13-02)

- a.** A physical therapist assistant shall not change a procedure or intervention unless such change of procedure or intervention has been included within the treatment plan of care as set forth by a physical therapist. (3-13-02)
- b.** A physical therapist assistant may not continue to provide treatment as specified under a treatment plan of care if a patient's condition changes such that further treatment necessitates a change in the established treatment plan of care unless the physical therapist assistant has consulted with the supervising physical therapist prior to the patient's next appointment for physical therapy, and a re-evaluation is completed by the supervising physical therapist. (3-13-02)
- c.** A patient re-evaluation must be performed and documented by the supervising physical therapist a minimum of every five (5) visits or once a week if treatment is performed more than once per day. (3-13-02)

d. A physical therapist assistant may refuse to perform any procedure, intervention, or task delegated by a physical therapist when such procedure, intervention, or task is beyond the physical therapist assistant's skill level or scope of practice standards. (3-13-02)

e. A physical therapist shall not be required to co-sign any treatment related documents prepared by a physical therapist assistant, unless required to do so in accordance with law, or by a third-party. (3-13-02)

03. Supervision of Supportive Personnel. Any routine physical therapy tasks performed by supportive personnel shall require direct personal supervision. (3-13-02)

04. Supervision of Physical Therapy and Physical Therapist Assistant Students. Supervision of physical therapy students and physical therapist assistant students shall require ~~a degree of supervision of no less than~~ direct supervision. ~~(3-13-02)(_____)~~

a. A physical therapy student shall only be supervised by the direct supervision of a physical therapist. (3-13-02)

b. A physical therapy student shall be required to sign all treatment notes with the designation "SPT" after their name, and all such signatures shall require the co-signature of the supervising physical therapist. (3-13-02)

c. A physical therapist assistant student shall be required to sign all treatment notes with the designation "SPTA" after their name, and all such signatures shall require the co-signature of the supervising physical therapist or supervising physical therapist assistant. (3-13-02)

05. Supervision Ratios. (3-13-02)

a. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants providing such treatment be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (3-13-02)

b. At no time during the treatment of a patient or patients for physical therapy shall the number of supportive personnel performing routine physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-13-02)

c. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapy students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (3-13-02)

d. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistant students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-13-02)

e. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants, physical therapy students, physical therapist assistants students, and supportive personnel, or a combination thereof, performing delegated supervised physical therapy or routine physical therapy tasks be more than three (3) times in number of such physical therapist(s) providing physical therapy treatment at any physical therapy practice or site; nor shall the number of physical therapist assistant students or supportive personnel, or a combination thereof, performing delegated and supervised physical therapy tasks or routine physical therapy tasks be more than twice in number of such physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-13-02)

017. -- 019. (RESERVED).

020. PHYSICAL THERAPY ~~ADVISORY COMMITTEE~~ LICENSURE BOARD (RULE 20).

Pursuant to Section 54-2205, Idaho Code, ~~the committee shall work in conjunction with the board to perform the following duties and functions:~~ there is hereby established a physical therapy licensure board to the Idaho State Board of Medicine. The licensure board shall work in conjunction with the Board to enforce the provisions of Title 54, Chapter 22, Idaho Code, and shall perform duties and functions assigned by the Board. The members of the licensure board shall be selected by the Board after considering a list of three (3) qualified applicants for each such vacancy submitted by the Idaho physical therapy association. A majority of licensure board members present shall constitute a quorum for the conduct of licensure board business. The director or the director's designee shall keep written minutes of the licensure board's meetings, such minutes to be signed by the licensure board chairperson, and submitted to the director. (3-13-02)(____)

01. Meetings. ~~The committee shall meet not less than two (2) times per year. A majority of committee members present shall constitute a quorum for the conduct of committee business. The director or the director's designee shall keep written minutes of the committees meetings, such minutes to be signed by the committee chairperson, and submitted to the director.~~ **Membership.** The licensure board shall consist of five (5) members appointed by the Board, three (3) of whom shall be licensed physical therapists, one (1) of whom may be a licensed physical therapist assistant or a licensed physical therapist, and one (1) of whom shall be a member of the public with an interest in the rights of the consumers of health services. All members of the licensure board shall be residents of Idaho at the time of their appointment and for their term of service. The individuals appointed to the licensure board who are required to be licensed under Title 54, Chapter 22, Idaho Code, shall have been engaged in rendering physical therapy or physical therapy assistant care services, respectively, to the public, in teaching, or in research in physical therapy or physical therapy assistant care services, respectively, for at least three (3) years immediately preceding their appointments. All members, excepting the public member, shall at all times be holders of valid licenses and be in good standing without restriction upon such license for the practice of physical therapy in Idaho. (3-13-02)(____)

02. Chairperson. ~~Each committee appointee shall serve as chairperson of the committee during the final year of their appointed and reappointed term. In the event of a vacancy in the chairpersonship, for any reason, the committee shall, by majority vote, select a chairperson. If a chairperson cannot be selected by majority vote, then the director shall appoint an appointee of the committee as chairperson. Such term, whether appointed by the director, or selected by majority vote of the committee, shall cease on July 1 of the year following such appointment or selection. The board shall provide for the timely orientation of a new appointee to the committee regarding the duties and functions of the committee as set forth in this chapter and Chapter 22, Title 54, Idaho Code.~~ **Appointment.** The Board shall appoint two (2) licensure board members for a term of one (1) year; two (2) members for a term of two (2) years; and one (1) member for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms, but no individual shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed in Section 54-2205, Idaho Code. (5-3-03)(____)

a. Chairperson. On and after January 1, 2006, and annually thereafter, the licensure board shall hold a meeting and elect a chairman who shall preside at meetings of the licensure board. In the event the chairman is not present at any licensure board meeting, the licensure board may by majority vote of the members present appoint a temporary chairman. The licensure board shall meet annually. Other meetings may be convened at the call of the chairman or upon the written request of any two (2) licensure board members. (____)

b. Orientation. The Board shall provide for the timely orientation of new appointees to the licensure board regarding the duties and functions of the licensure board as set forth in Title 54, Chapter 22, Idaho Code, and these rules. (____)

c. Impartiality. Licensure board members shall disqualify themselves and upon the motion of any interested party may, upon proper showing, be disqualified in any proceeding in which they have an actual conflict of interest or bias that interferes with their fair and impartial service. (____)

d. Removal. The Board may remove any member of the licensure board from the licensure board who is guilty of malfeasance, misfeasance or nonfeasance. (____)

e. Compensation. Each member of the licensure board shall be compensated as provided in Section

59-509(h), Idaho Code. ()

03. Evaluation of Applicant Qualifications. The ~~committee~~ licensure board shall review all applications for licensure referred to the ~~committee~~ licensure board by the director, and shall make a recommendation to the Board regarding any applicant's application for licensure, including character and fitness, education, training, and any other qualifications deemed relevant by the Board or ~~committee~~ licensure board for licensure.

(3-13-02)()

04. Examinations. The ~~committee~~ licensure board shall ~~administer~~ review all authorized examinations of applicants for licensure, ~~by advising~~ advise the Board of acceptable national examinations for licensure, and ~~recommending~~ to the Board appropriate passing scores for such examinations.

(3-13-02)()

a. An applicant applying for licensure by examination who fails any Board authorized examination may retake a Board authorized examination one (1) additional time without reapplication for licensure, provided that the second attempt occurs within six (6) months from the Board's notification of the first failure.

(5-3-03)()

b. If an applicant applying for licensure by examination has failed any Board authorized examination two (2) or more times, the ~~committee~~ licensure board shall make a determination if the applicant shall reapply for licensure or if additional clinical training or coursework is needed, and recommend to the Board such reapplication or such additional clinical training or coursework for such applicant.

(5-3-03)()

c. If ~~licensure is by endorsement, the minimum passing score for~~ an applicant holds or has held an active valid license issued in another state of the United States pursuant to passing a required examination, the examination, ~~which~~ must be substantially similar to a Board authorized examination, ~~required by the other state and~~ the minimum passing score must be equal to or higher than the minimum passing score in Idaho for the same year.

(5-3-03)()

05. Issuing and Renewing Licenses. If the requirements for licensure as set forth in Title 54, Chapter 22, Idaho Code, and these rules have been met, the ~~committee~~ licensure board shall issue and renew licenses, and submit such licenses to the director for distribution to the licensees, upon Board approval.

(3-13-02)()

a. The ~~committee~~ licensure board shall examine any application for a license by a former licensee whose license has been expired for a period of three (3) consecutive years, and shall recommend to the Board whether such applicant can demonstrate competency in the practice of physical therapy, and recommend whether such applicant should be required to take an examination or remedial courses, or both, prior to issuance of a license.

(5-3-03)()

06. Investigations and Discipline. The ~~committee~~ licensure board shall review all complaints received by the Board regarding ~~a~~ licensees. If the Board finds that probable cause exists to institute proceedings against the licensee and determines that the institution of proceedings against the licensee are appropriate, the ~~committee~~ licensure board shall serve as an advisor to the Board with such proceedings.

(3-13-02)()

a. Proceedings instituted against such licensee shall be conducted in accordance with the procedures established in Title 54, Chapter 22, Idaho Code, Title 67, Chapter 52, Idaho Code, and Title 54, Chapter 18, Idaho Code.

(3-13-02)

b. Upon any entering of findings of fact or conclusions of law entered by the Board or its designee, or prior to the signing of any stipulation and order, the ~~committee~~ licensure board shall review such findings of fact or conclusions of law, or stipulation and order rendered during following such proceedings and recommend to the Board the appropriate disciplinary action or penalty, as those disciplinary actions and penalties are set forth in Section 54-2220, Idaho Code.

(3-13-02)()

07. Maintenance of List. The ~~committee~~ licensure board shall maintain a current list of ~~persons~~ individuals licensed in accordance with Title 54, Chapter 22, Idaho Code, and these rules. Such list shall include the licensee's name, home and business addresses, home and business telephone numbers, and license number. Licensees shall notify the Board of any change of name, address or telephone number within thirty (30) days of such change.

(3-13-02)()

08. Rules. The ~~committee~~ licensure board may submit proposed rules to the Board, and shall review all proposed rules relating to these rules governing the licensure of physical therapists and physical therapist assistants contemplated by the Board prior to their adoption, and provide comment and recommendation thereon.

(3-13-02)(____)

09. Information. In conjunction with the Board and director, the ~~committee~~ licensure board shall provide such information as follows:

(3-13-02)(____)

a. At least thirty (30) days prior to their effect, information shall be provided to all licensees regarding changes in Title 54, Chapter 22, Idaho Code, and changes to these administrative rules.

(3-13-02)

b. Information shall be provided to the general public, upon request, regarding the disciplinary proceeding process.

(3-13-02)

c. At least annually, all licensees shall be provided information regarding any Board or attorney general interpretations of Title 54, Chapter 22, Idaho Code, or these administrative rules, and disciplinary actions taken or penalties assessed against a licensee, unless such disciplinary action is a censure or reprimand by informal admonition for minor misconduct in accordance with Section 54-2220(1), Idaho Code.

(3-13-02)(____)

021. -- 030. (RESERVED).

031. APPLICATION (RULE 31).

Each applicant shall submit a completed written application to the Board on forms provided by the Board together with ~~an application and examination~~ applicable fees. The application shall be verified under oath and shall require the following information:

(3-13-02)(____)

01. Education. The educational background of the ~~application~~ applicant;

(3-13-02)(____)

02. Evidence of Graduation. Evidence of graduation from ~~an approved physical therapy curriculum; or an approved physical therapist assistant's curriculum~~ nationally accredited school;

(3-13-02)(____)

03. Criminal Convictions. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses;

(3-13-02)

04. ~~Current~~ Mental and Physical Status. The current mental and physical condition of the applicant together with disclosure of any previous serious physical or mental illness;

(3-13-02)(____)

05. Disciplinary Action. The disclosure of any disciplinary action against the applicant by any professional regulatory agency;

(3-13-02)

06. License or Registration Denial. The disclosure of the denial of registration or licensure by any state or district regulatory body;

(3-13-02)

07. References. Two (2) references from ~~persons having~~ individuals, other than relatives or individuals living with the applicant, who have at least two (2) years of personal knowledge of the applicant's character and ability to provide physical therapy;

(3-13-02)(____)

08. Photograph. An un-mounted photograph of the applicant, three inches by three inches (3" x 3"), taken not more than one (1) year prior to the date of application; and

(3-13-02)

09. Other Information. Such other information as the Board and licensure board deems necessary to identify and evaluate the applicant's credentials.

(3-13-02)(____)

032. FEES (RULE 32).

01. Fee Table.

(3-13-02)

a. The fee for the initial licensure of a physical therapist shall be one hundred and twenty dollars (\$120) and the renewal fee shall be sixty-five dollars (\$65). (5-3-03)

b. The fee for the initial licensure of a physical therapist assistant shall be eighty dollars (\$80) and the renewal fee shall be forty-five dollars (\$45). (5-3-03)

c. Initial licensure by examination. The ~~examination~~ fee for the initial licensure by examination of a physical therapist or a physical therapist assistant shall ~~equal the cost of the examination plus~~ include an administrative fee of forty dollars (\$40). (~~3-13-02~~)()

d. A reinstatement fee shall be thirty-five dollars (\$35) and satisfactory proof of successful completion of the continuing education requirement set forth in Section 54-2213(2), Idaho Code, and these rules. (~~3-13-02~~)()

02. Application Fees and Refunds. Necessary fees shall accompany all applications. Fees shall not be refundable. (~~3-13-02~~)()

03. Extraordinary Expenses. In those situations where the processing of an application requires extraordinary expenses, the Board may charge the applicant reasonable fees to cover all or part of the extraordinary expenses. (3-13-02)

033. LICENSE RENEWAL (RULE 33).

01. License Renewal. Each license to practice as a physical therapist or physical therapist assistant shall be issued for a period of not less than one (1) year or more than five (5) years. Each license shall set forth its expiration date on the face of the certificate. The Board shall collect a fee for each renewal year of a license. The failure of any licensee to renew his or her license shall not deprive such ~~person~~ individual of the right to renewal, except as provided for herein and Section 54-2214, Idaho Code. (~~5-3-03~~)()

02. Time for Application. All applications for license renewal shall be received by the Board no later than June 30 of the year in which the license has expired and include satisfactory proof of successful completion of the continuing education requirement set forth in Section 54-2214, Idaho Code, and these rules. Applications received after June 30 of the year in which the license expires shall not deprive such ~~person~~ individual of the right to renewal, unless such license shall have been expired for a period equal to or exceeding three (3) consecutive years. (~~3-13-02~~)()

a. An application for renewal which has not been expired for a period of three (3) consecutive years, but which is received after June 30 of the year in which the license has expired, shall require a reinstatement fee of thirty-five dollars (\$35) in addition to the renewal fee of sixty-five dollars (\$65) for each lapsed year and satisfactory proof of successful completion of the continuing education requirement set forth in Section 54-2214, Idaho Code, and these rules. (~~5-3-03~~)()

b. An application for renewal of a license which has been expired for a period of three (3) consecutive years shall not be eligible for renewal, but shall require a re-application for a licensure, payment of a licensure fee, successful demonstration to the Board of competency in the practice of physical therapy and satisfactory proof of successful completion of the continuing education requirement set forth in Section 54-2214, Idaho Code, and these rules. The Board may require the applicant ~~for licensure~~ to take an examination or remedial courses, or both, prior to issuing a license. (~~5-3-03~~)()

034. CONTINUING EDUCATION REQUIREMENT (RULE 34).

On and after July 1, 2007, each applicant for renewal of a license shall, on or before the expiration of the license, submit an attestation that the applicant successfully completed not less than thirty-two (32) hours of continuing education for every two (2) years (biennial) period pursuant to Section 54-2213(2), Idaho Code. The Board, in its discretion, may require additional evidence as is necessary to verify compliance. ()

01. Continuing Education Compliance Periods. Each two (2) year biennial continuing education

compliance period shall extend for continuous two (2) year periods. ()

02. Renewal Requirements. Every biennium, each licensee shall be required to complete a minimum of thirty-two (32) hours of continuing education. No more than sixteen (16) hours of self-study or self directed study shall be used during each biennium. ()

03. Continuing Education Credit Hours. Hours of continuing education credit may be obtained by attending and participating in a continuing education activity meeting the requirements herein pursuant to Section 54-2213(2), Idaho Code, and as hereby provided: ()

a. No hours of continuing education shall be carried over into the next biennium. ()

b. No hours of continuing education shall be repeated in the biennium. ()

c. Licensees are responsible for the cost of continuing education. ()

04. Criteria for Continuing Education. ()

a. General Criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit: ()

i. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee; ()

ii. Pertains to subject matters integrally related to the practice of the profession; ()

iii. Conducted by individuals who have specialized education, training and experience by reason they should be considered qualified concerning the subject matter of the program, and is accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The Board may request the documentation of the qualifications of presenters; ()

iv. Fulfills stated program goals, objectives, or both; and ()

v. Provides proof of attendance to licensees in attendance including: Date, location, course title, presenter(s); Number of program contact hours (One (1) contact hour usually equals one (1) hour of continuing education credit.); and Official signature or verification by program sponsor. ()

b. Specific Criteria. Continuing education hours of credit may be obtained by: ()

i. Presenting professional programs which meet the criteria listed in these rules. Two (2) hours of credit will be awarded for each hour of presentation by the licensee. A course schedule or brochure must be maintained for audit; ()

ii. Providing official transcripts indicating successful completion of academic courses which apply to the field of physical therapy in order to receive the following continuing education credits: ()

(1) One (1) academic semester hour = fifteen (15) continuing education hours of credit; ()

(2) One (1) academic trimester hour = twelve (12) continuing education hours of credit; ()

(3) One (1) academic quarter hour = ten (10) continuing education hours of credit. ()

iii. Attending workshops, conferences, symposiums or electronically transmitted, live interactive conferences which relate directly to the professional competency of the licensee; ()

iv. Authoring research or other activities which are published in a recognized professional publication. The licensee shall receive five (5) hours of credit per page; ()

- v. Viewing videotaped presentations if the following criteria are met: ()
 - (1) There is a sponsoring group or agency; ()
 - (2) There is a facilitator or program official present; ()
 - (3) The program official may not be the only attendee; and ()
 - (4) The program meets all the criteria specified in these rules; ()
- vi. Participating in home study courses that have a certificate of completion; ()
- vii. Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics; ()
- viii. Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics; and ()
- ix. Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics. ()

05. Biennium Reporting Continuing Education. At the time of the biennium license renewal, each licensee shall be required to submit an attestation of successful completion of continuing education to the Board. ()

06. Audit of Continuing Education Attestation. After each educational biennium, there shall be an audit of a random number of licensees' continuing education attestations. The selected licensee shall make available to the Board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information: ()

- a. Date, location, course title, schedule (brochure, pamphlet, program, presenter(s) and applicable credentials), and method of presentation; ()
- b. Number of contact hours for program attended; and ()
- c. Indication of the successful completion of the course. ()
- d. For auditing purposes, the licensee must retain the above information for two (2) years after the biennium has ended. ()

07. Submitting False Reports or Failure to Comply. The Board may condition, limit, suspend, or refuse to renew the license of any individual whom the Board determines submitted a false report of continuing education or failed to comply with the continuing education requirements of these rule and Section 54-2213(2), Idaho Code, and these rules. ()

08. Failure to Receive the Renewal Application. Failure to receive the renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal application and renewal fee. ()

09. Continuing Education Waiver. A licensee shall be deemed to have complied with the continuing education requirements during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing physical therapist or physical therapist assistant. ()

10. Continuing Education Exemption for Disability or Illness. The Board may, in individual cases involving disability or illness, grant exemptions of the educational requirements or extension of time within which to

fulfill the same or make the required reports. No exemption or extension of time shall be granted unless the Board receives a written application and signed by the licensee and appropriate licensed health care practitioners. The Board may grant an exemption of the educational requirements for any period of time not to exceed one (1) calendar year from the onset of disability or illness. In the event that the disability or illness upon which an exemption has been granted continues beyond the period of exemption, the licensee must reapply for an extension of the exemption. The Board may, as a condition of any exemption granted, require the applicant to make up a certain portion or all of the educational requirements exempted by such methods as may be prescribed by the Board. ()

0345. DISCIPLINARY PENALTY (RULE 345).

If the Board finds, after instituting proceedings against a licensee, that disciplinary actions or penalties are warranted, the Board may impose a reasonable fine for each violation in an amount not to exceed five-hundred dollars (\$500) for each violation, and may, in addition to such fine, assess reasonable costs and attorney's fees. (3-13-02)

0356. CODE OF ETHICS (RULE 356).

Physical therapists and physical therapist assistants are responsible for maintaining and promoting ethical practice in accordance with the ethical principles set forth in Appendix A and Appendix B to these rules. (3-13-02)

0367. -- 999. (RESERVED).

IDAPA 22 - BOARD OF MEDICINE

22.01.11 - RULES FOR THE LICENSURE OF RESPIRATORY THERAPISTS AND PERMITTING OF POLYSOMNOGRAPHERS IN IDAHO

DOCKET NO. 22-0111-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-4316, 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 October 19, 2005.

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 proposed rule changes are necessary to carry out statutory provisions of Section 54-4309, Idaho Code, as adopted by the 1991 Legislature to amend existing language relating to the proration of fees charged in conjunction with an initial application for a license or temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Section 54-4309 and 54-4310, Idaho Code, and make other changes to update and clarify rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A. The fee schedule has not been changed; there will be no increase in fees for respiratory therapists, polysomnographic trainees, technicians or technologists. Authority for imposition of the existing fees is found in Section 54-4311, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rule making: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted, however, members of the licensure board participated in the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

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 October 26, 2005.

DATED this 9th day of August, 2005.

Nancy M. Kerr, Executive Director
Idaho State Board of Medicine
Mailing Address: PO Box 83720
Boise, Idaho 83720-0058
Telephone (208) 327-7000
Fax (208) 327-7005

Physical Address: 1755 Westgate Drive
Suite 140
Boise, Idaho 83704

THE FOLLOWING IS THE TEXT OF DOCKET NO. 22-0111-0501

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

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 327-7005. The Board's web address is www.bom.state.id.us. The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST. (3-16-04)()

(BREAK IN CONTINUITY OF SECTIONS)

032. APPLICATION FOR LICENSURE AND PERMITS.

01. All Applications. Each applicant for licensure or permit shall submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The Board may, in its discretion, prorate the application fees charged in conjunction with an application for initial licensure or a temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. The application shall be verified and under oath and shall require documentation of the following information: (3-16-04)()

a. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; and (2-23-94)

b. The disclosure of any charge, investigation or disciplinary action against the applicant by any state professional regulatory agency or professional organization that bears a demonstrable relationship to the ability of the applicant to practice in accordance with the provisions of this chapter; and (3-16-04)

c. The disclosure of the denial of registration or licensure by any state or district regulatory body; and (2-23-94)

d. Not less than two (2) certificates of recommendation from persons, other than relatives or individuals living with the applicant, who have personal knowledge of at least one (1) year of the applicant's character and the applicant's ability to work as a respiratory therapist or provide polysomnography related respiratory care services; and (3-16-04)

e. One (1) unmounted photograph of the applicant, no larger than three by four inch (3" x 4") (head and shoulders), taken not more than one (1) year prior to the date of the application; and (2-23-94)

f. Such other information as deemed reasonably necessary and as is lawful for the Board to identify and evaluate the applicant's credentials; and (3-16-04)

g. Evidence that applicant is no less than eighteen (18) years of age. (3-16-04)

h. The Board may, at its discretion, require the applicant to appear for a personal interview. (3-16-04)

02. Application for Respiratory Care Practitioner. (3-16-04)

a. Documentation of evidence that applicant has passed the entry level examination and is a Certified Respiratory Therapist (CRT) or has successfully completed the written registry and clinical simulation examinations and is a Registered Respiratory Therapist (RRT); or (3-16-04)

b. Documentation that the applicant is licensed as a respiratory care practitioner, or the equivalent at the discretion of the Board, in another state, district or territory of the United States. (3-16-04)

c. Application for Temporary Permit. The Board may issue a temporary permit to an applicant who

meets the requirements set forth in this chapter and Section 54-4307, Idaho Code. A temporary permit shall authorize the practice of respiratory care under the supervision of a respiratory care practitioner or licensed physician. (3-16-04)

i. A temporary permit for a respiratory care practitioner may be converted to a permanent license by providing to the Board, verification of appropriate certification as a Certified Respiratory Therapist (CRT) or Registered Respiratory Therapist (RRT). (3-16-04)

ii. A temporary permit shall be effective for one (1) year from the date of issuance. (4-28-93)

iii. A temporary permit may be renewed one (1) time for a period of one (1) year, upon application to the Board. (4-28-93)

iv. Application for a temporary permit shall be made to the Board on a form prescribed by the Board, together with the application fee. The Board may, in its discretion, prorate the application fees charged in conjunction with an initial application for a temporary permit if such temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. (~~3-16-04~~)()

03. Application for Inactive License. A person holding a current license issued by the Board to practice as a respiratory care practitioner may be issued, upon written application provided by the Board and payment of required fees to the Board, an inactive license on the condition that he will not engage in the provision of respiratory care services as a respiratory care practitioner in this state. (3-16-04)

a. Issuance and Renewal. Inactive licenses shall be issued for a period of not more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee of no more than fifty dollars (\$50) for each renewal year. Such inactive licenses shall expire on the expiration date printed on the face of the certificate unless renewed. (3-16-04)

b. Inactive to Active License. An inactive license may be converted to an active license to practice as a respiratory care practitioner upon written application and payment of active licensure fees for each inactive year minus paid inactive fees plus a conversion fee of no more than fifty dollars (\$50) to the Board. The applicant must account for the time during which an inactive license was held and document continuing competence. The Board may, in its discretion, require a personal interview to evaluate the applicant's qualifications. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)

04. Application for Respiratory Care and Polysomnography Related Respiratory Care Practitioner. (3-16-04)

a. The Board may issue a dual license/permit to an applicant who meets the requirements set forth in this chapter and Sections 54-4306 and 54-4304A(2) and (3), Idaho Code. A dual license/permit shall authorize the holder to perform respiratory care and polysomnography related respiratory care in this state. (3-16-04)

b. Application for a dual license/permit shall be made to the Board on a form prescribed by the Board, together with the application fee. (3-16-04)

c. Such dual license/permit shall expire on the expiration date printed on the face of the certificate unless renewed. (3-16-04)

05. Application for Polysomnography Related Respiratory Care Practitioner. (3-16-04)

a. Only persons who are licensed as respiratory care practitioners or who are exempt from licensure pursuant to the chapter and Section 54-4308, Idaho Code, or who hold a permit issued by the Board as registered polysomnographic technologists, polysomnographic technicians or polysomnographic trainees may provide polysomnography related respiratory care services. (3-16-04)

b. Qualifications for permit. An applicant for a permit to provide polysomnography related respiratory care services as a registered polysomnographic technologist or polysomnographic technician or for a temporary permit as a polysomnographic trainee under the provisions of Section 032 who is not otherwise licensed to provide respiratory care services or exempt from the requirements of this chapter pursuant to Section 54-4308, Idaho Code, must provide documentation of: (3-16-04)

i. Being a high school graduate or have passed a general educational development (GED) examination and earned a GED certificate; and (3-16-04)

ii. Being currently certified in cardiopulmonary resuscitation (CPR). (3-16-04)

c. Application for Registered Polysomnographic Technologist. An applicant must provide documentation of successful completion of the comprehensive registry examination as a registered polysomnographic technologist administered by the Board of Registered Polysomnographic Technologists or an equivalent examination, approved by the Board as recommended by the Licensure Board. (3-16-04)

d. Application For Polysomnographic Technician. An applicant must provide written documentation and a signed affidavit affirming and attesting to one (1) of the following qualifications: (3-16-04)

i. Successful completion of a polysomnography program of not less than one (1) year duration, associated with a state licensed or a nationally accredited educational facility, as approved by the Board, as recommended by the Licensure Board; or (3-16-04)

ii. Successful completion of a minimum of seven hundred twenty (720) hours of experience as a polysomnographic trainee with documented proficiency in polysomnography related respiratory care services, as approved by the Board, as recommended by the Licensure Board. (3-16-04)

e. Application for Polysomnographic Trainee. An applicant must provide a signed affidavit from an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician, an Idaho licensed respiratory care practitioner, or an Idaho licensed physician affirming and attesting he shall ensure that there is direct supervision of performance of basic polysomnography related respiratory care services by a polysomnographic trainee applicant. The direct supervisor shall be on the premises where such polysomnographic related respiratory care services are provided and shall be immediately available for consultation with the polysomnographic trainee applicant. The Affiant need not be the direct supervisor at any given time. Such Affiant shall be responsible for the activities of the supervised polysomnographic trainee and shall document his review of all patient documentation performed by the supervised polysomnographic trainee. If at any time during the term of the polysomnographic trainee's permit, the Affiant of the trainee changes, the polysomnographic trainee shall provide a signed affidavit from his new Affiant who will ensure that the trainee has direct supervision. In addition, the applicant shall provide written documentation he has at least one (1) of the following qualifications: (3-16-04)

i. At least seven hundred twenty (720) hours of experience as a paid employee or contractor in a health care related field. For the purposes of this Section, experience as a paid employee or contractor in a health care related field shall include any work providing direct clinical care to patients or having worked in a clinical care setting in which the applicant had direct interaction with patients, and an opportunity to observe the provision of clinical care to patients; (3-16-04)

ii. Current enrollment in a polysomnography program associated with a state licensed or a nationally accredited education facility; or (3-16-04)

iii. Successful completion of twenty-four (24) semester credit hours (or a quarter ($\frac{1}{4}$) hour system equivalent of the same) of postsecondary education at a state licensed or nationally accredited facility. (3-16-04)

f. Permits. All permits shall be issued after applicants have met the requirements of this chapter and Section 54-4304A, Idaho Code and submitted a completed application and payment of a fee in an amount to be fixed by the Board for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the Board. Such permits shall expire on the expiration date printed on the face of the certificate unless renewed. The failure of any person to renew a renewable permit shall not deprive such person of the right to renewal, except as

provided for herein and Section 54-4312, Idaho Code. The Board shall collect a fee in an amount to be fixed by the Board for the initial issuance and each renewal year. (3-16-04)

i. Permits for registered polysomnographic technologists, including renewals, shall be issued for a period of not less than one (1) year nor more than five (5) years. Such permits shall be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee. (3-16-04)

ii. Permits for polysomnographic technicians, including renewals, shall be issued for a period of one (1) year, and shall be renewed for successive one (1) year periods, not to exceed three (3) renewals for a total period of four (4) years. Such permits shall be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee. (3-16-04)

iii. Temporary permits for polysomnographic trainees shall be issued for a period of not more than one (1) year, the exact period to be fixed by the Board. Such permits may be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee, for a period of one (1) year, with renewal limited to one (1) such renewal, provided however, such permits for polysomnographic trainees shall be limited to a total period of two (2) years. The Board may, in its discretion, prorate the application fees charged in conjunction with an initial application for a temporary permit if such temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. (3-16-04)(____)

iv. Reinstatement after failure to renew. Permits canceled for nonpayment of renewal fees may be reinstated by filing a completed request for renewal with the Board and paying a reinstatement fee, and back renewal fees. (3-16-04)

v. Reapplication after failure to renew. A registered polysomnographic technologist, whose permit has been canceled for failure to renew for a period of more than two (2) years, shall be required to make application to the Board as a new applicant for a permit. A polysomnographic technician, whose permit has been canceled for failure to renew for a period of more than one (1) year, shall be required to make application to the Board as a new applicant for a permit. Temporary permits for polysomnographic trainees whose permits have been canceled for failure to renew for a period of more than six (6) months shall be required to make application to the Board as new applicants for permits. (3-16-04)

vi. Continuing education. Each individual applicant for renewal of an active permit shall, on or before the expiration date of the permit, submit satisfactory proof to the Licensure Board of successful completion of not less than twelve (12) hours of approved continuing education pertaining to the provision of polysomnographic-related respiratory care per year in addition to any other requirements for renewal as adopted by the Board. The Board, as recommended by the Licensure Board, may substitute all or a portion of the coursework required in Section 032 when an applicant for renewal shows evidence of passing an approved challenge exam or of completing equivalent education as determined by the Board, as recommended by the Licensure Board, to be in full compliance with the education requirements of this chapter. (3-16-04)

g. Conditional Permits. Any individual who desires to provide polysomnography related respiratory care services as described in Section 54-4304A, Idaho Code, and this chapter and who meets the requirements of Subsection 032.03, as well as the necessary requirements in Subsections 032.05.g.i. through 032.05.g.iv., may make application for a conditional permit. Conditional permits shall be issued on or after January 1, 2004, as outlined in Section 54-4304A(8), Idaho Code, and shall be issued until the Board has adopted rules as may be required for the issuance of regular permits as provided in this chapter and has had an opportunity to process applications for such regular permits. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

034. LICENSE EXPIRATION AND RENEWAL.

All licenses shall be issued for a period of not less than one (1) year nor more than five (5) years, the exact period to

be fixed by the Board and shall become invalid on the expiration date printed on the face of the certificate of the license unless renewed. The failure of any person to renew his renewable license shall not deprive such person of the right to renewal, except as provided for herein and Section 54-4312, Idaho Code. The Board shall collect a fee for each renewal year of a license. The Board may, in its discretion, prorate the application fees charged in conjunction with an application for initial licensure if such license shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code.

~~(3-16-04)~~(____)

01. Renewal. Each license shall be renewed by submitting a completed request for renewal form accompanied by payment of the renewal fee to the Board. Licenses not renewed by the expiration date shall be canceled. (3-16-04)

02. Reinstatement. Licenses canceled for nonpayment of renewal fees may be reinstated by filing a completed request for renewal with the Board and paying a reinstatement fee, and back renewal fees. (3-16-04)

03. Reapplication. A person whose license has been canceled for a period of more than five (5) years, shall be required to make application to the Board as a new applicant for licensure. (2-23-94)

04. Continuing Education. Prior to renewal each applicant for renewal, reinstatement or reapplication, shall submit evidence of successfully completing no less than twelve (12) clock hours per year of continuing education acceptable to the Board. Continuing education for licensure renewal must be germane to the practice or performance of respiratory care. Appropriate continuing professional education activities include but are not limited to, the following: ~~(2-23-94)~~(____)

a. Attending or presenting at conferences, seminars or inservice programs. (2-23-94)

b. Formal course work in Respiratory Therapy related subjects. (2-23-94)

(BREAK IN CONTINUITY OF SECTIONS)

046. FEES.

Actual fees shall be set to reflect real costs of Board administration. Fees authorized under this chapter shall be used solely to carry out the purposes of this chapter including the provisions of Section 54-4317, Idaho Code. Each applicant shall be responsible for the payment of any fee charged by the National Board for Respiratory Care, Inc., Board of Registered Polysomnographic Technologists or an equivalent board, recognized by the Board. (3-16-04)

01. Licensure and Permit Fees for Respiratory Care Practitioners. (3-16-04)

a. Initial Licensure Fee. The fee for initial licensure, which may be prorated pursuant to Section 54-4309, Idaho Code, shall be no more than ninety dollars (\$90). (3-16-04)

b. Reinstatement Fee. The reinstatement fee for a lapsed license shall be the renewal for each year not licensed plus a fee of thirty-five dollars (\$35). (3-16-04)

c. Inactive Fee - Reactivate Fee. The fee for converting an active license to an inactive license shall be no more than fifty dollars (\$50). An inactive license may be converted to an active license to practice as a respiratory care practitioner upon written application and payment of active licensure fees for each inactive year minus paid inactive fees plus a conversion fee of no more than fifty dollars (\$50) to the Board. (3-16-04)

d. Renewal Fee. The renewal fee shall be no more than seventy dollars (\$70). (3-16-04)

e. Temporary Permit Fee. The fee for a temporary permit, which may be prorated pursuant to Section 54-4309, Idaho Code, shall be no more than ninety dollars (\$90). ~~(2-23-94)~~(____)

02. Permit Fees for Polysomnography Related Respiratory Care Practitioners. (3-16-04)

a. Initial Permit Fee. The fee for an initial permit for a registered polysomnographic technologist or a polysomnographic technician shall be no more than ninety dollars (\$90). The fee for an initial permit for a polysomnographic trainee shall be no more than forty-five dollars (\$45). (3-16-04)

b. Reinstatement Fee. The reinstatement fee for a lapsed permit for a registered polysomnographic technologists or a polysomnographic technician shall be the renewal fee for each year not holding an active permit plus a fee of thirty-five dollars (\$35). (3-16-04)

c. Renewal Fee. The renewal fee for an active permit for a registered polysomnographic technologist and polysomnographic technician shall be no more than seventy dollars (\$70). The renewal fee for an active permit for a polysomnographic trainee shall be no more than thirty-five dollars (\$35). (3-16-04)

d. Temporary Permit Fee. The fee for a temporary permit, which may be prorated pursuant to Section 54-4309, Idaho Code, for a registered polysomnographic technologist and polysomnographic technician shall be no more than ninety dollars (\$90). The fee for a temporary permit, which may be prorated pursuant to Section 54-4309, Idaho Code, for a polysomnographic trainee shall be no more than forty-five dollars (\$45). ~~(3-16-04)~~()

e. Conditional Permit Fee. The fee for a conditional permit for a registered polysomnographic technologist and polysomnographic technician shall be no more than ninety dollars (\$90). The fee for a conditional permit for a polysomnographic trainee shall be no more than forty-five dollars (\$45). Conditional permits will issue on or after January 1, 2004, and will issue until issuance of regular permits as provided in this chapter. (3-16-04)

03. Dual Licensure/Permit Fees for Practitioners of Respiratory and Polysomnography Related Respiratory Care. (3-16-04)

a. Initial Licensure/Permit Fee. The fee for initial issuance of a dual license/permit, which may be prorated pursuant to Section 54-4309, Idaho Code, shall be no more than ninety dollars (\$90). A person holding a current license or permit, if qualified, may apply for and obtain a dual license/permit without paying an additional fee. (3-16-04)

b. Reinstatement Fee. The reinstatement fee for a dual license/permit that has lapsed shall be the renewal for each year not dually licensed/permitted plus a fee of thirty-five dollars (\$35). (3-16-04)

c. Renewal Fee. The renewal fee shall be no more than seventy dollars (\$70). Renewal shall be required upon the expiration of either the permit or the license, whichever expires first if the two (2) initially shall not have been obtained at the same time. (3-16-04)

04. General Fee Information. (4-28-93)

a. Necessary fees shall accompany applications. (4-28-93)

b. Fees shall not be refundable. (4-28-93)

c. In those situations where the processing of an application requires extraordinary expenses, the Board may charge the applicant with reasonable fees to cover all or part of the extraordinary expenses. (4-28-93)

d. The Board may, in its discretion, provide for the proration of fees charged in conjunction with the initial application for a license or temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.01.01 - RULES OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS

DOCKET NO. 24-0101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-312, 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 October 19, 2005.

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:

Update document dates of incorporation by reference, update contact information for the Board, clarify examination process, provide that the examination must be completed within a five year period.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are not controversial.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0101-0501

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled ~~2004-2005~~ NCARB Handbook for Interns and Architects, dated ~~July~~ August 2004, referenced in Subsection 250.01, is herein incorporated by reference. The document titled NCARB Rules of Conduct as published by the National Council of Architectural Registration Boards, Dated ~~July~~ August 2004, referenced in Section 750, is hereby incorporated by reference. All documents incorporated by reference can be obtained at the office of the Bureau and on the Board web site. (3-15-02)(_____)

005. ADDRESS OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS (RULE 5).

The office of the Board of Architectural Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~ibol@ibol.state.id.us~~ arc@ibol.idaho.gov. The Board's official web site is at <https://www.ibol.idaho.gov/arc.htm>. (4-6-05)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

250. QUALIFICATIONS OF APPLICANTS (RULE 250).

01. ARE Applicants. All applicants for the Architectural Registration Examination (ARE) shall possess the minimum qualifications required by the ~~2001-2002~~ NCARB Handbook for Interns and Architects, ~~dated July 2001~~, where such handbook ~~for Interns and Architects~~ does not conflict with Idaho law. All applicants for the ARE must have completed the Intern Development Program (IDP) requirements. (3-15-02)(_____)

02. Experience in Lieu of Degree Applicants. The Board may allow an applicant without an architecture degree to sit for the architecture examination upon determining that such applicant has attained the knowledge and skill approximating that attained by graduation from an accredited architecture curriculum including the submission of a record of eight (8) years or more of experience in architecture work of a character deemed satisfactory by the Board. Said experience shall be in addition to that necessary for completion of the Intern Development Program (IDP) requirements. Two (2) years of eight (8) or more years of experience may be accepted if determined that such experience is directly related to architecture under the direct supervision of a registered engineer (practicing as a structural, civil, mechanical or electrical engineer in the field of building construction) or a registered landscape architect. At least six (6) years of such experience must be obtained while working under the direct supervision of a licensed architect. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

350. REGISTRATION EXAMINATION (RULE 350).

The Board, having found that the content and methodology of the ARE prepared by NCARB is the most practicable and effective examination to test an applicant's qualifications for registration, adopts the ARE as the single, written and/or electronic examination for registration of architects in this state, and further adopts the following rules with respect thereto: (7-1-97)

01. When Taken. The Board will cause the ARE, prepared by NCARB, to be administered to all applicants eligible, in accordance with the requirements of the Board, by their training and education to be examined for registration on dates scheduled by the NCARB. The Board shall cause repeat divisions of the ARE to be administered to qualified candidates on such dates as are scheduled by the NCARB. The ARE examination is a multiple part examination prepared by NCARB. Content of the examination in all of its sections is available from the Board or NCARB. (7-1-98)(_____)

02. Content. *The ARE comprises nine (9) divisions as follows:* (7-1-93)

a. *Division A—PRE-DESIGN.* (7-1-98)

- ~~**b.** Division B—SITE PLANNING. (7-1-98)~~
- ~~**i.** Candidates who have not passed both Division B Written and Graphic prior to computerized ARE will need to take Site Planning. (7-1-98)~~
- ~~**c.** Division C—BUILDING PLANNING and BUILDING TECHNOLOGY. (7-1-98)~~
- ~~**i.** Candidates who have not passed Division C prior to computerized ARE need to take both Building Planning and Building Technology. (7-1-98)~~
- ~~**d.** Division D/F—GENERAL STRUCTURES. (7-1-98)~~
- ~~**e.** Division E—LATERAL FORCES. (7-1-98)~~
- ~~**f.** Division G—MECHANICAL AND ELECTRICAL. (7-1-98)~~
- ~~**g.** Division H—MATERIALS AND METHODS. (7-1-98)~~
- ~~**h.** Division I—CONSTRUCTION DOCUMENTS AND SERVICES. (7-1-98)~~

032. Grading. The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB. To achieve a passing grade on the ARE, an applicant must receive a passing grade in each division. Grades from the individual division may not be averaged. Applicants will have unlimited opportunities to retake division which they fail except as set forth in these rules. The Board shall accept passing grades of computer administered divisions of the ARE as satisfying the requirements for said division(s) when such examinations are administered as prescribed by the NCARB ~~regardless of the date of the examination or location in which the examination took place.~~ (7-1-93)()

~~**04. Transfer Credits.** Except as indicated at Subsection 350.02, above, applicants who had passed portions of the previous registration examinations (Professional Examination—Section A, Professional Examination—Section B, and Qualifying Test) will receive the transfer credits set forth below and need only take those divisions of ARE for which no transfer credit has been received. To be eligible for transfer credits for any portion of the Professional Examination—Section B, the applicant must have passed three (3) parts of that examination in one (1) sitting, in or after December, 1980.~~

~~NOTE: Since the history and theory of architecture is incorporated into all divisions of the ARE, no credit will be given for having passed the Qualifying Test—Section A, History. (7-1-98)~~

- ~~**a.** For previous examinations passed credits go to the following ARE divisions: (7-1-93)~~
- ~~**i.** Professional Examination—Section B, Parts I and II—Division A. (7-1-93)~~
- ~~**ii.** Professional Examination—Section A, (Design/Site)—Divisions B and C. (7-1-93)~~
- ~~**iii.** Professional Examination—Section B, Part III—Divisions D, E, F, G, and H. (7-1-93)~~
- ~~**iv.** Qualifying Test—Section B—Divisions D, E and F. (7-1-93)~~
- ~~**v.** Qualifying Test—Section D—Division G. (7-1-93)~~
- ~~**vi.** Qualifying Test—Section C—Division H. (7-1-93)~~
- ~~**vii.** Professional Examination—Section B, Part IV—Division I. (7-1-93)~~
- ~~**b.** Applicants without an accredited professional degree in architecture must, in all cases, pass Divisions D, E, F, G and H of the ARE if they have not passed equivalent portions of the Qualifying Test: even though~~

~~the applicant may have passed the professional Examination—Section B, Part III. (7-1-93)~~

~~e. Applicants without an accredited professional degree in architecture must in all cases, pass Division A of the ARE if they have not passed Section A of the Qualifying Test; even though the applicant may have passed the Professional Examination—Section B, Parts I and II. (7-1-93)~~

03. Passing (ARE). To pass the ARE, an applicant must achieve a passing grade on each division. Effective July 1, 2006, and subject to certain conditions, a passing grade for any division of the ARE shall be valid for five (5) years, after which time the division must be retaken unless all divisions have been passed. The Board may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, active duty in military service, or other like causes. ()

04. Transition. The transitional rules are as follows: ()

a. For applicants who have passed all divisions of the ARE by July, 2006 regardless of the time taken, will have passed the ARE. ()

b. For applicants who have passed one (1) or more but not all divisions of the ARE by July 1, 2006, such applicants will have five (5) years to pass all remaining divisions. A passing grade for any remaining division shall be valid for five (5) years, after which time the division must be retaken if the remaining divisions have not been passed. The five (5) year period shall commence after July 1, 2006, on the date when the first passed division is administered. ()

c. For applicants who have passed no divisions of the ARE by July 1, 2006, such applicants shall be governed by the above five (5) year requirement. The five (5) year period shall commence on the date when the first passed division is administered. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-707, 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 October 19, 2005.

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:

Update contact information for the board for public access, define athletic trainer, set standard. Provide for supervision of athletic trainers in compliance with Title 54, Chapter 39. Sets deadline for appeals on peer review conducted by the committee.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this is not a controversial change.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0301-0501

005. ADDRESS OF IDAHO BOARD OF CHIROPRACTIC PHYSICIANS (RULE 5).

The office of the Board of Chiropractic Physicians is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us chi@ibol.idaho.gov. The Board's official web site is at ~~www2.state.id.us/ibol/chi~~ <https://www.ibol.idaho.gov/chi.htm>. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITION (RULE 10).

01. Board. The State Board of Chiropractic Physicians as prescribed in Section 54-703, Idaho Code. (7-1-93)

02. Bureau. The Bureau of Occupational Licenses as prescribed in Section 67-2602, Idaho Code. (3-15-02)

03. Inactive Status. The status of licensure that has been made inactive by compliance with Section 54-708(2) and Subsection 300.02. The holder of an inactive license may not practice chiropractic in Idaho. (3-15-02)

04. Inactive Retired. The status of a licensee who is over sixty-five (65) years of age, has paid the inactive retired fee and is permanently retired from the practice of chiropractic. The holder of an inactive retired license may not practice chiropractic in Idaho. (3-15-02)

05. Athletic Trainer. A person licensed by the Idaho Board of Medicine pursuant to Section 54-3909, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

553. -- ~~599~~559. (RESERVED).

560. SUPERVISION OF ATHLETIC TRAINERS.

Idaho licensed chiropractic physicians who are designated as a directing physician responsible for the supervision of licensed athletic trainers shall comply with all duties and responsibilities of a directing physician as set forth in IDAPA 22.01.10, "Rules for the Licensure of Athletic Trainers to Practice in Idaho," except that designated chiropractic physicians shall not be required to register. ()

561. -- 599. (RESERVED).

600. CHIROPRACTIC PEER REVIEW (RULE 600).

01. Purpose and Composition of Peer Review Committee. There is hereby established a Peer Review Committee, the members of which will function at the will of the Idaho State Board of Chiropractic Physicians. (7-1-98)

a. The purpose of the Peer Review Committee is to review those matters relative to the appropriateness, quality, utilization, and cost of chiropractic care in the state of Idaho. (7-1-98)

b. The Committee will be comprised of a chairman and a minimum of five (5) members, all of whom will be appointed by the members of the Board, and all of whom will serve at the pleasure of the Board. They may be removed from the Committee by vote of the Board, at any time, without cause. (7-1-98)

c. The Board will appoint one (1) of its members to act as a liaison between the Board and the Committee. This liaison will serve at the pleasure of the Board and may be removed by the Board, at any time, without cause. (7-1-98)

02. Definitions. (7-1-98)

a. "Board" means the Idaho State Board of Chiropractic Physicians. (7-1-98)

b. "Patient" means an individual who has received treatment from an Idaho licensed chiropractor, or who has received treatment under the supervision or direction of an Idaho licensed chiropractor, which treatment is within the scope of practice for a chiropractor within the state of Idaho. (7-1-98)

c. "Peer Review" means an evaluation performed by members of the Committee, which review will include the appropriateness, quality, utilization, and cost of chiropractic services and ethical performance of chiropractic care. (7-1-98)

d. "Peer Review Committee Members" shall mean those individuals appointed by the Board to serve on the Peer Review Committee. (7-1-98)

e. "Individual Reviewers" means those individual members of the Committee who are designated by the chairman of the Committee to conduct a peer review evaluation of any particular matter. (7-1-98)

03. Committee Criteria. (7-1-98)

a. Requirements for Membership: To be considered for appointment to the Committee, an applicant shall: (7-1-98)

i. Hold a current Idaho license to practice chiropractic, which license is in good standing and which has never been the subject of a formal disciplinary action in any jurisdiction; (7-1-98)

ii. Be actively engaged in the practice of chiropractic for the past four (4) years, with the most recent two (2) of those years having been spent in Idaho. (7-1-98)

iii. Obtain such peer review training as may be required by the Board. (3-15-02)

b. Appointment Process: Each year the Board will notify all Idaho licensed chiropractors of the process and deadlines by which they may self-submit for membership on the Committee. (7-1-98)

i. The submissions will be maintained on file for one (1) year; after which time they will be discarded without notice to the applicants. (7-1-98)

ii. The Board will notify those individuals who are named to the Committee of their appointment. (7-1-98)

c. Limitations of Peer Review Committee Members. While serving on the Peer Review Committee, a member shall not: (7-1-98)

i. Solicit to do independent medical examinations and/or reviews for insurance companies, attorneys or other third parties; (7-1-98)

ii. Utilize any designation or other reference to Committee membership on any advertisement, including telephone book, office, letterhead, or any other place. (7-1-98)

d. Reimbursement: Committee members will be afforded expense reimbursement in accordance with state employee travel regulations upon Board approval. (7-1-98)

04. Standards. (7-1-98)

a. In conducting any review, the Committee will utilize the Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference, and Procedural/Utilization Facts, Chiropractic/Physical Therapy Treatment Standards, a Reference Guide, 5th Edition, Robert E. Olson, D.C. (7-1-98)

b. The reviewing chiropractors will be expected to utilize their own experience and other reference sources in ascertaining the reasonableness and appropriateness of care provided. (7-1-98)

05. Who May Utilize the Services of the Committee. A request for peer review may be submitted to the Committee by a patient, the patient's legal representative, an insurer or other third-party payor or health care provider, or the treating chiropractic physician. (7-1-98)

06. Form of Request. A request for peer review must be submitted to the Committee on forms available from the Board offices. (7-1-98)

07. Fees for Review. The following fees will be assessed: (7-1-98)

a. If review is requested by a patient: no charge. (7-1-98)

b. If review is requested by a treating physician, an insurer or third party provider: (7-1-98)

i. One hundred twenty-five dollars (\$125) for a review of claims in the amount of one thousand dollars (\$1,000) or less; (3-30-01)

ii. Two hundred fifty dollars (\$250) for a review of claims in the amount of one thousand one dollars (\$1,001) or more and not exceeding three thousand dollars (\$3,000); (3-30-01)

iii. Three hundred fifty dollars (\$350) for a review of claims in the amount of three thousand one dollars (\$3,001) or more; (3-30-01)

c. Payment for reviews by the insurer or third-party provider is required prior to implementation of any review process. (7-1-98)

08. Procedures for Review. (7-1-98)

a. All reviews will be blind reviews. The identity of the patient, treating physician, and any insurer or third-party payor for the services will be unknown to the individual reviewers. (7-1-98)

b. Peer review will be conducted only upon request. The opportunity for participation in the review will be made available to the non-requesting party or parties. With the exception of the treating chiropractic physician, there is no requirement of participation in the peer review process. (7-1-98)

c. Reviews will be conducted by three (3) individual reviewers, to be chosen from the membership of the Committee by the chairman. (7-1-98)

d. The individual reviewers will conduct their evaluation, reach an agreement as to the outcome, and report that outcome to the chairman. If any of the parties desire to appeal this decision, they may within sixty (60) days of the decision notify the chairman who will appoint one (1) new reviewer to conduct an evaluation and report the outcome to the chairman. There will be no further rights to appeal. Decisions of the individual reviewer will not be subject to challenge. (~~7-1-98~~)(____)

e. The chairman will provide regular reports to the Board liaison. If it is the opinion of the reviewers that a licensed chiropractic physician has violated any of the laws and rules governing continued licensure, the Committee chairman will notify the Board liaison, immediately. The liaison will then refer the matter for further investigation and potential disciplinary action by the Board. (7-1-98)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-0501 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-2406, 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 October 19, 2005.

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:

Update contact information for the Board, reduce endorsement, renewal and original license fees from \$60 to \$45, clarify requirements for license, clarify continuing education requirements, clarify reinstatement or renewal of licenses for operator-in-training, backflow assembly tester, and wastewater land application.

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

Reduces endorsement, renewal and original license fees from \$60 to \$45.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general funds. This change would reduce the cash balance in dedicated funds for the Board by a total of approximately \$43,000 per year.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are not controversial.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0501-0501

005. ADDRESS OF IDAHO BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS (RULE 5).

The office of the Board of Drinking Water and Wastewater Professionals is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is wwp@ibol.state.id.us ~~(3-24-05)()~~
[www@ibol.idaho.gov](http://www.ibol.idaho.gov). The Board's official web site is at <https://www.ibol.idaho.gov/wwp.htm>. ~~(3-24-05)()~~

(BREAK IN CONTINUITY OF SECTIONS)

200. FEES FOR EXAMINATION AND LICENSURE (RULE 200).

The fees for each license type and classification shall be as follows: (3-24-05)

- 01. Application Fee.** Application fee - twenty-five dollars (\$25). (3-24-05)
- 02. Examination Fee.** The examination fees shall be those fees charged by the Association of Boards of Certification (ABC) or other approved examination provider. (3-24-05)
- 03. Endorsement Fee.** Endorsement fee - ~~sixty~~ forty-five dollars (~~\$6045~~). ~~(3-24-05)()~~
- 04. Original License Fee.** Original license fee - ~~sixty~~ forty-five dollars (~~\$6045~~). ~~(3-24-05)()~~
- 05. Annual Renewal Fee.** Annual renewal fee - ~~sixty~~ forty-five dollars (~~\$6045~~). ~~(3-24-05)()~~
- 06. Reinstatement Fees.** Reinstatement fee - twenty-five dollars (\$25). (3-24-05)
- 07. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application, examination, reexamination, or reinstatement of a license. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

300. REQUIREMENTS FOR LICENSE (RULE 300).

Applicants shall submit an application together with the required fees and such documentation as is required. (3-24-05)

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%), ~~except that backflow assembly testers must obtain a minimum score of seventy five percent (75%) on both the theory and practical examination.~~ For those classifications of Class II through IV, successful completion of the examinations from the immediate lower type and classification shall be a prerequisite to examination eligibility for the next higher classification of the same type, except that applicants for wastewater collection operator or wastewater laboratory analyst or drinking water distribution operator licenses may apply for any classification examination for which they hold the required education and experience. ~~(3-24-05)()~~

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (3-24-05)

b. The examination for all types and classes of ~~drinking water and wastewater~~ licensure shall be validated and provided by the Association of Boards of Certification (ABC). ~~(3-24-05)()~~

e. ~~The examination for backflow assembly testers shall be that practical and theory examination~~

~~approved by the Board.~~

~~(3-24-05)~~

~~d. The examination for wastewater land application operators shall be that examination approved by the Board.~~

~~(3-24-05)~~

ec. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (3-24-05)

02. Education and Experience Requirements. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable. (3-24-05)

a. Each applicant for an Operator-In-Training License must have a high school diploma or GED and pass an ~~Operator-In-Training~~ Class I exam. ~~(3-24-05)(_____)~~

b. To qualify for a Very Small Water System license an operator must have a high school diploma or GED and six (6) months of acceptable operator-in-training experience at a water distribution system. (3-24-05)

c. To qualify for a Class I license an applicant must have a high school diploma or GED and one (1) year of acceptable experience at a Class I or higher system. (3-24-05)

d. To qualify for a Class II treatment or lab analyst license an applicant must have a high school diploma or GED and three (3) years of acceptable Class I operating experience at a Class I or higher system. (3-24-05)

e. To qualify for a Class III treatment or lab analyst license an applicant must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class II operating experience of a Class II or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

f. To qualify for a Class IV treatment or lab analyst license an applicant must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class III operating experience at a Class III or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

g. To qualify for a Class II collection or distribution license an operator must have a high school diploma or GED and three (3) years of acceptable operating experience at a Class I or higher system. (3-24-05)

h. To qualify for a Class III collection or distribution license an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

i. To qualify for a Class IV collection or distribution license an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience at a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

j. To qualify for a lagoon license, an operator must have a high school diploma or GED and twelve (12) months of acceptable supervised operating experience at a Lagoon system. (3-24-05)

k. To qualify for a Wastewater Land Application license, an operator must have a high school diploma or GED, a current wastewater treatment license and minimum six (6) months of hands-on operating experience at a wastewater land application system. The wastewater land application operator that is a responsible charge or

substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (3-24-05)

l. To qualify for a backflow assembly tester license, an applicant must have a high school diploma or GED, and shall document successful completion of a board approved backflow assembly tester training program ~~approved by the board~~ in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of ~~both~~ theory ~~and~~ instruction, practical instruction, and a practical examination in compliance with the USC Test procedures. (3-24-05)(____)

m. To qualify for an original wastewater laboratory analyst license, an applicant must hold a current water treatment, wastewater treatment or lagoon license. (3-24-05)

03. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. (3-24-05)

a. No substitution for operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-24-05)

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both operating and responsible charge) has been met by actual on-site operating experience. (3-24-05)

c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (3-24-05)

d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of responsible charge experience. (3-24-05)

e. Education substituted for operating experience may not be also credited toward the education requirement. (3-24-05)

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)

04. Substituting Experience for Education. Where applicable, approved operating and responsible charge experience may be substituted for education as specified below: (3-24-05)

a. One (1) year of operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (3-24-05)

b. For Class III and IV, additional responsible charge experience (that exceeding the two (2) year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge = one (1) year post high school education. (3-24-05)

05. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: (3-24-05)

a. Experience as an environmental or operations consultant; (3-24-05)

b. Experience in an environmental or engineering branch of federal, state, county, or local government; (3-24-05)

c. Experience as a wastewater collection system operator; (3-24-05)

- d. Experience as a wastewater treatment plant operator; (3-24-05)
 - e. Experience as a water distribution system operator and/or manager; (3-24-05)
 - f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)
 - g. Experience in waste treatment operation and maintenance. (3-24-05)
- 06. Equivalency Policy.** Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-24-05)
- a. High School - High School diploma = GED or equivalent as approved by the board = four (4) years. (3-24-05)
 - b. College - Thirty-five (35) credits = one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the board). (3-24-05)
 - c. Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours = one (1) CEU; forty-five (45) CEUs = one (1) year of college. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

500. CONTINUING EDUCATION (RULE 500).

In order to further protect the health, safety and welfare of Idaho's public, and to facilitate the continued competence of persons licensed under the drinking water and wastewater professionals licensing act, the Board has adopted the following rules for continuing education. (3-24-05)

01. Continuing Education Requirement. Each licensee must successfully complete a minimum of six (6) hours (0.6 CEUs) of approved continuing education annually for license renewal, except that backflow assembly testers shall complete an eight (8) hour refresher course every two (2) years for license renewal. Continuing education must be earned in a subject matter ~~appropriate~~ relevant to the field in which the license is issued. A licensee holding one (1) or more drinking water license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding one (1) or more wastewater license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding both drinking water and wastewater class licenses must complete a minimum of six (6) hours annually for the drinking water license plus six (6) hours annually for the wastewater license. (~~3-24-05~~)(____)

a. Each licensee shall submit to the Board an annual license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the CE requirements have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (3-24-05)

b. A licensee shall be considered to have satisfied their CE requirements for the first renewal of their license. (3-24-05)

c. A water or wastewater licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. The same hours may not be carried forward more than one (1) renewal cycle. (3-24-05)

d. Continuing Education hours for approved operator training courses, seminars, related college courses, and other training activities may be converted to Continuing Education Units (CEU) as follows: Six (6) classroom hours = point six (0.6) CEU. (3-24-05)

02. Subject Material. The subject material of the continuing education requirement shall be relevant to the license for which the continued education is required; ~~and~~ (3-24-05)

~~a. Approved by the Idaho Department of Environmental Quality; or~~ (3-24-05)

~~b. Sponsored by an accredited college, university; or~~ (3-24-05)

~~c. Otherwise approved by the board.~~ (3-24-05)

~~d. "Relevant" shall be limited to material germane to the operation, maintenance and administration of drinking water and wastewater systems as referenced in Chapter 24, Title 54, Idaho Code, and includes those subjects identified in the "need to know" criteria published by the Associations of Boards of Certification.~~ (3-24-05)()

03. Course Approval. All course providers must submit requests for approval of continuing education courses ~~must be made~~ to the board in writing no less than ~~sixty~~ thirty (30) days prior to the course being offered, on a form approved by the board ~~and accompanied by~~ that includes: (3-24-05)()

a. The name and qualifications of the instructor or instructors; (3-24-05)

b. The date, time and location of the course; (3-24-05)

c. The specific agenda for the course; (3-24-05)

d. The type and number of continuing education credit hours requested; (3-24-05)

e. A statement of how the course is believed to be relevant as defined; (3-24-05)

f. Any certificate of approval from a governmental agency if the course has been previously approved for continuing education; ()

~~g.~~ The training materials; (3-24-05)

~~h.~~ Other information as may be requested by the board. (3-24-05)

i. Upon review of all information requested, the Board may either approve or deny any request for a course. Board approval of a course shall be granted for a period not to exceed two (2) years or until the course materials or instructors are changed. ()

04. Verification of Attendance. It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification shall be maintained by the licensee and provided upon request of the Board or its agent. (3-24-05)

05. Distance Learning and Independent Study. The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the licensee in a face-to-face setting with the course instructor. The licensee shall maintain documentation of the nature and details of the course and evidence that the licensee successfully completed the course, which shall be made available to the Board upon request. ()

056. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board. (3-24-05)

067. Exemptions. The Board may waive the continuing education requirement or extend the deadline

up to ninety (90) days for any one or more of the following circumstances. The licensee must request the exemption and provide any information requested to assist the Board in making a determination. An exemption may be granted at the sole discretion of the Board. ~~(3-24-05)~~()

a. The licensee is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for licensure renewal and has complied with the requirements of that state or district. (3-24-05)

b. The licensee is a government employee working outside the continental United States. (3-24-05)

c. The licensee documents individual hardship, including health (certified by a medical doctor) or other good cause. (3-24-05)

501. -- 599. (RESERVED).

600. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 600).

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-24-05)

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the applicant shall submit proof of having met the required continuing education for each year the license or certificate was cancelled. (3-24-05)

03. Operator-in-Training Permit. Applicants for the operator-in-training permit shall, upon compliance with the requirements of Subsections 300.01 and 300.02, be issued a "one-time" non-renewable permit for the purpose of gaining supervised experience as an operator-in-training (OIT). This permit will be valid for three (3) years from the date of issue. Upon making application and providing documented proof to the Board of having completed twelve (12) months of supervised operating experience in a Class I or higher public drinking water or wastewater system, and payment of the ~~original license~~ required fees, the permittee will be issued a Class I License. ~~(3-24-05)~~()

04. Backflow Assembly Testers. Backflow assembly testers shall complete a board approved eight (8) hour refresher course every two (2) years for license renewal. ()

05. Wastewater Land Application License. Wastewater land application licenses shall not be renewed unless the licensee also maintains a current wastewater treatment license. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - RULES GOVERNING THE IDAHO BOARD OF HEARING AID DEALERS AND FITTERS

DOCKET NO. 24-0601-0501 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-2914, 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 October 19, 2005.

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:

Repeal of rules for the Board of Hearing Aid Dealers and Fitters, IDAPA 24.06.01. Title 54, Chapter 29, Idaho Code, was rewritten during the 2005 legislative session and the Board of Hearing Aid Dealers and Fitters was eliminated.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rules are no longer applicable due to changes in Title 54, Chapter 29.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208-334-3233.

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 October 26, 2005.

DATED this 26th day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233 phone
(208) 334-3945 fax

IDAPA 24.06.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS

DOCKET NO. 24-0801-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1107, 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 October 19, 2005.

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:

Correct Board contact information, add definition for funeral establishment and resident trainee, change meeting criteria, change examination dates, clarify resident trainee as mortician and/or funeral director, include funeral director in application process, define standard for pre-need trust account, minimum standards clarified as funeral establishments, clarify records of bodies, expand responsibility for records, and correct language in fee section.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general or dedicated funds

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are not controversial.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0801-0501

005. ADDRESS OF IDAHO BOARD OF MORTICIANS (RULE 5).

The office of the Board of Morticians is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~ibol@ibol.state.id.us~~ mor@ibol.idaho.gov. The Board's official web site is at ~~www2.state.id.us/ibol/mor~~ https://www.ibol.idaho.gov/mor.htm. (3-13-02)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

01. Board. The State Board of Morticians as prescribed in Section 54-1102, Idaho Code. (7-1-93)

02. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-1106 and 67-2602, Idaho Code. (3-13-02)

03. Funeral Establishment. Funeral Establishment means a place of business at a specific street address or location devoted to the embalming and care and preparation for burial or disposal of dead human bodies including all portions of such business premises and all tools, instruments and supplies used in the preparation and embalming of dead human bodies for burial or disposal, and including any chapel or other facility in which funeral or other religious services may be conducted. ()

04. Resident Trainee. The term "Resident Trainee" is defined as a person who is engaged in preparing to become licensed as a mortician or funeral director, and who practices under the direct and immediate personal supervision of a licensed mortician. ()

011. -- 099. (RESERVED).

100. MEETINGS (RULE 100).

The board shall hold meetings ~~on the third Tuesdays of July and January of each year~~ no less than annually at such times and places as determined by the board. The annual election of ~~officers~~ chairman will be held during the ~~July~~ first meeting of each fiscal year. The chairman of the board shall preside at all meetings, appoint all committees, and perform all the functions incidental to the office of chairman. (7-1-93)()

101. -- 149. (RESERVED).

150. TIME OF EXAMINATIONS (RULE 150).

Examinations will be held no less than semi-annually ~~in Boise, on the third (3rd) Tuesday of July and January, or at other such~~ times or places as the Board may determine. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

250. ~~MORTICIAN~~ RESIDENT TRAINEE (RULE 250).

01. Definition. The term "~~Mortician~~ Resident Trainee" as herein used is a person who is engaged in learning the practice of embalming and/or the profession of mortuary arts and sciences. Training shall be understood to mean diligent attention to the subject matter in the course of regular and full-time paid employment. Full-time employment shall mean a minimum of thirty-six (36) hours per week for fifty (50) weeks per year within the mortuary where the sponsoring resident mortician is practicing. It shall be further required that at least three-fourths (3/4) of the training period consists of a sponsoring licensed mortician instructing and demonstrating practices and procedures to increase knowledge of the service performed by a mortician or a funeral director as defined in Chapter 11, Title 54-~~1102 Section A,~~ Idaho Code. A ~~Mortician~~ Resident Trainee shall not sign a death certificate as provided

under Idaho law. For the balance of the required hours it would be the responsibility of the sponsoring mortician, or his licensed appointee, to be immediately available for consultation with the trainee. All training must be served in the state of Idaho. (3-18-99)(____)

02. Sponsoring Mortician. A practicing mortician within the state of Idaho who is duly registered as such with the Bureau of ~~Occupational Licenses~~ and assumes responsibility for the proper supervision and instruction of a "Resident ~~Mortician~~ Trainee". (7-1-93)(____)

03. Eligibility to Be Licensed. No person shall be eligible to be licensed as a "~~Mortician~~ Resident Trainee" who has practiced as a resident trainee or apprentice for a total cumulative period of more than two (2) years in the state of Idaho. For purposes of accounting for total cumulative training as a "~~Mortician~~ Resident Trainee" the sponsoring mortician is required to notify the bureau at the beginning and termination of the training period. When a "~~Mortician~~ Resident Trainee" has completed ~~his~~ training, ~~he must proceed to qualify~~ qualification for licensure as a licensed "Mortician" or "Funeral Director must be completed within the following three (3) year period or said trainee must show good reason for further delay. (7-1-93)(____)

04. Resident Trainee Applicants to Qualify. (7-1-93)

a. Must be a least eighteen (18) years of age. (7-1-93)

b. Must be of good moral character. (7-1-93)

c. Must have graduated from an accredited high school or have received an equivalent education as determined by the standards set and established by the state board of education. (7-1-93)

d. A photo as specified in Section 200 above. (3-13-02)

e. The effective date of the resident training shall be determined by the board at its next meeting. In no case shall it be prior to the date the application, together with the required fees, are received in the office of Occupational License the Bureau. (7-1-93)(____)

f. Resident ~~mortician~~ training must be served under the direction of a qualified full time resident mortician licensed and practicing in Idaho. (7-1-93)(____)

g. Applicants pursuing a mortician license must ~~complete~~ resident training affidavits showing time served, the number of bodies embalmed. (7-1-93)(____)

h. ~~The applicant must appear in person before the board before licensure may be completed. Applicants pursuing a funeral director license must complete resident training affidavits of conducting and/or providing assistance in twenty-five (25) funerals under supervision.~~ (7-1-93)(____)

05. Interruption in Training. An interruption in training of sixty (60) days or more constitutes termination of training. (7-1-93)

251. -- 299. (RESERVED).

300. APPLICATIONS AND REQUIREMENTS EXAMINATION (RULE 300).

In order to be admitted to the examination, the applicant must submit ~~a~~ completed application on ~~a~~ forms approved provided by the ~~Board~~ bureau ~~with the required fees documenting and provide all requested documentation including~~ proof of having completed the training period as prescribed by law and these rules, and meet the specific requirements for license as set forth in Section 54-1109 of the Idaho Code as follows: (3-16-04)(____)

01. Age. Applicant must have attained the age of twenty-one (21) years by the time of examination. (7-1-93)

02. Moral Character. Must be of good moral character. (7-1-93)

03. Mortician Educational Requirements. Applicants for a mortician license ~~must~~ have completed and received credit for at least sixty (60) semester hours or ninety (90) quarter hours instruction in a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in fields of liberal arts, business or science directly relating to the knowledge required to successfully compete in the field of mortuary science. In questionable cases the decision of the board shall be final. These requirements shall be in addition to and not considered a part of the ~~successful~~ completion of and graduation from an accredited embalming school for those pursuing licensure as a mortician mortuary college accredited by the American Board of Funeral Service Education that includes an embalming course of study. (3-16-04)()

~~a. Applicants pursuing licensure as a mortician must also document successful completion of an embalming college accredited by the American Board of Funeral Service Education, Inc. or an embalming college approved by the Board. (3-16-04)~~

~~b. Applicants pursuing licensure as a funeral director must also document completion of at least fifteen (15) semester credit hours from a mortuary college accredited by the American Board of Funeral Service Education, Inc., or document such credits as may otherwise be approved by the Board. An approved course of study shall include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business. (3-16-04)~~

04. Completion of One Year as a Resident Trainee. ~~Must have served one (1) year as required by statute as a resident trainee and receive certification from a sponsoring mortician in Idaho.~~ **Funeral Director Educational Requirements.** Applicants for a funeral director license must have completed and received at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction from a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board. These requirements shall be in addition to completion of at least fifteen (15) semester credit hours or the equivalent from a mortuary college accredited by the American board of funeral service education, inc., or such credits as are otherwise approved by the board, with course of study to include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business. (3-16-04)()

~~a. Trainees pursuing licensure as a mortician must document having assisted in embalming at least twenty-five (25) dead human bodies under the supervision of a sponsoring mortician. (3-16-04)~~

~~b. Applicants pursuing licensure as a funeral director must document having assisted in making at least twenty-five (25) funeral arrangements and in conducting twenty-five (25) funerals under the supervision of a sponsoring mortician. (3-16-04)~~

05. Examination. Each applicant for mortician or funeral director licensure must successfully pass the entire examination approved by the Board. **Photo.** A photo as specified in Section 200 of these rules. (3-16-04)()

06. Completion of One Year as a Resident Trainee. Must have served one (1) year as required by statute as a resident trainee and receive certification from a sponsoring mortician in Idaho. ()

a. Trainees pursuing licensure as a mortician must document having assisted in embalming at least twenty-five (25) dead human bodies under the supervision of a sponsoring mortician. ()

b. Applicants pursuing licensure as a funeral director must document having assisted in making at least twenty-five (25) funeral arrangements and in conducting twenty-five (25) funerals under the supervision of a sponsoring mortician. ()

(BREAK IN CONTINUITY OF SECTIONS)

401. -- ~~449~~424. (RESERVED).

425. MAINTENANCE OF PRE-NEED TRUST ACCOUNT FEES (RULE 425).
Maintenance of pre-need trust accounts fee. Pursuant to Section 54-1134 D, Idaho Code, a fee not to exceed ten percent (10%) of the annual earned interest income may be charged for maintenance of pre-need trust accounts. ()

426. -- 449. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

452. ~~CREMATORY~~ MINIMUM STANDARDS (RULE 452).

01. Reasonable Sanitation and Safety Required. In the interest of the protection of the public welfare, no license will be issued on an application to operate a funeral establishment or crematory unless it is apparent that the establishment or crematory can; and will be operated in a reasonably sanitary and safe manner, ~~free from substantial annoyance to the public.~~ (3-16-04)()

02. Reduction of Cremated Remains. No crematory will be licensed or operated unless it is capable of reducing human remains to cremains containing not more than five percent (5%) of the weight of the body immediately after death. (3-16-04)

03. Delay Before Cremation. No dead human body, regardless of cause of death, is to be cremated, nor is actual cremation of such a body to be commenced, unless the county coroner in the county in which the death occurred gives his written authorization to cremate the body. (3-16-04)

04. Embalming. If a dead human body is to be held longer than twenty-four (24) hours prior to burial, cremation, or other disposition, the body must be either embalmed or refrigerated at thirty-six degrees Fahrenheit (36F) or less until buried, cremated, or otherwise disposed of. ~~No body can be held longer than fourteen (14) days after death prior to cremation unless there is a written request from the next of kin for holding the body.~~ (3-16-04)()

05. Casket Not Necessary. It is not necessary for the body to be in a casket for cremation to take place. (3-16-04)

a. This is not to be construed to mean that the crematory must cremate without a casket; and (3-16-04)

b. It will not prevent the operators from developing their own internal requirements for aesthetic or sanitary reasons. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

454. ~~RECORDS OF CREMATION~~ OF BODIES (RULE 454).

01. Content of Record. Each funeral establishment and crematory must maintain a record of each burial, cremation, or other disposition of human remains, ~~all in the form of that crematory log as adopted by the board~~; disclosing: (3-16-04)()

a. The name of the decedent ~~whose body was cremated~~; and (3-16-04)()

b. The name and address of the person, or names and addresses of the persons if more than one (1),

authorizing the burial, cremation, or other disposition of that body ~~as received by the crematory or its representative;~~
and (3-16-04)(____)

- ~~e.~~ The date upon which that body was received by the crematory; and (3-16-04)
- ~~d.~~ The place where that body was received; and (3-16-04)
- ~~ec.~~ A statement as to whether or not the body was embalmed; and (3-16-04)
- ~~fd.~~ The date of the burial, cremation, or other disposition of that body; and (3-16-04)(____)
- ~~ge.~~ The subsequent disposal of ~~the~~ any cremated remains ~~of that body by the crematory.~~ (3-16-04)(____)

~~02. **Responsibility for Record.** Such record must be made as soon as reasonably possible after the cremation and must be dated and signed by the owner and operator of the crematory and by the licensed mortician who supervised or was otherwise directly responsible for the cremation. (3-16-04)~~

~~03. **Inspection by the Board.** Such records must be maintained at the crematory and open for inspection at any reasonable time by the Board or its designated representatives. (3-16-04)~~

455. RESPONSIBILITY, INSPECTION, AND CONFIDENTIALITY OF RECORDS (RULE 455).
~~Any disclosure of information obtained by the Board in connection with licensure activities and records of funerals or cremations must comply with Idaho Public Records Act 9-337 et seq., Idaho Code. (3-16-04)~~

01. Responsibility for Record. Records regarding the burial, cremation, and other disposition of human bodies must be made as soon as reasonably possible after the burial, cremation, or other disposition and must be dated and signed by the licensed mortician who supervised or was otherwise directly responsible for the burial, cremation, or other disposition. (____)

02. Inspection of Records. Records regarding the receipt, burial, cremation, and other disposition of human bodies must be maintained at the funeral establishment and crematory and be open for inspection at any reasonable time by the Board or its designated representatives. (____)

03. Confidentiality of Records. Any disclosure of information obtained by the Board in connection with licensure activities and records of funerals or cremations must comply with Idaho Public Records Act 9-337 et seq., Idaho Code. (____)

456. -- 499. (RESERVED).

500. FEES (RULE 500).

- 01. Funeral Director.** Funeral director - eighty-five dollars (\$85). (3-13-02)
- 02. Funeral Establishment.** Funeral establishment - one hundred twenty-five dollars (\$125) (original license/annual renewal). (3-13-02)
- 03. Crematory Establishment.** Crematory establishment - two hundred dollars (\$200) (original license/annual renewal). (3-16-04)
- 04. Mortician.** Mortician - eighty-five dollars (\$85) (original license/annual renewal). (3-13-02)
- 05. Mortician Resident Trainee.** ~~Mortician~~ Resident trainee - fifty dollars (\$50) (original license/annual renewal). (3-13-02)(____)
- 06. Application Fee.** Application fee - one hundred dollars (\$100). (3-13-02)

07. Certificate of Authority. Certificate of Authority - fifty dollars (\$50) (original certificate/annual renewal). (3-13-02)

08. Application for Reinstatement. Application for reinstatement within five (5) years - twenty-five dollars (\$25) reinstatement fee and annual renewal fees for back years (Reference Section 67-2614, Idaho Code). (7-1-93)

~~**09. Maintenance of Pre-Need Trust Accounts Fee.** Pursuant to Section 54-1134 D., Idaho Code, a fee not to exceed ten percent (10%) of the annual earned interest income may be charged for maintenance of pre-need trust accounts. (7-1-93)~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.11.01 - RULES OF THE STATE BOARD OF PODIATRY

DOCKET NO. 24-1101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-605, 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 October 19, 2005.

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:

Update incorporation by reference, update board contact information, clarify podiatric residency requirements, change examination dates, clarify acceptable examination and documentation, and provide a scope of practice.

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

There are no fees being imposed or charged as a result of this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are not controversial.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1101-0501

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled American Podiatric Medical Association's Code of Ethics as published by the American Podiatric Medical Association, dated ~~March~~ April 2002~~5~~ and referenced in Section 500, is herein incorporated by reference and is available from the Board's office and on the Board web site. (5-3-03)(____)

005. ADDRESS OF THE IDAHO BOARD OF PODIATRY (RULE 5).

The office of the Board of Podiatry is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~ibol@ibol.state.id.us~~ pod@ibol.idaho.gov. The Board's official web site is at ~~www2.state.id.us/ibol/pod~~ https://www.ibol.idaho.gov/pod.htm. (3-13-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

152. PODIATRIC RESIDENCY (RULE 152).

01. Residency Required for Licensure. A candidate may not apply for licensure until completion of an accredited podiatric surgical residency as approved by the Council on Podiatric Medical Education of no less than twenty-four (24) months, a minimum of twelve (12) months ~~or more as approved by the Council on Podiatric Medical Education or completion of equivalent surgical training as approved by the Board of which must be surgical.~~ (7-1-98)(____)

02. Submission of Verification of Residency Curriculum. Notwithstanding the provisions of Subsection 152.01, a candidate shall cause to be provided directly from the residency program such official documentation of completion of the entire curriculum as the board may require. Any deviation of this requirement must be approved by the Board. (3-13-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

400. LICENSURE BY EXAMINATION (RULE 400).

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

02. Exam Required for Licensure. No person shall be granted a license to practice podiatry without first receiving a passing grade on an examination given by the board and consisting of those subjects outlined in Section 54-606, Idaho Code. (3-13-02)

03. Exam Dates. Examinations shall be held at Boise, Idaho, ~~the third Monday of July~~ no less than annually and at such ~~other~~ and places as the board shall direct. (3-13-02)(____)

04. Passing Grade. A passing grade in all subjects examined shall be a general average of not less than seventy percent (70%). (5-3-03)

05. Failure of Exam. An applicant failing the examination shall be entitled within six (6) months to a reexamination upon the payment of an additional fee as established in Section 300. (3-13-02)

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

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

401. LICENSURE BY ENDORSEMENT (RULE 401).

Applicants for licensure under Section 54-613, Idaho Code, may upon the approval of the Board be granted a license. Each applicant for licensure by endorsement shall provide documentation for each of the following before licensure will be considered: (3-15-02)

- 01. Complete Application.** A complete application together with the required fee; ~~and.~~ (3-15-02)(____)
- 02. Certification of License.** Certification of having maintained a current license or other authority to practice issued by a regulatory board of Podiatry in any state or territory; ~~and.~~ (3-15-02)(____)
- 03. Credentials.** Credentials as required in Subsections 200.02, through 200.06; ~~and.~~ (3-15-02)(____)
- 04. Examination.** Successful passage of a written licensure examination covering all those subjects noted in Section 54-606, Idaho Code. ~~Examination shall be certified by either~~ Official certification of examination must be received by the board directly from: (3-15-02)(____)
 - a.** The applicant's state or territory of licensure; or (3-15-02)
 - b.** The national board of podiatry examiners; ~~and.~~ (3-15-02)(____)
- 05. Practical Experience.** Having practiced podiatry under licensure for three (3) of the last five (5) years immediately prior to the date of application; ~~and.~~ (3-15-02)(____)
- 06. Continuing Education.** Obtained at least twelve (12) hours of continuing education during the twelve (12) months prior to the date of application; ~~and.~~ (3-15-02)(____)
- 07. Disciplinary Action.** Has not been the subject of any disciplinary action within the last five (5) years immediately prior to application and has never had a license to practice podiatry revoked, suspended, or otherwise sanctioned either voluntarily or involuntarily in any jurisdiction. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

403. -- ~~499449.~~ (RESERVED).

450. SCOPE OF PRACTICE (RULE 450).

01. Competence. Upon being granted a license to practice podiatry, a practitioner is authorized to provide only those services and treatments for which that practitioner has been trained and prepared to provide. Information contained within the application file and supplemental certified information of additional training and experience included in the credential file maintained by the practitioner shall be prima facie evidence of the practitioner's education and experience. It is the responsibility of the individual practitioner to ensure that the information in his credential file is accurate, complete and supplemented to support all procedures, applications and treatments employed by the practitioner. Practice beyond a practitioner's documented education and experience may violate the adopted code of ethics and be grounds for discipline by the board. (____)

02. Advanced Surgical Procedures. Advanced surgical procedures shall be performed in a licensed hospital or certified ambulatory surgical center accredited by the joint commission on accreditation of healthcare organizations or the accreditation association for ambulatory health care where a peer review system is in place. Advanced surgical procedures shall be defined as: (____)

- a.** Ankle fractures - Open Reduction and Internal Fixation. (____)

- b.** Ankle and rearfoot arthrodesis. ()
 - c.** Nerve surgery of the leg. ()
 - d.** Major tendon repair or transfer surgery - proximal to ankle. ()
 - e.** Autogenous bone grafting. ()
 - f.** External fixation of the rearfoot, ankle and leg. ()
- 451. -- 499.** **(RESERVED).**

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3204, 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 October 19, 2005.

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:

Update contact information for the Board, clarify group supervision, clarify requirements for social work supervisor registration.

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

There are no fees being imposed or charged as a result of this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are not controversial.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-0501

005. ADDRESS OF THE STATE BOARD OF SOCIAL WORK EXAMINERS (RULE 5).

The office of the State Board of Social Work Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us ~~(3-14-05)~~(____) swo@ibol.idaho.gov. The Board's official web site is at <https://www.ibol.idaho.gov/swo.htm>.

(BREAK IN CONTINUITY OF SECTIONS)

201. PRACTICE OF SOCIAL WORK.

01. Baccalaureate Social Work. The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing psychotherapy. (3-20-04)

02. Master's Social Work. The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (3-20-04)

03. Clinical Social Work. The practice of clinical social work is a specialty within the practice of master's social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (3-20-04)

04. Clinical Practice Exemption. A social worker licensed in Idaho at the masters level prior to August 5, 2002 engaged in clinical social work and employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility may meet the supervised experience requirement for clinical licensure upon submission of documentation prior to July 1, 2006 showing a minimum of one hundred (100) face-to-face hours of employer provided supervision. No more than seventy-five (75) hours of supervision may be provided by a licensed counselor, marriage and family therapist, or psychiatric nurse and no less than twenty-five (25) hours of supervision may be provided by a licensed clinical social worker, psychologist, or an individual licensed to practice medicine and surgery who practices in the area of psychiatry. A licensed social worker who meets the requirements of Section 201 may continue to practice clinical social work until July 1, 2006. An individual practicing under this exemption must still pass the clinical examination as set forth in Section 350 prior to clinical licensure. (3-14-05)

05. Independent Practice Of Social Work. As defined in Section 54-3207, Idaho Code, is that practice in which an individual who, wholly or in part, practices social work autonomously, with responsibility for that practice. No baccalaureate or masters level social worker shall engage in independent practice until such time as

the social worker shall have worked in a supervised setting and received a minimum of three thousand (3000) hours in a supervised setting in no less than two (2) years. Anyone holding a current Idaho Social Work license who was licensed in Idaho prior to August 5, 2002 shall be exempt from the requirement to submit a plan of supervision and may apply for the Independent Practice certification. Such applicant shall, prior to July 1, 2006, submit documentation establishing that a minimum of three thousand (3,000) hours of supervised practice, including one hundred (100) face-to-face hours, was obtained in a supervised setting and provided by a qualified and experienced professional working in the same area of practice; that supervision occurred on a regular and on-going basis; and that the supervisor(s) held a social work license in good standing. (3-14-05)

06. Private Practice of Social Work. As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (5-3-03)

07. Employment of a Social Worker. A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

08. Supervision. Supervised experience shall be required for both independent practice status and clinical licensure. Consultative-teaching supervision is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. Actual supervisor contact shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice and must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Group supervision totaling no more than fifty (50) hours will be allowed for groups of no more than six (6) persons and the allowable credit shall be prorated at the two to one (2 to 1) ratio (total session minutes divided by total supervisees multiplied by two (2) equals maximum allowable credit per supervisee for the session. i.e. an individual attending a one (1) hour group supervisory session consisting of six (6) supervisees shall be allowed twenty (20) minutes of group supervision credit. Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.08.c. (~~3-14-05~~)(____)

a. Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the baccalaureate, masters, or clinical level. (3-20-04)

b. Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)

c. Supervision of social workers pursuing licensure as clinical level practitioners must be provided by either a licensed clinical social worker, a licensed clinical psychologist, a person licensed to practice medicine and surgery who practices in the area of psychiatry, a licensed clinical professional counselor registered as a supervisor or a licensed marriage and family therapist registered as a supervisor and must focus on clinical social work as defined. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. A social worker pursuing licensure at the clinical level must document one thousand seven hundred fifty (1,750) hours of direct client contact of the required three thousand (3,000) hours in clinical social work as defined. (3-14-05)

d. Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (3-20-04)

09. Supervised Practice Required. To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

a. Meet the requirements set forth in Subsection 201.08; (3-20-04)

- b.** Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)
- c.** Not have more than two (2) supervisors at any given time. (5-3-03)

202. SOCIAL WORK SUPERVISOR REGISTRATION (RULE 202).

Effective January 1, 2006~~7~~, Idaho licensed social workers shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a clinical social worker.

~~(3-14-05)~~()

01. Requirements for Registration. (3-14-05)

- a.** Document at least two (2) years experience as a licensed clinical social worker ~~in Idaho.~~ (3-14-05)()
- b.** Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (3-14-05)
- c.** Document fifteen (15) contact hours of education in supervisor training as approved by the Board. ()

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the board. (3-14-05)

- a.** Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. (3-14-05)
- b.** A supervisor's registration shall be valid only so long as the individual's clinical social worker license remains current and in good standing. (3-14-05)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-0501 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3404, 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 October 19, 2005.

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:

Adds supervision and continuing education requirements that are needed to further protect the public; increases the number of supervisees to allow more supervisory opportunities in the rural portions of Idaho; adds deadline for application review to avoid last minute rushes; and adds an administrative fee for the examination.

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

The \$25 administration fee for the examination could have a positive impact of approximately \$2,000 on the dedicated funds of the Board. This figure is based on the number of licensees from this last fiscal year per Section 54-3411, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are not controversial.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-0501

004. INCORPORATION BY REFERENCE (RULE 4).

01. ACA Code of Ethics. “ACA Code of Ethics and Standards of Practice,” as published by the American Counseling Association (ACA), ~~dated 1999~~ effective 1995 and referenced in Subsections 241.02, 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-13-02)(____)

02. AAMFT Code of Ethics. The document titled “AAMFT Code of Ethics”, as published by the American Association for Marriage and Family Therapy (AAMFT), ~~dated~~ effective July 1, 2001 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-13-02)(____)

03. ACES Guidelines. The document titled “ACES” that provides supervision guidelines for supervisors, as published by the Association for Counselor Education and Supervision (ACES), dated March 1993 referenced in Subsection 200.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (4-2-03)

04. Guidelines. The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2002 referenced in Subsection 240.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-20-04)

005. ADDRESS OF IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS (RULE 5).

The office of the Board of Professional Counselors and Marriage and Family Therapists is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board’s FAX number is (208) 334-3945. The Board’s e-mail address is ibol@ibol.state.id.us cou@ibol.idaho.gov. The Board’s official web site is at <https://www.ibol.idaho.gov/cou.htm>. (4-6-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

149. MATERIALS TO BE FILED BY ALL LICENSURE APPLICANTS (RULE 149).

Each applicant for licensure shall: (3-13-02)

01. Complete an Application. Complete an application upon a form prescribed by the Board. (3-13-02)

02. Provide Verification of Educational Program. Verify completion of the approved educational program identified on the application with official graduate transcripts. Official transcripts must be received by the Board directly from the registrar of the appropriate college or university. (3-13-02)

03. Submit Verification of Supervised Experience. The verification of supervised experience shall be provided directly to the Board by those supervisors listed on the application. (3-13-02)

04. Submit Application Fee. Submit a non-refundable application fee as determined by Subsection 250.01. (3-13-02)

05. Deadline. To be considered by the Board, a properly completed application together with all supporting documentation and required fees must be received by the Bureau at least seven (7) calendar days prior to the next scheduled meeting of the Board. (____)

06. Lack of Activity. Applications on file with the Board from an applicant who has not provided any

written contact with the Board during the previous twelve (12) consecutive months shall be deemed denied and shall be terminated. ()

150. QUALIFICATIONS FOR PROFESSIONAL COUNSELOR LICENSURE (RULE 150).

Licensure as a “professional counselor” shall be restricted to persons who have successfully completed the required examination and each of the following requirements: ~~(3-13-02)~~()

01. Graduate Program Requirement. A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling. (7-1-93)

a. A planned graduate program in a counseling field shall be defined as completion of one (1) of the following: (7-1-93)

i. A counseling program accredited or approved by the National Council for accreditation of Teacher Education or a counseling program listed in the Interstate List of Approved Programs; or (7-1-93)

ii. A counseling program approved by the Council for Accreditation of Counseling and Related Educational Programs; or (7-1-93)

iii. A counseling program approved by the Council on Rehabilitation Education; or (7-1-93)

iv. A counseling program approved by the Board which shows evidence of education in the following areas: Counseling Theory, Counseling Techniques and Supervised Counseling Experience (this practicum must be supervised at the ratio of at least one (1) hour of one-to-one supervision for every ten (10) hours of experience in the setting) and at least six (6) of the following: (7-1-93)

(1) Human growth and development: Includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological, sociological, and physiological approaches. Also included are areas such as human behavior (normal and abnormal), personality theory, and learning theory. (7-1-93)

(2) Social and cultural foundations: Includes studies of change, ethnic groups, subcultures, changing roles of women, sexism, urban and rural societies, population patterns, cultural mores, use of leisure time, and differing life patterns. (7-1-93)

(3) The helping relationship: Includes philosophic bases of the helping relationship: Consultation theory and/or an emphasis on the development of counselor and client (or consultee) self-awareness and self-understanding. (7-1-93)

(4) Groups: Includes theory and types of groups, as well as descriptions of group practices, methods dynamics, and facilitative skills. It includes either a supervised practice and/or a group experience. (7-1-93)

(5) Life-style and career development: Includes areas such as vocational-choice theory, relationship between career choice and life-style, sources of occupational and educational information, approaches to career decision-making processes, and career-development exploration techniques. (7-1-93)

(6) Appraisal of the individual: Includes the development of a framework for understanding the individual, including methods of data gathering and interpretation, individual and group testing, case-study approaches and the study of individual differences. Ethnic, cultural, and sex factors are also considered. (7-1-93)

(7) Research and evaluation: Includes areas such as statistics, research design, and development of research and demonstration proposals. It also includes understanding legislation relating to the development of research, program development, and demonstration proposals, as well as the development and evaluation of program objectives. (7-1-93)

(8) Professional orientation: Includes goals and objectives of professional counseling organizations, codes of ethics, legal consideration, standards of preparation, certification, and licensing and role of identity of counselors. (7-1-93)

b. A total of at least sixty (60) graduate semester hours or ninety (90) graduate quarter hours shall be required. (7-1-93)

c. Advanced counseling practicum shall be practica taken at the graduate school level. (7-1-93)

d. A graduate degree shall be one of the following beyond the baccalaureate level: The master's degree, the educational specialist certificate or degree, or the doctor's degree. (7-1-93)

e. An accredited university or college shall be a college or university accredited by one (1) of the following: the Middle States Association of Colleges and Secondary Schools, the New England State Association of Colleges and Secondary Schools, the North Central Association of Colleges and Secondary Schools, the Northwest Association of Colleges and Secondary Schools, the Southern Association of Colleges and Secondary Schools, or the Western College Association. (7-1-93)

02. Supervised Experience Requirement. One thousand (1,000) hours of supervised experience in counseling acceptable to the Board. (7-1-93)

a. One thousand (1,000) hours is defined as one thousand (1,000) clock hours of experience working in a counseling setting, four hundred (400) hours of which shall be direct client contact. Supervised experience in practica and/or internships taken at the graduate level may be utilized. The supervised experience shall include a minimum of one (1) hour of face-to-face or one-to-one (1/1) or one-to-two (1/2) consultation with the supervisor for every twenty (20) hours of job/internship experience. Face-to-face may include a face-to-face setting provided by a live video connection between the supervisor and supervisee. As stated under Subsection 150.01.a.iv. counseling practicum experience as opposed to job or internship experience shall be supervised at a ratio of one (1) hour of supervision for every ten (10) hours in the settings. For example: (3-13-02)(____)

i. A person in a twenty (20) hour per week job/internship who is receiving one (1) hour of individual supervision each week would accumulate one thousand (1,000) supervised hours in fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

ii. A person in a forty (40) hour per week setting with one (1) hour of supervision per week would still require fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

iii. A person in a forty (40) hour per week setting with two (2) hours of supervision per week would accumulate the one thousand (1,000) hours at the twenty to one (20/1) supervision ratio in twenty-five (25) weeks. (7-1-93)

b. Until July 1, 2004, the supervision must be provided by a Professional Counselor or a Clinical Professional Counselor licensed by the state of Idaho. Effective July 1, 2004, postgraduate supervision must be provided by a Professional Counselor, ~~or~~ a Clinical Professional Counselor or a Marriage and Family Therapist licensed by the state of Idaho and registered with the Board as a ~~Counselor~~ Supervisor. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for licensure in that state are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. If supervision was obtained prior to July 1, 1988, or in a state that does not regulate counseling, that supervision must have been provided by a qualified counselor educator as a part of a planned graduate program or by a person who holds a graduate degree beyond the baccalaureate level who is certified and/or licensed as a counselor, social worker, psychologist, or psychiatrist. Supervision by an administrative superior who is not in a counseling related profession is not acceptable to the Board. Supervision by a professional counseling peer, however, may be acceptable to the Board if the peer/supervisory relationship includes the same controls and procedures expected in an internship setting. (See Subsection 150.02.a.) For example, the relationship should include the staffing of cases, the critiquing of counseling tapes and this supervision must be conducted in a formal, professional, consistent manner on a regularly scheduled basis. (4-2-03)(____)

c. Experience in counseling is defined as assisting individuals or groups, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan action reflecting interests, abilities, aptitudes, and needs as related to personal-social concerns, educational progress, and occupations and careers. Counseling experience may include the use of appraisal instruments, referral activities, and research findings. (7-1-93)

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

~~**03. Written Examination Requirement.**~~ (7-1-93)

~~**a.** The Board requires the successful passage of the National Counselor Examination prepared by the National Board for Certified Counselors (NBCC).~~ (3-13-02)

~~**b.** Completion of the examination will not be required until the applicant meets the requirements presented in Subsections 150.01 and 151.02. However, an applicant may take the examination earlier if he desires.~~ (7-1-93)

~~**e.** The examination will be conducted at a time and place specified by the Board.~~ (7-1-93)

~~**d.** Successful passage of the examination is defined by the Board as achievement of the passing score set by the NBCC. Reexamination shall consist of the entire examination.~~ (3-13-02)

151. -- 199. (RESERVED).

200. COUNSELOR SUPERVISOR REQUIREMENTS (RULE 200).

Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a counselor. (4-2-03)

01. Requirements for Registration. (4-2-03)

a. Document at least two (2) years experience as a licensed counselor in Idaho. (4-2-03)

b. Document at least one thousand five hundred (1,500) hours of direct client contact as a counselor. (4-2-03)

c. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (4-2-03)

d. Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (4-2-03)

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the Board. (4-2-03)

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. (4-2-03)

b. A supervisor's registration shall be valid only so long as the individual's counselor license remains current and in good standing. (4-2-03)

03. Supervision. (4-2-03)

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines for supervisors dated March 1993, adopted by the Association for Counselor Education and Supervision. (4-2-03)

b. A Registered Counselor Supervisor shall not provide supervision to more than ~~three~~ six (~~3~~6)

individuals ~~at one time~~.

~~(4-2-03)~~()

201. -- 224. (RESERVED).

225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).

~~The following requirements must be met for clinical professional counselor licensure.~~ Licensure as a “clinical professional counselor” shall be restricted to persons who have successfully completed the required examination and the following: ~~(3-13-02)~~()

01. Requirements. The following requirements must be met: (3-13-02)

a. Hold a valid licensed professional counselor license; and (4-2-03)

b. Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure in any state. (4-2-03)

i. All applicants for Clinical Professional Counselor license must provide verification of meeting at least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor. The remainder of the supervision may be provided by licensed Psychiatrists, Counseling/Clinical Psychologists, Licensed Clinical Social Workers, or Marriage and Family Therapists. (4-6-05)

ii. The ratio for supervision will consist of one (1) hour of face-to-face, one-on-one (1/1) supervision to every thirty (30) hours of direct client contact. (7-1-97)

c. ~~Effective July 1, 2005, s~~Successful completion of ~~National Board of Certified Counselors’ National Clinical Mental Health Counseling Examination~~ the required written examination. ~~(4-6-05)~~()

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant’s supervised experience. (4-2-03)

02. Supervisors. A supervisor may supervise no more than ~~three~~ six (36) licensed professional counselors ~~at any one time~~. ~~(7-1-97)~~()

(BREAK IN CONTINUITY OF SECTIONS)

240. EXAMINATION FOR LICENSURE (RULE 240).

Licensure as a counselor, clinical counselor, or marriage and family therapist shall be restricted to persons who have successfully completed the required written examination. ()

01. Examination. ()

a. All counselor applicants are required to successfully pass the National Counselor Examination prepared by the National Board of Certified Counselors (NBCC). ()

b. All clinical counselor applicants are required to successfully pass the National Clinical Mental Health Counselor Examination (NCMHCE) prepared by the National Board of Certified Counselors (NBCC). ()

c. All marriage and family therapist applicants are required to successfully pass the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). ()

02. Time and Place. The examination will be conducted at a time and place specified by the Board or the examining entity. ()

03. Successful Passage. Successful passage of the examination is defined as achievement of the passing score set by the preparer of the examination. Reexamination shall consist of the entire examination. (____)

~~2401.~~ -- 244. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

250. FEES (RULE 250).

- 01. Application Fee.** Application fee: (7-1-97)
- a.** Professional Counselor - seventy-five dollars (\$75). (3-13-02)
 - b.** Clinical Professional Counselor - seventy-five dollars (\$75). (3-13-02)
 - c.** Marriage and Family Therapist - seventy-five dollars (\$75). (3-13-02)
 - d.** Intern Registration - twenty-five dollars (\$25). (4-2-03)

02. Professional Counselor and Marriage and Family Therapist Examination or Reexamination Fee. The Professional Counselor and Marriage and Family Therapist license examination or reexamination fee shall be the fee as set by the provider of the approved examination plus an administration fee of twenty-five dollars (\$25). (~~4-6-05~~)(____)

03. Original License Fee. Original license fee for Professional Counselor or Clinical Professional Counselor or Marriage and Family Therapist - seventy-five dollars (\$75). (4-6-05)

04. Annual Renewal Fee. Annual license renewal fee for Professional Counselor, Clinical Professional Counselor, or Marriage and Family Therapist - sixty dollars (\$60). (4-6-05)

05. Fees are Non-Refundable. All fees are non-refundable. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

425. CONTINUING EDUCATION (RULE 425).

Every person holding an Idaho license as a ~~Pastoral~~ Professional Counselor, Clinical Professional Counselor or a Marriage and Family Therapist must annually complete twenty (20) contact hours of continuing education prior to license renewal. (~~4-2-03~~)(____)

01. Contact Hours. The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. No less than ~~One~~ three (3) contact hours for each renewal period shall be in ethics. (~~3-20-04~~)(____)

02. Documentation of Attendance. It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (4-2-03)

03. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. No more than five (5) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried

forward more than one (1) time.

(4-2-03)

04. Compliance Audit. The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-3407, Idaho Code.

(4-2-03)

05. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board.

(4-6-05)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-0501

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: The pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective August 20, 2004, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 54-4106, Idaho Code, and Title XI of the federal statute.

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

The pending rule is being adopted as proposed. The original text of the temporary and proposed rule was published in the January 5, 2005 Idaho Administrative Bulletin, Vol. 05-1, pages 155 through 157. The effective date of the temporary rule is August 20, 2004.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

IDAPA 24, TITLE 18, CHAPTER 01

RULES OF THE REAL ESTATE APPRAISER BOARD

There are no substantive changes from the proposed rule text.

The complete text of the temporary and proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-1, January 5, 2005, pages 155 through 157.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-0502

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-4106, Idaho Code, and Title XI, federal statute.

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 October 19, 2005.

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:

Update incorporation by reference and board contact information, clarify quorum for voting purposes, remove certification from fees, define when eligible for examination, amends registered trainee real estate appraiser classification, and amends qualifications criteria for certified residential and certified general real estate appraisers.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are mandated by federal Appraisal Qualifications Board.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1801-0502

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)", 2005~~6~~ Edition published by the Appraisal Foundation and effective January 1, 2005~~6~~ as referenced in Subsection 700, is herein incorporated by reference and is available for review at the Board's office and may be purchased from the Appraisal Foundation.

(~~4-6-05~~)()

005. ADDRESS OF THE IDAHO REAL ESTATE APPRAISER BOARD (RULE 5).

The office of the Real Estate Appraiser Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220 Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~ibol@ibol.state.id.us~~ rea@ibol.idaho.gov. The Board's official web site address is https://www.ibol.idaho.gov.

(~~4-6-05~~)()

(BREAK IN CONTINUITY OF SECTIONS)

100. ORGANIZATION AND MEETINGS (RULE 100).

01. Board Name. In accordance with Idaho Statutes, the name of this Board shall be the Idaho Real Estate Appraiser Board, hereafter called the Board. Whenever reference is made to "Law," the same shall refer to the Laws of the state of Idaho.

(7-1-93)

02. Organization of Board. At the first meeting of each year, the Board shall organize and elect from its members a Chairman and Vice Chairman who shall assume the duties of their respective offices immediately upon such selection.

(3-13-02)

03. Board Members and Duties.

(7-1-93)

a. Chairman - The Chairman shall be a voting member of the Board, and when present preside at all meetings, appoint with the consent of the Board all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees.

(7-1-93)

b. Vice-Chairman - The Vice Chairman shall, in the absence or incapacity of the Chairman, exercise the duties and possess all the powers of the Chairman.

(7-1-93)

101. -- 149. (RESERVED).

~~**150. PROCEDURES AND DUTIES (RULE 150).**~~

~~**014. Meetings.** The Board shall meet at least four (4) times annually and at such other times as requested by the Board or its chairman.~~

(7-1-93)

~~**025. Voting - Quorum.** A quorum shall be three (3) board members. A majority vote of the quorum present shall be considered the action of the Board as a whole.~~

(~~7-1-97~~)()

~~**151. -- 199. (RESERVED).**~~

~~**200150. FEES (RULE 200150).**~~

Fees are established in accord with Section 54-4113, Idaho Code as follows:

(7-1-93)

01. Application. Application fee for ~~Certification/Registration~~ License - two hundred fifty dollars (\$250).

(~~3-13-02~~)()

02. Original ~~Certification~~ License. Original ~~Certification~~ License - one hundred twenty-five dollars (\$125*).

(~~3-30-01~~)()

- 03. ~~Certification~~ License Renewal.** ~~Certification~~ License renewal - two hundred fifty dollars (\$250*).
(~~3-30-01~~)(____)
- 04. Reinstatement.** Reinstatement fees are as provided in Section 67-2614, Idaho Code - twenty-five dollars (\$25).
(7-1-93)
- 05. Application for Reciprocity.** Application for reciprocity - two hundred fifty dollars (\$250*).
(3-30-01)
- 06. Original ~~Certification~~ License Via Reciprocity.** Original ~~Certification~~ License via reciprocity - one hundred twenty-five dollars (\$125*).
(~~3-30-01~~)(____)
- 07. Temporary Permit.** Temporary permit - one hundred dollars (\$100).
(7-1-93)
- 08. Trainee Registration Fee.** Trainee registration fee - fifty dollars (\$50).
(3-13-02)
- 09. Examination and Reexamination Fees.** Examination and Reexamination fees will be calculated based on the actual cost of the examination. Successful applicants will be notified of the fees at the time they are scheduled for examination.
(7-1-97)
- 10. Fees are Non-Refundable.** Fees are non-refundable.
(7-1-93)
- 11. Fees Followed By “*” Means.** Proposed fees for these categories marked with an asterisk include ~~an estimated~~ twenty five-dollars (\$25) to be submitted by the state to the federal government. Title XI, Section 1109 requires each state to submit a roster listing of state ~~certified~~ licensed appraisers to the Appraiser Subcommittee “no less than annually”. The state is also required to collect from such individuals who perform appraisals in federally related transactions an annual registry fee of “not more than twenty five dollars (\$25)”, such fees to be transmitted by the state to the federal government on an annual basis.
(~~7-1-93~~)(____)

151. -- 199. (RESERVED).

250200. APPLICATION (RULE 250200).

- 01. Filing Application With Supporting Documents and Fees.** Any person desiring to apply for ~~certification~~ licensure must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. After the qualifications have been reviewed/verified and approved by the Board, the applicant will receive the pre-approved examination application and must submit the appropriate fees to the examining entity.
(~~3-13-02~~)(____)
- 02. Application Deadline Date.** Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled board meeting in order to be reviewed by the Board. Applications received less than thirty (30) days in advance will be held until a subsequent meeting.
(3-13-02)
- 03. Eligibility for Examination.** The qualified applicant will be assigned to the first available examination subsequent to the determination of eligibility based on documentation that the applicant has met the required education and experience requirements.
(~~7-1-97~~)(____)
- 04. Trainee Registration Application.** Any person desiring registration as a trainee must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled Board meeting in order to be reviewed by the Board.
(3-13-02)

201. -- 249. (RESERVED).

Section 250 has been renumbered and moved to Section 200

~~251.—298. (RESERVED).~~

~~299~~250. REQUIREMENTS FOR LICENSURE/~~CERTIFICATION~~ (RULE ~~299~~250).

All applicants for licensure/~~certification~~ in any real estate appraiser classification must ~~meet~~ comply with the following education, experience and examination requirements in addition to meeting those requirements set forth in Sections ~~275~~, 300, 350, and 400 below. ~~All applicants for trainee registration must meet the following requirements regarding education set forth in Section 299 in addition to those requirements set forth in Section 430.~~

~~(3-13-02)~~(____)

~~01. Examination. Successful completion of an examination approved by the Board pursuant to the guidelines of the Appraisal Foundation.~~ (7-1-97)

021. Education. Effective July 1, 2006, hours will be credited only for courses with content that follows the Required Core Curriculum as outlined by the Appraisal Qualification Board. (7-1-97)(____)

a. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen (15) hours, and the individual successfully completes ~~an~~ closed-book examination pertinent to the educational offering. (7-1-97)(____)

b. Credit for the classroom hour requirement may be obtained from the following: (7-1-97)

i. Colleges or Universities. (7-1-97)

ii. Community or Junior Colleges. (7-1-97)

iii. The Appraisal Qualifications Board. (8-20-04)T

iv. State or Federal Agencies or Commissions. (7-1-97)

v. Other providers approved by the Board. (7-1-97)

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. (3-18-99)

d. Course credits ~~which~~ that are obtained from the course provider by challenge examination without attending the course will not be accepted. (3-18-99)(____)

e. Various appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of ~~all those~~ those topics listed ~~below~~ in Subsection 250.01.e. that are required for the license classification for which application is being made. Licensed Residential and Certified Residential must include emphasis in one (1) to four (4) unit residential properties; Certified General must include emphasis in nonresidential properties. (7-1-97)(____)

i. ~~Influences on Real Estate Value~~ Basic appraisal principles. (7-1-97)(____)

ii. ~~Legal Considerations in Appraisal~~ Basic appraisal procedures. (7-1-97)(____)

iii. ~~Types of Value~~ The fifteen (15) hour national USPAP course. (7-1-97)(____)

iv. ~~Economic Principles~~ Market analysis and highest and best use. (7-1-97)(____)

v. ~~Real Estate Markets and Analysis~~ Appraiser site valuation and cost approach. (7-1-97)(____)

vi. ~~Valuation Process~~ Sales comparison approach. (7-1-97)(____)

- vii. ~~Property Description~~ Sales income approach. (7-1-97)(____)
- viii. ~~Highest and Best Use Analysis~~ Report writing and case studies. (7-1-97)(____)
- ix. ~~Appraisal Statistical Concepts~~ Statistics, modeling and finance. (7-1-97)(____)
- x. ~~Sales Comparison Approach~~ Advanced applications and case studies. (7-1-97)(____)
- xi. ~~Site Value~~ Appraisal subject matter electives. (7-1-97)(____)
- xii. ~~Cost Approach.~~ (7-1-97)
- xiii. ~~Income Approach.~~ (7-1-97)
- xiv. ~~Valuation of Partial Interests.~~ (7-1-97)
- xv. ~~Appraisal Standards and Ethics.~~ (7-1-97)

f. Advanced courses will be those courses for which an introductory or basic course is required as a prerequisite. Typically classes titled "Introductory," "Basic," or "Principles" will not be accepted for advanced requirements. (7-1-97)(____)

032. Experience. (7-1-97)

a. The work product claimed for experience credit must be in conformity with the USPAP or shall be in compliance with generally accepted standards which were in effect at the time those appraisals were prepared. (3-13-02)

b. ~~On or after July 1, 2003, All appraisal experience must be obtained as a registered trainee or as a licensed or certified appraiser. A year of experience is equal to a minimum of one thousand (1,000) hours worked during a consecutive twelve (12) month period. Regardless of the number of experience hours submitted or obtained during any twelve (12) month period, no more than one thousand (1,000) of those hours may be credited to meet this requirement. Hours obtained in excess of one thousand (1,000) hours during any consecutive twelve (12) month period may not be credited or carried over into the next twelve (12) month period.~~ (3-13-02)(____)

c. Only experience gained during the five (5) years immediately preceding application will be considered for evaluation. (7-1-97)(____)

d. Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study. (3-18-99)(____)

e. ~~An appraiser~~ Each applicant applying for ~~certification~~ licensure must verify his completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board. (7-1-97)(____)

i. ~~To demonstrate experience~~ The Board requires submission of a log which that details hours claimed for experience credit. The log must include the type of property, address of the property, report date, description of work performed, and number of work hours. (7-1-97)(____)

ii. The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit. (7-1-97)

iii. The Board may request submission of written reports or file memoranda ~~which that~~ substantiate an applicant's claim for experience credit. (7-1-97)(____)

f. Ad valorem tax appraisers ~~who~~ must demonstrate ~~that~~ they use of techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 010.10, Field Real Estate Appraisal Experience ~~with~~ in order to receive experience credit. (7-1-97)()

03. Examination. Successful completion of an examination appropriate to the license classification being applied for and approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. ()

251. -- 274. (RESERVED).

275. REGISTERED TRAINEE REAL ESTATE APPRAISER (RULE 275).

01. Qualification. Each applicant for registration as an appraiser trainee must meet the following requirements: ()

a. Education. Beginning July 1, 2006, all applicants for registration as a trainee must document completion of at least seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: ()

i. Basic Appraisal Principles - not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and ()

ii. Basic Appraisal Procedures - not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and ()

iii. National USPAP Course - not less than fifteen (15) hours. ()

b. Experience. All applicants for registration as a trainee must retain and identify at least one (1) licensed real estate appraiser who agrees to provide the supervision required by law and rule. The supervising appraiser shall: ()

i. Hold a current and unrestricted Idaho license as a Certified Residential Appraiser or a Certified General Appraiser; and ()

ii. Not have been disciplined by the Board within the previous four (4) years from acting as a supervisor; and ()

iii. Not be registered to provide supervision responsibilities to more than three (3) appraiser trainees at any one (1) time; and ()

iv. Be responsible for the training and direct supervision of the appraiser trainee; and ()

v. Accept responsibility for all appraisal reports by signing and certifying that the report is in compliance with USPAP; and ()

vi. Review all appraiser trainee appraisal report(s); and ()

vii. Personally inspect each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. ()

c. Examination. Each trainee applicant shall document successful passage of examinations in each of the prerequisite courses required for registration as a trainee. ()

02. Scope and Practice. An Appraiser Trainee shall not be involved in the appraisal of any property

that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to USPAP. ()

a. Each appraiser trainee is permitted to have more than one (1) supervising appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. ()

b. An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the following for each appraisal: ()

i. Type of property. ()

ii. Date of report. ()

iii. Address of subject property. ()

iv. Description of work performed by the trainee and the scope of review and supervision of the supervisor. ()

v. Number of work hours. ()

vi. Signature and license number of the supervising appraiser. ()

c. An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. ()

03. Continuing Education. Prior to the second renewal of an appraiser trainee registration the appraiser trainee shall be required to obtain: ()

a. The equivalent of fifteen (15) classroom hours of instruction in approved courses or seminars during the twelve (12) month period preceding the renewal. ()

b. All continuing education shall be in compliance with Subsections 401.01 through 401.03. ()

c. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. ()

d. The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. ()

276. -- 298. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 300).

The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). Applicants must meet the following ~~examination~~, education, ~~and~~ experience and examination requirements in addition to complying with Section ~~299~~250. Subsequent to being licensed, ~~an individual~~ every licensee must annually meet the continuing education requirement. (7-1-97)()

01. Education. Prior to January 1, 2007, As a prerequisite to taking the examination for licensure as an Idaho Licensed Real Estate Appraiser, ~~##~~ each applicant shall present evidence satisfactory to the board ~~that he has~~ of having successfully completed not less than ninety (90) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than seventy (70) classroom hours of study related to those topics outlined under Subsection ~~299~~250.021.e., the basic principles of real estate appraising. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics will be credited to the classroom hour requirement. Beginning on January 1, 2007, as a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall: (3-13-02)()

- a.** Document registration as an Appraiser Trainee; and ()
- b.** Document the successful completion of not less than seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: ()
 - i.** Residential Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and()
 - ii.** Residential Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and ()
 - iii.** Residential Sales Comparison and Income Approaches - not less than thirty (30) hours specifically including Valuation Principles and Procedures - Sales Comparison Approach; Valuation Principles and Procedures - Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and ()
 - iv.** Residential Report Writing and Case Studies - not less than fifteen (15) hours specifically including Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies. ()

02. Experience. Prerequisite to sit for the examination: (7-1-97)

- a.** Equivalent of two (2) years Document two thousand (2,000) hours of supervised appraisal experience ~~(see Subsection 299.03.b.)~~ as a registered Appraiser Trainee in no less than twelve (12) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (7-1-97)()
- b.** Of the required two thousand (2,000) hours, the applicant must accumulate a minimum of one thousand five hundred (1,500) hours from field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection ~~299.03.e~~ 250.02.d. (7-1-97)()

03. Examination. Successful completion of the Licensed Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. ()

301. -- 349. (RESERVED).

350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 350).

The State Certified Residential Real Estate Appraiser classification applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following ~~examination;~~ education, ~~and~~ experience and examination requirements in addition to complying with Section ~~299~~250. Subsequent to being certified ~~an individual~~ every licensee must annually meet the continuing education requirement. (7-1-97)()

01. Education. Prior to January 1, 2007, As a prerequisite to taking the examination for ~~certification~~ licensure as an Idaho Certified Residential Real Estate Appraiser, ~~##~~ each applicant shall present evidence satisfactory to the board ~~that he has~~ of having successfully completed not less than one hundred twenty (120)

classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than ninety (90) classroom hours of study related to those topics outlined under Subsection ~~299~~250.021.e., the basic principles of real estate appraising and thirty (30) classroom hours of advanced residential or non-residential specialized courses relating to the topics specified at Subsection ~~299~~250.021.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; will be credited to the classroom hour requirement. Beginning on January 1, 2007, as a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall: (3-13-02)(____)

a. Hold an Associate Degree or higher from an accredited college or university or document successful completion of no less than twenty-one (21) college semester credit hours in English Composition, Principles of Economics (micro or macro), Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers, and Business or Real Estate Law; and (____)

b. Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser or hold a current license as a Licensed Residential Real Estate Appraiser; and (____)

c. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: (____)

i. Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (____)

ii. Advanced Residential Applications and Case Studies - not less than fifteen (15) hours specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and (____)

iii. Appraisal Subject Matter Electives - not less than twenty (20) hours and may include hours over the minimum shown in Subsection 350.01.c. (____)

02. Experience. Experience is a prerequisite to sit for the licensure examination: (3-18-99)(____)

a. Prerequisite to sit for the examination: Equivalent of three (3) years Document two thousand five hundred (2,500) hours of appraisal experience in no less than twenty-four (24) months (see Subsection ~~299.03.b~~-250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (3-18-99)(____)

b. The applicant must accumulate a minimum of two thousand five hundred (2,500) hours of real estate appraisal experience in not less than thirty (30) months. Two thousand (2,000) hours of the experience shall be from residential field appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection ~~299.03.e~~250.02.d. (4-5-00)(____)

351. -- 399. (RESERVED).

400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).

The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 299. Subsequent to being certified, an individual must meet the continuing education requirement. (7-1-97)

01. Education. Prior to January 1, 2007, As a prerequisite to taking the examination for certification licensure as an Idaho State Certified General Real Estate Appraiser, ~~an~~ each applicant shall present evidence satisfactory to the board ~~that he/she has~~ of having successfully completed not less than one hundred eighty (180) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than one hundred sixty (160) classroom hours of study related to

those topics outlined under Subsection ~~299~~250.021.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; and one hundred (100) classroom hours of advanced non residential specialized courses relating to the topics specified at Subsection ~~299~~250.021.e. Beginning on January 1, 2007, as a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall: (~~3-13-02~~)()

a. Hold a Bachelors Degree or higher from an accredited college or university or document successful completion of no less than thirty (30) college semester credit hours in English Composition, Micro Economics, Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers, and Business or Real Estate Law, and two (2) elective courses in accounting, geography, ageconomics, business management, or real estate; and ()

b. Document registration as an Appraiser Trainee or licensure as a Licensed Residential Real Estate Appraiser or licensure as a Certified Residential Real Estate Appraiser; and ()

c. Document the successful completion of not less than two hundred ten (210) classroom hours of courses in subjects related to real estate appraisal as follows: ()

i. Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and ()

ii. General Appraiser Market Analysis and Highest and Best Use - not less than thirty (30) hours; and ()

iii. General Appraiser Sales Comparison Approach - not less than thirty (30) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ()

iv. General Appraiser Site Valuation and Cost Approach - not less than thirty (30) hours; and ()

v. General Appraiser Income Approach - not less than sixty (60) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ()

vi. General; Appraiser Report Writing and Case Studies - not less than thirty (30) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ()

02. Experience. Experience is a prerequisite to sit for the licensure examination: (~~3-18-99~~)()

a. Prerequisite to sit for the examination. Equivalent of Document three thousand (3,000) years hours of appraisal experience in no less than thirty (30) months (See Subsection ~~299.03.b~~250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (~~3-18-99~~)()

b. The applicant must accumulate a minimum of three thousand (3,000) hours of appraisal experience in not less than thirty-six (36) months. Two One thousand five hundred (2,000)1,500 hours of the experience must be nonresidential field appraisal experience. The balance of one thousand five hundred (1,000)1,500 hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection ~~299.03.e~~250.02.d. (~~4-5-00~~)()

(BREAK IN CONTINUITY OF SECTIONS)

~~402.---429. (RESERVED).~~

~~430. REGISTERED TRAINEE REAL ESTATE APPRAISER. (RULE 430).~~

~~01. Scope of Practice. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to USPAP. (3-13-02)~~

~~02. Supervision. The appraiser supervising shall be subject to the following: (3-13-02)~~

~~a. The appraiser trainee shall be under the direct supervision of an appraiser who holds a current Idaho license in good standing. (3-13-02)~~

~~b. A supervising appraiser shall not have been disciplined by the Board within the previous four (4) years from acting as a supervisor. (3-13-02)~~

~~c. A supervising appraiser shall be limited to supervising no more than three (3) appraiser trainees. (3-13-02)~~

~~d. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by: (3-13-02)~~

~~i. Accepting responsibility for all appraisal reports by signing and certifying that the report is in compliance with USPAP. (3-13-02)~~

~~ii. Reviewing all appraiser trainee appraisal report(s); and (3-13-02)~~

~~iii. Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. (3-13-02)~~

~~e. Each appraiser trainee is permitted to have more than one (1) supervising appraiser. (3-13-02)~~

~~f. An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include the following for each appraisal: (3-13-02)~~

~~i. Type of property. (3-13-02)~~

~~ii. Client name and address. (3-13-02)~~

~~iii. Address of subject property. (3-13-02)~~

~~iv. Description of work performed. (3-13-02)~~

~~v. Number of work hours. (3-13-02)~~

~~vi. Signature and license number of the supervising appraiser. (3-13-02)~~

~~03. Qualification. An appraiser trainee must meet the following requirements: (3-13-02)~~

~~a. There is no examination requirement for registration as a Appraiser Trainee. (3-13-02)~~

~~b. Applicants for registration must document completion of at least seventy five (75) classroom hours of courses in subjects related to real estate appraisal as provided in Section 299, that shall include training in USPAP. (3-13-02)~~

~~04. Continuing Education. Prior to the second renewal of an appraiser trainee registration the~~

~~appraiser trainee shall be required to obtain:~~ (3-13-02)

~~a. The equivalent of fifteen (15) classroom hours of instruction in approved courses or seminars during the twelve (12) month period preceding the renewal. (3-13-02)~~

~~b. All continuing education shall be in compliance with Subsections 401.01 through 401.03. (3-13-02)~~

~~c. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. (3-13-02)~~

~~d. The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. (3-13-02)~~

~~43102. -- 449. (RESERVED).~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-0501 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-4205, 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 October 19, 2005.

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:

Update board contact information, revise suitability portion of qualifications for license, revise educational and training requirements of courses other than pre-approved, revise continuing education course approval process, and increase annual renewal fee to \$100.

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

Increases annual renewal fee from \$75 to \$100.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no impact on general funds. There is an impact on dedicated funds. The change will increase the boards revenue by approximately \$8,275 at \$25 times the 331 licensed administrators per Section 54-4205, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are not controversial.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233 / (208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1901-0501

005. ADDRESS OF IDAHO BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS (RULE 5).

The office of the Board of Examiners of Residential Care Facility Administrators is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us rca@ibol.idaho.gov. The Board's official web site is at www.idaho.gov/ibol/rea <https://www.ibol.idaho.gov/rca.htm>. (4-6-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

150. QUALIFICATIONS FOR ADMINISTRATOR LICENSE (RULE 150).

Each applicant for an administrator's license and each licensed administrator, as requested by the Board, shall submit proof, along with their application, that said individual meets the following qualifications for the issuance of a license or permit, or the retention or renewal of a license: (4-6-05)

01. Good Moral Character. The applicant shall ~~cause to be submitted~~ a criminal background check by an entity approved by the board establishing that the applicant has not been convicted, pled guilty or nolo contendere or received a withheld judgment for a felony or any crime involving dishonesty or the health; or safety ~~or welfare~~ of a person. (4-6-05)(____)

~~**02. Suitability.** The applicant shall submit a statement by a licensed physician establishing that the applicant has sufficient physical, emotional and mental capacity to carry out and comply with the laws and rules governing residential care facility administrators.~~ (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

400. EDUCATIONAL AND TRAINING REQUIREMENTS (RULE 400).

01. Approved Course. (5-3-03)

a. The Certification Program for Residential Care Facility Administrators course, administered by the Idaho Assisted Living Association (IDALA) or the Assisted Living Federation of America (ALFA), is the approved course of study to qualify for licensure. (5-3-03)

b. Any Certification Program for Residential Care Facility Administrators provided by a state or national Residential Care Facility Administrator organization or a nationally or regionally accredited college or university shall be an approved course of study to qualify for licensure. (5-3-03)

02. Approval of Other Courses. Applicants may, in lieu of completion of the Certification Program for Residential Care Facility Administrators, submit official documentation of ~~other course content and/or college transcripts, Vo-ed transcripts etc., supporting~~ successful completion of relevant ~~courses substantially meeting course content requirements listed in Subsection 300.04.a.~~ These courses must be approved by the Board before equivalency will be given. (7-1-93)(____)

401. CONTINUING EDUCATION (RULE 401).

~~**01. Courses Approved.** Courses of study in residential care facility administration sponsored or provided by accredited universities or colleges; seminars relevant to residential care facility administration sponsored or approved by national, state agencies, or associations will be acceptable to meet the continuing education requirement. Seminars or other courses of study in residential care facility administration may be approved by the Board.~~ (3-20-04)

021. Minimum Hours Required. Applicants for annual ~~recertification~~/renewal shall be required to ~~have~~ complete a minimum of twelve (12) hours of continuing education courses within the preceding twelve (12) month period. Basic First Aid, and/or Cardio-Pulmonary Resuscitation, medication assistance, or fire safety courses shall not be considered for continuing education credit. (7-1-93)()

02. Course Approval. Courses of study relevant to residential care facility administration and sponsored or provided by the following entities or organizations shall be approved for continuing education credits: ()

a. Accredited colleges or universities. ()

b. Federal, state or local government entities. ()

c. National or state associations. ()

d. Otherwise approved by the Board based upon documentation submitted by the licensee or course provider reviewing the nature and subject of the course and its relevancy to residential care administration, name of instructor(s) and their qualifications, date, time and location of the course and procedures for verification of attendance. ()

03. ~~Educational Hour Defined.~~ ~~An hour of education will mean sixty (60) minutes.~~ **Credit.** Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or by computer on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Each licensee shall maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

600. FEES (RULE 600).

01. License Application Fee. License application - fifty dollars (\$50). (4-2-03)

02. Annual Renewal Fee. Annual renewal fee - ~~seventy five~~ one hundred dollars (\$~~75~~100). (4-2-03)()

03. Provisional/Temporary. Provisional/temporary - forty dollars (\$40). (7-1-93)

04. Reinstatement Fee. Reinstatement - twenty-five dollars (\$25). (7-1-93)

05. Reissuance of Lost License Fee. Reissuance of lost license - ten dollars (\$10). (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.21.01 - RULES GOVERNING THE IDAHO STATE CONTRACTORS BOARD
DOCKET NO. 24-2101-0501 (NEW CHAPTER - FEE RULE)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 28, 2005.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-5207, 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 October 19, 2005.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and an explanation of the substance and purpose of the proposed rulemaking: These rules are being allowed per Title 54, Chapter 52. The temporary and proposed rules provide contact information, definitions, provide for an application, provide for fees, and allow for renewal of registrations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This is a new Board provided by Title 54, Chapter 52 that was signed into law 2005 session. This is not a rule change, but a complete set of administrative rules as allowed in Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: This is a new board and are presently in the process of receiving registration fees. Fees are as follows: Application fee - \$30; Reciprocal Fee - \$25; Renewal Fee - \$25; and Reinstatement Fee - \$25.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no impact on general funds. Fiscal impact on the Board of Contractors is dependant on the number of applications submitted to the Board. These fees are dedicated funds and used to administer the Board of Contractors.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this is a new set of rules authorized by Title 54, Chapter 52, Idaho Code.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220, Boise, ID 83072
(208) 334-3233 phone / (208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2101-0501

IDAPA 24, TITLE 21, CHAPTER 01

24.21.01 - RULES OF THE IDAHO STATE CONTRACTORS BOARD

000. LEGAL AUTHORITY (RULE 0).

These rules are hereby prescribed and established pursuant to the authority vested in the Idaho State Contractors Board by the provisions of Section 54-5206, Idaho Code. (6-28-05)T

001. TITLE AND SCOPE (RULE 1).

These rules shall be cited as IDAPA 24.21.01, "Rules of the Idaho State Contractors Board". (6-28-05)T

002. WRITTEN INTERPRETATIONS (RULE 2).

The board may have written statements that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (6-28-05)T

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (6-28-05)T

004. INCORPORATION BY REFERENCE (RULE 4).

These rules do not incorporate by reference any document other than those Sections of Idaho Code so referenced. (6-28-05)T

005. ADDRESS OF IDAHO STATE CONTRACTORS BOARD (RULE 5).

The office of the Idaho State Contractors Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is con@ibol.idaho.gov. The Board's official web site is at <https://www.ibol.idaho.gov/cont.htm>. (6-28-05)T

006. PUBLIC RECORDS (RULE 6).

The records associated with the Idaho State Contractors Board are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (6-28-05)T

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. Board. Board means the Idaho State Contractors Board as created in Section 54-5206, Idaho Code. (6-28-05)T

02. Bureau. Bureau means the Idaho Bureau of Occupational Licenses as created in Section 67-2602, Idaho Code. (6-28-05)T

03. Person. Person means any individual, firm, partnership, limited liability company, limited liability partnership, corporation, trust, association or other entity or organization capable of conducting business, or any combination thereof acting as a unit. (6-28-05)T

011. -- 099. (RESERVED).

100. ORGANIZATION (RULE 100).

01. Meetings. The Board shall meet not less than once during each calendar quarter and at such times and places as designated by the Board or the Chairman of the Board. Special meetings may be held at the call of the

Chairman, and all members shall be notified in writing. (6-28-05)T

a. All meetings shall be held in accordance with the Idaho Open Meeting Law, Chapters 2340 – 2347, Title 67, Idaho Code. (6-28-05)T

b. A minimum of three (3) Board members shall constitute a quorum and shall be required for the transaction of business. A majority vote of the Board members present at a meeting shall be considered the action of the Board as a whole. (6-28-05)T

02. Organization of the Board. At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. (6-28-05)T

a. The Chairman shall when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (6-28-05)T

b. The Chief of the Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. (6-28-05)T

101. -- 149. (RESERVED).

150. APPLICATION (RULE 150).

Each applicant for registration shall submit a complete application on applications forms approved by the board together with the required fee(s). The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. (6-28-05)T

151. -- 174. (RESERVED).

175. FEES (RULE 175).

Fees are not refundable, therefore, applications should not be filed unless the applicant can meet all requirements. (6-28-05)T

01. Application Fee. Application fee (includes original registration) - thirty dollars (\$30). (6-28-05)T

02. Reciprocal Fee. Endorsement fee - twenty-five dollars (\$25). (6-28-05)T

03. Renewal Fee. Annual registration renewal fee - twenty-five dollars (\$25). (6-28-05)T

04. Reinstatement Fee. Reinstatement fee - twenty-five dollars (\$25). (6-28-05)T

05. Refund of Fees. No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license. (6-28-05)T

176. -- 199. (RESERVED).

200. RENEWAL OF REGISTRATION (RULE 200).

01. Expiration Date. All registrations expire and must be renewed annually on forms approved by the Board on the birth date of an individual registrant or the anniversary date of the original registration for a business entity in accordance with Section 67-2614, Idaho Code. Registrations not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (6-28-05)T

02. Reinstatement. Any registration cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (6-28-05)T

201. -- 999. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.22.01 - RULES OF THE IDAHO STATE LIQUEFIED PETROLEUM GAS SAFETY BOARD

DOCKET NO. 24-2201-0501 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 20, 2005.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section(s)[54-5310] 54-5110, 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 October 19, 2005.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rules are being allowed per Title 54, Chapter [53] 51. The temporary proposed rules provide contact information, definitions, provide for an application, provide regulations for facilities, provide for fees, and allow for renewal of licenses.

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

This is a new Board provided by Title 54, Chapter [53]51 that was signed into law 2005 session. This is not a rule change, but a complete set of administrative rules as allowed in Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

This is a new board and are presently in the process of receiving application fees. Fees are as follows: Application Fee - \$30. Individual License and Renewal Fee - \$50. Facility License and Renewal Fee - \$50. Bulk Storage Facility License and Renewal Fee - \$200. Endorsement Fee - \$50. Reinstatement Fee - \$50.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no impact on general funds. Fiscal impact on the Liquefied Petroleum Gas Safety Board is dependant on the number of applications submitted to the Board. These fees are dedicated funds and used to administer the Liquefied Petroleum Gas Safety Board.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this is a new set of rules authorized by Title 54, Chapter [53]51, Idaho Code.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220, Boise, ID 83072
(208) 334-3233 phone / (208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2201-0501

IDAPA 24
TITLE 22
CHAPTER 01

24.22.01 - RULES OF THE IDAHO STATE LIQUEFIED PETROLEUM GAS SAFETY BOARD

000. LEGAL AUTHORITY (RULE 0).

In accordance with Section 54-5310, Idaho Code, the Idaho State Liquefied Petroleum Gas Safety Board shall promulgate rules that implement the provisions of Chapter 53, Title 54, Idaho Code. (8-4-05)T

001. TITLE AND SCOPE (RULE 1).

These rules shall be cited as IDAPA 24.22.01, "Rules of the Idaho State Liquefied Petroleum Gas Safety Board." (8-4-05)T

002. WRITTEN INTERPRETATIONS (RULE 2).

The board may have written statements that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (8-4-05)T

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (8-4-05)T

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled National Fire Protection Association Code 58, commonly known as NFPA 58, is herein incorporated by reference and is available from the Board's office and on the Board web site. (8-4-05)T

005. ADDRESS OF IDAHO LIQUEFIED PETROLEUM GAS SAFETY BOARD (RULE 5).

The office of the Idaho State Liquefied Petroleum Gas Safety Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is lpd@ibol.idaho.gov. The Board's official web site is <https://www.ibol.idaho.gov/lpd.htm>. (8-4-05)T

006. PUBLIC RECORDS (RULE 6).

The records associated with the Idaho State Liquefied Petroleum Gas Safety Board are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (8-4-05)T

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. Board. Board means the Idaho State Liquefied Petroleum Gas Safety Board as created in Section

54-5309, Idaho Code. (8-4-05)T

02. Bureau. Bureau means the Idaho Bureau of Occupational Licenses as created in Section 67-2602, Idaho Code. (8-4-05)T

03. Person. Person means any sole individual. (8-4-05)T

04. Facility. Facility means any facility at a fixed location licensed pursuant to this chapter whose activities include selling, filling, refilling, or commercial handling or commercial storage of LPG. (8-4-05)T

011. -- 099. (RESERVED).

100. ORGANIZATION (RULE 100).

01. Meetings. The Board shall meet not less than annually and at other such times and places as designated by the Chairman or upon the written request of two (2) members of the Board. (8-4-05)T

a. All meetings shall be held in accordance with the Idaho Open Meeting Law, Chapters 2340 - 2347, Title 67, Idaho Code. (8-4-05)T

b. A minimum of three (3) Board members shall constitute a quorum and may exercise all powers and authority conferred on the Board in order to hold a meeting of the Board. A majority vote of the Board members present at a meeting shall be considered the action of the Board as a whole. (8-4-05)T

02. Organization of the Board. At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. (8-4-05)T

a. The Chairman shall when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (8-4-05)T

b. The Chief of the Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. (8-4-05)T

101. -- 149. (RESERVED).

150. APPLICATION (RULE 150).

Each applicant for a license shall submit a complete application on application forms approved by the board together with the required fee(s). The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. (8-4-05)T

151. – 174. (RESERVED).

175. FEES (RULE 175).

Applications should not be filed unless the applicant can meet all requirements. (8-4-05)T

01. Application Fee. Application fee - thirty dollars (\$30). (8-4-05)T

02. Original Individual License and Annual Renewal Fee. License fee - fifty dollars (\$50). (8-4-05)T

03. Original Facility License Fee and Annual Renewal Fee. Facility with ten thousand (10,000) gallon or less storage capacity – fifty dollars (\$50). (8-4-05)T

04. Original Bulk Storage Facility Fee and Annual Renewal Fee. Bulk Storage Facility with more than ten thousand (10,000) gallon storage capacity – two hundred dollars (\$200). (8-4-05)T

- 05. Endorsement Fee.** Endorsement fee - fifty dollars (\$50). (8-4-05)T
- 06. Reinstatement Fee.** Reinstatement fee - fifty dollars (\$50). (8-4-05)T
- 07. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license. (8-4-05)T

176. – 199. (RESERVED).

200. RENEWAL OF LICENSE (RULE 200).

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board on the birth date of an individual licensee or the anniversary date of the original license for a facility in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (8-4-05)T

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (8-4-05)T

201. -- 224. (RESERVED).

225. APPROVED EDUCATION (RULE 225).

Each applicant shall provide certified proof that they have successfully completed one (1) of the following:(8-4-05)T

01. Basic Education. The Basic Certified Employee Training Program (CETP) provided by the National Propane Gas Association or the equivalent as determined by the board within the thirty-six (36) months immediately preceding application. (8-4-05)T

02. Other Education. For applicants prior to July 1, 2006, documented training relevant to the LPG industry preceding application, and acceptable to the Board. (8-4-05)T

226. -- 249. (RESERVED)

250. PRACTICAL EXPERIENCE (RULE 250).

Each applicant shall provide certified proof that they have successfully completed one (1) of the following.(8-4-05)T

01. Supervised Experience. Supervised experience of no less than one (1) year in an LPG facility under supervision of a licensed dealer. A person in the process of meeting the practical experience requirement must complete the education and examination requirements and make application for a dealer license within eighteen (18) months of beginning to obtain supervised experience. (8-4-05)T

02. Other Experience. (8-4-05)T

a. Applicants prior to July 1, 2006, must document practice for not less than five (5) years in the field for which they are applying for a license including LPG industry experience in Idaho prior to July 1, 2005. (8-4-05)T

b. Applicants after July 1, 2006, but prior to January 1, 2007 must document supervised experience of no less than one (1) year in an LPG facility under supervision. A person in the process of meeting the practical experience requirement must complete the education and examination requirements and make application for a dealer license within eighteen (18) months of beginning to obtain supervised experience. (8-4-05)T

251. -- 299. (RESERVED).

300. EXAMINATIONS (RULE 300).

Each applicant shall provide certified proof that they have successfully completed one (1) of the following.(8-4-05)T

01. Licensure Examination. Receipt of a passing grade on the Basic Certified Employee Training Program (CETP) examination provided by the National Propane Gas Association or the equivalent as determined by the board within the thirty-six (36) months immediately preceding application. (8-4-05)T

02. Other Examination. For applicants prior to July 1, 2006, receipt of a passing grade on an examination relevant to the LPG industry and acceptable to the Board. (8-4-05)T

301. - 349. (RESERVED).

350. FACILITY LICENSURE (RULE 350).

01. Facility Licensure and Operation Requirements. (8-4-05)T

a. Application for a facility license shall be made on forms available from the Bureau and shall include plans and specifications complying with local ordinances and zoning requirements. All applications shall be submitted to the Board for approval and a license must be issued before a new facility may open for business; (8-4-05)T

b. Each facility application shall clearly identify and designate a location adequate to allow the facilities safe operation and the selling, filling, refilling, or commercial handling or commercial storage of liquefied petroleum gas; (8-4-05)T

c. Each facility shall meet all requirements of NFPA 58. (8-4-05)T

02. Facility Changes in Ownership or Location. (8-4-05)T

a. Whenever a change of ownership or location of a facility occurs, an original application must be submitted, the fee must be paid and compliance with all rules concerning a new facility documented, before a new license will be issued. FACILITY LICENSES ARE NOT TRANSFERABLE. (8-4-05)T

b. Deletion of an owner from multiple ownership does not constitute a change in ownership. (8-4-05)T

c. Addition of an owner to multiple ownership does constitute a change in ownership. (8-4-05)T

d. Whenever any facility ceases operation at the licensed location, the owner(s) shall notify the Board in writing that the facility is out of business and the facility license shall be submitted to the Bureau. A new facility license will not be issued for any location that is currently licensed as a facility at the time of application. (8-4-05)T

351. -- 374. (RESERVED).

375. INSPECTION RULES (RULE 375).

All facilities shall be subject to inspection by the Board or its agents at any time without notice to insure the safe operation of each facility and to insure continued compliance with the requirements of NFPA 58 and the Idaho laws and rules. (8-4-05)T

376. -- 399. (RESERVED).

400. ENDORSEMENT (RULE 400).

Any person who holds a current, unsuspended, unrevoked or otherwise nonsanctioned license in another state or country that has licensing requirements substantially equivalent to or higher than those in Idaho may, submit the required application, supporting documentation, and required fee, for Board consideration. Those applicants who received their professional education or experience outside of the United States shall provide such additional information concerning their professional education or experience as the Board may request. The board may, in its discretion, require successful completion of additional course work or examination for any applicant under this provision. (8-4-05)T

401. -- 449. (RESERVED).

450. DISCIPLINE (RULE 450).

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed LPG dealer or a licensed LPG facility for each violation of Section 54-5315, Idaho Code. (8-4-05)T

02. Costs and Fees. The Board may order a licensed LPG dealer or a licensed LPG facility to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-5315, Idaho Code. (8-4-05)T

451. -- 999. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-0501 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 19, 2005.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-5207, 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 October 20, 2005.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rules are being allowed per Title 54, Chapter 52. The temporary proposed rules provide contact information, definitions, provide for an application, provide for fees, and allow for renewal of registrations.

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

This is a new Board provided by Title 54, Chapter 52 that was signed into law 2005 session. This is not a rule change, but a complete set of administrative rules as allowed in Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

This is a new board and are presently in the process of receiving registration fees. The fees are as follows: Application fee - \$30; Original License Fee - \$100; Examination/Reexamination Fee - \$50; Provisional Permit - \$100; and Annual Renewal Fee - \$100.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no impact on general funds. Fiscal impact on the Board of Contractors is dependant on the number of applications submitted to the Board. These fees are dedicated funds and used to administer the Board of Contractors.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this is a new set of rules authorized by Title 54, chapter 52, Idaho Code.

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

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 October 26, 2005.

DATED this 23rd day of August, 2005.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220, Boise, ID 83072
(208) 334-3233 phone / (208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2301-0501

IDAPA 24
TITLE 23
CHAPTER 01

24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD

000. LEGAL AUTHORITY (RULE 0).

These rules are hereby prescribed and established pursuant to the authority vested in the Speech and Hearing Services Licensure Board by the provisions of Section 54-2910, Idaho Code. (8-19-05)T

001. TITLE AND SCOPE (RULE 1).

These rules shall be cited as IDAPA 24.23.01, "Rules of the Speech and Hearing Services Licensure Board". (8-19-05)T

002. WRITTEN INTERPRETATIONS (RULE 2).

The board may have written statements that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (8-19-05)T

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative Appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (8-19-05)T

004. INCORPORATION BY REFERENCE (RULE 4).

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced. (8-19-05)T

005. ADDRESS OF IDAHO SPEECH AND HEARING SERVICES LICENSURE BOARD (RULE 5).

The office of the Idaho Speech and Hearing Services Licensure Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is shs@ibol.idaho.gov. The Board's official web site is at <https://www.ibol.idaho.gov/shs.htm>. (8-19-05)T

006. PUBLIC RECORDS (RULE 6).

The records associated with the Speech and Hearing Services Licensure Board are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (8-19-05)T

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. Board. The Speech and Hearing Services Licensure Board as prescribed in Section 54-2908, Idaho

Code. (8-19-05)T

02. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-2903 and 67-2602, Idaho Code. (8-19-05)T

011. -- 099. (RESERVED).

100. ORGANIZATION (RULE 100).

01. Meetings. The Board shall meet not less than twice annually and at other such times and places as designated by the Board or the Chairman of the Board. Special meetings may be held at the call of the Chairman, and all members shall be notified. (8-19-05)T

a. All meetings shall be held in accordance with the Idaho Open Meeting Law, Sections 67-2340 through 67-2347, Idaho Code. (8-19-05)T

b. Four (4) members of the board shall constitute a quorum, provided at least one (1) audiologist, one (1) speech-language pathologist, the hearing aid dealer and fitter member and the public member are present. The board may act by virtue of a majority vote of members present in which a quorum is present. The Chairman may vote only in the event of a tie vote. (8-19-05)T

02. Organization of the Board. At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. (8-19-05)T

a. The Chairman shall when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (8-19-05)T

b. The Chief of the Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. (8-19-05)T

101. -- 149. (RESERVED).

150. APPLICATION (RULE 150).

Each applicant for a license shall submit a complete application on application forms approved by the board together with the required fee(s). The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. The Board will review only those applications deemed complete. (8-19-05)T

151. -- 174. (RESERVED).

175. FEES (RULE 175).

Applications should not be filed unless the applicant can meet all requirements. (8-19-05)T

01. Application Fee. Application Fee - Thirty dollars (\$30). (8-19-05)T

02. Original License Fee. The original license fee is one hundred dollars (\$100) to be accompanied by the completed application. (8-19-05)T

03. Examination/Reexamination Fee. Examination fee shall be that charged by the examination provider plus an administration fee of fifty dollars (\$50) when the examination is administered by the Board. (8-19-05)T

04. Provisional Permit. Provisional permit fee is one hundred dollars (\$100). (8-19-05)T

05. Annual Renewal Fee. Annual renewal fee is one hundred dollars (\$100). (8-19-05)T

06. Refund of Fees. No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license. (8-19-05)T

176. -- 199. (RESERVED).

200. RENEWAL OF LICENSE (RULE 200).

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board on the birth date of an individual licensee in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (8-19-05)T

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (8-19-05)T

201. -- 299. (RESERVED).

300. EXAMINATION AND RE-EXAMINATION (RULE 300).

Each applicant shall be required to successfully pass the examination approved by the board that is relevant to the license or permit for which application is being made. (8-19-05)T

01. Dates and Locations of Exams. Examinations shall be held at such times and places as shall be determined by the board. (8-19-05)T

02. Content of Exam. Each applicant shall be required to successfully pass the examination approved by the board that is relevant to the license or permit for which application is being made. (8-19-05)T

a. Applicants for Speech-Language Pathologist licensure shall successfully pass the national Praxis speech-language pathologist examination. Applicants for speech-language pathologist aide or speech-pathologist assistant must pass an examination approved by the Board. (8-19-05)T

b. Applicants for audiologist licensure shall successfully pass the national Praxis audiologist examination. (8-19-05)T

c. Applicants for Hearing Aid Dealer and Fitter licensure shall successfully pass the national International Hearing Instrument Studies examination. (8-19-05)T

03. Failure of Exam. An applicant who fails to obtain a satisfactory score as determined by the examination provider in either the written examination or a section of the practical examination, shall be required to retake only the portion of the examination failed in order to qualify for licensure. If the applicant again fails the examination the applicant shall be required to retake the entire examination until the examination is successfully passed to qualify for licensure. (8-19-05)T

301. -- 349. (RESERVED).

350. LICENSE EXPIRATION (RULE 350).

01. Original Licenses. All original licenses shall expire on the anniversary of the licensee's birth date in the year following the year of issue. (8-19-05)T

02. Term of License. All license renewals shall be for a period of twelve (12) months in accordance with Section 67-2614, Idaho Code. (8-19-05)T

351. -- 399. (RESERVED).

400. CONTINUING EDUCATION (RULE 400).

Every person holding an Idaho license pursuant to this act must annually complete ten (10) contact hours of continuing education prior to license renewal. (8-19-05)T

01. Contact Hours. The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. (8-19-05)T

02. Documentation of Attendance. It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (8-19-05)T

03. Compliance Audit. The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-2923, Idaho Code. (8-19-05)T

04. Initial Compliance. Licensees shall not be required to meet the continuing education requirement for the first renewal. (8-19-05)T

05. Equivalence. One (1) continuing education hour shall equal one (1) clock hour. (8-19-05)T

401. -- 449. (RESERVED).

450. PROVISIONAL PERMIT (RULE 450).

The Board may issue a provisional permit to allow a person to engage in the practice of audiology or speech-language pathology while completing either the required postgraduate experience or a comparable experience as part of a doctoral program in audiology. The Board may issue a provisional permit to allow a person to engage in fitting and dealing hearing aids pursuant to rules adopted by the Board. The holder of a provisional permit may practice only while under the supervision of a person fully licensed under this chapter. (8-19-05)T

01. Adequate Personal Contact - Requirements. (8-19-05)T

a. The supervisor and provisional permit holder must make contact in person each work day to review any assignments, client contacts, diagnoses, therapies, and hearing aid fittings. A minimum of sixty (60) contacts that must be completed within the first six (6) months of such supervision. (8-19-05)T

b. Contact in person described in Subsection 450.01.a., must be made no less than once in each calendar week throughout the entire period of the permit. (8-19-05)T

c. In the event a permit holder fails the licensing examination two (2) consecutive times, and is eligible to maintain a permit, the supervisor and permit holder must reinstate contact in person each work day as set forth in Subsection 450.01.a. (8-19-05)T

d. All client and supervisor contacts shall be recorded in the permit holder's quarterly report. (8-19-05)T

02. Supervisor - Responsibilities - Restrictions. (8-19-05)T

a. The supervisor shall be familiar with Section 54-2908, Idaho Code. (8-19-05)T

b. The supervisor shall be responsible for all practice and the ethical conduct of each permit holder under supervision. (8-19-05)T

c. A supervisor may not supervise more than one (1) permit holder at a time. (8-19-05)T

d. The supervisor and the permit holder shall be required to work within the same facility. (8-19-05)T

e. The supervisor shall provide the permit holder with adequate training and client contact necessary

to prepare for the required examination. (8-19-05)T

f. The supervisor shall record with the Board a plan of training that encompasses all ten sections covered in the license examination. The plan must be accepted and approved by the Board or its agent prior to issuance of the permit. The supervisor shall document, by the quarterly report, the permit holder's progress. (8-19-05)T

g. A supervisor may terminate his supervision of a permit holder by a written notice to the Bureau and the permit holder by certified mail at least ten (10) calendar days prior to the termination. (8-19-05)T

03. Application - Quarterly Reports. (8-19-05)T

a. Application for permit shall include completed application, examination fee, permit fee, supervisor statement and plan of training and supervision. (8-19-05)T

b. A permit shall not be valid unless an unrevoked statement accepting supervisory responsibility by a qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the expiration date of the new permit is adjusted to not exceed the date of the third licensure examination following the original application. (8-19-05)T

c. Eighteen (18) months is the maximum time allowed for any combination of new or renewed permits. (8-19-05)T

d. Every permit holder must submit a quarterly report of his activities on forms furnished by the Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. All sales or fittings made by the permit holder will be indicated on the quarterly report forms supplied by the Bureau. Supplemental attachments to be submitted with this form include: (8-19-05)T

i. Log of client and supervisor contacts as specified in Subsection 450.01.d. (8-19-05)T

ii. Supervisor's statement of completion of training assignments by permit holder as specified in Subsection 450.02.f. (8-19-05)T

iii. Copy of test results for all persons tested by the permit holder whether or not a sale occurred. (8-19-05)T

iv. Copy of hearing aid order for all fittings including specifications of instruments ordered. (8-19-05)T

e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit will be revoked. A new permit may be applied for in accordance with Subsection 450.03.a. (8-19-05)T

04. Exemptions. (8-19-05)T

a. A permit holder who possesses the Certificate of Clinical Competence in Audiology from American Speech-Language-Hearing Association (ASHA) or who is board Certified by National Board for Certification in Hearing Instrument Sciences (NBC-HIS) shall be exempt from Subsections 450.01.a., 450.02.d., and 450.02.f. from the date of issuance of the permit until the date of the next offered licensing examination. (8-19-05)T

b. Failure of the licensing examination or failure to take the next offered licensing examination rescinds this exemption. (8-19-05)T

451. -- 499. (RESERVED).

500. TESTING (RULE 450).

01. Purpose of Rule. The purpose of this rule is to define, "tests utilizing appropriate procedures," as used in Section 54-2923(6), Idaho Code. This rule is intended to be consistent with and to compliment FDA Rule 801.420 as it refers to hearing aid evaluations. (8-19-05)T

02. Pre-Fitting Testing. All prospective hearing aid consumers must be given calibrated pure tone air and bone tests with masking when applicable. Speech tests must be given by appropriate equipment calibrated to current H.T.L. reference levels. (8-19-05)T

03. Sound Field Testing. Before the prospective consumer purchases a hearing aid or within six (6) weeks afterward, the licensee must conduct the testing necessary to document that the fitted instrument meets industry standards and provides benefit to the consumer. This testing shall be accomplished using appropriate sound field testing so as to ensure repeatability. Verification of benefit may be accomplished using any one (1) of the following tests: (8-19-05)T

- a. Soundfield testing for speech discrimination in both the aided and unaided conditions; (8-19-05)T
- b. Soundfield testing using warble tones or narrowband noise to evaluate functional gain; or (8-19-05)T
- c. "Real ear" probe microphone measurements. (8-19-05)T

04. Records. A copy of all test data shall be kept on file by the licensee for two (2) years after sale. (8-19-05)T

05. Exemptions. The testing requirements contained in Subsections 450.02 and 450.03 of this rule shall not apply to those consumers who are not capable of responding to acceptable audiological pure tone tests. Examples of these types of consumers are: (8-19-05)T

- a. A child of tender years; (8-19-05)T
- b. The developmentally disabled; and (8-19-05)T
- c. The legally incompetent by a court order. (8-19-05)T

551. -- 599. (RESERVED).

600. WRITTEN CONTRACTS (RULE 600).

01. Contract Form. Any person who practices the fitting and sale of hearing aids shall enter into a written contract with the person to be supplied with the hearing aid. The written contract shall be given to the consumer at the time of the sale, and shall be signed by the licensee and the consumer. The written contract shall contain each of the following: (8-19-05)T

- a. Licensee's signature and license number, (8-19-05)T
- b. Business address, (8-19-05)T
- c. The specifications as to the make, model, and manufacture date of the hearing aid, (8-19-05)T
- d. Clearly state the full terms of the sale (8-19-05)T
- e. Provide the serial number of the hearing aid upon delivery. (8-19-05)T
- f. Be clearly marked as "used" or "reconditioned," whichever is applicable, if the aid is not new.

(8-19-05)T

02. Cancellation and Refund. The written contract shall grant the consumer a nonwaivable thirty (30) day right to cancel the purchase and obtain a refund. The thirty (30) day right to cancel shall commence from either the date the contract is signed or the hearing aid is originally delivered to the consumer, whichever is later. The thirty (30) day period shall be tolled for any period in which the licensee has taken possession or control of the hearing aid after its original delivery. The written contract shall specify the exact portion of the purchase price, not to exceed twenty-five (25%) percent of the total purchase price of the hearing instrument and fitting expenses, that is nonrefundable. The written contract shall also contain, in print size no smaller than ten (10) point type, the address of the bureau of occupational licenses and the procedure for filing complaints against anyone licensed to dispense hearing aids. (8-19-05)T

03. Dealer Cancellation. The written contract shall also contain, in print size no smaller than ten (10) point type, a nonwaivable statement that the contract is null and void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty (30) days of the date the written contract is signed. The statement shall also provide that in the event the hearing aid is not delivered to the consumer within thirty (30) days of the date the written contract is signed, the licensee shall promptly refund any and all moneys paid for the purchase of the hearing aid. In the event that any licensee cancels, nullifies, or otherwise, of his own volition, refuses to honor any written contract, for any reason other than consumer cancellation as set forth in Subsection 500.02, that licensee shall promptly refund any and all moneys paid for the purchase of the hearing aid, including any monies designated by the contract as nonrefundable in the event that the consumer had cancelled the purchase. (8-19-05)T

601. -- 699. (RESERVED).

700. ADOPTION AND EFFECTIVE DATE OF RULES (RULE 700).

The rules of this Board are hereby approved by the Board on August 19, 2005 and shall become effective on this date. (8-19-05)T

701. -- 999. (RESERVED).

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0501 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223(a), 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 October 19, 2005.

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:

Certain portions of this rulemaking pertain to implementation of fee rules, most of which are closely tied to the expected activation of a new reservation system for IDPR. In response to a legislative request to eliminate a park and facility access fee, we have reevaluated our fee structure and are recommending implementation of adjusted fees for use of our campgrounds and facilities. These new fees will have a positive impact on various dedicated funds, which in turn is expected to generally offset a projected shortfall based on the adjustment requested by the Legislature. Additionally, several rule clarifications are included that are needed to help better define operational provisions at IDPR parks and facilities.

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

26.01.20.250.01 – Primitive Campsite, \$9.00; Campsite, \$12.00; Campsite/W, \$16.00; Campsite/E, \$16.00; Campsite/W, E, \$20.00; Campsite W, E, SWR, \$22.00; Companion Campsite, site type multiplied by 2; Extra Vehicle Charge, \$7.00; Camping Cabins, \$150.00; 26.01.20.250.02 – Reservation service fees, \$10.00. These fee adjustments are authorized in accordance with Sec. 67-4223(a), Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208-334-4180, ext 250, dsangrey@idpr.state.id.us.

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 October 26, 2005.

DATED this 6th day of September, 2005.

Dean Sangrey
Division Administrator, Operations
Idaho Department of Parks and Recreation
5657 Warm Springs Ave., Boise ID 83716
PO Box 83720, Boise ID 83720-0065
Phone: 208-334-4180 Fax: 208-334-3741

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0501

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

01. **Office Hours.** Office hours are 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-16-04)()

02. **Mailing Address.** The mailing address for the central office is Idaho Department of Parks and Recreation, PO Box 83720, Boise, ID 83720-0065. (3-16-04)

03. **Street Address.** The office of the Idaho Department of Parks and Recreation is located at 5657 Warm Springs Ave., Boise, ID 83716. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

As used in this chapter: (1-1-94)

01. **ADA Campsites and Facilities.** ()

a. ADA Designated Campsites. A reservable ADA campsite may only be reserved and occupied by a party that can provide proof of disability upon arrival. If not reserved, after 6:00 p.m. (check-in time) and no other non-ADA designated sites are available; the site would be available for use for one (1) night. ()

b. ADA Accessible Facilities. IDPR offers some facilities that provide for ADA accessibility. These facilities are not managed exclusively for ADA use. ()

02. **Board.** The Idaho Park and Recreation Board, a bipartisan, six (6) member Board, appointed by the Governor. (3-13-97)

03. **Camper Camping Unit.** A family camping unit or a party of no more than eight (8) persons occupying one (1) camper/vehicle combination or one (1) vehicle with a maximum of two (2) tents is the combined equipment and people capacity that a site or facility will allow. (3-16-04)()

a. Campsites. Maximum capacity limits on each campsite are subject to each site's design and size. In general, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, one (1) vehicle or RV, and up to two (2) tents, provided the combined equipment and people fit within the designated camping area of the site selected. ()

b. Facilities. Maximum capacity limits on each facility are subject to each facility's design and size. The combined equipment and people occupying a facility must fit within the designated areas of the facility selected. ()

04. **Camping Day.** ()

a. For individual and group campsites the period between 2:00 p.m. of one (1) calendar day and 1:00 p.m. of the following calendar day. (7-1-99)()

b. For individual and group camping facilities, the period between 3:00 p.m. of one (1) calendar day and 12:00 p.m. (noon) of the following calendar day. ()

- ~~045.~~ **Campsite.** *Site designated for overnight camping, including camping cabins, yurts, and teepees.* (3-7-03)()
- a.** Individual. An area within an IDPR managed campground designated for camping use by an individual camping unit or camping party. ()
- b.** Group. An area within an IDPR managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. ()
- c.** Facility, Individual. A camping structure within an IDPR managed campground designated for camping use by an individual camping party. ()
- d.** Facility, Group. A camping structure within an IDPR managed campground designated for group use. ()
- 056.** **Day Use.** Use of any non-camping lands and or facilities between the hours of 7:00 a.m. and 10:00 p.m. unless otherwise posted. (3-7-03)()
- 07.** **Day Use Fee -** A fee charged for entry to a designated area. ()
- ~~068.~~ **Department.** The Idaho Department of Parks and Recreation. (1-1-94)
- ~~079.~~ **Designated Beach.** Waterfront areas designated by the park manager or designee for water based recreation activities. The length and width of each designated beach shall be visibly signed. (3-7-03)
- ~~0810.~~ **Designated Roads and Trails.** Facilities recognizable by reasonable formal development, signing, or posted rules. (3-7-03)
- ~~0911.~~ **Director.** The Director and chief administrator of the Department, or the designee of the Director. (1-1-94)
- 102.** **Dock and Boating Facility.** Floats, piers and mooring buoys owned or operated by the Department. (3-13-97)
- 113.** **Extra Vehicle.** An additional motorized vehicle (not in tow at time of entry) without built in sleeping accommodations registered to a camp site. (3-13-97)
- 124.** **Group Use.** Twenty-five (25) or more people, or any group needing special considerations or deviations from normal Department rules or activities. (1-1-94)
- 135.** **Motorized Vehicle.** Every vehicle that is self propelled except for vehicles moved solely by human power and motorized wheelchairs as defined in Section 49-123(g), Idaho Code. (3-7-03)
- ~~14.~~ **Motorized Vehicle Entry Fee (MVEF).** *A fee charged for a motorized vehicle to enter a designated area.* (3-16-04)
- 156.** **Park or Program Manager.** The person, designated by the Director, responsible for administering and supervising particular lands, facilities, and staff that are under the jurisdiction of the Department. (3-7-03)
- 167.** **Primary Season.** The time of the year when the majority of use occurs at a park facility. (3-7-03)
- 178.** **Vessel.** Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in section 67-7003(22), Idaho Code. (3-7-03)

189. Vessel Length. The distance measured at the centerline at the highest point above the waterline from the fore-part of the outer hull at the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment. (3-13-97)

011. -- 074. (RESERVED).

075. AUTHORITY CONFERRABLE ON EMPLOYEES - ENFORCEMENT.

01. Director Authority. The Director may, pursuant to Section 67-4239, Idaho Code, authorize any employee of the Department to exercise any power granted to, or perform any duty imposed upon the Director. (3-7-03)

02. Park Manager Authority. The park manager or designee may establish and enforce all rules, including interim rules. Interim rules shall apply to the public safety, use, and enjoyment or protection of natural, cultural, or other resources within lands administered by the Department. Those rules shall be posted for public view and shall be consistent with established state laws and these rules. Interim rules shall expire in one hundred twenty (120) days from the established effective date unless approved by the Board. (~~3-7-03~~)(____)

076. -- 099. (RESERVED).

100. PENALTIES FOR VIOLATIONS.

Failure of any person, persons, partnership, corporation, concessionaire, association, society, or any fraternal, social or other organized groups to comply with these rules shall constitute an infraction. (~~1-1-96~~)(____)

01. Civil Claim. The penalty established in Section 100 of this chapter shall not prevent the Department from filing a civil claim against a violator to collect damages incurred to lands, resources, or facilities administered by the Department. (3-13-97)

02. Violators. In addition to the penalty provided in Section 100 of this chapter, or any other existing laws of the state of Idaho, any person failing to comply with any section of these rules or federal, state, or local laws, rules, or ordinances applicable under the circumstances, shall be a trespasser upon state land and subject to expulsion from any state park area for a period of time not less than forty-eight (48) hours. (3-7-03)

101. -- 124. (RESERVED).

125. PRESERVATION OF PUBLIC PROPERTY.

The destruction, injury, defacement, removal, or disturbance in or of any public building, sign, equipment, monument, statue, marker, or any other structures; or of any tree, flower, or other vegetation; or of any cultural artifact or any other public property of any kind, is prohibited unless authorized by the park manager of a specific area. (~~3-13-97~~)(____)

126. -- 149. (RESERVED).

150. USE OF MOTORIZED VEHICLES.

All motorized vehicles shall stay on authorized established Department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and vehicles operated within lands administered by the Department shall be licensed or certified as required under state law. The operators of all vehicles shall comply with the ~~motor vehicle entry~~ day use fee requirements, speed and traffic rules of the Department, and all other federal, state, local laws, and ordinances governing traffic on public roads. (~~3-7-03~~)(____)

01. Use of Parking Spaces for Persons With a Disability. Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as provided in Section 49-213, Idaho Code. (3-7-03)

02. Overdriving Road Conditions and Speeding Prohibited. No person shall drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every

person shall drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as provided in Section 49-654, Idaho Code. (3-7-03)

03. Motorcycle Safety Helmets. Persons under eighteen (18) years of age shall wear a protective safety helmet when riding upon a motorcycle as operator or passenger within Idaho State Parks as provided in Section 49-666, Idaho Code. (3-7-03)

04. Snowmobile Operation Limited. No person shall operate a snowmobile on any regularly plowed park road. Access on non-plowed roads and trails shall only be permitted when authorized by the park manager. (3-30-01)

05. Compliance With Posted Regulatory Signs Required. Persons operating vehicles within state parks are required to obey posted regulatory signs as provided in Section 49-807, Idaho Code. (3-7-03)

06. Obedience to Traffic Direction Required. No person shall willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control or regulate traffic within a state park. (3-30-01)

07. Restrictions. The operation of motorized vehicles within a designated campground is restricted to ingress and egress to a campsite. (3-7-03)

08. Official Use. This rule does not prohibit official use of motorized vehicles by Department employees anywhere within lands administered by the Department. (1-1-94)

151. -- 174. (RESERVED).

175. PUBLIC BEHAVIOR.

01. Resisting and Obstructing a Park Employee Prohibited. Persons shall not willfully resist, delay, obstruct, or interfere with any park employee in his duties to protect the state's resources and facilities and to provide a safe place to recreate. (3-30-01)

02. Day Use. Between the hours of 10:00 p.m. and 7:00 a.m., unless otherwise posted, all persons not registered for the night or attending park sponsored activities are to leave the park. (~~3-7-03~~)(____)

03. Quiet Hours. Within lands administered by the Department, the hours between 10:00 p.m. and 7:00 a.m. shall be considered quiet hours unless otherwise posted. During that time, users are restricted from the production of noise that may be disturbing to other users. (1-1-94)

04. Noise. Amplified sound, poorly muffled vehicles, loud conduct or loud equipment are prohibited within lands administered by the Department, except in designated areas or by authority of the park manager. (1-1-94)

05. Alcohol. State laws regulating alcoholic beverages and public drunkenness shall be enforced within lands administered by the Department. (3-30-01)

06. Littering. Littering is prohibited within lands administered by the Department. (1-1-94)

07. Smoking. State Park facilities are designated as "smoke free" areas. Persons shall not smoke within park structures or at posted outdoor areas. (3-30-01)

176. -- 199. (RESERVED).

200. CAMPING.

01. Occupancy. Camping shall be permitted only in designated campsites *with a maximum of one (1)*

~~camping unit per campsite, unless the site has been designed to accommodate or has been approved by the park manager or designee for a second unit or facilities.~~ A campsite will be determined occupied only after the required camping fees have been paid and registration information completed. Unique circumstances may arise, and specific sites or facilities by virtue of design may require exceptions to the capacity limits outlined below. ~~(3-16-04)()~~

02. Length of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the Department for more than fifteen (15) days in any thirty (30) consecutive day period. This applies to both reservation and "first come first served" customers. The IDPR Operations Division Administrator or designee may authorize shorter or longer periods ~~may be designated for any individual area by the park manager or designee for any individual area.~~ ~~(3-7-03)()~~

03. Registration Required. All camping fees must be paid and registration information completed prior to occupying a campsite or facilities. Saving or holding campsites or facilities for individuals not physically present at the time of registration for "first come first served" camping is prohibited. ~~(3-7-03)()~~

04. Condition of Campsite. Campers shall keep their individual or group campsite or facility and other use areas clean. ~~(3-7-03)()~~

05. Liquid Waste Disposal. All gray water and sewage wastes shall be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. (3-30-01)

06. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. (7-1-93)

07. Campsite Parking. All ~~boats, motorcycles, motorized wheeled vehicles and trailers, rigs and motorized vehicles~~ shall fit entirely within the campsite parking ~~spur~~ pad/area provided with the assigned individual or group campsite or facility. All equipment ~~which that~~ does not fit entirely within the designated campsite parking area shall be parked outside the campground in an area designated by the park manager or designee. If no outside parking is available, the park manager or designee may require the party to register on a second campsite, if available. ~~(3-7-03)()~~

08. Equipment. All camping equipment and personal belongings of a camper shall be maintained within the assigned individual or group campsite or facility perimeter. ~~(3-13-97)()~~

09. Check Out. ()

a. Campers are required to check out and leave a clean individual or group campsite by 1:00 p.m. of the day following the paid night of camping. ~~(7-1-99)()~~

b. Campers are required to check out and leave a clean individual or group camping facility by 12:00 p.m. (noon) of the day following the paid night of camping. ()

10. Visitors. Individuals visiting campers shall park in designated areas, except with permission of the park manager or designee. Visitors shall conform to established day use hours and ~~motor vehicle entry~~ day use fee requirements. ~~(3-7-03)()~~

11. Responsible Party. The individual purchasing an individual or group campsite or facility is responsible for ~~assuring~~ ensuring compliance with the rules within this chapter. ~~(1-1-94)()~~

12. Camping Prohibited. No camping is permitted outside designated individual or group campsites unless specifically authorized. Camping on individual or group facility sites is prohibited unless in areas specifically designated for camping or by authorization of the park manager or designee. ~~(3-13-97)()~~

201. BOATING FACILITIES.

The provisions of this section do not apply to Department-operated marinas which provide moorage on a lease or long term rental basis. (3-7-03)

01. Moorage and Use of Marine Facilities. No person or persons shall moor or berth a vessel of any type in a Department-owned or operated park or marine area that is signed for other use. Vessel moorage shall be limited to no more than fifteen (15) days in any consecutive thirty (30) day period. (3-7-03)(____)

02. Moorage Fees. Vessels moored between 10:00 p.m. and 7:00 a.m. at designated facilities shall be charged an overnight moorage fee. (3-7-03)(____)

03. Use of Onshore Campsites. If any person or persons from a vessel moored at a Department boating facility also occupies any designated campsite onshore, the appropriate established fee for such campsite(s) shall be paid in addition to any moorage fee provided herein. (3-13-97)

04. Self-Registration. In those areas so posted, boaters shall register themselves for the use of marine facilities and onshore campsites, paying the appropriate moorage and campsite fees as provided for herein and in accordance with all posted instructions. (3-13-97)

202. -- 224. (RESERVED).

225. FEES AND SERVICES.

01. Authority. (3-13-97)

a. The Board shall adopt fees for the use of lands, facilities, and equipment. Visitors shall pay all applicable fees. (3-7-03)

b. Park managers or designees may set fees for goods available for resale and services provided by staff that enhance the users experience unique to the individual park. Fees for lands, facilities and equipment unique to an individual park will be posted at that site. (3-7-03)

02. General Provisions. All fees in this chapter are maximum fees unless otherwise stated. Actual fees charged shall be established by Board Policy. (3-7-03)

03. Camping. Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-16-04)

04. Group Use. (7-1-93)

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall have a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (1-1-94)

b. Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) to one thousand (1,000) may be approved by the Director with forty-five (45) days advance notice. Groups over one thousand (1,000) may be approved by the Board with sixty (60) days advance notice. The Director may approve groups over one thousand (1,000) with thirty (30) days advance notice, if they are repeat users. (1-1-94)

c. The ~~motorized vehicle entry~~ day use fee may be charged to groups entering a designated area for a noncamping visit. (3-13-97)(____)

05. Fees and Deposits. Fees and deposits may be required for certain uses or the reservation of certain facilities unique to an individual park and will be posted at that site. (3-13-97)(____)

06. Fee Collection Surcharge. A five dollar (\$5) surcharge may be added to all established fees when the operator of a motorized vehicle or camping unit fails to pay required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the five dollar (\$5) surcharge will be assessed against the registered owner of the

motorized vehicle or camping unit. (3-16-04)

07. Admission Fees. A maximum per person fee of ten dollars (\$10) may be charged for internal park facilities which provide an educational opportunity or require special accommodations. (3-10-00)

08. Cooperative Fee Programs. The Department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. (3-10-00)

226. -- 249. (RESERVED).

250. FEE SCHEDULE.

01. Campsites.

CAMPSITE FEE TABLE	
Primitive Campsite <i>(may include: table, grill, camp spur, vault toilet, no water.)</i> No amenities at site, camping area not defined	\$7 <u>9</u> /day
Basic Campsite Any defined campsite, either tent pad or RV pad/area (may include: table, <u>and/or</u> grill, camp spur, central water, vault toilets.)	\$9 <u>12</u> /day
Developed Campsite/ <u>W</u> Any defined campsite, either tent pad or RV pad/area, with water at site (may include: table, <u>and/or</u> grill, camp spur, central water, flush toilets.)	\$12 <u>16</u> /day
Campsite/ <u>E</u> Any defined campsite, either tent pad or RV pad/area, with electricity at site (may include: table and/or grill)	\$16/day
Campsite/ <u>W, E</u> Any defined campsite, either tent pad or RV pad/area, with water and electricity at site (may include table and/or grill)	\$20/day
Campsite/ <u>W, E, SWR</u> Any defined campsite, either tent pad or RV pad/area, with water, electricity, and sewer at site (may include table and/or grill)	\$22/day
Deluxe Companion Campsite May be any campsite type, regardless of amenities, that has greater equipment/people capacity (a developed campsite that is designed to accommodate two (2) camper units may include table and/or grill) Fee determined by actual site type.	\$22/day Site type multiplied by two (2)
Electric hookups at site	additional \$4/day
Sewer hookups at site	additional \$2/day
Use of campground showers by noncampers	\$3/person
Limited Income Discount - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the Board) may receive a camping fee discount of:	\$4/day
Resident Disabled Idaho Veterans - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	

CAMPSITE FEE TABLE	
Extra Vehicle Charge	\$5 7 /day
Camping Cabins and ; Yurts, or Teepee	\$ 72 150/night
Each additional person above the sleeping capacity of camping cabin, or yurt or teepee	\$12/night

(3-16-04)()

02. Reservation Service Fees, Individual Campsite or Facility. A non-refundable non-transferable (from one (1) party to another) service charge of ~~six~~ ten dollars (\$~~6~~10) ~~will~~ may be assessed for each individual campsite or facility reserved. This fee will be waived for campers with a current Idaho RV registration sticker and reimbursed to the Department by the RV Program. A service charge of ten dollars (\$10) or the first night's fee, whichever is less, will be assessed for the cancellation or modification of each individual campsite or facility reserved that involves reducing the planned length of stay or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window) if notice is received more than twenty-four (24) hours in advance of the scheduled arrival time. Cancellations or modifications made less than twenty-four (24) hours in advance of the scheduled arrival time shall result in assessment of a ten dollar (\$10) service charge and may require the forfeiture of the first night's camping fee. Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and a re-book will be required.

(3-16-04)()

03. Motorized Vehicle Entry Day Use Fee (MVEF).

MOTORIZED VEHICLE ENTRY DAY USE FEE (MVEF) TABLE.	
Daily charge per motorized vehicle. The daily MVEF day use fee expires at 10:00 p.m. on date of purchase unless the party is registered to camp, in which case, the daily MVEF will expire at 1 p.m. the following day Overnight camping guests are exempt from this fee.	\$ 5
Daily charge per commercial motor coach (no annual pass available)	\$25
Statewide Annual State Park Passport per motorized vehicle	\$35
Disabled Idaho Resident Veterans - The MVEF day use fee is waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
Second Vehicle Annual Passport.	\$ 5

(3-16-04)()

04. Special Charges. The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. (3-7-03)

05. Group Facility Fees. Reservation service fee, designated group campground or facility.

(3-13-97)()

a. A ~~reservation~~ non-refundable, non-transferable (from one party to another) service charge of twenty-five dollars (\$25) shall be ~~charged for each reservation of a~~ assessed per designated group area or facility reserved. ~~Additional charges may~~ This fee will be ~~imposed by~~ charged in addition to the park manager or designee depending upon the cost of providing services usage fees for each group or campsite or facility. (3-7-03)()

b. Groups using overnight facilities shall be charged three dollars (\$3) per person per night camping fees for each individual above the authorized base occupancy rate for the specific site or facility. (3-16-04)()

e- *Unless other arrangements are made with the park manager or designee, all group facility use fees and any applicable deposits are required to be prepaid to confirm a group use facility reservation. Unless otherwise provided for in these rules, all use fees shall be refunded if notice of cancellation is provided not later than 2 p.m.,*

~~local time, twenty-one (21) days prior to date of scheduled arrival. Unless otherwise provided for in these rules, during the primary season, the percent of fees refunded for cancellations made less than twenty-one (21) days prior to date of scheduled arrival will be based on the ability of the park manager or designee to register the cancelled sites to other parties.~~ (3-7-03)

~~d.~~ Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they shall be paid prior to check-in. Cleaning/damage deposits shall be fully refunded if the facilities are facility is left in the same condition in which they were it was accepted. (3-7-03)()

~~d.~~ Group use fees for day use facilities may be negotiated by the park manager or designee but shall never fall below the cost of providing services. ()

06. Boating Facilities.

BOATING FACILITIES FEE TABLE	
Vessel launching (per vessel/per day) (Annual park passport and daily MVEF or <u>day use fee</u> apply toward vessel launching fees)	\$5/ day
Overnight moorage --any length of vessel. (Applicable to persons who have paid for a park campsite and are not camping on the vessel)	\$5/night
Overnight moorage --persons camping on vessel	
Any length vessel	\$8/night
Any length vessel moored at buoy	\$5/night

(3-16-04)()

07. Modification of Fees. Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The Department reserves the right to waive or reduce fees and charges for Department sponsored promotions. (7-1-93)

08. Sales Tax. Applicable sales tax may be added to all sales excluding ~~daily motor vehicle entrance~~ the day use fees. (3-10-00)()

09. Length of Stay. Fifteen (15) days in any consecutive thirty (30) day period. (7-1-93)()

10. Nordic Ski Grooming Program Fee. A fee of four dollars (\$4) per person per day and thirty-five dollars (\$35) per family per season will be required at Board-approved premium Nordic ski grooming program locations. These programs may include: maintained parking areas, warming facilities, winter accessible restroom facilities, regularly groomed ski trails, extensive signing, trail mapping and ski patrol services. (3-16-04)

251. -- 274. (RESERVED).

275. CRITERIA FOR INDIVIDUAL CAMPSITE, CAMPING CABIN, AND YURT AND TEPEE RESERVATIONS.

01. Confirmation Requirements. ()

a. Confirmation of an individual campsite or facility reservation. ~~The prepayment~~ Full payment of all applicable fees is required to confirm an individual campsite, appropriate camping ~~cabin, yurt or tepee~~ and related service fees shall be made before a reservation is confirmed. (3-7-03)()

b. Confirmation of a designated group campground or facility reservation. ()

i. Payment of the first night or daily base rate fee for a group facility and all related service fees shall be made before a reservation is confirmed. ()

ii. Payment of all camping and related service fees applicable for each campsite or facility reserved within a group campground must be paid at the time of booking before a reservation is confirmed. ()

02. Individual Campsite, ~~Camping Cabin, Yurt and Teepee~~ Facility Reservations. Reservations for individual campsites, ~~camping cabins, yurts and teepees~~ facilities may be made anytime ~~between ninety (90) days~~ up to nine (9) months in advance ~~and but no less than~~ two (2) days prior to the scheduled date of arrival. Reservations may be accepted greater than nine (9) months in advance or less than two (2) days prior to the scheduled date of arrival only with the approval of the ~~park manager~~ Operations Division Administrator or designee. All non-reservation camping is on a "first come first served" basis. (~~3-7-03~~)()

03. Multiple Campsite and Facility Reservations. ~~Multiple Reservations including ten (10) or more~~ for individual campsites or facilities may be made up to ~~eleven nine (119)~~ months in advance of the scheduled arrival date, ~~with the approval of the park manager or designee.~~ One (1) person may pay all applicable fees. No more than ~~thirty~~ forty percent (40%) of the total number of ~~campsites~~ sites in a campground managed for individual use (non-group designated) may be reserved ~~before the ninety (90) day individual campsite reservation window~~ for group use at any given time. (~~3-7-03~~)()

04. Reservation Modifications. (3-7-03)

a. Individual and group campsite(s) or facilities. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). ~~This service fee will be assessed for each campsite involved.~~ With the exception of the reservation service fees as defined in Subsection 250.02, all any overpaid fees paid will be reimbursed at the time the reservation is modified. (~~3-7-03~~)()

05. Reservation Cancellations. (3-7-03)

a. Individual site or facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. With the exception of the reservation service fees as defined in Subsection 250.02, all fees paid will be reimbursed at the time the reservation is cancelled. (~~3-7-03~~)()

b. Designated group campsite or facility. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs fewer than twenty-one (21) calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge of fifty dollars (\$50) will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. ()

06. Park Manager Authority. The park manager or designee may deny a reservation to any individual whose prior documented behavior has violated Department rules or whose in-park activities are incompatible with the park's operation. (3-7-03)

276. -- 299. (RESERVED).

300. RESERVING GROUP USE FACILITIES.

01. General. Unless otherwise provided, designated group use facilities may be reserved through the reservation system up to ~~eleven nine (19)~~ months in advance but at least two (2) days prior to the ~~first day to be reserved~~ date of arrival. ~~Individual campsites within designated group camping areas may be reserved by individual campers if they are not reserved by groups up to ninety (90) days prior to arrival.~~ (3-7-03)(____)

02. Responsible Party. A designated group leader shall be responsible for all facilities. A damage or cleaning deposit may be required by the park manager or designee as a condition of reservation. (3-7-03)

03. Park Manager Authority. The park manager or designee may deny a reservation to any group whose prior documented behavior has violated Department rules, whose in-park activities are incompatible with the park's operation, or whose in-park activity will violate Department rules. (3-7-03)

04. Additional Information. Additional information concerning group use reservations and definitions can be found in Subsection 250.06~~2~~ of this chapter. (3-7-03)(____)

301. -- 399. (RESERVED).

400. PARK CAPACITIES. Park managers may limit or deny access to an area whenever it has reached its designated capacity. Only if special arrangements for the public welfare have been made may the park manager allow that capacity to be exceeded. (1-1-94)(____)

(BREAK IN CONTINUITY OF SECTIONS)

576. PROTECTION OF HISTORICAL, CULTURAL AND NATURAL RESOURCES. The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and educational purposes will be through written permission of the park manager or designee only. (3-7-03)(____)

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.31 - RULES GOVERNING THE ADMINISTRATION OF IDAHO DEPARTMENT OF PARKS AND RECREATION RECREATIONAL PROGRAM GRANT FUNDS

DOCKET NO. 26-0131-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223(a), 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 October 19, 2005.

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:

Chapter 31 establishes rules which govern the administration of IDPR state and federal grant funds. Periodically it is necessary, and desirable, to modify and update the rules to ensure that IDPR manages its grant programs in a consistent manner. The proposed changes consist mainly of housekeeping measures to clarify existing terminologies, remove outdated definitions, and eliminate superfluous references.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

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 October 26, 2005.

DATED this 6th day of September, 2005.

Dean Sangrey
Division Administrator, Operations
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise ID 83716
PO Box 83720
Boise ID 83720-0065
Phone: 208-334-4180 Fax: 208-334-3741

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0131-0501

26.01.31 - RULES GOVERNING THE ADMINISTRATION OF IDAHO DEPARTMENT OF
PARKS AND RECREATION ~~RECREATIONAL PROGRAM~~ STATE AND FEDERAL GRANT FUNDS

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter shall be cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.31, "Rules Governing the Administration of the Idaho Department of Parks and Recreation ~~Recreational Program~~ State and Federal Grant Funds". (7-1-99)(____)

02. **Scope.** This chapter establishes procedures for ~~the grants~~ administration of the Off-Road Motor Vehicle Account, the Recreational Vehicle Account, ~~the Boat Safety Account~~, the Waterways Improvement Fund, ~~the Cross-Country Skiing Recreation Account~~, the State Trust for Outdoor Recreation Enhancement, ~~and~~ the Recreational Trails ~~Fund, including~~ Program, the Motorbike Recreation Account, the Cutthroat License Plate Fund, and the Recreational Road and Bridge Fund. This chapter includes requirements for project application, eligibility, review, award and management. (7-1-99)(____)

002. WRITTEN INTERPRETATIONS.

This agency has written interpretations of these rules, in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules, or documentation of compliance with IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 150. In addition, ~~participation manuals~~ Idaho Department of Parks and Recreation Grant Guidelines prepared and maintained by the Department provide additional interpretation of these rules. These documents are available for public inspection and copying in the central office of the agency. (7-1-99)(____)

003. ADMINISTRATIVE APPEALS.

Any applicant who may be adversely affected by a final decision, ruling, or direction of the Department may seek relief as outlined under IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 250. (7-1-99)(____)

004. PUBLIC RECORDS.

The records relative to any ~~recreational program~~ grant project are public records, and are to be controlled as outlined under IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 300. (7-1-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

As used in this chapter: (7-1-99)

01. **Applicant.** An public IDPR approved entity, ~~user group, organization, or individual~~ that identifies a need for a project, supplies initial support data, and applies for ~~a recreational~~ program grant through the Department. (7-1-99)(____)

02. **Board.** The Idaho Park and Recreation Board. (7-1-99)

~~03. **Boating Law Administrator.** The staff administrator of the Waterways Improvement Fund and the Boat Safety Account. (7-1-99)~~

~~04. **Boat Safety Account.** Those grant funds given to the department by the U.S. Coast Guard, and which originate from the Federal Aquatic Resources Trust Fund, Boat Safety Account. (7-1-99)~~

~~05. **Boat Safety Program.** The subdivision of the department responsible for administering the Boat~~

~~Safety Account.~~

~~(7-1-99)~~

063. County Waterways Committee. Those committees created by Section 67-7012, Idaho Code, whose purpose is to advise the county on the maintenance and improvements of waterways and expenditures of moneys deposited in the county vessel account. ~~(7-1-99)()~~

04. Cutthroat License Plate Fund (CLP). That portion of the Park and Recreation fund created in Section 67-4225, Idaho Code, received from the sale of cutthroat wildlife license plates. ()

~~**07.** Cross-Country Skiing Recreation Account. That account established by Section 67-7117, Idaho Code.~~ ~~(7-1-99)~~

~~**08.** Cross-Country Skiing Recreation Program. The subdivision of the department responsible for administering the Cross-Country Skiing Recreation Account.~~ ~~(7-1-99)~~

095. Department. The Idaho Department of Parks and Recreation. (7-1-99)

106. Director. The chief administrator of the Department, or the designee of the Director. (7-1-99)

~~**107.** Grant. A grant from the Off-Road Motor Vehicle Account, Recreation Vehicle Account, Waterways Improvement Fund, Boat Safety Account, Recreational Trails Fund, Cross-Country Skiing Recreation Account, or State Trust for Outdoor Recreation Enhancement programs or funds as described in Section 001.02 of this chapter.~~ ~~(7-1-99)()~~

08. Grantee. An applicant who receives a grant from the Department for the programs or funds as described in Section 001.02. ()

09. IDPR Grant Guidelines. A compilation of state procedures, rules, and instructions assembled in manual form for dissemination to the potential applicant and public entities that may wish to apply for grants. ()

120. Management. The actions taken in exercising control over, regulating the use, operation, and maintenance of facilities or programs. (7-1-99)

131. Motorbike Recreation (MBR) Fund Account. This fund account, created by Section 67-71226, Idaho Code, may be used for all of the purposes outlined in Subsection 010.141 of this chapter and rider education programs. When reference is made to the ORMV Account in this chapter, it is intended to include the MBR Fund the same as if it was specifically denoted as such except enforcement of laws and rules governing the use of off-road motor vehicles in Idaho. ~~(7-1-99)()~~

142. Off-Road Motor Vehicle (ORMV) Account. That account created by Section 57-1901, Idaho Code. These moneys may be used to acquire, purchase, improve, repair, maintain, furnish and equip off-road motor vehicle facilities and sites or areas used by off-road vehicles on public or private land, and to assist with enforcement of laws and regulations governing the use of off-road vehicles in the state of Idaho. (7-1-99)

153. Off-Road Motor Vehicle (ORMV) Account Advisory Committee. A nine (9) member committee appointed by the Board to advise the Department on matters involving ORMV Fund grants. (7-1-99)

~~**16.** Off-Road Motor Vehicle (ORMV) Program. The subdivision of the department responsible for administering the ORMV Account.~~ ~~(7-1-99)~~

~~**17.** Participation Manual. A compilation of state procedures, rules, and instructions assembled in manual form for dissemination to the potential applicant and public entities that may wish to participate in recreational program grants.~~ ~~(7-1-99)~~

184. Project. An effort to comply with Idaho statutes and rules for which recreational program grant funds shall be used to assist the applicant grantee in achieving the objectives of the recreational grant programs.

(7-1-99)()

195. Project Manager. Any individual who has the principle responsibility for the ongoing management of projects. (7-1-99)

2016. Public Entity. The state, federal or local government or a subdivision thereof, or an Indian tribe. (7-1-99)

~~**21. Recreational Program.** The Off-Road Motor Vehicle Program, Recreational Vehicle Program, Waterways Improvement Fund Program, Boat Safety Program, Cross-Country Skiing Recreation Program, Snowmobile Program, Recreational Trails Program, State Trust for Outdoor Recreation Enhancement Program, and the Land & Water Conservation Fund Program administered by the department. (7-1-99)~~

~~**22. Recreational Program Managers.** The Trails Program Supervisor, Recreational Vehicle Program Coordinator and Boating Law Administrator. (7-1-99)~~

17. Recreational Road and Bridge Fund (RRBF). That portion of the park and recreation capital improvement account designated for grants to improve roads, bridges, and parking lots in or leading to park and recreation areas of the state. ()

~~**2318. Recreational Trails Fund (Recreational Trails Program) (RTFP).** The account created by the Transportation Equity Act for the 21st Century (Section 1112). This fund may be used for maintenance and restoration of existing recreational trails, development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails, purchase and lease of recreational trail construction equipment, construction of new recreational trails, acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors, and the operation of education programs to promote safety and environmental protection as those objectives relate to the use of recreational trails. (7-1-99)()~~

~~**2419. Recreational Trails Fund Program (RTFP) Advisory Committee.** A ten (10) member advisory committee appointed by the Board to advise the Department on matters related to the Recreational Trails Fund Program. (7-1-99)()~~

250. Recreational Vehicle (RV) Account. That account created by Section 49-448, Idaho Code. The moneys may be used for the acquisition, lease, development, improvement, and maintenance of facilities designed to promote the health, safety, and enjoyment of recreational vehicle users. (7-1-99)

261. Recreational Vehicle (RV) Advisory Committee. A six (6) member committee appointed by the Board to advise the Board and Department on matters involving the RV Account. (7-1-99)

~~**27. Recreational Vehicle (RV) Coordinator.** The staff administrator of the Recreational Vehicle Program. (7-1-99)~~

~~**28. Recreational Vehicle (RV) Program.** The subdivision of the department responsible for administering the RV Account. (7-1-99)~~

292. Staff. Any individual employed by the Department. (7-1-99)

23. State and Federal Grant Manager. The Department administrator in charge of State and Federal grant programs. ()

24. State and Federal Grant Program. That section of the Department responsible for the administration of state and federal grant programs. ()

~~**3025. State Trust for Outdoor Recreation Enhancement (STORE).** The recreation account created by Section 67-4247, Idaho Code. (7-1-99)~~

~~**3126. Trails Program.** The subdivision of the Department responsible for administering the ORMV~~

Program, Motorbike Program, Recreational Trails Program, Snowmobile Program, Non-Motorized Trails Program, and the Cross-Country Skiing Recreation Program. (7-1-99)

~~32. Trails Program Supervisor. The staff administrator of the Trails Program. (7-1-99)~~

~~327. Waterways Improvement Fund (WIF). That fund created by Section 57-1501, Idaho Code. These moneys may be used for the protection and promotion of safety, waterways improvements, creation and improvement of parking areas for boating purposes, making and improving boat ramps and moorings, marking of waterways, search and rescue, and all things incident to such purposes including the purchase of real and personal property. No such improvements shall be constructed in any county of the state without the approval of the county waterways committee of the plan for such improvements. (7-1-99)(____)~~

~~3428. Waterways Improvement Fund Grant Advisory Committee. A six (6) member committee appointed by the Board to advise the Department on matters relating to Waterways Improvement Fund grants. (7-1-99)~~

011. -- 049. (RESERVED).

050. GENERAL PROVISIONS OF THE RECREATIONAL STATE AND FEDERAL GRANT PROGRAMS.

It is the intent of the Department, through the ~~recreational~~ State and Federal Grant programs, to provide funds and planning assistance to entities for the acquisition, lease, development, improvement and maintenance of facilities and equipment to promote the health, safety, enjoyment and general welfare of recreational users in the state of Idaho. (7-1-99)(____)

051. -- 074. (RESERVED).

075. ELIGIBLE APPLICANTS.

~~Applicants eligible for recreational program fund grants are as follows: Public entities as defined in Subsection 010.16 of this chapter are eligible to apply for and receive grants as described on Subsections 001.02 and 010.07 of this chapter. Additionally, project sponsors as defined by Federal Highway Administration Interim Recreational Trails Program Guidance are eligible to apply for and receive grants as described in Subsections 001.02 and 010.07 of this chapter. (7-1-99)(____)~~

~~01. Boat Safety Account. Public entities as defined in Section 010 of this chapter, and recognized national or statewide boating safety organizations that can demonstrate evidence of responsibility in providing public boating safety services. Federal funds shall not be used as match for Boat Safety Account grants. (7-1-99)~~

~~02. Cross-Country Skiing Recreation Account. Public entities as defined in Section 010 of this chapter and nonprofit entities. (7-1-99)~~

~~03. Off-Road Motor Vehicle Account. Public entities as defined in Section 010 of this chapter, and private groups, organizations or individuals which provide evidence of its ability to implement or operate and maintain the project following the completion of the project. (7-1-99)~~

~~04. Recreational Trails Fund. Public entities as defined in Section 010 of this chapter, and private groups, organizations or individuals which provide evidence of its ability to implement or operate and maintain the project following the completion of the project. Federal funds shall not be used as match for RTF grants except when specifically allowed by federal law. (7-1-99)~~

~~05. Recreational Vehicle Account. Public entities as defined in Section 010 of this chapter. (7-1-99)~~

~~06. State Trust for Outdoor Recreation Enhancement Fund. The state of Idaho and any of its subdivisions legally authorized to provide public recreation facilities. (7-1-99)~~

~~07. Waterways Improvement Fund. Public entities as defined in Section 010 of this chapter. All applications for projects involving the construction or improvements of physical facilities shall be approved by the~~

~~county waterways committee or the county commissioners.~~

~~(7-1-99)~~

076. -- 099. (RESERVED).

100. APPLICATION PROCEDURE.

All forms and documents required by these rules and the Department shall be completed and submitted according to these rules in order for a grant application to be considered for approval. (7-1-99)

01. Forms. To be considered for a grant, an applicant must file with the Department a completed grant application form and other documentation specified in the ~~participation manual~~ IDPR Grant Guidelines, all of which shall have original signatures. ~~Except for Boat Safety Account block grants, a~~ An applicant must file with the Department a completed grant agreement form, with original signatures, within ~~thirty sixty (360)~~ calendar days of written notification of grant approval. ~~An applicant for a Boat Safety Account block grant shall sign a Memorandum of Understanding with the director at least thirty (30) days prior to the beginning of the block grant award period.~~ The application, ~~and~~ grant agreement ~~or Memorandum of Understanding~~ forms shall be provided to the applicant by the Department. (7-1-99)(____)

02. Review. The applicant or applicant's representative may review the project and all associated documentation with the Department prior to submitting the application to ensure the project and documentation meet the criteria of the ~~recreational program~~ State and Federal grant program. When possible, Department staff may perform an on-site visit to the project site for preliminary fact finding and to evaluate the viability and eligibility of the project. (7-1-99)(____)

03. Public Comment. The applicant shall submit to the Department proof of public comment regarding the project. Proof of public comment ~~shall~~ may include the results of public meetings, scoping of National Environmental Policy Act (NEPA) processes, individual contacts with recreationists and others that may be affected by the project, newspaper articles and/or other media releases which describe the project and request public input. (7-1-99)(____)

04. Deadline. The deadline for grant applications to recreational program grants shall be established by the Department. The Department shall announce the availability of funds at least sixty (60) days prior to the deadline date for receipt of applications. (7-1-99)(____)

101. -- 149. (RESERVED).

150. ELIGIBILITY AND PRIORITY RATING OF PROJECTS.

Eligibility of all projects or applicants shall be determined by the ~~appropriate recreational program manager~~ State and Federal Grant Manager who shall consider relevant rules, ~~and~~ statutes and past performance of the applicant. (7-1-99)(____)

01. Pre-Application Activities. Projects, or any part thereof, either paid for by the ~~applicant~~ grantee or completed prior to the grant application deadline date established by the Department, shall be ineligible for ~~Recreational Vehicle Account and Waterways Improvement Fund~~ grant funding or to be considered as match. However, costs for design and engineering incurred within one (1) year prior to the ~~date awarded~~ application deadline date may be considered as match, provided they are listed as a scope element on the application. Recreational Trail Program projects, or any part thereof, completed prior to the execution of the project agreement shall be ineligible for grant funding or to be considered as match. (7-1-99)(____)

02. Priority Rating Criteria. The Department and/or appropriate advisory committee shall establish project ~~priorities~~ rankings by rating each eligible project using criteria established by the ~~department~~ Board. ~~All eligible projects shall be rated by the committee.~~ Specific evaluation criteria ~~for each recreational program~~ shall be listed in ~~their associated participation manual and may include:~~ the IDPR Grant Guidelines. (7-1-99)(____)

~~a- Conformance with legal requirements;~~ (7-1-99)

~~b- Compliance with program objectives;~~ (7-1-99)

- ~~e. Accuracy of estimated costs of the project; (7-1-99)~~
- ~~d. Potential of the project to enhance the health, safety, enjoyment and general welfare of recreational users in Idaho; (7-1-99)~~
- ~~e. History of prior recreational program grant management by the applicant; (7-1-99)~~
- ~~f. Adequacy of project design or construction, if applicable; (7-1-99)~~
- ~~g. The applicant's level of matching share provided for the project; (7-1-99)~~
- ~~h. Suitability of the project for the proposed site, use and location; and (7-1-99)~~
- ~~i. Grant amount requested compared to the amount of funds available. (7-1-99)~~

151. -- 174. (RESERVED).

175. PROJECT TIME PERIOD.

01. **Grant Cycle.** Applications for ORMV Fund, RV Account, WIF, MRB, CLP, RRBF, or STORE projects shall be considered at least once each state fiscal year (July 1 through June 30) dependant upon adequate funding availability. Applications for RTFP or Boat Safety Account projects shall be considered at least once each federal fiscal year (October 1 through September 30) dependent upon adequate funding availability. (7-1-99)(____)

02. **Expenditure of Grant Funds.** Except as herein provided, the applicant grantee shall have only the designated state or federal fiscal year or years to expend recreational program grant funds. If the recreational program grant funds are not expended within the designated fiscal year or years, the grant shall be revoked unless the applicant requests and receives an extension of time from the Department. (7-1-99)(____)

03. **Requests for Extension.** A written request for an extension of the project period shall be received by the Department prior to the end of the project period. The appropriate recreational program State and Federal Grant Manager shall make the final determination of extensions. No project extension shall be granted for more than one (1) year, however, project extensions may be granted in consecutive years. (7-1-99)(____)

176. -- 199. (RESERVED).

200. AUTHORITY FOR FUNDING APPROVAL.

Projects of less than up to and including twenty thousand dollars (\$20,000) may be approved by the Director. Projects of over twenty thousand dollars (\$20,000) or more shall be presented to the Board for approval. (7-1-99)(____)

01. **Minor Cost Increases.** Cost increases of fifteen percent (15%) or less of the original grant amount may be approved by the Director, except such increases that bring the initial project cost from less than twenty thousand dollars (\$20,000) to twenty thousand dollars (\$20,000) or more shall be presented to the board for approval. (7-1-99)(____)

02. **Major Cost Increases.** Cost increases of more than fifteen percent (15%) of the original grant amount shall require the project be presented as a totally new proposal and compete through the general application process described herein. Should the revised project not receive approval for cost increase grant funding, the applicant grantee shall be required to complete the scope of the project as originally proposed at its expense or return any project grant funds paid to it so that the project may be canceled and the grant funds reallocated. (7-1-99)(____)

03. **Waterways Improvement Fund Grant Limit.** The total sum of Waterways Improvement Fund WIF grant funds approved to be used in any one (1) county may not exceed thirty percent (30%) of the total WIF grant funds approved to be used statewide in any state fiscal year. (7-1-99)(____)

201. -- 249. (RESERVED).

250. DISBURSEMENT OF FUNDS.

01. Allowable Costs. Applicable Office of Management and Budget (OMB) cost principles, program regulations, and the terms of grant agreements shall be followed in determining the reasonableness and allowability of costs. (7-1-99)

02. Documentation and System of Internal Controls. The ~~applicant~~ grantee shall maintain a system of internal controls in order to identify the source and disbursement of funds provided for all project costs and match by grant or project. Accounting records shall be supported by source documentation such as vouchers, canceled checks, invoices, payroll, time and attendance records, contract and sub-grant award documents, and other required billing forms. (7-1-99)(____)

03. ~~Documentation for~~ Match. Match is the donation of cash, product or service used to complete the grant project as approved. The following types of match may be used: (7-1-99)(____)

a. Force account labor and equipment, i.e., the use of the grantee's staff (labor) and equipment costs. Documentation of force account shall include: the name of each worker, dates worked, hourly rate of pay, number of hours worked, and the total cost by each person. Documentation of equipment costs shall include the type of equipment used, dates used, hourly rate value, number of hours used, how the hourly rate was determined, and total cost. (7-1-99)

b. Donated material that is used as match shall be reasonable and cannot exceed the costs of the materials to the donor or the market price at the time they are charged to the project, whichever is less. A detailed invoice marked "donation" or a letter from the donor shall be used as documentation of donated material. (7-1-99)

c. Donated Contract Labor. When an employer, other than the grantee, furnishes the services of an employee, these services are valued at the employee's regular rate of pay (not including fringe benefits and overhead costs). These services shall be for the same skill for which the employees is normally paid. Documentation shall include the employee's name, dates worked, hourly rate, number of hours worked, and total cost. (7-1-99)

d. Rates for Volunteers. Skilled and unskilled shall be consistent with the rate regularly paid by the grantee for similar work or shall be consistent with those paid for similar work in the grantee's labor market. If the volunteer is professionally skilled and employed in the work he is performing on the project, the grantee may use the individual's normal wage rate. If the volunteer is unskilled and not professionally employed in the work he is performing the grantee shall value the donated labor at the national minimum wage rate. Documentation shall include the volunteer's name, date worked, hourly rate, number of hours worked, and total cost. (7-1-99)

04. Disbursement of Funds. Except as provided in Subsection 250.05 herein, the Department shall authorize disbursement of funds allocated to a project on a reimbursement basis. This means that the ~~applicant~~ grantee shall initially pay all project costs and then seek reimbursement through the Department. (7-1-99)(____)

a. General. Grantees shall use only the forms specified in this section, and such supplementary or other forms as may from time to time be authorized by the Department. (7-1-99)

b. Request for Reimbursement. ~~The grantee shall~~ complete an Idaho Department of Parks & Recreation (IDPR), Request for Reimbursement/Close-out Report form- ~~Sign~~ certifying that the data is correct and submit the form to the ~~applicable recreation program manager~~ State and Federal grant program with an original signature. (7-1-99)(____)

~~e.~~ ~~Request for Advance. Complete and sign the IDPR Request for Advance form and submit with written justification identifying the need for an advance to the applicable recreation program manager.~~ (7-1-99)

~~dc.~~ Extend the Due Date. The Department may extend the due date of any financial report upon receiving a justified request from a grantee. (7-1-99)

~~ed.~~ Accounting Basis. Each grantee shall report program outlays and program income on a cash or accrual basis pursuant to Generally Accepted Accounting Principles. (7-1-99)

05. Cash Advances. When approved for an advance grantees ~~and subgrantees~~ shall be paid in advance ~~no sooner than thirty (30) days~~ prior to project start, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the grantee ~~or subgrantee~~. (7-1-99)(____)

a. Requesting an Advance. A disbursement of funds may be made on an advance basis by submitting an IDPR Request for Advancement form provided by ~~IDPR~~ the Department. Written Justification for an advance is required unless there is a Memorandum of Understanding or Collection Agreement on file. (7-1-99)(____)

b. Interest Earned on Advances. Grantees and subgrantees shall promptly, at grant close-out, remit interest earned on advances to the Department. (7-1-99)

06. ~~Block Grants~~ Reporting. Each ~~applicant~~ grantee receiving ~~Recreational Program block~~ grant funds that require reporting shall remit a complete activities report to the ~~boating law administrator~~ Department no later than January 31 of each year which shall cover the preceding calendar year and shall be on forms provided by the Department. Failure to report or poor performance indicated by the report may disqualify grantee from future grant application. (7-1-99)(____)

07. Grant Closeouts. Within forty-five (45) days after the completion of the ~~grant~~ project, the grantee shall submit an IDPR Request for Reimbursement/Close-out form ~~and other required documentation~~ and immediately refund to the Department any balance of unobligated cash advanced and interest earned ~~that is not authorized to be retained for use on other grants~~. (7-1-99)(____)

08. Record Retention. The ~~applicant~~ grantee shall retain all financial information referenced in these rules regarding a project for a time period of three (3) years from the date of the final grant payment, unless any litigation or audit concerning the project has been started or announced. (7-1-99)(____)

09. Audit Authority. The Department shall have the right of access to any pertinent books, documents, papers, or other records of grantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due the Department. (7-1-99)

10. Contingency Fund. The Department may retain grant funds from each recreational program grant account for the exclusive purpose of providing facilities or services. (7-1-99)

251. -- 299. (RESERVED).

300. APPLICANT GRANTEE OBLIGATIONS.

01. Project Completion. Except as herein proved, upon approval of a grant application ~~or Memorandum of Understanding~~, the ~~applicant~~ grantee shall be obligated to complete all elements of a project as described on the approved ~~recreational program~~ grant application, grant agreement, or approved amendment, ~~or Memorandum of Understanding~~. (7-1-99)(____)

02. Project Management. Except as herein provided, upon approval of a grant application ~~or Memorandum of Understanding~~, the ~~applicant~~ grantee shall ensure adequate management of the project as specified in the approved ~~recreational program~~ grant application, or grant agreement ~~or Memorandum of Understanding~~. (7-1-99)(____)

03. Grant Modification. Only for good cause, and upon the submission of detailed justification shown in writing and approval by the ~~appropriate recreational program~~ State and Federal Grant Manager may the terms ~~of the~~ and obligations of the ~~recreational program~~ grant application, or grant agreement ~~or Memorandum of Understanding~~ be modified. (7-1-99)(____)

04. Maintenance and Operation. Real property, physical facilities and equipment funded by a ~~recreational program~~ grant ~~fund~~ shall be maintained and operated in the condition or state equivalent to that existing

when such facility was completed or property or equipment purchased, normal wear and tear excepted.

(7-1-99)(____)

05. Public Use/Nondiscrimination. Physical facilities and real property purchased in whole or in part with ~~recreational program~~ grant moneys shall be available for public use regardless of race, color, religion, national origin, gender, age, or disability. Facilities constructed with ~~recreational program~~ grant moneys shall meet the requirements as set by the Americans with Disabilities Act Guidelines.

(7-1-99)(____)

06. Fees And Donations. Except as herein provided, fees may be charged or donations subscribed for the use of or access to facilities or real property developed or purchased with ~~recreational program~~ grant funds at a level commensurate with the costs of maintenance and upkeep of the facility or real property with the approval of the Board. Fees may be charged or donations subscribed for special events of limited duration at the facility when approved by the ~~appropriate recreational program manager~~ Department.

(7-1-99)(____)

07. Acknowledgment of Funding Assistance. ~~Applicants~~ Grantee shall post and maintain appropriate permanent signs or decals upon project sites or equipment acknowledging funding assistance from the appropriate ~~recreational program~~ grant fund and the Department ~~immediately upon completion~~ start of the project or purchase of equipment.

(7-1-99)(____)

08. Notice Of Registration Requirements. Off-Road Motor Vehicle Account project applicants and sponsors shall be responsible for posting a written notice of the requirement of applicable registration requirements and enforcing such requirements for special events as well as general use.

(7-1-99)

09. Project Liability. ~~Applicants~~ Grantees, through a signed agreement, shall assume all project liability and hold the Department harmless.

(7-1-99)(____)

10. Purchase and Bidding Requirements. The ~~applicant~~ grantee shall follow all local, state and federal laws pertaining to the expenditure of ~~recreational program grant~~ public funds.

(7-1-99)(____)

11. Permits. The ~~applicant~~ grantee shall legally acquire all required local, state and federal permits for the construction or development of the project before ~~recreational program~~ grant funds shall be expended. Construction shall comply with the then current codes and standards as set by the Uniform Building Code, Uniform Plumbing Code, and the National Electrical Code.

(7-1-99)(____)

12. Failure to Comply. Failure by the ~~applicant or department~~ grantee to comply with such terms and obligations as set forth in the approved ~~recreation program~~ grant application; or grant agreement ~~or Memorandum of Understanding~~ shall result in the immediate revocation of an approved grant or shall constitute a conversion pursuant to Section 350 of this chapter, as applicable.

(7-1-99)(____)

301. -- 349. (RESERVED).

350. PROJECT CONVERSIONS.

No ~~project funded by recreational program~~ grant funds funded project shall, without the prior written approval of the ~~director~~ Board, be converted to uses other than for the authorized purposes specified in the original ~~recreational program~~ grant application; or grant agreement; ~~or Memorandum of Understanding~~.

(7-1-99)(____)

01. Approval of a Conversion. The ~~department~~ Board shall approve a conversion only when the ~~recreational program~~ grant moneys spent on the project can be returned to the appropriate ~~recreational program~~ account grant fund or the ~~applicant~~ grantee can provide an immediate substitution of other projects of at least equal current fair market value and of reasonably equivalent recreational usefulness and location. ~~The director has authority to disapprove a conversion request or to reject proposed project substitutions.~~

(7-1-99)(____)

02. Resolving a Conversion. If there is a project conversion, the ~~applicant~~ grantee is responsible for repaying the appropriate ~~recreational program~~ grant fund ~~account~~ an amount determined by investment amortization through use, project life expectancy, and depreciation or appreciation of the facilities or equipment.

(7-1-99)(____)

03. Conversion Requests. Project conversion requests shall be in writing by the ~~applicant~~ grantee

prior to any conversion attempts.

(7-1-99)

351. -- 399. (RESERVED).

400. RESPONSIBILITY FOR EQUIPMENT.

Motorized equipment purchased with grant funds shall become property of the grantee. Such units of motorized equipment shall be subject to Subsection 250.06 and Section 350 of this chapter. ()

~~**01. *Totally Grant Funded.* Single units of equipment with a current fair market value of one thousand dollars (\$1,000) or more as determined by the department, which are purchased wholly with recreational program grant funds, shall remain the property of the department to be leased to the applicant through a lease contract. If the equipment is being underutilized, misused, or used for purposes other than the original grant purposes it may be reclaimed by the department at the expiration or cancellation of the lease or with thirty (30) days written notice.**~~ (7-1-99)

~~**a.** *Equipment which is the property of the department shall be leased to the project applicant for the length of time determined by the appropriate recreational program manager as necessary to accomplish the project under the parameters of project viability, equipment usability and user needs. Either party may cancel the lease by providing the other party with at least thirty (30) days written notice.*~~ (7-1-99)

~~**b.** *Equipment lease price or consideration shall be negotiated and determined prior to project approval and shall be commensurate with the cost/benefit ratio of services provided the recreational program user group which it serves.*~~ (7-1-99)

~~**e.** *A project applicant shall bear the full responsibility for damage to or destruction of project facilities and equipment through its own means or applicable insurance.*~~ (7-1-99)

~~**02. *Partially Grant Funded.* Single units of equipment with a current fair market value of one thousand dollars (\$1,000) or more as determined by the department, which are purchased only partially (less than one hundred percent (100%)) with recreational program grant funds, shall become the property of the applicant. Such units of equipment shall be subject to Section 350 of this chapter.**~~ (7-1-99)

~~**03. *Minor Purchases.* Single units of equipment with a current fair market value of less than one thousand dollars (\$1,000) as determined by the department, which are purchased wholly or in part with recreational program grant funds shall become the property of the applicant. Such units or equipment shall be subject to Section 350 of this chapter.**~~ (7-1-99)

401. -- 449. (RESERVED).

450. REAL PROPERTY.

01. Appraisals. A real estate appraisal is required for all real property to be acquired with ~~recreational program~~ grant funds. All appraisals shall be prepared according to Department procedures. The appraisal shall be paid for by the ~~applicant~~ grantee, but may be included as part of eligible project costs. The selection of the appraiser shall be approved by the Department. (7-1-99)()

02. Appraisal Review. The Department shall review appraisals as necessary. Any appraisal report which does not meet content requirements or use correct analysis procedures shall be corrected to the satisfaction of the Department. All costs shall be covered by the ~~applicant~~ grantee. (7-1-99)()

03. Negotiated Price. An approved appraisal is an acceptable estimate of property value. The negotiation between a willing seller and a willing buyer may set a price which is higher than the appraisal, and this value can be considered along with the appraised value in establishing the reasonable limits of assistance. If the ~~applicant~~ grantee believes the ~~negotiating~~ negotiated price is a better indication of market value, yet is higher than the appraised value, a detailed statement of this difference shall be submitted to the Department. (7-1-99)()

04. Adequate Title and Public Access. The ~~applicant~~ grantee shall have clear title to, or adequate

control and tenure of, the real property (land, land improvement, structures, and appurtenances) to be developed. The term "adequate control and tenure" of real property means a lease or an easement that provides the applicant grantee sufficient control over the real property to permit the proposed development and use for a period of at least twenty-five (25) years from the date of application, unless specifically approved in writing by the appropriate recreational program manager or a shorter term. The applicant grantee shall list all outstanding rights or interests held by others in the real property to be developed. If access to the real property to be developed is over private property, then the applicant grantee shall describe the provisions made to ensure adequate public access. In the event the real property becomes unusable for its intended purposes or if such use ceases, the applicant grantee shall be responsible for conversion of the project as described in Section 350 of this chapter. (7-1-99)(_____)

05. Limitations on Use. Property rights obtained with recreational program grant funds shall be free of all reservations or encumbrances which would limit the use of the site disproportionate to the public benefit. (7-1-99)(_____)

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION
26.01.37 - RULES GOVERNING TEST PROCEDURES AND INSTRUMENTS
FOR NOISE ABATEMENT OF OFF HIGHWAY VEHICLES

DOCKET NO. 26-0137-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223(a), 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 October 19, 2005.

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:

Chapter 37 addresses rules governing test procedures and instruments for noise abatement of off highway vehicles. The Chapter also includes an outdated definition for all terrain vehicle (ATV). This amendment will provide consistency with current Idaho Code and other IDAPA references.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

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 October 26, 2005.

DATED this 20th day of September, 2005.

Dean Sangrey
Division Administrator, Operations
Idaho Department of Parks and Recreation
5657 Warm Springs Ave., Boise ID 83716
PO Box 83720, Boise ID 83720-0065
Phone: 208-334-4180 / Fax: 208-334-3741

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0137-0501

010. DEFINITIONS.

As used in this chapter:

(7-1-94)

01. All Terrain Vehicle (ATV). Any recreation vehicle with ~~two~~ three (23) or more tires, under ~~six~~ eight hundred fifty (6850) pounds and less than forty-eight (48) inches in width, having a wheelbase of sixty-one (61) inches or less, traveling on low pressure tires, less than ~~five~~ ten (510) pounds per square inch (psi), ~~and designed to be ridden by one (1) person.~~ (7-1-94)(____)

02. A-Weighting Scale. A sound filtering system contained in a sound meter which adjusts (weights) the incoming sound energy to approximate human hearing. (7-1-94)

03. Calibrator. A device used to standardize the reading of a sound level meter. (7-1-94)

04. CC. The displacement (size) of an engine in cubic centimeters. The cc's of an engine refers to the piston displacement or engine size. (7-1-94)

05. Db Or Decibel. A unit used to measure the amplitude of sounds. As a sound measured in decibels increases, so does its loudness. (7-1-94)

06. Off Highway Vehicle (OHV). Any ATV or motorbike as defined in Section 67-7101, Idaho Code, used off public highways but excluding those vehicles used exclusively on private land for agricultural use or used exclusively for snow removal purposes. These vehicles, together with others not covered by these rules, are sometimes commonly known as off-road vehicles or ORMV's. (7-1-94)

07. Operator. Any person who is in physical control of an OHV. (7-1-94)

08. Red-Line Speed. The lowest numerical engine speed included in the red zone on the OHV tachometer or prescribed by the manufacturer as compiled in the "Off-Highway Motorcycle and ATV Stationary Sound Test Manual" published by the Motorcycle Industry Council, Inc. (7-1-94)

09. Revolutions Per Minute (RPM). The number of times the crankshaft of an engine revolves in one (1) minute. (7-1-94)

10. Sound Level Meter. An instrument used for measuring sound levels, which includes a microphone, an amplifier, and meter with frequency weighing networks, such as the A-weighting scale. (7-1-94)

11. Tachometer. A device used to measure ~~revolutions per minute (RPM)~~ of an engine. Tachometers used to obtain sound level measurements may be permanently affixed to the OHV or may be portable units such as hand-held electric, vibrating reed, or inductive tachometers. (7-1-94)(____)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2702 and 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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 rule change clarifies the existing requirement that pharmacies have positive identification for persons receiving controlled substances to better outline the means of compliance with this requirement. The change also moves the requirement from its earlier location (within the definition section) to the section that addresses filling controlled substance prescriptions. This rule change specifically outlines the types of positive identification that are required for delivery of controlled substances (officially recognized photo identification or actual positive personal knowledge of the pharmacy staff). This rule change also adds a requirement that the pharmacy prescription record reflect the means of positive identification used.

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

The proposed changes does not impose or increase any fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule was discussed with impacted groups at a public meeting of the Board.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R. K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 23rd day of August, 2005.

R. K. "Mick" Markuson
Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0501

433. DEFINITIONS - (H -- Z).

01. Hospital. The term “hospital” means an institution for the care and treatment of the sick and injured, approved by the Department of Health as proper to be entrusted with the custody of controlled substances and the professional use of controlled substances under the direction of a practitioner. (7-1-93)

02. Individual Practitioner. The term “individual practitioner” means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the state in which he practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner. (7-1-93)

03. Institutional Practitioner. The term “institutional practitioner” means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy. (7-1-93)

04. Laboratory. The term “laboratory” means a laboratory approved by the Idaho Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and medical purposes and for purposes of instruction and administered by a person licensed by the state of Idaho to possess such substances. (7-1-93)

05. Name. The term “name” means the official name, common or usual name, chemical name, or brand name of a substance. (7-1-93)

06. Official Idaho Register. The term “Official Idaho Register” is defined as the official register issued by the Board of Pharmacy and contains the required information to record the sales or disposition of Schedule V substances, which book shall be in duplicate bearing the notice to the public on the reverse side of the original sheet which is permanently bound in the book and shall be retained for a period of two (2) years after the last dated entry. (7-1-93)

07. Owner. The term “owner” as defined in this act, with reference to a vehicle, means any person having any right, title or interest in it. (7-1-93)

08. Pharmacist. The term “pharmacist” means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (e.g., pharmacist-intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State. (7-1-93)

09. Pharmacy. The term “pharmacy” means every store or other place of business where prescriptions are compounded, dispensed or sold by a pharmacist and prescriptions for controlled substances are received or processed in accordance with the federal law and the pharmacy laws and rules of this state. (7-1-93)

10. Prescription. The term “prescription” as used in this act, means a prescription for a controlled substance in Schedules III, IV, V, such prescription is an oral order given individually for the person for whom prescribed, directly from the prescriber or by the prescriber’s employee or agent to the pharmacist or indirectly by means of an order written in ink, indelible pencil, typewritten, or a computer generated hard copy, signed by the prescriber, and shall contain the address of the prescriber, his federal registry number, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, and shall be dated as of the date on which it is written. Written prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to federal and state laws, regulations and rules. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these rules. *Persons receiving controlled substances shall be positively identified.* (3-20-04)(_____)

11. Register, Registration. The terms “register” and “registration” refer only to registration required and permitted by Section 37-2717, Idaho Code. (7-1-93)

12. Registrant. The term “registrant” means any person who is registered. (7-1-93)

13. Readily Retrievable. The term “readily retrievable” means that certain records are kept by automatic data processing systems or other electronic or mechanized record keeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records. (7-1-93)

14. Sale. The term “sale” as used in this act, includes barter, exchange, or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee. (7-1-93)

15. Transport. The term “transport” as used in this act, with reference to controlled substances, includes “conceal”, “convey”, and “carry”. (7-1-93)

16. Vehicle. The term “vehicle” as used in this act, any vehicle or equipment used for the transportation of persons or things. (7-1-93)

17. Physician, Veterinarian, Dentist, Podiatrist, Osteopath, Optometrist, Pharmacist. As used in this act, these terms or any similar designation, means persons who hold valid, unrevoked licenses to practice their respective professions in this state, issued by their respective examining boards in this state. (12-7-94)

18. Physician. The term “physician” includes only persons licensed under Chapter 18 of Title 54, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

463. CONTENTS OF PRESCRIPTION FILE RECORD.

The prescription file shall constitute a record that as to the transactions shall show all of the following: name and address of patient; a description of the means of positive identification obtained by the pharmacy when so required under Section 464 of these rules; the date; the character and quantity of the controlled substance involved; the name, address and state registry number of the prescriber. (7-1-93)(____)

464. FILLING OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE.

No person other than a registered pharmacist under the laws of this state shall be responsible for the filling and dispensing of a prescription for a controlled substance. Persons receiving controlled substances shall be positively identified by staff at the pharmacy at the time any controlled substance is dispensed directly to an individual at the pharmacy. Positive identification shall consist of either a valid, current state or military drivers license or identification card, or a valid, current passport, each of which must contain a photo of the individual and the individual's signature. In lieu of these means of positive identification, an individual whose identity is personally and positively known to a staff member of the pharmacy who is present and who identifies the individual at the time of delivery of the prescribed controlled substance may be so identified by the staff member. (7-1-93)(____)

IDAPA 27 - BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY
DOCKET NO. 27-0101-0502
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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 rule is necessary to conform to changes in applicable Medicaid law. This rule change eliminates the reference to drug product selection for Medicaid patients, which is no longer applicable under current law.

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

The proposed changes does not impose or increase any fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is mandated by changes in applicable Medicaid law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R. K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 23rd day of August, 2005.

R. K. "Mick" Markuson
Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720, Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0502

188. DRUG PRODUCT SELECTION.

Drug product selection is allowed only when bioequivalence has been shown.

(7-1-93)

01. Method of Drug Product Selection. *Drug product selection will be allowed for medicaid patients unless indicated in the prescriber's own handwriting on the face of the prescription or drug order "BRAND MEDICALLY NECESSARY".* For non-medicaid patients a brand must be dispensed only if the prescriber has indicated "BRAND ONLY" by checking the appropriate box on the face of the prescription. ~~(8-4-94)~~(____)

02. Sign. The pharmacy must have a sign posted, readily visible, stating:

"IT MAY BE POSSIBLE TO USE AN EQUIVALENT BUT LESS EXPENSIVE DRUG TO FILL YOUR PRESCRIPTION PROVIDED YOUR PRACTITIONER WILL PERMIT DRUG PRODUCT SELECTION BY THE PHARMACIST. PLEASE CONSULT YOUR PHARMACIST OR PRACTITIONER FOR MORE INFORMATION."
(7-1-93)

03. Consumer's Right of Refusal. The consumer shall have the right to refuse generic equivalents when product selection has been allowed by the practitioner.
(7-1-93)

04. Labeling. The pharmacist shall label the prescription, unless the practitioner indicates "do not label", with the brand name dispensed or, if a generic is used, the name of the drug and the manufacturer. In addition, he must indicate, on the face of the prescription, the same information.
(7-1-93)

05. Definition of Drug Product Selection. Drug product selection means the act of selecting the brand or supplier of therapeutically equivalent generic drug products and will be permitted in the state of Idaho.
(7-1-93)

06. Coercion. In no way shall the employer coerce an employee pharmacist to use product selection if the above provisions are not fulfilled.
(7-1-93)

IDAPA 31 - PUBLIC UTILITIES COMMISSION

31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR PUBLIC UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 61-515 and 61-115, 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 October 19, 2005.

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

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

The Commission's Safety and Accident Reporting Rules currently adopt by incorporation several national safety codes. In particular, Rule 201 adopts the federal safety regulations applicable to natural gas utilities and pipelines. This year the Pipeline and Hazardous Materials Safety Administration (PHMSA) made two changes to the federal pipeline safety regulations found at 49 C.F.R. Parts 192 and 195. Both changes implement portions of the Pipeline Safety Improvement Act of 2002. First, PHMSA promulgated new requirements for individuals who perform certain safety-related tasks on pipelines. In particular, the new requirements address personnel training, notice of training program changes, government review and verification of such programs, and use of on-the-job training as a qualification method. Second, PHMSA amended its safety regulations to require pipelines to develop and implement public awareness programs to promote pipeline safety. The Commission proposes to adopt these amended federal safety regulations by incorporation.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed rule adopts federal safety regulations dealing with pipeline safety.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding these proposed rules. All written comments concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or must be postmarked on or before October 26, 2005.

DATED this 19th day of August, 2005.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:
472 W Washington
Boise, Idaho 83702-5983

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-1101-0501

201. FEDERAL REGULATIONS -- 49 C.F.R. PARTS 191, 192, 193, 195 AND 199 (RULE 201).

The Commission adopts by reference Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 2004~~5~~), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available from the, U.S. Government Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The incorporated CFR Parts are also available in electronic format at www.access.gpo.gov/nara. All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. ~~(4-6-05)~~(_____)

IDAPA 31 - PUBLIC UTILITIES COMMISSION

31.21.01 - CUSTOMER RELATIONS RULES FOR GAS, ELECTRIC AND WATER PUBLIC UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION (THE UTILITY CUSTOMER RELATIONS RULES)

DOCKET NO. 31-2101-0402

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 61-302, 61-303, 61-307, 61-503, 61-507, and 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rule will be held on:

Wednesday, October 19, 2005 at 7 p.m.
Commission's Hearing Room
472 W. Washington Street, Boise, Idaho
(208) 334-0300

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

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

In July 2004 the Idaho Community Action Network (ICAN) filed a Petition for Rulemaking recommending that the Commission adopt six (6) proposed changes to its Utility Customer Relations Rules and adopt one (1) new rule. In response to ICAN's Petition, the Commission initiated a negotiated rulemaking. The Commission Staff conducted public workshops in Boise and in Coeur d'Alene, Idaho, to discuss ICAN's proposed changes. Parties participating in the negotiated rulemaking included ICAN, Idaho Power Company, PacifiCorp, Avista Utilities, Intermountain Gas, the Community Action Partnership Association of Idaho (CAPAI), the Idaho Office for Refugees, Idaho Legal Aid, the North Idaho Community Action Agency, and the Commission Staff.

The workshops and subsequent conversations among the parties did not result in consensus. After reviewing the ICAN proposals, the existing rules and the workshop discussions, the Commission now proposes several changes to the Utility Customer Relations Rules. First, the Commission proposes changes to Rule 305 regarding the contents of the notices that utilities are required to give customers before terminating service during the three (3) months of the winter moratorium (December, January and February). During the winter moratorium, utilities are prohibited from terminating natural gas or electric heating service for residential household customers with children, elderly or infirm persons. Second, the proposed changes to Rule 306 would amend the eligibility requirements and the operation of the winter moratorium. Proposed Rule 306.01 would expand moratorium eligibility to include households receiving financial assistance through the Low-Income Home Energy Assistance Program (LIHEAP) during the current program year. Customers who participate in the winter payment plan (payments equal to one-half (1/2) of the annual level pay plan) may participate in successive years of the winter payment plan. Eligible customers participating in the moratorium may maintain their participation if they move to another residence during the three (3) months and utilities shall be required to turn on service at the new residence.

Third, existing Rule 311.01 prohibits the termination of utility services on Saturday, Sunday, a legal holiday, or after 2 p.m. on any Friday or on any day immediately preceding any legal holiday. The Commission proposes to amend this rule by prohibiting disconnection on any day immediately preceding a holiday and moving the 2 p.m. threshold on Friday to 12 noon. Fourth, Rule 701 would be clarified by listing the required contents of the annual summary of rules that utilities provide to each customer. Finally, Rule 701.04 would require that the Commission provide utilities with a "model" of the annual summary of rules including a Spanish language model. The Commission also proposes other changes to clarify these rules.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state

general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, October 6, 2004 in Volume 04-10 at page 475.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Beverly Barker at (208) 334-0302.

Anyone may submit written comments regarding these proposed rules. All written comments concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or must be postmarked on or before October 26, 2005.

DATED this 19th day of August, 2005.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:
472 W Washington St.
Boise, Idaho 83702-5983

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-2101-0402

305. CONTENTS OF NOTICE OF INTENT TO TERMINATE SERVICE (RULE 305).

01. Contents of Notice. The written or oral notice of intent to terminate service required by Rule 304 shall state: (7-1-93)(____)

01a. Reasons for Termination. The reason(s), citing these rules, why service will be terminated and the proposed date of termination; (7-1-93)(____)

02b. Actions to Avoid Termination. Actions the customer may take to avoid termination of service; (7-1-93)(____)

03c. Medical Certificate. That a certificate notifying the utility of a serious illness or medical emergency in the household may delay termination as prescribed by Rule 308; (7-1-93)(____)

04d. Filing Complaints. That an informal or formal complaint concerning termination may be filed with the utility or the Commission, and that service will not be terminated on the ground relating to the dispute between the customer and the utility before resolution of the complaint (the Commission's address and telephone number must be given to the customer); and (7-1-93)(____)

05e. Payment Arrangements. That the utility is willing to make payment arrangements (this statement must be in bold print on written notices). (7-1-93)(____)

06f. Partial Payments. That for purposes of termination, partial payments will be applied toward utility service charges first, unless the customer requests otherwise, and that charges for non-utility services cannot be used as a basis for termination. (3-30-01)(____)

02. Additional Requirements for Gas and Electric Utilities. During the months of November, December, January and February, oral and written notices provided by gas and electric utilities shall include or be accompanied by an explanation of restrictions on termination of service and the availability of the Winter Payment Plan described in Rule 306. ()

306. TERMINATION OF RESIDENTIAL GAS AND ELECTRIC SERVICE -- WINTER PAYMENT PLAN (RULE 306).

01. Restrictions on Termination of Service to Certain Households ~~With Children, Elderly, or Infirm.~~ Except as provided in Rule 303, no gas or electric utility may terminate service or threaten to terminate service during the months of December through February to any residential customer who declares that he or she is unable to pay in full for utility service and whose household includes children, elderly or infirm persons, or receives financial assistance through the Low Income Home Energy Assistance Program (LIHEAP) during the current program year. (7-1-93)()

02. Definitions for This Rule. For purposes of this rule: (7-1-93)

a. "Children" are defined as persons eighteen (18) years of age or younger, but customers who are emancipated minors are not children under this rule. (7-1-93)

b. "Elderly" ~~are defined as~~ means persons sixty two (62) years of age or older. (7-1-93)()

c. "Infirm" ~~are defined as~~ means persons whose physical health or safety would be seriously impaired by termination of utility service. (7-1-93)()

03. Opportunity to Participate in Winter Payment Plan. Any residential customer who declares that he or she is unable to pay in full for utility service and whose household includes children, elderly or infirm persons, or receives financial assistance through the Low Income Home Energy Assistance Program (LIHEAP) during the current program year ~~must~~ shall be offered the opportunity to establish a Winter Payment Plan. However, no customer may be required to establish such a plan. Except as provided in Rule 303, no gas or electric utility may terminate service during the months of November through March to any customer who establishes a Winter Payment Plan before November 1. A customer may establish a Winter Payment Plan after November 1, but the extended protection from termination of service offered under such a plan will not begin until the date the plan is established. Failure of a participating customer to make payments as required will result in cancellation of the plan and elimination of the extended protection from termination of service offered under the plan. The customer may use any source of funds to satisfy the payment requirements of Winter Payment Plan. (7-1-93)()

04. Amount of Payments Under Winter Payment Plan. Monthly payments under a Winter Payment Plan are equal to one-half (1/2) of the Level Pay Plan amount for that customer. The Level Payment Plan amount ~~must~~ shall be calculated according to Rule 313.06. (7-1-93)()

05. Payment Arrangements Following Winter Payment Plan. If a customer who received the protection of this rule has an outstanding balance owed to the utility, the customer ~~must~~ shall either pay this balance or negotiate a new payment arrangement: (7-1-93)()

a. On or after March 1, if the customer has not established a Winter Payment Plan; or (7-1-93)

b. On or after April 1, if the customer has established a Winter Payment plan. Failure of a customer to pay or make payment arrangements on or after these dates may result in termination of service. (7-1-93)

06. Successive Participation in Winter Payment Plan. A customer ~~who participates in a Winter Payment Plan one (1) year~~ must shall be allowed to participate establish a Winter Payment Plan in the succeeding years if the customer has honored the payment arrangements ~~and the balance owing as of November 1 does not exceed seventy five dollars (\$75) or the customer's utility bill for the previous thirty (30) days, whichever is greater made under a Winter Payment Plan for the prior year.~~ ~~However, the utility is not required to connect or reconnect the service of a customer or applicant who does not currently have utility service and owes an unpaid, undisputed bill to~~

~~the utility.~~

~~(7-1-93)()~~

07. Unoccupied Residences, ~~Etc~~ - Failure or Refusal to Apply for Service. Nothing in this rule prevents a gas or electric utility from terminating service to unoccupied residences or residences where the occupants have failed or refused to apply for utility service. ~~Nothing in this rule requires the utility to connect service for a customer who owes money on an existing account when that customer moves to a new residence that does not currently have service.~~

~~(7-1-93)()~~

08. Customers Who Move. During the months of December, January and February, a gas or electric utility shall continue to provide service to any residential customer who made a declaration as provided for in Subsection 306.01 and subsequently moves to a new residence served by the same utility, regardless of any outstanding balance owed by the customer. If service is not connected at the new residence, service shall be connected as soon as possible after the customer requests service at the new residence. ()

09. Applicants Previously Served. During the months of December, January and February, a gas or electric utility shall provide service to any residential applicant who made a declaration as provided for in Subsection 306.01 and within thirty (30) days of discontinuing service, subsequently applies for service at a new residence served by the same utility, regardless of any outstanding balance owed by the applicant. If service is not connected at the new residence, service shall be connected as soon as possible after the applicant requests service at the new residence. ()

(BREAK IN CONTINUITY OF SECTIONS)

311. RESTRICTIONS ON TERMINATION OF SERVICE -- OPPORTUNITY TO AVOID TERMINATION OF SERVICE (RULE 311).

01. When Termination Not Allowed. Service shall not be terminated on any Friday after 12 p.m. noon, or on Saturday, Sunday, legal holidays recognized by the State of Idaho, or ~~after 2 p.m.~~ on any day immediately preceding any legal holiday, or at any time when the utility is not open for business, except as authorized by Rules 303.01 and 303.02. Service may be terminated between the hours of 4 p.m. and 9 p.m., Monday through Thursday, if the utility is unable to gain access to the customer's meter during normal business hours. Unless otherwise authorized by this rule, Rules 303.01 and 303.02, or the affected customer in writing, service may be terminated only between the hours of 8:00 a.m. and 4:00 p.m.

~~(5-3-03)()~~

02. Personnel to Authorize Reconnection. Each utility shall have personnel available after the time of termination who are authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction. Service shall be reconnected as soon as possible, but no later than twenty-four (24) hours after the utility's conditions are satisfied and the customer requests reconnection. (5-3-03)

03. Opportunity to Prevent Termination of Service. Immediately preceding termination of service, the employee designated to terminate service shall identify himself or herself to the customer or other responsible adult upon the premises and shall announce the purpose of the employee's presence. This employee shall have in his or her possession the past due account record of the customer and shall request any available verification that the outstanding bills are satisfied or currently in dispute before this Commission. Upon presentation of evidence that outstanding bills are satisfied or currently in dispute before this Commission, service shall not be terminated. The employee shall be authorized to accept full payment, or, at the discretion of the utility, partial payment, and in such case shall not terminate service. Nothing in this rule prevents a utility from proceeding with termination of service if the customer or other responsible adult is not on the premises at the time of termination. (5-3-03)

04. Notice of Procedure for Reconnecting Service. The employee of the utility designated to terminate service shall give to the customer or leave in a conspicuous location at the service address affected a notice showing, the time of and grounds for termination, steps to be taken to secure reconnection, and the telephone numbers of utility personnel or other authorized representatives who are available to authorize reconnection. (5-3-03)

05. No Termination While Complaint Pending. Except as authorized by order of the Commission or of the Judiciary, service shall not be terminated for failure to pay amounts in dispute while a complaint filed pursuant to Rule 402 is pending before this Commission or while a case placing at issue payment for utility service is pending before a court in the state of Idaho. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

701. SUMMARY OF RULES (RULE 701).

01. Summary to Be Provided to Customers. Each utility ~~must make available~~ shall provide to its customers a summary of this chapter approved by the Commission. The summary shall be provided to customers at least once each year and must be available at local offices of the utility in Idaho and provided to each new customer upon commencement of service. ()

02. Contents of Summary. The summary ~~sent by gas and electric utilities must~~ shall include ~~or be accompanied by information explaining the Third-Party Notification Program described in Rule 307 and a~~ the following information: ()

a. An explanation of the conditions under which the utility may request a deposit; ()

b. An explanation of the conditions under which the utility may deny or terminate service; ()

c. An explanation of how termination of service may be postponed due to serious illness or medical emergency (residential customers only); ()

d. A statement of the utility's willingness ~~pursuant to Rule 311~~ to make payment arrangements to assist customers having difficulty paying their utility bills; ~~Foreign language summaries of the rules~~ ()

e. An explanation of how to file a complaint with the utility and the Commission; and ()

f. A statement that termination of service is prohibited while a complaint is pending with the Commission or with a court in the State of Idaho. ()

03. Summary for Gas and Electric Customers. The summary provided by a gas or electric utility also shall include the following information: ()

a. An explanation of restrictions on termination of service and the availability of the Winter Payment Plan described in Rule 306 (residential customers only). ()

b. An explanation of the Third Party Notification Program described in Rule 307 (residential customers only); and ()

c. An explanation of the availability of the Level Pay Plan described in Rule 313. ()

04. Model Summaries. Model Rules Summaries, including Spanish language translations for residential customers, shall be provided by the Commission to ~~the~~ utilities ~~must be made available to customers, civic organizations, etc., on~~ and other interested parties upon request. (7-1-93)()

IDAPA 31 - PUBLIC UTILITIES COMMISSION

31.71.03 - RAILROAD SAFETY/SANITATION RULES

DOCKET NO. 31-7103-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 61-515 and 61-113, 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 October 19, 2005.

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

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

The federal Pipeline and Hazardous Materials Safety Administration (PHMSA) has issued several changes to the federal regulations concerning the transportation of hazardous materials by rail. PHMSA has clarified which functions in the rail transportation chain are subject to the federal hazardous materials regulations (HMRs) and which are not subject to HMRs. More specifically, the "pre-transportation function" (the loading of packaged hazardous material on a rail car), the transportation of the car by a railroad, and "storage incidental" to the transportation (storage between the time the railroad takes physical possession of the car containing hazardous materials and when the car is delivered to its destination), are all subject to the federal HMRs. Delivery of a rail car carrying hazardous material to tracks that are used solely by the receiving customer (e.g., private track or private siding) is not subject to the HMRs. The HMRs do not apply to rail movements solely within a contiguous facility where public access is restricted, or to the unloading of a hazardous material car after the railroad has delivered the car to the customer.

PHMSA also adopted changes that align the HMRs with the International Atomic Energy Agency requirements regarding the rail transportation of Low Specific Activity (LSA) materials. Finally, PHMSA added a definition of "person who offers or [the] offeror" to the HMRs. The Commission proposes to adopt these new amendments to the federal HMRs by incorporation.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed rule merely adopts existing federal safety regulations applicable to shippers and transporters of hazardous materials by rail.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding these proposed rules. All written comments concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or must be postmarked on or before October 26, 2005.

DATED this 19th day of August 2005.

Jean D. Jewell, Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington
Boise, Idaho 83702-5983

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-7103-0501

103. TRANSPORTATION OF HAZARDOUS MATERIAL BY RAIL (RULE 103).

01. Hazardous Material Defined. "Hazardous material" means a substance or material which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated by the Secretary of Transportation. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials as defined in 49 C.F.R. Section 171.8, materials designated as hazardous under the provisions of 49 C.F.R. Section 172.101, and materials that meet the defining criteria for hazardous classes and divisions in 49 C.F.R. Part 173. (3-30-01)

02. Adoption of Federal Safety Regulations. The Commission hereby adopts by reference 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179, and 180 (October 1, 2003~~5~~). All customers offering hazardous materials for shipment by rail and all railroads operating in Idaho that transport hazardous materials listed in, defined by, or regulated by the adopted federal safety regulations must comply with 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179 and 180. (~~3-20-04~~)()

03. Recognition of Federal Exemptions. Whenever a railroad or shipper has applied to a federal agency and has been granted an exemption from the transportation or packaging requirements of the federal safety regulations adopted in Subsection 103.02, the federal exemption will also be recognized under these rules. The Commission shall not administer a program to duplicate consideration or approval of federal exemptions on a state level. (3-30-01)

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0401

NOTICE OF RULEMAKING - PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2007, and 54-2020, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the November 3, 2004, Idaho Administrative Bulletin, Volume 04-11, pages 33-34.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-2020(1), Idaho Code. This rulemaking reduces the licensing fee amount set in the pending rule by an additional twenty dollars (\$20) per bi-annual licensing period for licensed individuals (from \$220 to \$200)). Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no fiscal impact on the state general fund, since all license fees revenues are credited to the Special Real Estate Account.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donna Jones, (208) 334-3285 ext. 232.

Dated this 25th day of August, 2005

Donna M. Jones, Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
(208) 334-3285; (208) 334-2050 (fax)

IDAPA 33, TITLE 01, CHAPTER 01

RULES OF THE IDAHO REAL ESTATE COMMISSION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 04-11, November 3, 2005, pages 33 and 34.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2007, Idaho Code.

PUBLIC HEARING: Public hearing concerning this rulemaking will be held as follows:

**October 26th, 2005 at 10:00 a.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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Effective July 1, 2005, and as a result of Senate Bill 1010, the text being deleted by this rulemaking has been added to statute, at Section 54-2018, Idaho Code.

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

The rulemaking is necessary to comply and coordinate with deadlines in the statutory amendment resulting from SB 1010.

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 of the need for temporary rulemaking.

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 October 26, 2005.

DATED this 24th day of August, 2005.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0501

~~400. CONTINUING EDUCATION A PREREQUISITE FOR RENEWAL OF ACTIVE LICENSE.~~

~~Every licensee applying to renew a license on active status, or applying to change from inactive to active license status, shall first meet the continuing education requirements set forth in Sections 54-2018 and 54-2023, Idaho Code. (3-20-04)~~

~~401. OBTAINING CONTINUING EDUCATION CREDIT.~~

~~In addition to those courses that have been certified or preapproved for continuing education by the Commission, and as provided in Section 54-2023(5)(e), Idaho Code, a licensee may obtain continuing education credit for the successful completion of any course meeting either of the following descriptions, without the preapproval or certification of the Commission: (3-20-04)~~

~~01. Professional Designation Courses. Courses developed by national professional organizations and that are required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice; or (3-20-04)~~

~~02. Courses Accredited by Other Professions. Courses approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements, if within the approved topics listed in Rule 402. (3-20-04)~~

~~400. -- 401. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

~~403. CERTIFICATION OF COMPLIANCE AND SATISFACTORY PROOF.~~

~~As required by Section 54-2018, Idaho Code, a licensee applying to renew an active license, or to change from inactive to active status, shall certify having met the continuing education requirements set forth in Section 54-2023, Idaho Code, in the form and manner approved by the commission. The licensee shall keep satisfactory proof of having completed the requirement, and upon request, shall provide satisfactory proof to the Commission of having completed the requirement. (3-20-04)~~

~~01. Commission Request for Proof of Compliance. The commission may request satisfactory proof of continuing education compliance from any licensee who has submitted a certification of continuing education compliance. The request shall state the time within which the proof must be received in the Commission office, which time shall not be less than ten (10) business days. (3-20-04)~~

~~02. Satisfactory Proof of Compliance. Upon request from the Commission, the licensee shall submit satisfactory proof of having met the continuing education requirement. Satisfactory proof shall include, for each course listed in the certificate of compliance, the following: (3-20-04)~~

- ~~a. Satisfactory evidence of having successfully completed the course, which shall consist of: (3-20-04)~~
- ~~i. A transcript of the course taken; (3-20-04)~~
- ~~ii. A letter from the provider verifying successful completion of the course; or (3-20-04)~~
- ~~iii. A course completion certificate; and (3-20-04)~~
- ~~iv. Shall clearly identify the licensee, the title of the course or challenge exam, the course provider, the~~

~~number of classroom hours, and the challenge exam or course completion date; and (3-20-04)~~

~~**b.** Satisfactory evidence that the course listed is approved for continuing education credit, as provided by section 54-2023, Idaho Code, which shall be established by the course certification approval number. The Commission may, in its sole discretion, accept alternative documentation establishing that the course is approved for credit. (3-20-04)~~

~~**404. FAILURE TO SUBMIT SATISFACTORY PROOF -- INACTIVATION OF LICENSE.**
Failure of a licensee to comply with a Commission request for satisfactory proof of continuing education compliance shall be deemed an insufficient application for licensure under Section 67-5254, Idaho Code, and shall result in the immediate inactivation of the license. The inactivation of the license shall be deemed a partial expiration of the license. (3-20-04)~~

~~**405. AUTHORITY TO INVESTIGATE AND DISCIPLINE NOT LIMITED.**
Nothing in these rules shall limit the Commission's authority granted in Sections 54-2058 through 54-2065, Idaho Code, to investigate and discipline a licensee for misconduct. (3-20-04)~~

~~**406. FALSIFICATION OF CERTIFICATES OR DOCUMENTATION.**
Any licensee who, acting alone or in concert with others, wilfully or knowingly causes or allows a Certification of Continuing Education Compliance, or any written documentation verifying a Certification of Continuing Education Compliance, to be submitted to 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 these rules. (3-20-04)~~

~~**4073. -- 999. (RESERVED).**~~

IDAPA 33 - REAL ESTATE COMMISSION
33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION
DOCKET NO. 33-0101-0502 (FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2007 and 54-2020, Idaho Code

PUBLIC HEARING: Public hearing concerning this rulemaking will be held as follows:

October 26th, 2005, at 10:00 a.m.
The Idaho Real Estate Commission
633 North Fourth Street
Boise, Idaho 83702

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 proposed rule reduces the licensing fee amount by twenty dollars (\$20) per bi-annual licensing period for licensed individuals (from \$200 to \$180), and by fifty dollars (\$50) per licensing period for licensed business entities (from \$100 to \$50).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-2020(1), Idaho Code.

This rulemaking reduces the licensing fee amount by twenty dollars (\$20) per bi-annual licensing period for licensed individuals (from \$200 to \$180), and by fifty dollars (\$50) per licensing period for licensed business entities (from \$100 to \$50).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact on the state general fund, since all license fees revenues are credited to the Special Real Estate Account.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the nature of this rulemaking.

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 October 26, 2005.

Dated this 25th day of August, 2005.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0502

100. LICENCE FEES.

License fees are established as follows.

(3-15-02)

01. Fees For Licensed Individuals. The fees for an initial or renewing license for broker, associate broker, or salesperson shall be ~~two~~ one hundred eighty dollars (\$~~200~~180) per license period, which fees include the twenty dollar (\$20) fee prescribed in Section 54-2070, Idaho Code. ~~(4-1-04)F(____)~~

02. Fees For Licensed Legal Business Entities. The fee for an initial or renewing license for each legal business entity shall be ~~one hundred~~ fifty dollars (\$~~100~~50) per license period. ~~(3-15-02)F(____)~~

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 006: Amend Income Tax Rule 006 to update the publication date of the incorporated document "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," to the new edition.

Rule 050: Promulgate new Income Tax Rule 050 to clarify that LLCs and members will be treated according to their federal classification and that the income tax administrative rules apply in accordance with that federal classification even though LLC and member may not be specifically mentioned in a rule.

Rule 075: Amend Income Tax Rule 075 to add the table for the income tax brackets and rates for calendar year 2005.

Rule 107: Amend Income Tax Rule 107 to correct the references from "Rule 330 and 335" to "Rules 330 through 336" so that all the rules for the definitions of business income and nonbusiness income are referenced.

Rule 108: Amend Income Tax Rule 108 to add information related to the new addback required for general state sales taxes deducted by individuals who include such taxes as itemized deductions. The amendments conform to Idaho Code section 63-3022, as amended in HB 10, passed by the 2005 Legislature.

Rule 120: Amend Income Tax Rule 120 to add information related to the new deduction allowed to taxpayers who restore income under the federal claim of right and who claimed the federal credit instead of the deduction. The amendments conform to new Idaho Code section 63-3022F, enacted in HB 13, passed by the 2005 Legislature.

Rule 121: Amend Income Tax Rule 121 to include sales tax in the information that discusses itemized deductions and the calculations that must be made. The amendments conform to Idaho Code section 63-3022, as amended in HB 10, passed by the 2005 Legislature.

Rule 170: Amend Income Tax Rule 170 to correct the phrase "Idaho taxable income" to "taxable income." Restructure the rule so that the general information is addressed at the beginning of the rule followed by specific information and examples.

Rule 266: Amend Income Tax Rule 266 to add information on how a nonresident will report the gain or loss from the sale or other disposition of a partnership interest or stock in an S corporation. The amendments conform to Idaho Code section 63-3026A, as amended in HB 25, passed by the 2005 Legislature.

Rule 340: Amend Income Tax Rule 340 to correct the word "contributes" to "contribute" to make the sentence grammatically correct.

Rule 341: Amend Income Tax Rule 341 to clarify that unity can be established under any one of the judicially acceptable tests and cannot be denied merely because another of those tests does not simultaneously apply. Because the rule only discusses one test, the Mobil Oil Corp. v. Vermont "factors of profitability" test, to illustrate how significant flows of value might be used to determine if a unitary business exists, the amendments clarify at the

beginning of the rule that unity can be established under any one of the judicially acceptable tests.

Rule 342: Amend Income Tax Rule 342 to correct the word “many” to “may” and to change a semicolon to a period to make the sentence grammatically correct.

Rule 550: Amend Income Tax Rule 550 to provide the exceptions to the general rule that income producing activity for purposes of the sales factor generally does not include transactions and activities performed on behalf of the taxpayer. The amendments provide that income producing activity includes transactions and activities performed on behalf of a taxpayer when the taxpayer sells its product exclusively through independent contractors, when the independent contractors can work only for the taxpayer, or when excluding the transactions and activities of the independent contractors would lead to an unreasonable result. The amendments also provide that only the direct costs paid by the taxpayer are considered.

Rule 570: Amend Income Tax Rule 570 to include the exception to the general rule that alternative apportionment may be required to fairly represent the extent of the taxpayer’s business activity in Idaho even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. Amendments also correct instances where “income” was used in the rule when “gross receipts” should have been.

Rule 620: Amend Income Tax Rule 620 to correct the references from “Rules 330 through 334” to “Rules 330 through 336” so that all the rules for the definitions of business income and nonbusiness income are referenced.

Rule 872: Amend Income Tax Rule 872 to change the due date for paying withholding for employers who are farmers from the last day of February to the last day of January in accordance with Idaho Code section 63-3036, as amended in HB 28, passed by the 2005 Legislature.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0501

006. INCORPORATION BY REFERENCE (RULE 006).

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: (3-15-02)

01. MTC Special Industry Regulations. This document is found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," ~~July 27, 2001~~ November 2004 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. ~~(5-3-03)~~()

02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This document is found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," ~~July 27, 2001~~ November 2004 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rule 582 of these rules. ~~(5-3-03)~~()

(BREAK IN CONTINUITY OF SECTIONS)

046. -- 0749. (RESERVED).

050. LIMITED LIABILITY COMPANIES (RULE 050).

Section 63-3006A, Idaho Code. ()

01. Classification. A limited liability company shall be classified for Idaho income tax purposes the same as classified for federal income tax purposes as provided by the Internal Revenue Code. ()

02. Application of Idaho Code and Rules. Idaho income tax laws and administrative rules shall apply according to the applicable classification of the limited liability company. For example, if a limited liability company has elected to be classified for income tax purposes as a partnership, Idaho's income tax administrative rules that apply to partnerships shall also apply to such limited liability company. ()

051. -- 074. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).

Section 63-3024, Idaho Code. (3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Subsection 075.03 of this rule. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-6-05)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2). (3-3-03)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

a. For taxable years beginning in 1987 through 1999:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,000.00	\$0.00	2% of taxable income
\$1,000.00	\$2,000.00	\$20.00	4% of the amount over \$1,000.00
\$2,000.00	\$3,000.00	\$60.00	4.5% of the amount over \$2,000.00
\$3,000.00	\$4,000.00	\$105.00	5.5% of the amount over \$3,000.00
\$4,000.00	\$5,000.00	\$160.00	6.5% of the amount over \$4,000.00
\$5,000.00	\$7,500.00	\$225.00	7.5% of the amount over \$5,000.00
\$7,500.00	\$20,000.00	\$412.50	7.8% of the amount over \$7,500.00
\$20,000.00 or more		\$1,387.50	8.2% of the amount over \$20,000.00

(3-20-04)

b. For taxable years beginning in 2000:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,022.00	\$0.00	1.9% of taxable income
\$1,022.00	\$2,044.00	\$19.42	3.9% of the amount over \$1,022.00
\$2,044.00	\$3,066.00	\$59.28	4.4% of the amount over \$2,044.00
\$3,066.00	\$4,088.00	\$104.25	5.4% of the amount over \$3,066.00
\$4,088.00	\$5,110.00	\$159.44	6.4% of the amount over \$4,088.00
\$5,110.00	\$7,666.00	\$224.85	7.4% of the amount over \$5,110.00
\$7,666.00	\$20,442.00	\$413.99	7.7% of the amount over \$7,666.00
\$20,442.00 or more		\$1,397.74	8.1% of the amount over \$20,442.00

(3-20-04)

c. For taxable years beginning in 2001:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,056.00	\$0.00	1.6% of taxable income

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1,056.00	\$2,113.00	\$16.90	3.6% of the amount over \$1,056.00
\$2,113.00	\$3,169.00	\$54.93	4.1% of the amount over \$2,113.00
\$3,169.00	\$4,226.00	\$98.25	5.1% of the amount over \$3,169.00
\$4,226.00	\$5,282.00	\$152.13	6.1% of the amount over \$4,226.00
\$5,282.00	\$7,923.00	\$216.57	7.1% of the amount over \$5,282.00
\$7,923.00	\$21,129.00	\$404.09	7.4% of the amount over \$7,923.00
\$21,129.00 or more		\$1,381.30	7.8% of the amount over \$21,129.00

(3-20-04)

d. For taxable years beginning in 2002:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,087.00	\$0.00	1.6% of taxable income
\$1,087.00	\$2,173.00	\$17.38	3.6% of the amount over \$1,087.00
\$2,173.00	\$3,260.00	\$56.50	4.1% of the amount over \$2,173.00
\$3,260.00	\$4,346.00	\$101.04	5.1% of the amount over \$3,260.00
\$4,346.00	\$5,433.00	\$156.46	6.1% of the amount over \$4,346.00
\$5,433.00	\$8,149.00	\$222.73	7.1% of the amount over \$5,433.00
\$8,149.00	\$21,730.00	\$415.59	7.4% of the amount over \$8,149.00
\$21,730.00 or more		\$1,420.60	7.8% of the amount over \$21,730.00

(3-20-04)

e. For taxable years beginning in 2003:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,104.00	\$0	1.6% of taxable income
\$1,104.00	\$2,207.00	\$17.66	3.6% of the amount over \$1,104.00
\$2,207.00	\$3,311.00	\$57.39	4.1% of the amount over \$2,207.00
\$3,311.00	\$4,415.00	\$102.64	5.1% of the amount over \$3,311.00
\$4,415.00	\$5,518.00	\$158.93	6.1% of the amount over \$4,415.00
\$5,518.00	\$8,278.00	\$226.25	7.1% of the amount over \$5,518.00
\$8,278.00	\$22,074.00	\$422.16	7.4% of the amount over \$8,278.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$22,074.00 or more		\$1,443.06	7.8% of the amount over \$22,074.00

(3-20-04)

f. For taxable years beginning in 2004:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,129.00	\$0	1.6% of taxable income
\$1,129.00	\$2,258.00	\$18.06	3.6% of the amount over \$1,129.00
\$2,258.00	\$3,387.00	\$58.70	4.1% of the amount over \$2,258.00
\$3,387.00	\$4,515.00	\$104.98	5.1% of the amount over \$3,387.00
\$4,515.00	\$5,644.00	\$162.55	6.1% of the amount over \$4,515.00
\$5,644.00	\$8,466.00	\$231.41	7.1% of the amount over \$5,644.00
\$8,466.00	\$22,577.00	\$431.78	7.4% of the amount over \$8,466.00
\$22,577.00 or more		\$1,475.95	7.8% of the amount over \$22,577.00

(4-6-05)

g. For taxable years beginning in 2005:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
<u>\$0.00</u>	<u>\$1,159.00</u>	<u>\$0</u>	<u>1.6% of taxable income</u>
<u>\$1,159.00</u>	<u>\$2,318.00</u>	<u>\$18.54</u>	<u>3.6% of the amount over \$1,159.00</u>
<u>\$2,318.00</u>	<u>\$3,477.00</u>	<u>\$60.26</u>	<u>4.1% of the amount over \$2,318.00</u>
<u>\$3,477.00</u>	<u>\$4,636.00</u>	<u>\$107.78</u>	<u>5.1% of the amount over \$3,477.00</u>
<u>\$4,636.00</u>	<u>\$5,794.00</u>	<u>\$166.89</u>	<u>6.1% of the amount over \$4,636.00</u>
<u>\$5,794.00</u>	<u>\$8,692.00</u>	<u>\$237.53</u>	<u>7.1% of the amount over \$5,794.00</u>
<u>\$8,692.00</u>	<u>\$23,178.00</u>	<u>\$443.29</u>	<u>7.4% of the amount over \$8,692.00</u>
<u>\$23,178.00 or more</u>		<u>\$1,515.25</u>	<u>7.8% of the amount over \$23,178.00</u>

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(BREAK IN CONTINUITY OF SECTIONS)

107. ADJUSTMENTS TO TAXABLE INCOME -- ADJUSTMENTS REQUIRED ONLY OF TAXPAYERS REPORTING NONBUSINESS INCOME (RULE 107).

Section 63-3027(a)(4), Idaho Code. All deductions relating to the production of nonbusiness income shall be allocated with the income produced. See Section 63-3027, Idaho Code, and Rules 330 ~~and~~ through 335336 of these rules for the definitions of business income and nonbusiness income. ~~(5-3-03)~~(____)

108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).

Section 63-3022, Idaho Code. (3-20-97)

01. Lump Sum Distributions. As provided in Section 63-3022(k), Idaho Code, add the taxable amount of a lump sum distribution excluded from taxable income. (3-30-01)

02. Withdrawals From an Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. (7-1-98)

03. Withdrawals From an Idaho College Savings Program. As provided in Section 63-3022(o), Idaho Code, an account owner shall add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)

04. Certain Expenses of Eligible Educators. As provided in Section 63-3022O, Idaho Code, an eligible educator as defined in Section 62, Internal Revenue Code, shall add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. (3-20-04)

05. State and Local Sales Tax. As provided in Section 63-3022(j), Idaho Code, add the amount of state and local general sales taxes deducted as an itemized deduction. (____)

(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).

Section 63-3022, Idaho Code. (3-20-97)

01. State And Local Income Tax Refunds. Subtract from taxable income state and local income tax refunds included in taxable income, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 of these rules. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (7-1-99)

03. Income Not Taxable By Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred

dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

04. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market value of technological equipment donated to qualifying institutions. (4-5-00)

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty percent (50%) of the amount of the premiums paid during the taxable year. (4-6-05)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. (3-20-04)

a. Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes. (3-20-04)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed. (3-20-04)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (3-20-04)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (3-20-04)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (3-20-04)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

07. Income Restored Under Federal Claim of Right. As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer shall be allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction shall be

allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. ()

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code. (3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back shall be computed by dividing the amount of limited itemized deductions by total itemized deductions before the limitation. This percent shall be rounded to the nearest whole percent. For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%). This percent is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. (~~3-15-02~~)()

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)

d. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified property. (3-20-97)

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (RULE 170). (3-20-97)
Section 63-3022H, Idaho Code.

01. Qualifying for the Idaho Capital Gains Deduction. To qualify for the Idaho capital gains deduction, a taxpayer must report capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. ()

02. Capital Gain Net Income Limitation. ()

a. The Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. ()

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, limited to the capital gain net income included in taxable income. ()

03. Ordinary Income Limitation. The Idaho capital gains deduction may not include any gains treated as ordinary income pursuant to the Internal Revenue Code. For example, any gain from the sale, exchange, or involuntary conversion of certain depreciable property treated as ordinary income pursuant to Section 1245, Internal Revenue Code, may not be included when computing the Idaho capital gains deduction. ()

04. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. ~~However, the Idaho capital gains deduction may not exceed the capital gain net income included in Idaho taxable income. See Subsection 170.04 for an explanation of the capital gain net income limitation.~~ (3-15-02)()

025. Losses From Qualified Property. (7-1-99)

a. Losses from property qualifying for the Idaho capital gains deduction shall be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (7-1-99)

b. A capital loss carryover from property qualifying for the Idaho capital gains deduction shall be netted against current year gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. If a taxpayer has a capital loss carryover consisting of qualified and nonqualified property, the qualified capital loss carryover shall be the proportion that the qualified capital loss bears to the total capital loss shown on the return in the prior year multiplied by the capital loss carryover. (7-1-99)

036. Examples. (3-20-97)

a. A taxpayer sells two (2) parcels of Idaho real property that qualify for the deduction. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in capital gain net income from qualified property of two thousand five hundred dollars (\$2,500). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or two thousand dollars (\$2,000). After 2001, the capital gains deduction returns to sixty percent (60%) or one thousand five hundred dollars (\$1,500). (5-3-03)

b. A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars (\$12,000). (5-3-03)

~~04. Capital Gain Net Income Limitation. (3-15-02)~~

~~a. The Idaho capital gains deduction is allowed only if the taxpayer reports capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. In addition, the Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. (3-15-02)~~

~~b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property. This deduction is also limited to the capital gain net income included in Idaho taxable income. (5-3-03)~~

~~05. Ordinary Income Limitation. The Idaho capital gains deduction may not include any gains treated as ordinary income pursuant to the Internal Revenue Code. For example, any gain from the sale, exchange, or involuntary conversion of certain depreciable property treated as ordinary income pursuant to Section 1245, Internal Revenue Code, may not be included when computing the Idaho capital gains deduction. (3-20-97)~~

(BREAK IN CONTINUITY OF SECTIONS)

266. INCOME FROM INTANGIBLE PROPERTY (RULE 266).

Section 63-3026A(3), Idaho Code.

(7-1-99)

01. In General. Gross income from intangible property generally is sourced to the state of the owner's domicile. ~~There following~~ are ~~three (3)~~ exceptions to this rule. (7-1-99)(____)

a. If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (7-1-99)

b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. (7-1-99)

c. Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. (7-1-99)

d. Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. ()

02. Interest Income Earned on a Bank Account. (7-1-99)

a. Personal Bank Accounts. Interest income earned on a personal bank account is sourced to the owner's state of domicile. A personal bank account is an account that is not used in connection with a business. (7-1-99)

b. Business Bank Accounts. If the business is a sole proprietorship, see Rule 265 of these rules. If the business is an S corporation or partnership, see Rule 263 of these rules. (7-1-99)

03. Covenant Not to Compete. Income from a covenant not to compete is sourced to the owner's state of domicile unless the covenant was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in ~~Subsection~~ Paragraph 266.01.a. of this rule. (7-1-99)()

(BREAK IN CONTINUITY OF SECTIONS)

340. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- UNITARY BUSINESS PRINCIPLE (RULE 340).
Section 63-3027, Idaho Code. (4-6-05)

01. The Concept of a Unitary Business. (4-6-05)

a. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Idaho that comes from being part of a unitary business conducted both within and without Idaho is what provides the constitutional due process "definite link and minimum connection" necessary for Idaho to apportion business income of the unitary business, even if that income arises in part from activities conducted outside Idaho. The business income of the unitary business is then apportioned to Idaho using an apportionment percentage provided by Section 63-3027, Idaho Code. (4-6-05)

b. This sharing or exchange of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one (1) business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. (4-6-05)()

02. Constitutional Requirement for a Unitary Business. (4-6-05)

a. The sharing or exchange of value described in Subsection 340.01 of this rule that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. (4-6-05)

b. In Idaho, the unitary business principle shall be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution. (4-6-05)

03. Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned. (4-6-05)

04. Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a commonly controlled group of business entities. The relationship shall be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates shall be considered even though a water's edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. The scope of what is included in a commonly controlled group of business entities is set forth in Rule 344 of these rules. (4-6-05)

341. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DETERMINATION OF A UNITARY BUSINESS (RULE 341).
Section 63-3027, Idaho Code. ()

01. In General. Unity can be established under any one (1) of the judicially acceptable tests (Butler Brothers, Edison California Stores, Container, etc.), and cannot be denied merely because another of those tests does not simultaneously apply. ()

02. Significant Flows of Value. A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above. (4-6-05)()

342. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DESCRIPTION AND ILLUSTRATION OF FUNCTIONAL INTEGRATION, CENTRALIZATION OF MANAGEMENT AND ECONOMIES OF SCALE (RULE 342).
Section 63-3027, Idaho Code. (4-6-05)

01. Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance. (4-6-05)

a. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser. (4-6-05)

b. Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. (Such activity, however, is relevant to determining the existence of economies of scale and centralization of management.) (4-6-05)

c. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations. (4-6-05)

d. Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration. (4-6-05)

e. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where products, services, or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration. (4-6-05)

f. Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one (1) or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. (See Subsection 342.02 of this rule for discussion of centralization of management.) (4-6-05)

02. Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management. (4-6-05)

a. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management ~~may~~ exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors. (4-6-05)()

b. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight. (4-6-05)()

03. Economies of Scale. Economies of scale refers to a relation among and between business activities

resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance. (4-6-05)

a. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale. (4-6-05)

b. Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

550. SALES FACTOR -- SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 550).

Section 63-3027(r), Idaho Code. (3-20-97)

01. In General. Section 63-3027(r), Idaho Code, provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government. Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. (3-20-97)

02. Income Producing Activity. The term income producing activity applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. The activity generally does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. However, income producing activity shall include transactions and activities performed on behalf of a taxpayer when the taxpayer sells its product exclusively through independent contractors, when the independent contractors can only work for the taxpayer, or when excluding the transactions and activities of the independent contractors would lead to an unreasonable result. Income producing activity includes the following: (3-20-97)(____)

a. The rendering of personal services by employees or the use of tangible and intangible property by the taxpayer in performing a service; (3-20-97)

b. The sale, rental, leasing, licensing or other use of real property; (3-20-97)

c. The rental, leasing, licensing or other use of tangible personal property; (3-20-97)

d. The sale, licensing or other use of intangible personal property; and (3-20-97)

e. The mere holding of intangible personal property is not, by itself, an income producing activity. (3-20-97)

03. Costs of Performance. Costs of performance are the direct costs determined according to generally accepted accounting principles and accepted conditions or practices of the taxpayer's trade or business. Only the direct costs paid by the taxpayer shall be considered. (3-20-97)(____)

04. Application. In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: (3-20-97)

a. The income producing activity is performed wholly in Idaho; or (3-20-97)

b. The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. (3-20-97)

05. Special Rules. The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: (3-20-97)

a. Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. (3-20-97)

b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho shall be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. (3-20-97)

c. Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows: ((ten (10) bulldozers x fifty (50) days) / (ten (10) bulldozers x three hundred sixty five (365) days)) x total receipts = receipts attributable to Idaho. (3-20-97)

d. Gross receipts for the performance of personal services are attributable to Idaho to the extent the services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. (3-20-97)

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. (3-20-97)

f. Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars (\$9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars (\$3,000): (200 man hours/600 man hours) x \$9,000. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

570. SPECIAL RULES -- SALES FACTOR (RULE 570).
Section 63-3027(s), Idaho Code. (3-20-97)

01. De Minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho. (3-20-97)

02. Gross Receipts From Intangibles. (3-20-97)

a. If the income producing activity in respect to business income from intangible personal property can be readily identified, the ~~income is~~ gross receipts shall be included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. ~~For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Rule 525 of these rules, and income from the sale, licensing or other use of intangible personal property, see Rule 550 of these rules.~~ (3-20-97)(____)

b. If business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the ~~income cannot be assigned to the numerator of the sales factor for any state~~ and gross receipts shall be excluded from the denominator and numerator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest shall be excluded from the denominator and numerator of the sales factor. (3-30-01)(____)

c. Subsection 570.02 of this rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. (____)

03. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses shall be treated as provided in Subsection 570.03 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.03 of this rule, each treasury function shall be considered separately. (4-5-00)(____)

a. For purposes of Subsection 570.03 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer and has a substantial business relationship with the taxpayer is not considered marketable stock. (4-5-00)(____)

b. For purposes of Subsection 570.03 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. (4-5-00)(____)

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. (4-5-00)

d. Examples. (4-5-00)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (4-5-00)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.03 of this rule does not operate to classify those sales as attributable to a treasury function. ~~(4-5-00)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (RULE 620).

Section 63-3027, Idaho Code. (3-20-97)

01. In General. If a corporation required to file an Idaho income tax return is a member of an operating partnership, the corporation shall report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture. (3-20-97)

02. Transacting Business. A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement. (3-20-97)

03. Multistate Partnerships. If a partnership operates in more than one state, its income shall be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership. (3-20-97)

04. Partnership Income as Business Income of the Partner. (3-20-97)

a. Income. If the income or loss of a partnership is business income or loss to a corporate partner, its share of this net business income or loss shall be apportioned together with all other net business income or loss of the corporation. Business income or loss is defined by Section 63-3027(a)(1), Idaho Code, and Rules 330 through ~~334~~336 of these rules. ~~(3-20-97)~~(____)

b. Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, shall be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Section 63-3027(q), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation. (3-30-01)

05. Partnership Income as Nonbusiness Income of Partner. (3-20-97)

a. Income. If the partnership income or loss is not business income to a corporate partner, the income is nonbusiness income as defined in Section 63-3027(a)(4), Idaho Code, and Rules 335 through 339 of these rules. The corporate partner shall allocate the nonbusiness income to the state in which it was earned. The corporate partner, on its Idaho corporation income tax return, shall specifically allocate to Idaho its share of the nonbusiness income attributable to Idaho. (3-20-97)

b. Factors. If the partnership income or loss is nonbusiness income to the corporate partner, none of the partnership property, payroll, or sales may be included in the computation of the factors of the corporation. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).

Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer shall remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. (4-6-05)

b. Split-Monthly Filers. (4-6-05)

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period. (4-6-05)

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000.00	\$60,000.00
On or After January 1, 2004, but Before July 1, 2005	\$6,000.00	\$72,000.00
On or After July 1, 2005	\$20,000.00	\$240,000.00

(4-6-05)

iii. Filing status changes will occur only in January. (4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of ~~February~~ January. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (4-6-05)(_____)

02. Filing of Annual Reconciliation Returns. (4-6-05)

a. In General. Beginning January 1, 2004, an employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return shall: (4-6-05)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of January. The Tax Commission may require a shorter filing period and due date. (4-6-05)

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date. (4-6-05)

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

a. The employer shall file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-6-05)

b. The employer shall file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request shall be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (4-6-05)

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-0502
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 275: Promulgate new Income Tax Rule 275 to address qualifying entities and what investment in securities and activities incident thereto includes in accordance with Idaho Code section 63-3026A, as amended in HB 400, passed by the 2005 Legislature.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0502

273. -- 2794. (RESERVED).

275. INCOME FROM INTANGIBLE PROPERTY OF INVESTMENT PARTNERSHIPS (RULE 275).
Section 63-3026A(3)(c), Idaho Code. ()

01. In General. ()

a. For taxable years beginning on or after January 1, 2001, investment income from securities received from a qualifying entity described in Subsection 275.02 of this rule shall be deemed to be derived from or related to a source in the partner's or member's state of domicile. This income shall be deemed to be derived from or related to a source in Idaho if the partner or member is domiciled in Idaho or is residing in Idaho when the income is received. See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. ()

b. This rule shall not apply to gains or losses derived from the sale of an interest in a partnership. The source of these gains and losses is to be governed by Section 63-3026A(3)(a)(vii), Idaho Code, and as discussed in Rule 266 of these rules. The source of investment income that is not from a qualifying entity shall be determined as provided in Rule 263 of these rules. ()

02. Qualifying Entity. ()

a. A qualifying entity includes only an entity that is taxed as a partnership for federal income tax purposes. ()

b. The business activity of a qualifying entity must be limited to investment in securities and activities incident thereto. If the entity is involved in any other business activity not related to the securities investment activities, the entity is not a qualifying entity for purposes of Section 63-3026(A)(3)(c) and the source of income from such entity shall be determined pursuant to Rule 263 of these rules. Activities incident thereto shall include only those activities that would be usual and customary in the securities investment business and that contribute to the earning of the investment income. ()

03. Investment in Securities. For purposes of this rule: ()

a. Investment in securities shall include only investments that are publicly traded through the stock exchanges specified in Section 63-3026A(3)(b), Idaho Code. ()

b. Investment in securities and activities incident thereto shall not include income from the installment sale of real or tangible personal property. ()

c. Activities incident thereto shall include those activities that are usual and customary to the business of investing in securities including: maintaining accounts for individual investors, soliciting applications from new investors, record keeping and storage, maintaining bank accounts for liquid assets and disbursing profits to investors, research and evaluation of investment opportunities and results, and the maintenance of an office in Idaho. ()

276. -- 279. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-0503
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 799: Amend Income Tax Rule 799 to add to the list of priority of credits the new credits allowed by HBs 306 and 323, which were passed by the 2005 Legislature, and to address adjustments to credits.

Rule 920: Promulgate new Income Tax Rule 920 to provide definitions for rules relating to the Idaho Corporate Headquarters Incentive Act of 2005.

Rule 921: Promulgate new Income Tax Rule 921 to discuss the coordination of the Idaho Corporate Headquarters Incentive Act with the Idaho Small Employer Incentive Act of 2005, pass-through entities, the effects of reorganizations, mergers and liquidations, relocations of facilities, and unitary sharing.

Rule 922: Promulgate new Income Tax Rule 922 to discuss the Idaho Corporate Headquarters tax incentive criteria and the certification requirements.

Rule 923: Promulgate new Income Tax Rule 923 to discuss the Idaho Corporate Headquarters Investment Tax Credit, including when the credit is allowed, qualifying taxpayers, qualified investments, limitations, carryovers, and coordination with the investment tax credit allowed by Idaho Code section 63-3029B.

Rule 924: Promulgate new Income Tax Rule 924 to discuss the Idaho Corporate Headquarters Real Property Improvement Tax Credit, including when the credit is allowed, qualifying taxpayers, qualifying buildings and structural components, limitations, and carryovers.

Rule 925: Promulgate new Income Tax Rule 925 to discuss the Idaho Corporate Headquarters New Jobs Tax Credit, including when the credit is allowed, qualifying taxpayers, calculating the number of employees and the number of new employees, how to compute the credit, limitations, and carryovers.

Rule 926: Promulgate new Income Tax Rule 926 to discuss recapture of the Corporate Headquarters tax incentives, including the failure to meet the tax incentive criteria, the year the deficiency occurs, early dispositions of investment in new plant, failure to maintain increased employment, and the effects of reorganizations, mergers, and liquidations.

Rule 930: Promulgate new Income Tax Rule 930 to provide definitions for rules relating to the Idaho Small Employer Incentive Act of 2005.

Rule 931: Promulgate new Income Tax Rule 931 to discuss the coordination of the Idaho Small Employer Incentive Act with the Idaho Corporate Headquarters Incentive Act of 2005, pass-through entities, the effects of reorganizations, mergers and liquidations, relocations of facilities, and unitary sharing.

Rule 932: Promulgate new Income Tax Rule 932 to discuss the Idaho Small Employer tax incentive criteria and the certification requirements.

Rule 933: Promulgate new Income Tax Rule 933 to discuss the Idaho Small Employer Investment Tax Credit, including when the credit is allowed, qualifying taxpayers, qualified investments, limitations, carryovers, and coordination with the investment tax credit allowed by Idaho Code section 63-3029B.

Rule 934: Promulgate new Income Tax Rule 934 to discuss the Idaho Small Employer Real Property Improvement Tax Credit, including when the credit is allowed, qualifying taxpayers, qualifying buildings and structural components, limitations, and carryovers.

Rule 935: Promulgate new Income Tax Rule 935 to discuss the Idaho Small Employer New Jobs Tax Credit, including when the credit is allowed, qualifying taxpayers, calculating the number of employees and the number of new employees, how to compute the credit, limitations, and carryovers.

Rule 936: Promulgate new Income Tax Rule 936 to discuss recapture of the Idaho Small Employer tax incentives, including the failure to meet the tax incentive criteria, the year the deficiency occurs, early dispositions of investment in new plant, failure to maintain increased employment, and the effects of reorganizations, mergers, and liquidations.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0503

799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799). (5-3-03)
Section 63-3029P, Idaho Code.

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A

nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

- a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)
- b. For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; (5-3-03)
- c. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)
- d. Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)
- e. Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)
- f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)
- g. Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)
- h. Credit for qualifying new employees as authorized by Sections 63-3029E and 63-3029F, Idaho Code; (3-15-02)
- i. Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)
- j. Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)
- k. Incentive investment tax credit as authorized by Section 63-3029J, Idaho Code. (3-15-02)
- l. Corporate headquarters investment tax credit as authorized by Section 63-2903, Idaho Code. ()
- m. Corporate headquarters real property improvement tax credit as authorized by Section 63-2904, Idaho Code. ()
- n. Corporate headquarters new jobs tax credit as authorized by Section 63-2905, Idaho Code. ()
- o. Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. ()
- p. Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. ()
- q. Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. ()
- 03. Adjustments to Credits. ()**
 - a. Adjustments to the amount of a credit earned shall be determined pursuant to the law applicable to the taxable year in which the credit was earned. ()
 - b. Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit shall also apply to any taxable years to which the credit was carried over. ()
 - c. If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned shall not result in any tax due or refund for the closed taxable years.

However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. ()

(BREAK IN CONTINUITY OF SECTIONS)

901. -- ~~999~~19. (RESERVED).

920. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- DEFINITIONS (RULE 920).

Title 63, Chapter 29, Idaho Code. For purposes of administering the Idaho Corporate Headquarters Incentive Act of 2005 and Rules 920 through 926 of these rules, the following definitions apply: ()

01. Buildings and Structural Components. Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ()

02. Corporate Headquarters Investment Tax Credit. Corporate headquarters investment tax credit shall mean the additional income tax credit allowed by Section 63-2903, Idaho Code. ()

03. Corporate Headquarters New Jobs Tax Credit. Corporate headquarters new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-2905, Idaho Code. ()

04. Corporate Headquarters Tax Incentive Criteria. Corporate headquarters tax incentive criteria shall mean the tax incentive criteria defined in Section 63-2902(2)(j), Idaho Code. See Rule 922 of these rules for more information. ()

05. Corporate Headquarters Tax Incentives. Corporate headquarters tax incentives shall mean the tax incentives allowed by Title 63, Chapter 29, Idaho Code. ()

06. Corporate Headquarters Real Property Improvement Tax Credit. Corporate headquarters real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-2904, Idaho Code. ()

07. Investment in New Plant. Investment in new plant shall mean investment in headquarters or administrative facilities: ()

a. That is constructed or erected by the taxpayer, or ()

b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. ()

c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ()

08. Majority of the Company's Services. A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-2902(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded. ()

09. Making Capital Investments. The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ()

10. National Headquarters or Administrative Facilities. A national headquarters is that office or location of a multistate business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the national headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all regional offices, operating facilities or any other offices of the business enterprise. The national headquarters is subordinate only to the ownership of the organization or its representatives. ()

11. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ()

12. Project Period. The project period is a period of time that begins and ends as follows: ()

a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: ()

i. The date of a physical change to the project site, or ()

ii. The date new employees begin providing personal services at the project site. ()

b. The project period shall end at the earlier of: ()

i. The conclusion of the project, or ()

ii. December 31, 2009. ()

13. Project Site. The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. ()

14. Regional Headquarters or Administrative Facilities. A regional headquarters is one (1) of several management offices or facilities of a multistate business that is responsible for planning, directing and controlling a majority of the business operations within a subdivided area of the United States. A regional headquarters performs a function that is separate from the management of operational facilities within the region. A regional headquarters performs functions similar to the national headquarters, but within a more limited area. It has final authority over all matters within its region and is subordinate only to the national headquarters. ()

921. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- IN GENERAL (RULE 921).

Sections 63-4401 and 63-2906, Idaho Code. ()

01. Coordination With Idaho Small Employer Incentive Act of 2005. A taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under the corporate headquarters incentive act of 2005, shall not be allowed any of the tax incentives provided by the small employer incentive act of 2005. ()

02. Pass-Through Entities. The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. ()

03. Reorganizations, Mergers and Liquidations. The corporate headquarters investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b),

Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho corporate headquarters investment tax credits and real property improvement tax credits. See Rule 926 of these rules for information related to the recapture required by an acquiring corporation.

()

04. Relocations. The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity.

()

05. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the corporate headquarters investment tax credit, real property improvement tax credit, and new jobs tax credit it earns, but does not use, with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward.

()

922. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS TAX INCENTIVE CRITERIA (RULE 922).
Section 63-2902, Idaho Code.

()

01. In General. The corporate headquarters tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for corporate headquarters tax incentives. To meet the corporate headquarters tax incentive criteria, a taxpayer shall satisfy the following requirements at the project site, during the project period:

()

a. Making capital investment in new headquarters or administrative facilities totaling fifty million dollars (\$50,000,000) or more.

()

b. Increasing employment by at least five hundred (500) new employees who meet the requirements of Section 63-2902(2)(j)(ii)(1), Idaho Code, and

()

c. Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by five hundred (500) new employees has been reached.

()

02. Certification. A taxpayer shall certify that he has met, or will meet, the corporate headquarters tax incentive criteria before he can claim any of the corporate headquarters tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the corporate headquarters tax incentives:

()

a. A description of the qualifying project;

()

b. The estimated or actual start date of the project;

()

c. The estimated or actual end date of the project;

()

d. The location of the project site or sites;

()

e. Information as to whether the project site is the location of the company's national or regional headquarters;

()

f. The estimated or actual percent of the company's administrative services handled at the project site;

()

g. The estimated or actual number of new administrative jobs created during the project period; and ()

h. The estimated or actual cost of capital investment in new administrative facilities for each year in the project period. ()

03. **Copy of Certification Form Required.** A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a corporate headquarters income tax incentive is claimed or carried over. ()

923. **IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS INVESTMENT TAX CREDIT (RULE 923).**
Sections 63-2903 and 63-2906, Idaho Code. ()

01. **Credit Allowed.** ()

a. The corporate headquarters investment tax credit allowed by Section 63-2903, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. ()

02. **Taxpayers Entitled to the Credit.** The corporate headquarters investment tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. ()

03. **Qualified Investments.** ()

a. Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments. ()

b. Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify. ()

04. **Limitations.** The corporate headquarters investment tax credit allowable in any taxable year shall be limited as follows: ()

a. The corporate headquarters investment tax credit claimed during a taxable year may not exceed the lesser of: ()

i. Five million dollars (\$5,000,000); or ()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. **Carryovers.** The carryover period for the corporate headquarters investment tax credit is fourteen (14) years. ()

06. Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the corporate headquarters investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the corporate headquarters investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. ()

924. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 924).
Sections 63-2904 and 63-2906, Idaho Code. ()

01. Credit Allowed. ()

a. The corporate headquarters real property improvement tax credit allowed by Section 63-2904, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the corporate headquarters real property improvement tax credit. ()

02. Taxpayers Entitled to the Credit. The corporate headquarters real property improvement tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. ()

03. Buildings and Structural Components of Buildings. ()

a. To qualify for the corporate headquarters real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: ()

i. The buildings and structural components of buildings must be new as defined in Subsection 920.07 of these rules. ()

ii. The buildings and structural components of buildings must be placed in service at the project site. ()

iii. The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail, wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the corporate headquarters real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity. ()

b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the corporate headquarters real property improvement tax credit. ()

04. Limitations. The corporate headquarters real property improvement tax credit allowable in any taxable year shall be limited as follows: ()

a. The corporate headquarters real property improvement tax credit claimed during a taxable year may not exceed the lesser of: ()

- i. Five hundred thousand dollars (\$500,000); or ()
- ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the corporate headquarters real property improvement tax credit is fourteen (14) years. ()

925. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS NEW JOBS TAX CREDIT (RULE 925).
Sections 63-2905 and 63-2906, Idaho Code. ()

01. Credit Allowed. ()

a. The corporate headquarters new jobs tax credit allowed by Section 63-2905, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the corporate headquarters new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. ()

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. ()

02. Taxpayers Entitled to the Credit. The corporate headquarters new jobs tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. ()

03. Calculating Number of Employees. ()

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-2902(e) and 63-2905, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: ()

- i. The employee must have worked primarily within the project site for the taxpayer. ()
- ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. ()
- iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. ()
- iv. The employee must have been subject to Idaho income tax withholding. ()
- v. The employee must have been covered for Idaho unemployment insurance purposes. ()
- vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. ()

vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ()

b. Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ()

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ()

04. Calculating the Number of New Employees. ()

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ()

i. The number of employees for the prior taxable year; or ()

ii. The average of the number of employees for the three (3) prior taxable years. ()

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 925.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 925.04.a.i., and 925.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. ()

c. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()

05. Computing the Credit Earned. The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. ()

a. If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). ()

b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). ()

c. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). ()

d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). ()

06. Limitations. The corporate headquarters new jobs tax credit allowable in any taxable year shall be limited as follows: ()

a. The corporate headquarters new jobs tax credit claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters new jobs tax credit, regardless of whether this credit results from a carryover earned in prior

years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

07. **Carryovers.** The carryover period for the corporate headquarters new jobs tax credit is ten (10) years. ()

08. **Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who has new employees who are eligible for the corporate headquarters new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the corporate headquarters new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. ()

926. **IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- RECAPTURE (RULE 926).** Section 63-2907, Idaho Code. ()

01. **Failure to Meet Tax Incentive Criteria.** If a taxpayer fails to meet the corporate headquarters tax incentive criteria, the full amount of the corporate headquarters investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. ()

02. **Year Deficiency Occurs.** Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below five hundred (500). ()

03. **Early Disposition of Investment in New Plant.** ()

a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: ()

i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. ()

04. **Failure to Maintain Increased Employment.** ()

a. If the increased level of employment of five hundred (500) new employees is not maintained for the entire recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: ()

i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used: ()

ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used: ()

iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used: ()

iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used: ()

v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. ()

c. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. ()

05. Reorganizations, Mergers and Liquidations. ()

a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. ()

b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. ()

927. -- 929. (RESERVED).

930. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- DEFINITIONS (RULE 930).

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005 and Rules 930 through 936 of these rules, the following definitions apply: ()

01. Buildings and Structural Components. Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ()

02. Headquarters or Administrative Facilities. A headquarters is that office or location of a business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all other offices or operating facilities of the business enterprise. ()

03. Investment in New Plant. Investment in new plant shall mean investment in headquarters or administrative facilities: ()

a. That is constructed or erected by the taxpayer, or ()

b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the

use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. ()

c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ()

04. Majority of the Company's Services. A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-4402(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded. ()

05. Making Capital Investments. The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ()

06. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ()

07. Project Period. The project period is a period of time that begins and ends as follows: ()

a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: ()

i. The date of a physical change to the project site, or ()

ii. The date new employees begin providing personal services at the project site. ()

b. The project period shall end at the earlier of: ()

i. The conclusion of the project, or ()

ii. December 31, 2009. ()

08. Project Site. The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. ()

09. Small Employer Investment Tax Credit. Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. ()

10. Small Employer New Jobs Tax Credit. Small employer new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. ()

11. Small Employer Real Property Improvement Tax Credit. Small employer real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-4404, Idaho Code. ()

12. Small Employer Tax Incentive Criteria. Small employer tax incentive criteria shall mean the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 932 of these rules for more information. ()

13. Small Employer Tax Incentives. Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. ()

931. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- IN GENERAL (RULE 931).

Sections 63-4401 and 63-4406, Idaho Code.

()

01. Coordination With Idaho Corporate Headquarters Incentive Act of 2005. The tax incentives provided by the small employer incentive act of 2005 shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code.

()

02. Pass-Through Entities. The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits.

()

03. Reorganizations, Mergers and Liquidations. The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 936 of these rules for information related to the recapture required by an acquiring corporation.

()

04. Relocations. The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity.

()

05. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns, but does not use, with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward.

()

932. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 932).

Section 63-4402, Idaho Code.

()

01. In General. The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period:

()

a. Making capital investment in new headquarters or administrative facilities totaling five hundred thousand dollars (\$500,000) or more, and

()

b. Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code.

()

c. Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by ten (10) new employees has been reached.

()

d. Increasing employment by at least one (1) new employee for each fifty thousand dollars (\$50,000) of investment in new headquarters or administrative facilities. For example, if a taxpayer invests four million dollars (\$4,000,000) in new administrative facilities, he must have increased employment by eighty (80) new employees to meet the small employer tax incentive criteria.

()

02. Certification. A taxpayer shall certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification shall be accomplished by

filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives: ()

- a. A description of the qualifying project; ()
- b. The estimated or actual start date of the project; ()
- c. The estimated or actual end date of the project; ()
- d. The location of the project site or sites; ()
- e. Information as to whether the project site is the location of the company's national or regional headquarters; ()
- f. The estimated or actual percent of the company's administrative services handled at the project site; ()
- g. The estimated or actual number of new administrative jobs created during the project period; and ()
- h. The estimated or actual cost of capital investment in new administrative facilities for each year in the project period. ()

03. Copy of Certification Form Required. A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over. ()

933. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 933).
Sections 63-4403 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. ()

02. Taxpayers Entitled to the Credit. The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Qualified Investments. ()

a. Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments. ()

b. Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify. ()

04. Limitations. The small employer investment tax credit allowable in any taxable year shall be limited as follows: ()

of: **a.** The small employer investment tax credit claimed during a taxable year may not exceed the lesser ()

i. One million two hundred fifty thousand dollars (\$1,250,000); or ()

ii. Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. **Carryovers.** The carryover period for the small employer investment tax credit is fourteen (14) years. ()

06. **Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. ()

934. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 934).
Sections 63-4404 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit. ()

02. Taxpayers Entitled to the Credit. The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Buildings and Structural Components of Buildings. ()

a. To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: ()

i. The buildings and structural components of buildings must be new as defined in Subsection 930.03 of these rules. ()

ii. The buildings and structural components of buildings must be placed in service at the project site. ()

iii. The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail,

wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the small employer real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity.

()

b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the small employer real property improvement tax credit.

()

04. Limitations. The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows:

()

a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of:

()

i. One hundred twenty-five thousand dollars (\$125,000); or

()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits.

()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.

()

05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years.

()

935. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 935).

Sections 63-4405 and 63-4406, Idaho Code.

()

01. Credit Allowed.

()

a. The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009.

()

b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code.

()

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee.

()

02. Taxpayers Entitled to the Credit. The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria.

()

03. Calculating Number of Employees.

()

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(e) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following:

()

i. The employee must have worked primarily within the project site for the taxpayer.

()

ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. ()

iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. ()

iv. The employee must have been subject to Idaho income tax withholding. ()

v. The employee must have been covered for Idaho unemployment insurance purposes. ()

vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. ()

vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ()

b. Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ()

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ()

04. Calculating the Number of New Employees. ()

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ()

i. The number of employees for the prior taxable year; or ()

ii. The average of the number of employees for the three (3) prior taxable years. ()

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 935.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 935.04.a.i., and 935.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. ()

c. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()

05. Computing the Credit Earned. The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. ()

a. If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). ()

b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). ()

c. If during the taxable year the new employee earned more than an average rate of thirty-six dollars

and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). ()

d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). ()

06. Limitations. The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: ()

a. The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

07. Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. ()

08. Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. ()

936. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- RECAPTURE (RULE 936). Section 63-4407, Idaho Code. ()

01. Failure to Meet Tax Incentive Criteria. If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. ()

02. Year Deficiency Occurs. Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below the level of new employees required by Section 63-4402(2)(j), Idaho Code. ()

03. Early Disposition of Investment in New Plant. ()

a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: ()

i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed ()

in service, sixty percent (60%) shall be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. ()

04. Failure to Maintain Increased Employment. ()

a. If the required increased level of employment is not maintained for the entire recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: ()

i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. ()

c. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. ()

05. Reorganizations, Mergers and Liquidations. ()

a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. ()

b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. ()

937. -- 999. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 041: Amend Rule 041 to conform to the rate change.

Rule 058: Amend Rule 058 to conform to the 5% tax rate, effective July 1, 2005.

Rule 063: Amend Rule 063 to conform to the statute.

Rule 068: Amend Rule 068 to correct the effective dates for the 5% and 6% rates and strike Subsection 068.07.

Rule 073: Amend Rule 073 to change references to the 6% rate to 5%.

Rule 107: Amend Rule 107 to correct the rule so it refers to a 5% tax rate.

Rule 109: Amend Rule 109 to add a statement that, as of July 1, 2005, the fee is \$35.

Rule 126: Amend Rule 126 to strike Subsections 126.03 and 126.04.

Rule 128: Amend Rule 128 to conform to Section 63-3622RR, Idaho Code.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0501

041. FOOD, MEALS, OR DRINKS (RULE 041).

01. In General. This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations. (7-1-93)

02. Commercial Establishments. Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

03. Clubs and Organizations. Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

a. When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example:

Dinner, dancing, etc.	\$ 8.00
Tax	.48 <u>.40</u>
Registration, speakers, etc.	\$ 6.60
Total Ticket	\$15.08 <u>15.00</u>

Meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (~~3-20-04~~)()

b. The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

c. When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

04. Colleges, Universities, and Schools. A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

a. If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

b. Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

05. Fraternities, Sororities, and Cooperative Living Group. Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

a. If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

b. If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

c. Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (~~7-1-93~~)()

06. Boarding Houses. Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

07. Honor System Snack Sales. Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

a. Sales tax applies to the gross receipts. The posted price must include a statement that sales tax is included. (7-1-93)

b. The formula for computing the taxable amount ~~effective May 1, 2003~~, is: (Gross Receipts) / (one hundred ~~six~~ five percent (10~~6~~5%) = Taxable Sales. (Taxable Sales) x (~~six~~ five percent (65%) = Tax Due. (~~3-20-04~~)()

08. Church Organizations. Special rules apply to religious organizations. See Rule 086 of these rules. (~~3-15-02~~)()

09. Senior Citizens. Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)

10. Nontaxable Purchases by Establishments Selling Meals or Beverages. Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

a. Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

b. Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

11. Taxable Purchases by Establishments Selling Meals or Beverages. Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)

c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

058. SALES THROUGH VENDING MACHINES (RULE 058).

01. In General. The sale of tangible personal property through a vending machine is a taxable transaction. The term vending machine shall mean any mechanical device which, without the assistance of a human cashier, dispenses tangible personal property to a purchaser who deposits cash in the device. Video games and other coin operated amusement devices are not vending machines. Fees paid for the use of coin operated amusement devices are not subject to sales tax pursuant to Section 63-3623B, Idaho Code. See Rule 109 of these rules. (5-3-03)

02. Amount Subject to Tax. Pursuant to Section 63-3613, Idaho Code, sales of items through a vending machine for amounts from twelve cents (\$0.12) through one dollar (\$1) are taxable at one hundred seventeen percent (117%) of the vendor's acquisition cost of the items. Items sold for more than one dollar (\$1) are taxable on the retail sales price. Sales of items for a price of eleven cents (\$0.11) or less are exempt from tax pursuant to Section 63-3622L, Idaho Code. (5-3-03)

03. Requirement to Obtain a Seller's Permit. Vendors who sell tangible personal property through a vending machine must obtain a seller's permit. Only one seller's permit is required; however, each vending machine operated by the vendor must conspicuously display the vendor's name, address, and seller's permit number. When a number of vending machines are placed in a single location, the owner's name, address, and seller's permit number need be displayed only once. (5-3-03)

04. Calculation of Tax. The following examples show how vending machine operators shall calculate the amount of sales tax due: (5-3-03)

a. Example 1: Corporation A's business activity consists only of sales through vending machines in various locations in the state of Idaho. All of the items sold in the vending machines are sold for a unit price of twelve cents (\$0.12) or more but none are sold for a price greater than one dollar (\$1). During the month of July, Corporation A's gross receipts from the vending machine sales were ten thousand dollars (\$10,000). Corporation A purchased the items sold during that one (1) month period for eight thousand dollars (\$8,000). The company made no nontaxable or exempt sales. Corporation A should file a sales and use tax return for the month of July, computing and reporting its taxable sales as follows. Numbers correspond to line numbers on the return.

Line 1.	Total sales	\$ 9,360
Line 2.	Less nontaxable sales	\$ 0
Line 3.	Net taxable sales	\$ 9,360
Line 1 computed as follows:		
	8,000 x 117% =	\$ 9,360

(3-20-04)

b. Example 2: During the month of July, Corporation B had total Idaho sales in the amount of ten thousand dollars (\$10,000). In addition to sales through vending machines, the corporation made over-the-counter sales, all of which were taxable, in the amount of two thousand dollars (\$2,000). The remaining eight thousand dollars (\$8,000) constituted sales through vending machines, of which one thousand dollars (\$1,000) was for items with a unit retail price of over one dollar (\$1). The other seven thousand dollars (\$7,000) were sales of items through vending machines with a unit retail price of fifty cents (\$0.50) each. The items sold during the month for fifty cents (\$0.50) each were purchased by Corporation B for five thousand dollars (\$5,000). Corporation B should file a sales and use tax return for the month, computing and reporting its taxable sales as follows:

Line 1.	Total sales	\$ 8,793.40
Line 2.	Less nontaxable sales	\$ 0
Line 3.	Net taxable sales	\$ 8,793.40
Line 1 computed as follows:		
	2,000 + (1,000 ÷ 1.065) + (5,000 x 117%) =	\$ 8,793.40

Note, that if a vendor sells some items for more than one dollar (\$1) the sales tax is included in the total receipts. This amount must be divided by one (1) plus the current tax rate expressed as a decimal, to determine the receipts before sales tax. If the tax rate is ~~six~~ five percent (65%) the divisor is one and ~~six~~ five one-hundredths (1.065).

(3-20-04)()

- 05. Cross-References.** (7-1-93)
- a. Amusement devices, see Rule 109 of these rules. (5-3-03)
 - b. Money operated dispensing equipment, see Rule 095 of these rules. (5-3-03)
 - c. Sales of newspapers through vending machines, see Rule 033 of these rules. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

063. BAD DEBTS AND REPOSSESSIONS (RULE 063).

01. In General. Sales tax must be collected on an accrual basis. The tax is owed to the state at the time of sale, regardless of when the payment is made by the customer. (7-1-93)

02. Rules for Unsecured Credit Sales. The following rules apply to unsecured credit sales: (7-1-93)

a. When a seller cannot collect accounts receivable arising from an unsecured credit sale of tangible personal property subject to sales tax, he may make an adjustment on his sales tax return or apply for a refund of taxes

according to this rule. (7-1-93)

b. The adjustment or refund may be claimed on the sales tax return for the month in which the bad debt adjustment is made on the books and records of the taxpayer. The tax for which the credit or refund is sought must be included in the amount which is financed and which is charged off as a bad debt for income tax purposes. (6-23-94)

c. A written claim for the refund may also be filed with the State Tax Commission within three (3) years from the time the tax was paid to the State Tax Commission. The State Tax Commission will review all such refund claims. See Rule 117 of these rules, Refund Claims. (3-20-04)

03. Rules for Secured Credit Sales. The following rules apply to secured credit sales: (7-1-93)

a. If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit sale. (7-1-93)

b. If the collateral is repossessed and not seasonably resold at a public or private sale, its retention is considered to satisfy the debt and no bad debt adjustment is allowed. (7-1-93)

c. If the collateral is repossessed and seasonably resold at public or private sale, then the seller is entitled to a bad debt adjustment. However, before calculating the amount of tax that may be credited or refunded, the taxpayer must reduce the amount claimed as worthless by the amount realized from the sale of the collateral. (3-30-01)

d. If merchandise is repossessed and is subsequently resold at retail, sales tax is computed on the sales price and collected and remitted the same as on other retail sales. (7-1-93)

04. Application to Taxpayers. The following rules apply to taxpayers who remit sales tax on an accrual basis but report income tax on a cash basis or are not required to file income tax returns. (7-1-93)

a. Retailers are required to remit sales tax on an accrual basis, even though their accounting records and income tax returns may be prepared on the cash basis of accounting. (7-1-93)

b. For taxpayers who keep their records and file income tax returns on a cash basis, a worthless account cannot be written off as a bad debt because it has not been recognized as income in the taxpayer's books. These retailers may still claim a bad debt for sales tax purposes. The claim should be made at the same time and in the same way discussed in Subsections 063.02 and 063.03 of this rule, even though the bad debt does not appear on the retailer's income tax return. (7-1-93)

c. For taxpayers who are not required to file income tax returns, the claim should be made the same way discussed in Subsections 063.02 and 063.03 of this rule. (6-23-94)

d. As these claims cannot be verified against the income tax returns of these taxpayers, sufficient evidence must be attached to the sales tax return to prove that the account has become worthless, that the tax was remitted by the retailer, and that the retailer did not receive payment of the tax from the buyer. (7-1-93)

05. Amount of Credit Allowed. The amount of credit that can be claimed is the amount of sales tax that is uncollectible. If both nontaxable and taxable items are financed, credit may be taken only for that portion of the bad debt which represents unpaid sales tax. (7-1-93)

a. Example: A retailer sells a thirty thousand dollar (\$30,000) forklift for thirty-one thousand ~~eight~~ five hundred dollars (\$31,~~8~~500) including sales tax. The purchaser pays a five thousand dollar (\$5,000) down payment and finances the balance. The purchaser later defaults and the retailer repossesses the forklift and sells it at a public auction for six thousand dollars (\$6,000). At the time of repossession the purchaser owes seventeen thousand ~~five~~ two hundred forty-five dollars (\$17,~~5~~245) including the financed sales tax. After the sale the amount that the retailer writes off is eleven thousand ~~five~~ two hundred forty-five dollars (\$11,~~5~~245). The sales tax bad debt write off is ~~six~~ five hundred ~~fifty-three~~ thirty-five dollars (\$~~653~~ 535).

Total taxable sale	\$30,000
6 5% sales tax	\$1, 8 500
Total sale	\$31, 8 500
Down payment	(\$5,000)
Total financed	\$26, 8 500
Payment to principal after sale	(\$9,255)
Amount realized at public sale	(\$6,000)
Total bad debt	\$11, 5 245
Sales tax portion of bad debt	
\$11,545 - (11,545 / 1.06)	\$ 653
\$11,245 - (11,245 / 1.05) =	\$ 535

(3-20-04)()

b. Example: A car dealer makes a taxable sale of an automobile for fourteen thousand nine hundred dollars (\$14,900) along with an extended warranty for five hundred dollars (\$500), a documentation fee of one hundred dollars (\$100), a title fee of eight dollars (\$8) and credit insurance for one hundred dollars (\$100). The customer pays one thousand dollars (\$1,000) cash and trades in a car worth ten thousand dollars (\$10,000) which is pledged as security for an earlier outstanding loan of six thousand dollars (\$6,000). The customer, therefore, has to borrow enough to pay off the old loan on the trade-in. The customer defaults on the new ten thousand ~~nine~~ eight hundred ~~eight~~ fifty dollar (\$10,~~908~~850) loan after paying five hundred dollars (\$500) towards the principal. The customer damages the automobile in an accident leaving the collateral worthless. The car dealer may take an adjustment for only that portion of the bad debt representing the taxable percentage of the total sales price of the car. Only five thousand dollars (\$5,000) of the total fifteen thousand ~~nine~~ eight hundred ~~eight~~ fifty dollar (\$15,~~908~~850) cost was taxable.

Sales price of vehicle	\$14,900
Documentation fee	\$100
Extended warranty	\$500
Credit insurance	\$100
Title fee	\$8
Trade-in	(\$10,000)
Sales tax	\$300 <u>250</u>
Subtotal	\$5,908 <u>5,858</u>
Down payment	(\$1,000)
Invoice total	\$4,908 <u>4,858</u>
Amount financed	\$10,908 <u>10,850</u>
Payment to principal after sale	(\$500)
Amount of bad debt	\$10,408 <u>10,350</u>

Amount of down payment used to pay sales tax	(300 / 5,908) 5.08%
	(\$250 / \$5,858) = 4.27%
	.0508 x \$1,000 = \$50.80
	<u>.0427 x \$1,000 = \$42.70</u>
Amount of sales tax financed	\$300 - \$50.80 = \$249.20
	<u>\$250 - \$42.70 = \$207.30</u>
Percentage of loan representing sales tax	\$249.20 / \$10,908 = 2.28%
	<u>\$207.30 / \$10,850 = 1.91%</u>
Sales tax paid by payments to principal	\$500 x .0228 = \$11.40
	<u>\$500 x .0191 = \$9.55</u>
Amount of bad debt write-off	\$249.20 - \$11.40 = \$237.80
	<u>\$207.30 - \$9.55 = \$197.75</u>

(3-20-04)()

06. Bad Debt Collected at a Later Date. If a bad debt account is collected later, the retailer must pay tax on the amount collected. (7-1-93)

07. To Claim Credit for a Bad Debt. Credit for bad debts for sales tax purposes may be claimed by the retailer that made the original sale and paid the sales tax to the state. Financial institutions or other third parties who are the assignees of the retailer may claim a bad debt for sales tax on property for which they provided financing, if the amount financed includes the sales tax remitted on the sale of the property. The person claiming the credit must be the person who ultimately bears the loss if the purchaser of the property defaults on the obligation to repay. (3-30-01)

08. Cross-Reference. Rescinded Sale. See Rule 045 of these rules. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

068. COLLECTION OF TAX (RULE 068).

01. In General. Idaho Sales Tax is an excise tax which is imposed upon each sale at retail. The tax is computed at the time of each sale and the tax on the total sales for the reporting period, usually monthly, will be reported and paid on or before the due date as established by ~~ISTC~~ Rule 105 of these rules. (7-1-93)()

02. Sales Tax to be Collected by Retailer. Sales tax shall be collected by the retailer from the customer. The tax will be computed on and collected for all credit, installment, conditional or similar sales when made or, in the case of rentals, when the rental is charged. (7-1-93)

03. Computation of Tax. The retailer will compute the tax upon the total sale to a purchaser at a given time and not upon each individual item purchased. (7-1-93)

04. Bracket System for Five Percent Tax Rate. The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale ~~through April 30, 2003~~ beginning July 1, 2005. (3-20-04)()

a. Multiply five cents (\$0.05) for every whole dollar included in the sale, and (7-1-93)

- b. Add for each additional fractional dollar amount of sale the corresponding tax below:

Dollar Amount of Sale	Tax
0.00 - 0.05	.00
0.06 - 0.25	.01
0.26 - 0.45	.02
0.46 - 0.65	.03
0.66 - 0.85	.04
0.86 - 0.99	.05

However, sales to a total amount of eleven cents (\$0.11) or less are exempt from tax. (7-1-93)

05. Bracket System for Six Percent Tax Rate. Beginning May 1, 2003, and ending June 30, 2005, the sales tax rate is six percent (6%). The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale. ~~(3-20-04)(_____)~~

- a. Multiply six cents (\$0.06) for every whole dollar included in the sale, and (3-20-04)
- b. Add for each additional fractional dollar amount of sale the corresponding tax below:

Dollar Amount of Sale	Tax
0.00 - 0.03	.00
0.04 - 0.20	.01
0.21 - 0.37	.02
0.38 - 0.53	.03
0.54 - 0.70	.04
0.71 - 0.87	.05
0.88 - 0.99	.06

However, sales to a total amount of eleven cents (\$0.11) or less are exempt from tax. (3-20-04)

06. Tax to be Separately Displayed. The amount of tax collected by the retailer must be displayed separately from the list price, marked price, the price advertised in the premises or other price on the sales slip or other proof of sale. The retailer may retain any amount collected under the bracket system which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting that tax. (7-1-93)

~~**07. Unit Sales at Single Price.** When transactions involve unit sales at a single price, such as admission tickets, the requirement to calculate and itemize the sales tax can be met by showing the total cost separately in a statement of the price on the ticket. (7-1-93)~~

~~a. Example 1: The ticket price for admission to a high school basketball game is two dollars (\$2). The separate statement of tax may be shown as:~~

Admission	\$1.88
Tax (6%)	\$.12

Total	\$2.00
-------	--------

~~Twelve cents (\$0.12) must be set aside and held as state money arising from tax on the admission. (3-20-04)~~

~~**b.** Example 2: The ticket price to a movie theater is four dollars (\$4.). The separate statement of tax may be shown as:-~~

Admission	\$3.76
Tax (6%)	\$.24
Total	\$4.00

~~Twenty four cents (\$0.24) must be set aside and held as state money arising from tax on the admission. (3-20-04)~~

087. Reimbursement of Tax From the Purchaser to the Seller. If the seller does not collect the sales tax at the time of the sale and it is later determined that sales tax should have been collected, the seller can then collect the sales tax from the purchaser if the delinquent tax has been paid by the seller. The legal incidence of the tax is intended to fall upon the buyer, Section 63-3619, Idaho Code. (7-1-93)

a. Example: The Commission determines that certain nontaxed sales by a seller are subject to sales tax and that the seller did not collect the tax and did not have documentation supporting exemption from the sales tax. The Commission issued a Notice of Deficiency Determination to the seller imposing the tax and interest. The assessment then paid by the seller entitles the seller to reimbursement from the buyer. (7-1-93)

b. The seller is also entitled to collect reimbursement from the buyer of the interest paid on the taxes assessed. (7-1-93)

c. The seller is not entitled to reimbursement from the buyer for penalties imposed as part of the assessment against the seller. (7-1-93)

d. The receivable established by the seller seeking reimbursement from the purchaser is not subject to expiration of the statute of limitations provided in Section 63-3633, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO (RULE 073).

01. Equipment Brought Into Idaho. Equipment or other tangible personal property brought or shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03, ~~below~~ of this rule. For property a contractor fabricates to install into Idaho real property, see Rule 012 of these rules. ~~(3-20-04)(_____)~~

02. Substantive Use. Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and Rule 072 of these rules. The use tax does not apply to the use of items purchased before July 1, 1965, or the use of items excluded from tax by Idaho Code. (3-20-04)

03. Transient Equipment. Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due. (7-1-93)

a. A nonresident business that brings transient equipment to Idaho may elect to pay use tax on either

the fair market value of the equipment at the time it enters Idaho, or the fair market rental value of transient equipment for the time it is kept in Idaho. Fair market rental value is the amount it would cost to rent or lease similar equipment from an unrelated equipment rental company. (3-20-04)

b. Businesses that elect to pay use tax on the rental value of transient equipment may do so without the approval of the Tax Commission as long as the use tax due on the first month's rental is paid in a timely manner. If the owner fails to pay the tax timely, he must get written approval from the Tax Commission to use this option. (7-1-93)

c. Equipment which remains in Idaho for more than ninety (90) days in any consecutive twelve (12) months is no longer transient. This equipment becomes subject to Idaho use tax on its fair market value at that time. No credit may be taken for use tax paid on fair market rentals against the use tax due at the time equipment ceases to qualify as transient. (7-1-93)

d. Example: A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars (\$100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars (\$15,000). Idaho use tax on the fair market rental value, at the rate of ~~six~~ five percent (~~65~~%), totals ~~nine~~ seven hundred fifty dollars (~~\$900750~~). The contractor paid three thousand five hundred dollars (\$3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due. (~~3-20-04~~)(_____)

e. Example: The same contractor takes a second job in Idaho within the same twelve (12) months and brings the same equipment, now with a fair market value of ninety-five thousand dollars (\$95,000), to Idaho for the job. As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's ~~six~~ five percent (~~65~~%) use tax on its fair market value of ninety-five thousand dollars (\$95,000) x ~~six~~ five percent (~~65~~%) = ~~five~~ four thousand seven hundred fifty dollars (~~\$5,700 4,750~~). Credit of two thousand ~~six~~ seven hundred fifty dollars (~~\$2,600750~~) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars (\$3,500) less the ~~nine~~ seven hundred fifty dollar (~~\$900750~~) credit already used on rentals. The contractor owes ~~three~~ two thousand ~~one~~ hundred dollars (~~\$3,100 2,000~~) of use tax to Idaho. (~~3-20-04~~)(_____)

04. **Licensed Motor Vehicles.** A motor vehicle licensed in a nonresident's home state and brought to Idaho to use for ninety (90) days or less in any consecutive twelve (12) months is not subject to Idaho use tax. Once the vehicle is used here more than ninety (90) days during any consecutive twelve (12) months, use tax applies to the fair market value of the vehicle at that time unless tax was paid to another state in an amount equal to, or greater than, the tax owed to Idaho. Special rules apply to new residents of Idaho. See Rule 107 of these rules. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

107. VEHICLES AND VESSELS - GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).

01. **In General.** This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

02. **Gifts of Motor Vehicles.** When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

b. The recipient assumes no indebtedness. (7-1-93)

- c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)
- d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)
- i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)
- ii. The back of the title may be marked as a gift and signed by the donor. (2-18-02)
- 03. Nonresidents.** A nonresident does not owe use tax on the use of a motor vehicle which is registered or licensed under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection, a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. (2-18-02)
- 04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects and privately owned motor vehicles, if he acquired them while he resided in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (2-18-02)
- a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)
- b. Exclusion from the tax applies only to motor vehicles owned by an individual. A privately owned motor vehicle is one which is owned by, and titled to, a private individual or individuals. (3-6-00)
- 05. Military Personnel.** Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)
- 06. Tax Paid to Another State.** When sales tax has been properly imposed by another state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. (7-1-93)
- a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)
- b. Example: A Wyoming resident buys a vehicle there for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his Wyoming title to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to Wyoming was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the ~~six~~ five hundred dollars (\$500) tax due Idaho. The assessor will collect ~~three~~ two hundred dollars (\$200) tax. (~~3-20-04~~)()
- c. Example: A vehicle was purchased by a Colorado resident two (2) months before moving to Idaho.

The applicant paid three percent (3%) Colorado state sales tax, one and six tenths of one percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total Colorado general sales tax paid was six and two tenths percent (6.2%). Since the Idaho tax rate is ~~five~~ five percent (5%), no tax is due Idaho because the amount of tax paid to Colorado exceeds the amount owed Idaho. ~~(3-20-04)~~()

d. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

e. Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

f. Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

07. Sales to Family Members. The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollars (\$10,000) purchase price of the vehicle. ~~(7-1-93)~~()

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

09. Bulk Sale Transfers. A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho. (5-3-03)

a. Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under eight hundred fifty (850) pounds, forty-eight (48) inches or less in width, having a wheel base of sixty-one (61) inches or less, and traveling on low pressure tires of less than ten (10) psi. (3-20-04)

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

11. Motor Vehicles and Trailers Used in Interstate Commerce. The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

12. Related Party Transfers and Sales. Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

(BREAK IN CONTINUITY OF SECTIONS)

109. AMUSEMENT DEVICES (RULE 109).

01. Currency Operated Amusement Devices. "Amusement device" means all currency or token operated machines and devices used for amusement or entertainment. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or noncurrency operated machines or games described in Subsection 109.03 of this rule. (6-30-95)

02. Requirement to Obtain Permit. The owner or operator of amusement devices is required to obtain a seller's permit if he is making retail sales other than the use of currency or token operated amusement devices. If the owner or operator is not making such other retail sales, he need not obtain a seller's permit, but must obtain an amusement device permit for each device in service. (6-30-95)

a. From July 1, 1995 to June 30, 2004, owners or operators of amusement devices were required to pay a fee of thirty-five dollars (\$35) per machine in service or use. The fee for permits purchased for the year

beginning July 1, 2004, is forty-two dollars (\$42). Beginning July 1, 2005, the fee for permits will be thirty-five dollars (\$35). The fee will change by an amount proportional to any change in the sales tax rate. The formula to apply to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For a ~~six~~ five percent (~~65~~) tax rate the amount is therefore seven hundred dollars (\$700) x five percent (~~65~~) = ~~forty-two~~ thirty-five dollars (\$~~42~~35).
(3-16-04)()

b. Upon receiving the appropriate payment, the Tax Commission will issue to the owner or operator of one or more amusement devices, a permit for each such device in service. A separate permit on each device in service is required. The permit shall be affixed near the currency slot of the machine in such a manner that it is easily visible. Permits are transferable from one person to another after written notice of the transfer is received and acknowledged by the Tax Commission. Permits may be transferred from a machine that is no longer in service to another machine owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit. (3-16-04)

c. Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. (6-30-95)

d. Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require the appropriate fee for a full-year permit. (3-16-04)

03. Noncoin Operated Amusement Machines or Games. Charges for the use of amusement machines or games which are not currency or token operated are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of noncurrency or nontoken operated amusement machines or games is required to obtain a seller's permit if he is charging for the use of such machines. (6-30-95)

04. Cross-Reference. See Rule 095 of these rules regarding purchases of Money-Operated Dispensing Equipment. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

126. SALES TAX COLLECTED BY THE STATE LIQUOR DISPENSARY (RULE 126).

01. Liquor Subject to Sales Tax. All sales of liquor which includes alcohol, spirits, beer, and wine as defined in Sections 23-105(g), 23-1303(a), and 23-1001(a), Idaho Code, unless specifically exempt, are subject to the tax measured by the sales price. (7-1-93)

02. Sales for Resale. In the case of sales to persons licensed under the provisions of Title 23, Chapter 9, Idaho Code, only those purchases for resale by an establishment licensed to sell liquor will be exempt from the tax. If the licensee purchases liquor for any purpose other than for resale, the licensee is subject to the use tax. (7-1-93)

03. ~~Posting Amount of Tax.~~ ~~The liquor dispensaries shall cause to be posted, in addition to the current price, the amount of the tax and the total cost including the tax. For example:~~

Brand X Whiskey	\$7.00
Idaho Sales Tax	.42
Total Price	\$7.42

(3-20-04)

04. Identifying Code. ~~If codes are used to identify the brands and/or prices of liquor, the price might be~~

posted as follows:

Code 64	\$7.00
Idaho Sales Tax	.42
Total Price	\$7.42

(3-20-04)

053. Reporting. The superintendent of the State Liquor Dispensary shall forward monthly to the Tax Commission a report of all sales tax collected for the preceding month. All sales tax collected by the superintendent of the State Liquor Dispensary and by contract private liquor stores, when the product is supplied by the State Liquor Dispensary, shall be credited directly to the liquor account, and shall not become a part of the sales tax account.

(7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).

01. In General. This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. Burden of Proof. All sales made within Idaho are presumed to be subject to sales tax unless an exemption is established. The burden of proving that a sale is not subject to tax is upon the seller. The seller may overcome the presumption by obtaining a written statement from the purchaser on a form approved by the State Tax Commission. When a valid certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-6-00)

03. Qualified Buyers for Purposes Other Than Resale. Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622NN, Idaho Code, completing, and providing the required form to the seller. (3-6-00)

04. Qualified Buyers for Purposes of Resale. The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

a. A retailer or wholesaler doing business in Idaho who holds an Idaho seller's permit number. An Idaho seller's permit number has nine (9) digits followed by an "S". Example: 000123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid. (3-6-00)

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

05. Description and Proper Execution of Approved Forms. In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. They must comply with any additional requirements provided in this rule or on the form in question. (3-6-00)

a. To claim a resale exemption on or after July 1, 2000, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax

Certificate - Multi-jurisdiction. Form ST-103, Certificate of Purchase for Resale, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000 and complies with that form's instructions. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for and the nature of the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include a seller's permit number. (3-6-00)

b. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a travelling government employee nor for any other reasons enumerated on the form. (3-6-00)

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or local government agency employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-6-00)

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

f. Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-6-00)

h. Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

i. Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

j. Sales Tax Resale and Exemption Certificate, Form ST-101, is required on or after July 1, 2000 for tax-free purchases claimed under the production exemption. Form ST-104, Sales Tax Exemption Certificate, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000, and complies with that form's instructions. In lieu of Forms ST-101 or ST-104, retailers may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the

following language: (3-6-00)

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating or farming or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

NATURE OF BUSINESS

BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 or ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection. (3-6-00)

06. Seller's Responsibility -- Purchases for Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, or a Form ST-103, Certificate of Purchase for Resale, properly executed prior to July 1, 2000, if the customer intends to resell the items in the regular course of business. The general character of the goods purchased for resale must be those displayed on the certificate given to the retailer. (3-6-00)

a. Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. (3-6-00)

07. Seller's Responsibility - Purchases Claimed Exempt From Sales Tax for Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received, or a Form ST-104, Sales Tax Exemption Certificate properly executed prior to July 1, 2000, if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-6-00)

a. A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- i. Hand tools with a unit price not in excess of one hundred dollars (\$100); (3-6-00)
- ii. Maintenance and janitorial equipment and supplies; (3-6-00)
- iii. Office equipment and supplies; (3-6-00)
- iv. Selling and distribution equipment and supplies; (3-6-00)
- v. ~~Property used in research and development;~~ (~~3-6-00~~)

- vi. Property used in transportation activities; (3-6-00)
- vii. Equipment or other property used to make repairs; (3-6-00)
- viii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- ~~ix~~viii. Licensed motor vehicles; (3-6-00)
- ix. Aircraft; and (3-6-00)
- x. Recreational vehicles. (3-6-00)

b. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars (\$100) or less ~~are~~ is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (~~3-6-00~~)()

c. Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)

d. A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

e. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

08. Timely Acceptance of Certificates. A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

a. Certificates obtained by a seller at a time subsequent to but not within a reasonable time after the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established, by clear and convincing evidence, that a sales tax transaction is exempt from tax. For the purposes of this rule, evidence is clear and convincing when it shows that the truth of the facts asserted is highly probable. Evidence which indicates that it is more likely than not the fact is true is not sufficient to establish clear and convincing evidence. (3-6-00)

b. Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is clear and convincing evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer is in a business which sells the type of goods purchased from the retailer. Even if it is more likely than not that the customer intended to resell the goods, the retailer has not established, solely by the existence of the seller's

permit number, that it is highly probable that the goods were for resale. The retailer is liable for the tax on the sale.

(3-6-00)

c. Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish clear and convincing evidence that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. Although it is more likely than not that the customer is a farmer, the retailer has not provided clear and convincing evidence that the hay was purchased for use in a farming operation. The retailer is liable for the tax on the sale.

(3-6-00)

d. When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination.

(3-6-00)

IDAPA 35 – STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0502

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 037: Amend Rule 037 to conform to federal law.

Rule 047: Amend Rule 047 to state that sales of rafting trips aren't taxable if they occur on navigable waters. To add a statement that judicial determinations could change this ruling. And to change the reference to the 5% rate to conform to statute.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are being made to conform to state and federal statutory changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0502

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

01. **Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)

~~a. Certified Air Carrier. Any person who directly or indirectly or by a lease or any other arrangement, offers air transportation and is authorized by the FAA to operate as an air carrier under an air carrier operating certificate. (7-1-94)~~

~~b. Regular Scheduled Flight. A flight which is operated regularly between two (2) points and is listed in a published schedule which is readily available to the public. (7-1-94)~~

~~c. On Demand Flight. The hiring on demand of an aircraft with a pilot to transport freight or passengers on an unscheduled flight. (7-1-94)~~

~~d. Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, photography, wildlife viewing, hot air balloon rides, or other similar activities. (7-1-94)()~~

~~e. Intrastate Flight. A flight where the origin and destination points are within Idaho. (7-1-94)~~

~~f. Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (7-1-94)()~~

~~g. Transportation of Passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. ()~~

~~h. Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)~~

~~i. Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-20-04)~~

~~j. Day. For the purpose of this rule any part of a day is a day. (7-1-94)~~

~~02. Sales Subject to Tax. Sales or use tax applies to the total sales price of: (7-1-94)~~

~~a. An aircraft sold at retail, except as provided by Subsection 037.03 of this rule; (2-18-02)~~

~~b. The receipts from intrastate on demand flights, except as part of a regularly scheduled flight by a certified air carrier, under the authority of the FAA; (2-18-02)~~

~~c. The receipts from transporting passengers for a recreational flight; or (2-18-02)~~

~~d. The sale of parts or other tangible personal property used to repair or maintain an aircraft not held for resale, except as provided by Subsection 037.05.e. of this rule. (2-18-02)~~

~~03. Sales of Aircraft Not Subject to Tax. Sales of aircraft are taxable unless an exemption applies. Sales or use tax does not apply to Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft; (7-1-94)()~~

~~a. Primarily used to transport passengers or freight for hire; (2-18-02)~~

- b. Primarily used for emergency transportation of sick or injured persons; or (2-18-02)
- c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)
- i. The aircraft is sold to a nonresident as defined in Subsection 037.01.g~~c~~. or 037.01.h~~d~~. of this rule; and ~~(3-20-04)~~()
- ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

03. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. ()

04. Rentals and Leases of Aircraft. The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.03~~2~~ of this rule. See Rule 024 of these rules. ~~(2-18-02)~~()

~~**05. On-Demand Flying Services.** The charge for intrastate on demand flying of passengers or freight is subject to sales tax. The sales tax applies to the total amount charged for the intrastate charter flight, including standby time for a pilot, crew, or other separately stated charges. (7-1-94)~~

~~**a.** Example: A customer hires a flight on demand from Boise to Coeur d'Alene, Idaho. During the flight the pilot stops briefly in Spokane, Washington, at the passenger's request. In this example the flight is an intrastate on demand flight of passengers for hire and is subject to sales tax. The measure of the sales tax is the total amount charged for the on demand flight. (7-1-94)~~

~~**b.** Example: A customer hires a flight on demand from Boise, Idaho, to Spokane, Washington. During the flight the pilot stops briefly in Coeur d'Alene, Idaho, at the passenger's request. In this example the flight is an interstate on demand flight, even though the aircraft landed briefly in Idaho. Sales tax will not apply to the flight because it is an interstate flight. (7-1-94)~~

~~**c.** Example: A company hires a flight on demand from Boise, Idaho, which is to transport one (1) passenger to Pocatello, Idaho, and the remaining passengers to Salt Lake City, Utah. The amount charged to transport the passenger to Pocatello is subject to sales tax as an intrastate on demand flight. The charge for flying the remaining passengers to Salt Lake City is not subject to sales tax, as it is an interstate flight. (7-1-93)~~

~~**d.** Example: A company hires a flight on demand from Boise to Pocatello, Idaho, and requests that the plane then fly the passenger to Salt Lake City, Utah, later in the day. Two (2) on demand flights have occurred. The first is an intrastate flight from Boise to Pocatello, subject to sales tax. The second flight is interstate, Pocatello to Salt Lake City, and not subject to sales tax. (7-1-93)~~

~~**e.** Aircraft which are purchased, rented, leased, or withdrawn from resale inventory to be used primarily for on demand flights are not subject to sales or use tax. Sales or use tax does not apply to the sale or use of repair and replacement materials and parts which will become component parts of such aircraft. Sales or use tax does apply to the sale or use of tools and equipment utilized in performing the repair or maintenance. (2-18-02)~~

065. Aerial Contracting Services. Sales tax does not apply to the amount charged by the owner or operator of an aircraft to perform aerial contracting services such as aerial logging, applying agricultural products or other products by aerial spraying or dumping, or other similar activities not involving the transportation of freight or passengers. However, if the service involves the hauling of freight or passengers who are not employees of the flying service, the flight is deemed an on demand flight. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (7-1-94)()

- a. Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no

difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (7-1-94)

b. When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)(____)

~~076.~~ **Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

~~087.~~ **Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

~~098.~~ **Recreational Flights.** ~~Fees charged for recreational flights are taxable as provided by Subsection 037.02.c. of this rule. Sales and purchase of~~ Aircraft ~~purchased, rented, or leased~~ used primarily for providing recreational flights are subject to sales or use tax. (7-1-94)(____)

~~109.~~ **Aircraft Held for Resale.** Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

a. Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

b. When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

c. Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

~~110.~~ **Fuel.** The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

~~12.~~ **Records Required.** ~~The owner or operator of an on-demand flying service must give his customer a receipt and keep a copy for his records, showing the customer's name and address, date of flight, its purpose, and its origin and destination. If the flight or transaction is subject to sales tax, the tax must be separately stated on the receipt.~~ (7-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

047. OUTFITTERS, GUIDES, AND LIKE OPERATIONS (RULE 047).

01. In General. Fees charged for services performed by outfitters, guides, dude ranches, hunting and fishing lodges, or camps are charges for the use of, or privilege of using, tangible personal property or other facilities for recreation. Fees charged by outfitters and like operations for providing outdoor recreational services are subject to sales tax. (7-1-93)

a. An outfitter is any person who holds himself out to the public for hire to conduct outdoor recreational activities, including: hunting animals or birds; float or power boating of rivers, lakes, and streams; fishing; hiking; skiing; hazardous desert or mountain excursions; and other recreational activities. (7-1-93)

b. A guide is a person employed by an outfitter to furnish personal services for the conduct of outdoor recreational activities. (7-1-93)

02. Services Performed in More Than One State. When an outfitter's service to a client takes place in more than one (1) state, and the customer receives an invoice from the outfitter that separately displays the Idaho portion of the charges from those of the other states, only the Idaho portion is subject to Idaho sales tax. (7-1-93)

a. When an outfitter's service to a client takes place in more than one (1) state and the outfitter fails to separately state the Idaho portion of the charges from those of other states, sales tax must be charged on the total amount. (7-1-93)

~~**b.** If the service takes place on a river which divides Idaho from another state, tax must be charged on fifty percent (50%) of the fee attributed to that portion of the trip. (7-1-93)~~

~~**e.** Example: A one hundred (100) mile float trip consists of fifty (50) miles on Idaho rivers, twenty (20) miles on another state's river, and thirty (30) miles on a river which divides Idaho from another state. If the outfitter's invoice to his client separately states the Idaho portion of the charge from the out-of-state charges, only the Idaho fees will be subject to Idaho sales tax. The invoice should show the following:~~

FLOAT TRIP	FEE	IDAHO SALES TAX
50 miles Idaho river	\$500	\$ 30.00 (on 100%)
20 miles out-of-state	\$200	\$ 0.00 (none)
30 miles border river	\$300	\$ 9.00 (on 50%)

~~(3-20-04)~~

~~**03. Charter Aircraft.** When an outfitter hires a charter aircraft to transport his customer within Idaho, the outfitter must charge the customer tax on the fee for the charter service. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)~~

043. Government Use Fee. Land and water use fees imposed on outfitters, such as the three percent (3%) fee paid to the U.S. Forest Service, are not subject to the sales tax when separately stated on the customer's invoice. (6-23-94)

054. Prepaid Travel Expense. When an outfitter's invoice separately states prepaid travel expenses such as lodging, and the outfitter has paid sales tax, when applicable, to vendors providing the travel services, the outfitter will not be required to tax that portion of his bill to the customer. Example: An outfitter's bill to a client for a seven (7) day hunt and prepaid travel expenses should read:

SEVEN-DAY HUNT	FEE	IDAHO SALES TAX
Airline Ticket (New York/Boise)	\$ 500	\$ 0.00 (none)
1 Night Lodging, Motel X Boise (Outfitter has paid tax to Motel X)	\$ 50	\$ 0.00 (none)
7 Day Hunt	\$1,500	\$ 90 75.00 (on 100%)

~~(3-20-04)()~~

065. Lodging. If an outfitter provides overnight lodging for a client at a facility operated by the outfitter,

charges for the lodging are subject to sales tax and hotel/motel taxes as provided by Idaho Hotel/Motel Room Sales Tax Rule IDAPA 35.01.06.011. (6-23-94)

076. Equipment Rental. When an outfitter rents equipment such as ground sheets, sleeping bags, rain gear, boots and dry bags, to his client for use during the recreational activity, sales tax must be charged on the equipment rental. (7-1-93)

087. Game Processing, Packing, and Taxidermy. When an outfitter bills a client for game processing, packing, or taxidermy services, sales tax must be charged on the entire fee to the client. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)

098. Preurchased Hunting and Fishing Licenses. When an outfitter purchases a hunting or fishing license for a client and separately states the fee on the billing to the client, no sales tax applies to the license fee. (7-1-93)

409. Travel Agency Services. (7-1-93)

a. When outfitter services are purchased by a client through a travel agency and the outfitter bills the travel agency for the fee, the amount billed to the travel agency is subject to tax. In this case, the agency is acting as an agent for the client and the additional fee charged by the agency to the client is not subject to the sales tax. (7-1-93)

b. When outfitter services are arranged for a client by a travel agency but the outfitter bills the client, the amount billed to the client is subject to tax. In this case, the agency is acting as the agent of the outfitter and the fee paid to the travel agency by the outfitter cannot be deducted from the measure of the taxable sale. Even if the outfitter separately states the travel agency fee on his billing to the client, he must charge tax on the total amount. (7-1-93)

c. When an outfitter, Outfitter X, books a client and hires a second outfitter, Outfitter Y, to provide the services to the client, Outfitter X must charge the client tax on the full fee. Outfitter Y must obtain a resale certificate from Outfitter X. If this form is not obtained, Outfitter Y must charge sales tax on the services provided to Outfitter X. (7-1-93)

140. Purchases by Outfitters and Like Operations. (7-1-93)

a. Outfitters must pay tax when purchasing equipment and supplies for use in their business. Examples include boats, rafts, oars, motors, horses, tack, llamas, transportation equipment, camp gear, cooking gear, animal feed, brochures, and promotional give-away items. (7-1-93)

b. ~~When an outfitter purchases food that will be prepared and furnished to clients, no sales tax applies if the outfitter provides a resale certificate.~~ (7-1-93)

eb. When an outfitter maintains an inventory of gear, such as ground sheets, sleeping bags, boots, rain gear, and dry bags, which is exclusively held for rental to clients, the outfitter may purchase the gear without tax in the manner previously described. The outfitter may purchase gear without paying tax only if the gear is rented to clients as a separate line item on the invoice to the client and sales tax is charged to the client. If gear is provided to clients as a part of the outfitter package fee, the outfitter must pay tax when purchasing the gear. (3-20-04)

d. ~~When an outfitter purchases the services of a charter aircraft to transport his clients within Idaho, he will not pay tax to the charter service by providing the service with a properly completed resale certificate. The outfitter must then charge tax to his client on this fee.~~ (7-1-93)

ec. When an outfitter arranges travel accommodations for his client and pays the vendors of ~~the lodging, and restaurant or catered meals and services~~, he must pay sales tax, as well as other applicable hotel/motel taxes, to the vendors. When an outfitter purchases food that he will prepare and furnish to clients, no sales tax applies if the outfitter provides a resale certificate. The outfitter must then collect a tax from his client on the sale of the furnished food. Alternatively, an outfitter may buy food and pay tax on the purchase. Under this alternative, the

outfitter will include the cost of the food in his nontaxable charges to his client.

(7-1-93)()

fd. When an outfitter purchases the services of a taxidermist or meat processor on behalf of his client, he should not pay tax to the vendor by providing the vendor with a properly completed resale certificate. The outfitter must charge tax to his client on this fee. (7-1-93)

11. Federal Preemption. The National Maritime Transportation Security Act of 2002, enacted November 25, 2002, prohibits the states from imposing tax on any vessel or other water craft, or its passengers or crew if the vessel or water craft is operating on any navigable waters. The Tax Commission interprets this statute to mean that states are prohibited from taxing sales of rafting trips if they occur on navigable waters. See 33 U.S.C. Section 5. If Congress repeals the preemption sales of rafting trips will become taxable on the effective date of the repeal. This interpretation is subject to judicial review and could change, depending on rulings from state or federal courts. ()

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0503

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 070: Amend Rule 070 to state that the Commission may issue temporary permits that are valid for no more than 90 days.

Rule 079: Amend Rule 079 to conform to Section 63-3622RR, Idaho Code.

Rule 099: Amend Rule 99 to correct the statement in Subsection 099.07 and add a new subsection clarifying amendment to Section 63-3622K, Idaho Code.

Rule 102: Amend Rule 102 to conform to Section 63-3622RR, Idaho Code.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0503

070. PERMITS (RULE 070).

01. Requirements for Obtaining Permits. All retailers, wholesalers and other persons required to collect sales tax must obtain a permit from the Tax Commission before engaging in business. No fee is required for the initial sales tax permit. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

a. Every wholesaler, retailer or other person required to collect sales tax must apply for a permit on the form prescribed by the Commission. The application for a permit must list each place of business operated by the same person, firm or corporation. The permit must be posted in a conspicuous place at each location for which it is issued. A separate permit number must be obtained for each business name. (7-1-93)

b. Example 1: Corporation A operates the businesses named B, C, and D. Three (3) permit numbers are required, regardless of how many locations operate using the business names B, C, and D. (7-1-93)

c. Example 2: Corporation E operates three locations, using the business name F. Only one permit number is required, since all locations have the same business name. (7-1-93)

02. Out-of-State Seller. An out-of-state seller desiring to conduct business as a seller within Idaho must obtain a seller's permit. This requirement also applies to any salesmen user's agents who solicit orders for nonresident sellers. (7-1-93)

03. Sales in Leased Premises. When any established business leases a portion of its shelves, counters or floor space to other persons selling tangible personal property to consumers, the sales from such leased department may be included in the tax return of the lessor. When the lessee conducts the leased department in the same manner as a separate business and keeps separate business records, the lessee must apply for a sales tax permit. (7-1-93)

04. Cancellation of Sales Tax Permits. It is the responsibility of a permit holder to notify the Tax Commission in writing immediately upon any change in ownership of the permitted business or upon complete or partial termination of the permit holder's business. Complete or partial termination of a permit holder's business includes the lease of part or all of the business or business location to another party who will be responsible for remitting the sales tax. This notice must include the following information. (7-1-93)

a. This notice must include the date of closure, date of sale or date of lease. If the permit holder does not continue to operate a business under that permit number, the notice must state that the permit should be canceled. The permit holder must return the permit or send a written statement that the permit has been destroyed. If the permit holder has sold or leased his business, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the Tax Commission and the new owner or lessee continues operation of the business on the previous owner's or operator's permit, without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated a business under the previous owner's permit. (7-1-93)

05. Suspension of Sales Tax Permits. The permit holder must notify the Tax Commission in writing of the anticipated discontinuation of a business due to seasonal operation or for any other reason. This notice must contain the date of closure and anticipated date of reopening. Upon receipt of this information, returns will be suspended during the period of closure. (7-1-93)

06. Requirements of Holding a Seller's Permit. A seller's permit may be held only by persons actively engaged in making retail sales subject to Idaho sales tax. Any person holding a permit who fails to meet this requirement must surrender the permit to the Commission for cancellation. If a permit is held by a person who has reported no sales for a period of twelve (12) consecutive months, the Commission may revoke the permit and require the holder to return the permit to the Commission or provide a sworn statement that the permit has been destroyed by the holder. (7-1-93)

07. Seller's Permit and Sales Tax Permit. The terms seller's permit and sales tax permit may be used

interchangeably. Both refer to the permit issued to a person desiring to engage in business in Idaho as a retailer. (7-1-93)

08. Temporary Seller's Permits. The Commission may issue temporary seller's permits that are valid for a limited period of time. The time period for which the temporary permit is issued will be shown on the face of the permit. No temporary seller's permit shall be issued for a period of time greater than ninety (90) days. ()

(BREAK IN CONTINUITY OF SECTIONS)

079. PRODUCTION EXEMPTION (RULE 079).

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (7-1-93)

a. A manufacturing, processing, or fabrication operation devoted to producing tangible personal property for resale. (6-23-94)

b. The business of custom farming or operating a farm or ranch for profit. (7-1-93)

c. The business of contract mining or operating a mine for profit. (6-23-94)

02. Qualifying Businesses. The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail. (7-1-93)

a. For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

b. The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail. (7-1-93)

03. Exempt ~~Property~~ Purchases. As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following ~~items of~~ tangible personal property are exempt, except as limited by other subsections of this rule: (7-1-93)()

a. Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)

b. Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)

c. Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)

d. Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)

e. Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)

f. Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)

g. Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)

h. Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)

i. Equipment used primarily to fabricate production equipment. (7-1-93)

04. Production Process Beginning and End. The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)

05. Taxable ~~Property~~ Purchases. The production exemption does not include any of the following: (7-1-93)()

a. Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)

b. Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)

c. A hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)

d. Office equipment and supplies. (7-1-93)

e. Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)

f. Equipment and supplies used in selling and distribution activities. (7-1-93)

g. Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)

h. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)

i. Transportation equipment and supplies. (7-1-93)

j. Aircraft of any type and supplies. (7-1-93)

k. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)

~~**l.** Research equipment and supplies, all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41 of the Internal Revenue Code. (7-1-93)~~

~~**m.** Other incidental items not directly used in production. (7-1-93)~~

~~**n.** Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)~~

05. Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATV's), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

06. Parts to repair recreation-related vehicles. (7-1-93)

07. Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

06. Real Property. The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. (7-1-93)

07. Change in Primary Use of Property. If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

08. Transportation Activities. Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

a. Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

b. Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

09. Exemption Certificate. To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

10. Special Rules. Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

099. OCCASIONAL SALES (RULE 099).

01. Occasional Seller. Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of

tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-98)

a. If the sale does not qualify as an occasional sale, the seller becomes a retailer, is required to register for an Idaho seller's permit, and must collect and remit sales tax. See Section 63-3610, Idaho Code. (7-1-98)

b. Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108 to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (3-15-02)

c. Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See Rule 020 of these rules. (3-15-02)

02. Change in the Form of Doing Business. A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion of the corporation's stock as they owned in the partnership interest as partners. (7-1-93)

03. Bulk Sale - Sale of an On-Going Business. The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment of a business qualifies for the occasional sale exemption if: (7-1-98)

a. The purchaser continues the same type of business operation; and (7-1-93)

b. Prior to the sale the income and expenses attributable to the separate division, branch, or identifiable segment can be determined from the accounting records and books. (7-1-93)

c. Example: Corporation X sells its entire wood products division to Corporation Y, which continues to operate it in substantially the same form. The transaction qualifies for an occasional sale exemption. (7-1-93)

04. Sale of a Motor Vehicle Between Family Members. Sales of motor vehicles between family members related within the second degree of consanguinity, blood relationship, qualify for the occasional sale exemption but only if the seller paid a sales or use tax when the motor vehicle was acquired. (7-1-93)

a. Example 1: A brother sells his automobile to his sister. The brother purchased the car from an Idaho dealer and paid Idaho sales tax on the original purchase. No tax applies to the sale of the vehicle to the sister. (7-1-93)

b. Example 2: A mother sells her automobile to her son for five thousand dollars (\$5,000). The mother is an Oregon resident and did not pay a sales or use tax when she purchased the automobile. The son, who is a resident of Idaho, must pay Idaho use tax on the five thousand dollar (\$5,000) purchase price of the automobile. (7-1-93)

05. Transfers Between Related Parties. ~~Effective July 1, 1990, if~~ The transfer of capital assets between related parties qualifies for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders stockholders, when the transfer is made only in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made only in exchange for stock or securities. (7-1-93)(____)

a. Example: Two (2) individuals form a partnership. Each contributes a car in exchange for a percentage of ownership in the business. If each partner paid sales tax when he purchased his vehicle, no sales tax applies to the transfer of the vehicle into the partnership. (7-1-97)

b. Example: Three (3) individuals are equal partners in a construction business. They dissolve the partnership, and each person takes one-third (1/3) of the capital assets as his share of the equity in the business. If tax was paid on the assets when they were purchased by the partnership, sales tax does not apply to the transfer of the assets from the partnership to the co-owners. (7-1-93)

c. Example: A corporation-owned car is given to a shareholder as a bonus for special accomplishments. There is no change in the recipient's shareholdings. The shareholder must pay tax on the bonus based on the value of the car, regardless of whether the corporation paid tax when the car was purchased. The exemption does not apply because the transfer of the car did not change the shareholder's equity. (7-1-93)

06. Sales and Rentals to Related Parties. The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. ~~Effective January 1, 1996,~~ Rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. If the initial purchaser does not pay sales or use tax upon the purchase of a capital asset and then leases the asset to a related party, the lessor must collect and remit sales tax on the lease payments. The lease payments must also represent a reasonable rental value for the asset. Exempt transactions between related parties include sales, rentals, and leases of capital assets other than aircraft, boats and vessels, snowmobiles, off-highway motorbikes, and recreational vehicles, as defined by Section, 63-3622HH, Idaho Code, such as the following: (7-1-97)(____)

a. Sales to family members, but only if all parties to the sale are related within the second degree of consanguinity, relationship by blood, or affinity, relationship by marriage, i.e., spouses, children, parents, brothers, sisters, or grandparents. Example: A father and son are the stockholders of Corporation A. This corporation sells a business asset to Proprietorship B, which is owned by the son's grandfather. This sale is exempt as long as Corporation A paid sales tax when the asset was acquired. (7-1-98)

b. Sales in which the new owners are identical to the prior owners. Example: Corporation B owns one hundred percent (100%) of Corporation A. If the initial purchaser paid tax when it acquired an asset, it may sell the asset to the other without tax. Example: John Doe owns one hundred percent (100%) of a corporation. He buys a truck and pays sales tax. He later sells the truck to his corporation. No tax applies to the sale of the truck to the corporation. Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments. (7-1-97)

07. Motor Vehicles. Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, ~~written clearance must be obtained from the State Tax Commission~~ the purchaser must complete an appropriate exemption claim form prior to applying for an Idaho motor vehicle title. See Rule 107 of these rules regarding sales of licensed motor vehicles that do not qualify as occasional sales and the appropriate exemption claim form. (3-15-02)(____)

08. Sales of Business Assets. Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. (7-1-93)

09. Taxable Sales of Aircraft, Boats, and Recreation Related Vehicles. The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

a. Snowmobiles, including those required to be numbered as provided by Section 67-7102, Idaho Code. (7-1-97)

b. Off-highway motorbikes and dual purpose motorcycles. A dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be legally operated on public roadways and highways. (7-1-93)

c. All-terrain vehicles, ATV's, but not including tractors. A tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other farm implements. (7-1-93)

d. Portable truck campers designed for temporary living quarters, but not including pickup shells or canopies that do not have a floor. (7-1-93)

e. Camping, park, travel, and fifth-wheel travel-type trailers which are designed to provide temporary living quarters. (7-1-93)

f. Motor homes. (7-1-93)

g. Buses and van-type vehicles when converted to recreational use as temporary living quarters and providing at least four (4) of the following facilities: cooking; refrigeration or icebox; self-contained toilet; heating or air conditioning; a portable water supply system including a faucet and sink; and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

h. Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See Rule 037 of these rules regarding other exemption provided for aircraft. (3-15-02)

i. Boats or vessels, meaning every description of watercraft used or capable of being used as a means of transportation on water. Example: A nonretailer sells a boat and boat trailer to an Idaho resident. The sale of the boat does not qualify for the occasional sale exemption and is subject to the tax. The sale of the boat trailer may qualify for the occasional sale exemption if the sales price of the boat trailer is separately stated on the bill of sale and an occasional sale affidavit is provided by the seller. (7-1-93)

10. Exempt Sales of Aircraft, Boats, and Recreation-Related Vehicles. Sales of aircraft, boats, or recreation-related vehicles under the provisions of Subsections 099.02 or 099.03 of this rule are exempted from the tax. Transfers of aircraft, boats, or recreation-related vehicles under the provision of Subsection 099.05 of this rule are exempted from the tax. The provisions of Subsection 099.04 of this rule apply to the sale of motorized, on-highway recreation-related vehicles. (7-1-98)

11. Exclusion From the Occasional Sale Exemption. Section 63-3622K, Idaho Code, excludes from the occasional sale exemption the use of tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property. This exclusion applies only to building materials and fixtures that will be incorporated into real property. Sales of construction equipment such as loaders, backhoes, and excavators may still be included within the definition of "occasional sale" if the seller meets all the other requirements of the exemption. ()

a. Example. A contractor enters into a contract to fabricate and install a wrought iron gate. The contractor fabricates the gate but prior to installation the building owner decides to install the gate himself and purchases it from the contractor. The building owner's purchase does not qualify for the occasional sale exemption. ()

b. Example. A contractor has a backhoe that he uses in his contracting business. He sells the backhoe to another contractor. If the seller is not a retailer, as defined by statute, the sale can still qualify as an exempt

occasional sale.

()

(BREAK IN CONTINUITY OF SECTIONS)

102. LOGGING (RULE 102).

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See Rules 010 and 067 of these rules for a definition of real property. (4-6-05)

03. Property Used in Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. (7-1-93)

04. Logging Process Begins and Ends. The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

05. Logging Exemption. Generally, the logging exemption includes equipment and supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

- a. Chain saws with a unit price of more than one hundred dollars (\$100) and tree harvesters. (7-1-93)
- b. Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)
- c. Log loaders and log jammers which are not licensed motor equipment. (7-1-93)
- d. Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)
- e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

06. Directly Used. Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

- a. The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)
- b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)

c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)

d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ~~Any portion of the quality control function that is related to research and development is excluded from this exemption.~~ (7-1-93)()

07. Not Included in Logging Exemption. Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

a. Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)

b. Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, except when part of the operation of a tree farm. (7-1-93)

c. Reforestation equipment and supplies, except when part of the operation of a tree farm. (7-1-93)

d. Safety equipment and supplies, including hard hats and earplugs. (7-1-93)

e. Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)

f. Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)

~~g. Research equipment and supplies all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41(f) of the Internal Revenue Code. (7-1-93)~~

~~h.g.~~ Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)

~~h.h.~~ Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles (ATV), snowmobiles, and off-highway motorbikes. (4-6-05)

~~h.i.~~ Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)

08. Election to Pay Sales Tax. The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (4-6-05)

a. Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

b. Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - IDAHO PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-0501
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-3624, 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 October 19, 2005.

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

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

Rule 960 – is being amended to update rule based on HB126 and make rule internally consistent and update procedures for calculation of the county weighted average forestland levy rate in response to request from industry representatives.

In August 2005, the State Tax Commission adopted this rule as a temporary rule with an effective date of January 1, 2005. The temporary rule was published in the Idaho Administrative Bulletin, Volume 05-8, August 3, 2005, pages 295 through 297. With this publication the Department is initiating proposed rulemaking.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Alan Dornfest, Tax Policy Supervisor
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

**This docket has been previously published as a Temporary Rule.
The temporary effective date is January 1, 2005.**

**The text of the Temporary Rule was published in the Idaho Administrative
Bulletin, [Volume 05-8, August 3, 2005, pages 295 through 297.](#)**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0501

960. DEFINITIONS (RULE 960).

01. **Present Use.** Present use shall mean that the land contains trees of a marketable species which are being actively managed to produce a forest crop for eventual harvest and which may be accepted by a commercial mill. (7-1-97)

02. ~~**Silvicultural Treatment.**~~ ~~Silvicultural treatment~~ shall include the following activities: site preparation, planting, vegetation control, precommercial thinning, commercial thinning, fertilization, mechanical or chemical pest and disease control, pruning, inventorying, cruising, or regeneration surveys, fencing established to protect seedlings, and genetic tree improvement. (7-1-97)()

03. **Custodial Expenses.** Custodial expenses are some of the expenses incurred in the management of forestlands. ()

a. **Included Expenses.** Custodial expenses include the following expenses, except as provided in Paragraph 960.03.b of this rule: ()

i. Reforestation expenses are the cost of seeds, seedlings, and planting for the establishment of a forest to the specifications of the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code); ()

ii. Road maintenance expenses are those costs necessary to prevent major deterioration or maintain the integrity of forest roads including culvert maintenance, public access control, and erosion prevention, but not including the cost of original construction, opening the road for silviculture, driveway maintenance, or recreation access; ()

iii. Managing public use expenses are limited to the costs of installing and maintaining gates and signage; ()

iv. Forest inventory expenses are the costs of collection and analysis of forest inventory data; ()

v. Forest management planning expenses are the costs associated with a geographic information system (GIS) or similar information database and those activities integral to the planning process; ()

vi. Facility operations and maintenance expenses are those costs of maintaining and operating facilities necessary for forestland management; ()

vii. Environmental analysis and documentation expenses are analysis and documentation costs associated with federal and state environmental requirements; ()

viii. Appeals and litigation expenses are those costs associated with litigating items associated with federal and state environmental requirements; ()

ix. Land survey expenses are those costs associated with surveying forestland; ()

x. Forest fire suppression expenses are the portion of those costs associated with the suppression of wildfires on forestlands borne by the forestland owner, that exceed the annual fire protection fee under Section 38-111, Idaho Code; ()

xi. Other management expenses are unspecified costs agreed to by the committee on forestland taxation methodologies (CFTM) and determined to be annualized custodial expenses by the forest management cost study conducted pursuant to Section 63-1705, Idaho Code. ()

- b. Excluded Expenses. Custodial expenses exclude the following: ()
- i. Fertilization: ()
- ii. Precommercial thinning: ()
- iii. Tree improvement: ()
- iv. Genetic improvement: ()
- v. Site preparation: ()
- vi. Harvesting: ()
- vii. Road building: ()
- viii. Timber harvest layout and silvicultural layout: ()
- ix. Slash management: ()
- x. Brush control: ()
- xi. Litigation pertaining to Subparagraphs 960.03.b.i. through 960.03.b.xi., of this rule. ()

034. Forestland Management Plan. Forestland management plan shall mean a written management plan reviewed by a professional consulting forester, Idaho Department of Lands private forestry specialist, professional industry forester, or federal government forester, to include eventual harvest of the forest crop. Professional forester is defined as an individual holding at least a Bachelor of Science degree in forestry from an accredited four (4) year institution. The forestland management plan shall include as a minimum: (7-1-97)

- a. Date of the plan preparation; (7-1-97)
- b. Name, address, and phone number of the land owner, and person preparing and/or reviewing the plan; (7-1-97)
- c. The legal description of the property; (7-1-97)
- d. A map of the property of not less than 1:24,000 scale; (7-1-97)
- e. A general description of the forest stand(s) including species and age classes; (7-1-97)
- f. A general description of the potential insect, disease, and fire hazards that may be present and the management systems which shall be used to control them; (7-1-97)
- g. The forest management plans of the landowner over the next twenty (20) years. (7-1-97)

045. Bare Forestland. Bare forestland shall qualify as forestland only if, within five (5) years after harvest or initial assessment, they are planted or regenerated naturally to minimum stocking levels as specified by the Idaho Forest Practices Act. (Title 38, Chapter 13, Idaho Code). (7-1-97)

06. County Weighted Average Forestland Levy Rate. The county weighted average forestland levy rate is calculated by summing the products of the levy rate times the number of forested acres for each forested tax code area in each county and dividing this sum by the total number of forested acres in all forested tax code areas in each county. ()

07. Weighted Average Forestland Levy Rate. The weighted average forestland levy rate is the weighted average forestland levy rate defined in Subsection 960.06 of this rule multiplied by the total number of

designated forestland acres in each county. The sum of the product of this calculation for each county in a forest value zone is then divided by the total number of designated forestland acres in the forest value zone. ()

08. Guiding Discount Rate. The guiding discount rate shall be determined in accordance with procedures found in the User's Guide and derived from ten-year treasury constant maturity rates as reported by the federal reserve system, the producer price index (PPI) published by the U.S. bureau of labor statistics, and a risk premium. ()

09. Real Price Appreciation of Stumpage. A real price appreciation (RPA) of stumpage in Idaho shall be determined in accordance with procedures found in the User's Guide and will be benchmarked to the PPI for softwood logs and bolts as reported by the U.S. bureau of labor statistics, less inflation as reported in the PPI. ()

0510. Joint Ownership. Joint ownership as used in Subsections 963.01 and 966.01 of these rules includes ownership of a single parcel of forestland by two (2) or more legal entities irrespective of their proportionate ownership interests in the parcel, but shall not include the community property interests of a spouse. (3-30-01)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - IDAHO PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-0503
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-3624, 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 October 19, 2005.

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

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

Rule 006: Make annual updates to incorporations by reference material.

Rule 130: Amend rule to clarify land not meeting the definition in Idaho Code Section 63-604, is the only land to be reported by the assessor for the rural speculative homesite exemption and all land meeting criteria in Idaho Code Section 63-604 must be reported in categories 1 through 5.

Rule 131: Amend rule to update definitions and statistical measures for consistency with national standards.

Rule 315: Amend rule to assure improved equalization of manufactured homes.

Rule 509: Amend rule to require submission of exempt value resulting from Idaho Code Sections 63-602GG, 63-602HH, 63-602HH [63-602II] and 63-606A.

Rule 609: Amend rule to clarify and provide examples relating to ownership of homes on jointly owned land.

Rule 612: Add rule to clarify exempt status of personal property permanently affixed to certain property registered vehicles.

Rule 802: Amend rule to clarify new construction in annexed areas is only reported on the new construction roll and is excluded from the annexation value.

Rule 805: Modifies date for county clerks to submit notices of compliance so notice is timely and current for property tax funded budget approval process.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Alan Dornfest
Tax Policy Supervisor
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0503

006. INCORPORATION BY REFERENCE (RULE 006).

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

01. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at main office of the State Tax Commission as listed in Rule 005 of these rules. (5-3-03)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. “Standard on Ratio Studies” published in 1999 by the International Association of Assessing Officers. (5-3-03)

b. “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2004~~5~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-6-05~~)()

c. “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2004~~5~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-6-05~~)()

d. “Official Railway Equipment Register” published for the last three (3) quarters in 2004~~5~~ and the first quarter in 200~~5~~6 by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. (~~4-6-05~~)()

e. “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

f. “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

g. “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

h. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

i. “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-15-02)

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.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This irrigated land must be capable of and normally *producing produce* harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or 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.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. 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 a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-01)(____)

03. Category 3 - Nonirrigated 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.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This nonirrigated land must be capable of and normally *producing produce* harvestable crops without man-made irrigation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or 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.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of a subdivision without restrictions on such use or 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.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. 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 a subdivision without restrictions on such use or 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 forestland 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 - Speculative Homesite. In each county with a population of less than one hundred thousand (100,000), rural subdivision plat lots granted the exemption under Section 63-602FF, Idaho Code, for the current year's assessment roll. Never place any land, even when within a platted subdivision, currently meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, in this category; such land must always be in the appropriate category(ies) 1 through 5. (~~5-3-03~~)(____)

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. Only list acres in this category on the abstract. (3-15-02)

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 located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare a real property has been filed but becomes effective the following year. (5-3-03)
43. **Category 47 - Improvements to Manufactured Housing.** Additions not typically moved with manufactured housing. (3-23-94)
44. **Category 48 - Manufactured Housing.** Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. (5-3-03)
45. **Category 49 - Manufactured Housing.** Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. (5-3-03)

46. **Category 55 - Boats or Aircraft.** Unlicensed watercraft or unregistered aircraft. (3-23-94)
47. **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)
48. **Category 57 - Equities in State Property.** Property purchased from the state under contract. (4-5-95)
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)
54. **Category 64 - Mining Machinery, Tools, and Equipment.** Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-23-94)
55. **Category 65 - Manufactured Housing.** Manufactured housing not considered real property located on exempt, rented or leased land. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-15-02)
56. **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)
57. **Category 67 - Operating Property.** Property assessed by the State Tax Commission. (3-30-01)
58. **Category 68 - Other Miscellaneous Machinery, Tools, and Equipment.** Unlicensed machinery, tools, and equipment not used in construction, logging, mining, or not used exclusively in agriculture. (3-15-02)
59. **Category 69 - Recreational Vehicles.** Unlicensed recreational vehicles. (3-23-94)
60. **Category 70 - Reservations and Easements.** Reservations, including mineral rights reserved divide ownership of property rights. Easements convey use but not ownership. (3-23-94)
61. **Category 71 - Signs and Signboards.** Signs and signboards, their bases and supports. (3-23-94)
62. **Category 72 - Tanks, Cylinders, Vessels.** Containers. (3-23-94)
63. **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)

131. USE OF RATIO STUDY IN EQUALIZATION (RULE 131).

Section 63-109, Idaho Code.

(5-3-03)

01. Annual Equalization Ratio Study. Each year the State Tax Commission shall conduct a ratio study to assist in the equalization of assessments of property within and among the categories of property established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the "Standard on Ratio Studies" ~~published in 1999 by the International Association of Assessing Officers~~ referenced in Rule 006 of these rules. The annual ratio study shall test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be ~~determined as follows: the median for equalization ratio studies conducted beginning October 1, 2006.~~

~~(3-30-01)()~~

~~a. Given a sample of ten (10) or fewer observations, the mean shall be used. (3-30-01)~~

~~b. Given a sample of eleven (11) or more observations, the median shall be used. (3-30-01)~~

02. Tested For Equalization. Categories which will be tested for equalization purposes will include the following, provided that adequate samples can be obtained: (4-5-95)

a. Improved Urban Residential: Abstract Items 20 and 41; (4-5-95)

b. Unimproved Urban Residential: Abstract Item 20; (4-5-95)

c. Improved Rural Residential: Subcategory 1 (tracts): Abstract Items 12, 18, 34, and 40; Subcategory 2 (subdivisions): Abstract Items 15 and 37; (4-5-95)

d. Unimproved Rural Residential: Subcategory 1 (tracts): Abstract Items 12 and 18; Subcategory 2 (subdivisions): Abstract Item 15; (4-5-95)

e. Commercial: Abstract Items 13, 16, 21, 27, 33, 35, 38, and 42. (Urban and rural categories and land and improved categories will be analyzed separately, if adequate samples are available.) (3-30-01)

f. Residential Condominiums: Abstract Item 26. (3-30-01)

g. Manufactured Housing Without Land: Abstract Items 46, 47, 49, and 65. (5-3-03)

h. Manufactured Housing With Land: Abstract items 46, 47, and 48 with residential land ~~for ratio studies conducted beginning January 1, 2002.~~ (3-15-02)()

03. Separate and Combined Analyzations. (3-30-01)

a. Categories 18 and 40 may be analyzed separately from Categories 12 and 34 if adequate samples are available. If these categories (18 and 40) are not used for residential property, they should not be included in the 12/34 study. (3-30-01)

b. Manufactured housing sales that include land may be analyzed as an independent category or in combination with other improved residential property sales with the same land category. The manufactured housing sales with land will be analyzed as an independent category unless the State Tax Commission and county assessor

agree that analysis in combination with other improved residential property sales with the same land category would produce a more representative sample. (3-15-02)

c. Samples for the categories listed in Subsection 131.02 of this rule may be analyzed in combinations designed to produce studies of improved residential property, unimproved residential property, commercial property, and manufactured housing. Such analysis will be conducted upon request by the county assessor, provided that the assessor provides evidence to the State Tax Commission that the resulting combined category studies will provide results that are more representative of the categories to be equalized. (~~3-30-01~~)(____)

04. Follow-Up Ratio Study. When the annual ratio study provided in Subsections 131.01 and 131.02 of this rule, discloses that assessments in any category of property as defined in Subsections 131.02 and 131.03 of this rule in a county are out of compliance with the equalization standards of this rule, the State Tax Commission shall conduct a follow-up ratio study. The follow-up ratio study shall test the assessments for January 1 of the year following the year tested by the annual ratio study and shall be based on property sales occurring during the calendar year immediately preceding that date. The State Tax Commission shall notify the county assessor of the results of the follow-up ratio study. The notice shall indicate whether any adjustments will be considered by the State Tax Commission at its next equalization meeting in August based on either the annual or any follow-up ratio study and the reason for the proposed adjustments. (~~3-30-01~~)(____)

05. Use of Ratio Study Results. The results of the annual ratio study or any follow-up ratio study shall be one (1) source of information upon which the State Tax Commission may rely when equalizing assessments of property by category under Section 63-109, Idaho Code. When the results of any ratio study on any property category as defined in Subsections 131.02 and 131.03 of this rule show, with reasonable statistical certainty as defined in Subsection 131.08 of this rule, that the appropriate measure of level of any category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in any category or subcategory included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property. The State Tax Commission may order the county auditor to adjust the value of manufactured homes with land as if the combination were a category. If categories have been combined for analysis, adjustment will not be considered for any category that does not have at least one (1) observation in the ratio study conducted for the combined categories. (~~3-15-02~~)(____)

06. Use of Alternate Ratio Study. When the follow-up ratio study required by Subsection 131.04 of this rule does not measure the true assessment level, the State Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the State Tax Commission has reason to question the representativeness of the sample used in an annual or follow-up ratio study conducted on any category of property, the State Tax Commission may delay implementation of any order to adjust property values until two (2) successive years' ratio studies fail to produce an appropriate measure of level between ninety percent (90%) and one hundred ten percent (110%). (~~3-30-01~~)(____)

07. Submission of Additional Information. Any party may petition the State Tax Commission to consider any information or studies relevant to equalization. The petition shall include a description of the information to be presented and the petitioner's conclusions drawn from the information. (4-5-95)

08. Reasonable Statistical Certainty. For the purposes of this section and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any category is not equalized shall mean that the appropriate measure of level determined by the ratio study for the category must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. *Beginning with the ratio study used to test 2000 assessments, s*Such a determination shall occur if: (~~3-30-01~~)(____)

a. The appropriate measure of level for the category(ies) being tested is less than ninety percent (90%) or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or (3-30-01)

b. The appropriate measure of level for the category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio

studies on the category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%). (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

315. RATIO STUDIES - SCHOOL DISTRICTS (RULE 315).

Section 63-315, Idaho Code.

(5-3-03)

01. Procedures for School District Ratio Studies. The ratio study conducted by the State Tax Commission to comply with the requirements of Section 63-315, Idaho Code, shall be conducted in accordance with the "Standard on Ratio Studies" ~~published in 1999 by the International Association of Assessing Officers referenced in Rule 006 of these rules.~~ The following specific procedures will be used. (~~3-30-01~~)(____)

a. Information on property sales, which meet the requirements of arm's length and market value sales, will be obtained and assembled into samples representing various categories of property and designations defined in Subsection 315.02 of this rule in each school district. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each school district between October 1 of the year preceding the year for which adjusted market value is to be computed and September 30 of the year for which adjusted market value is to be computed. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which adjusted market value is to be computed, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. (~~3-30-01~~)(____)

b. A ratio will be determined for each sale by dividing the market value for assessment purposes of the property by the adjusted sale price or appraised value. (7-1-98)

c. A statistical analysis is to be conducted for the sales and any appraisals in each property designation defined in Subsection 315.02 of this rule in each school district and appropriate measures of central tendency, uniformity, reliability, and normality computed. (~~3-30-01~~)(____)

d. With the exception of any property designations with extended time frames or added appraisals, if fewer than five (5) sales and appraisals are available, no adjustment to the taxable value of the designation will be made. (7-1-98)

e. If there are five (5) or more sales and appraisals and it is determined with reasonable statistical certainty that the property designation is not already at market value for assessment purposes, an adjusted market value will be computed for the school district by dividing the taxable value for the year for which adjusted market value is to be determined by the appropriate ratio derived from the ratio study. The appropriate ratio to be used shall be the weighted mean ratio calculated from the sample for each designation, unless it can be clearly demonstrated that this statistic has been distorted by nonrepresentative ratios. In this case the median may be substituted: (3-30-01)

f. Within each school district, adjusted market value or taxable value for each category of real, personal and operating property will be summed to produce the total adjusted market value for the school district. The school district taxable value will then be divided by this adjusted market value to produce the overall ratio of assessment in each school district. Statewide totals are to be calculated by compiling county totals. (7-1-98)

g. Urban renewal increment values will not be included in the taxable value or the adjusted market value for any school district. (7-1-98)

h. "Reasonable statistical certainty," that the property designation in question is not at market value for assessment purposes, is required. Such certainty is tested using ninety percent (90%) confidence intervals about the weighted mean or median ratios. If the appropriate confidence interval includes ninety-five percent (95%) or one hundred five percent (105%), there is not "reasonable statistical certainty" that the property designation is not at market value for assessment purposes. (3-30-01)

i. Categories of property subject to adjustment following the procedure outlined in this rule and ratio study designations from which measures of central tendency used for adjustments will be derived are:

Category	Property Category	Ratio Study Designation
41	Urban Residential Improvements	Residential
20	Urban Residential Land	Residential
37	Rural Residential Subdivision Improvements	Residential
15	Rural Residential Subdivision Land	Residential
34 & 40	Rural Residential Tract and Other Rural Improvements	Residential
12 & 18	Rural Residential Tracts and Other Lands	Residential
42	Urban Commercial Improvements	Commercial
21	Urban Commercial Land	Commercial
35 & 38	Rural Commercial Tract and Subdivision Improvements	Commercial
13 & 16	Rural Commercial Tracts and Subdivision Land	Commercial
46, 47, 49 , & 65	Manufactured Homes and Attachments	Manufactured Homes and Attachments Residential
48 & 49	Manufactured Homes Declared to be Real Property	Residential
26	Residential Condominiums	Residential
27	Commercial Condominiums	Commercial

~~(5-3-03)~~()

~~j. Except for manufactured homes identified as category 48, sales of manufactured homes including land shall not be used in the ratio study done to calculate school district adjusted market value.~~ (5-3-03)

~~k.~~ For all other property categories not contained in the list in Subsection 315.01.i. of this rule, adjusted market value will equal taxable value. (3-30-01)()

~~h.~~ "Appraisal" or "appraised value" refers to any State Tax Commission provided independently conducted property appraisal. (7-1-98)

02. Use of Property Designations. In computing the ratio for each school district, the State Tax Commission will designate property as residential, commercial, or manufactured housing and shall assign appropriate property categories defined in Rule 130 of these rules to these designations. For each school district, adjusted market value shall be computed by dividing the appropriate ratio ascertained for each of these designations into the sum of the taxable values for each category of property assigned to a designation. For the taxable value in any category to be included in said sum, at least one (1) observation (sale or appraisal) from that category must be present in the ratio study. If the ratio for any given designation in a school district indicates that the market value for assessment purposes cannot be determined with reasonable statistical certainty to differ from statutorily required market value, the taxable value shown on the school district abstract(s) required pursuant to Subsection 315.04 of this rule for each of the categories included in that designation shall be the adjusted market value for said designation for said school district. (3-30-01)()

03. Assessor to Identify School Districts. Each county assessor will provide to the State Tax Commission the school district in which each sale submitted for the ratio study is located. (7-1-98)

04. Abstracts of Value by School District. Each county auditor shall provide to the State Tax Commission abstracts of the taxable value of all property within the portion of each school district in each county. These abstracts shall be submitted in the same manner and at the same time as provided for county abstracts of value. (7-1-98)

05. Urban Renewal Increment and Exemption to be Subtracted. The taxable value of each category of property within each school district shall not include the value that exceeds the value on the base assessment roll in any urban renewal district pursuant to Chapter 29, Title 50, Idaho Code, and shall not include the value of any exemption pursuant to Sections ~~63-602P, 63-602AA, 63-602K, 63-602G, 63-602X, 63-602CC, 63-602BB~~ 63-602G, 63-602K, 63-602P, 63-602X, 63-602AA, 63-602BB, 63-602CC, and 63-602FF, Idaho Code. (~~5-3-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

509. IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES ON COUNTY AND SCHOOL DISTRICT ABSTRACTS OF VALUE (RULE 509).
Section 63-509, Idaho Code. (5-3-03)

01. County and School District Abstracts to Balance. The taxable value of property in each category as shown on the abstracts prepared and submitted under Section 63-509, Idaho Code, shall equal the sum of the taxable value of property in each category as shown on the school district abstracts, required under Rule 315 of these rules, for the portion of each school district located within each given county. (3-20-04)

02. Identification of Increment. The value that exceeds the value on the base assessment roll in any urban renewal district, under Chapter 29, Title 50, Idaho Code, and Rule 804 of these rules is identified as the "increment". (3-20-04)

03. Increment and Exemption Values to be Indicated. In addition to the value of exemptions required under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under Sections ~~63-602X, 63-602BB~~, 63-602FF, 63-602GG, 63-602HH, [63-602II] 63-602HH (as enacted under House Bill 253 in 2005), 63-606A, and 63-3029B, Idaho Code, shall be indicated and subtracted from the taxable value shown for each category of property on each county and school district abstract. (~~3-20-04~~)()

(BREAK IN CONTINUITY OF SECTIONS)

609. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS (RULE 609).
Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (4-6-05)

01. Homeowner's Exemption. This exemption shall also be known as the homeowner's exemption. (3-15-02)

02. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.02.a., of this rule unless the owner provides documented evidence of ownership interest in the improvement. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b., of these rules. (~~4-6-05~~)()

a. Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

<u>Description</u>	<u>Value</u>	<u>Notes</u>
<u>Land</u>	<u>\$42,000</u>	
<u>Residential Improvement</u>	<u>\$82,000</u>	<u>Occupied by Mr. Smith</u>
<u>Prorated Ownership Interest</u>	<u>\$41,000</u>	<u>Mr. Smith's interest</u>
<u>Homeowner's Exemption</u>	<u>\$20,500</u>	<u>For Mr. Smith as owner occupant</u>
<u>Residential Improvement</u>	<u>\$67,000</u>	<u>Occupied by Mr. Anderson</u>
<u>Prorated Ownership Interest</u>	<u>\$33,500</u>	<u>Mr. Anderson's interest</u>
<u>Homeowner's Exemption</u>	<u>\$16,750</u>	<u>For Mr. Anderson as owner occupant</u>

()

b. Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

<u>Item Description</u>	<u>Value</u>	<u>Notes</u>
<u>Land</u>	<u>\$42,000</u>	
<u>Residential Improvement</u>	<u>\$82,000</u>	<u>Owned and occupied by Mr. Smith</u>
<u>Homeowner's Exemption</u>	<u>\$41,000</u>	<u>For Mr. Smith as occupant and sole owner</u>
<u>Residential Improvement</u>	<u>\$67,000</u>	<u>Owned and occupied by Mr. Anderson</u>
<u>Homeowner's Exemption</u>	<u>\$33,500</u>	<u>For Mr. Anderson as occupant and sole owner</u>

()

03. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

612. (RESERVED) PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES AND VESSELS PROPERLY REGISTERED (RULE 612).

Sections 49-123, 49-401, 49-402A, 49-422, 49-432, and 63-602J, Idaho Code. ()

01. Motor Vehicle Defined. Motor vehicle means any vehicle as defined in Section 49-123(g), Idaho Code, and any personal property permanently affixed to that vehicle. ()

02. Exempt Motor Vehicles. Except as provided in Subsection 612.03 of this rule, any motor vehicle, as defined in Subsection 612.01 of this rule, registered for any part of the previous year under Chapter 4, Title 49,

Idaho Code, is exempt from property taxation under Sections 49-401 and 63-602J, Idaho Code. ()

03. Taxable Vehicles. The following registered or permitted vehicles are taxable and not eligible for the exemption under Sections 49-401 and 63-602J, Idaho Code. ()

a. Any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. ()

b. Any manufactured home registered under Section 49-422, Idaho Code. ()

04. Exempt Permanently Affixed Personal Property. Except as provided in Subsection 612.05 of this rule, any personal property permanently affixed to any motor vehicle registered as described in Subsection 612.02 of this rule is part of that vehicle. Hence, that permanently affixed personal property is exempt from property taxation under Section 63-602J, Idaho Code. ()

05. Taxable Personal Property. The following personal property, not otherwise exempt under Chapter 6, Title 63, Idaho Code, is taxable and not eligible for the exemption under Section 63-602J, Idaho Code. ()

a. Any personal property on, but not permanently affixed to, any motor vehicle registered as described in Subsection 612.02 of this rule. ()

b. Any personal property on or affixed, permanently or otherwise, to any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. ()

c. Any personal property on or affixed, permanently or otherwise, to any utility trailer registered under Section 49-402A, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).

Sections 63-802, 63-301A, and 63-602FF, Idaho Code. (3-20-04)

01. Definitions. (4-5-00)

a. “Change of Land Use Classification.” “Change of land use classification” shall mean any change in land use resulting in a category change and in an increase in taxable land value to be reflected on the current ~~assessment~~ property roll. This increase in value due to change of land use classification shall be reported on the new construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. ~~Beginning with the assessment roll prepared to reflect value as of January 1, 1997, the~~ increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (5-3-03)()

b. “Nonresidential Structure.” “Nonresidential structure” shall mean any structure listed by the assessor in any category not described as residential, manufactured homes, or improvements to manufactured homes pursuant to Rule 130 of these rules. (5-3-03)

02. New Construction Roll Listing. “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, including qualifying new construction within any revenue allocation area within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (7-1-99)

03. Manufactured Housing. “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

04. Partial New Construction Values. The net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Any increase in a nonresidential parcel’s taxable value, due to new construction, shall be computed by subtracting the previous year’s or years’ partial taxable value(s) from the current taxable value. ~~In the case of partially completed property previously reported on the property roll, but subsequently exempt pursuant to Section 63-602W, Idaho Code, the increase in value to be reported on the new construction roll following loss of this exemption shall be the difference between previously reported new construction roll value and the taxable value for the year in which the occupied property is first entered on the property roll.~~ If any of this difference is attributable to inflation, such value shall not be included on the new construction roll. (7-1-99)()

Example: Assume a partially completed, ~~never occupied~~ nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, ~~1997~~ 2004. The improvement was occupied February 2, ~~1998~~ 2004. Assume the ten thousand dollars (\$10,000) value was on the ~~1997~~ 2004 new construction roll. Assume that in ~~1999~~ 2005 the improvement is assessed at ninety thousand dollars (\$90,000) ~~and a forty-five thousand dollars (\$45,000) homeowner’s exemption is then deducted.~~ Assume there has been no inflation. The ~~amount~~ value that can be reported on the ~~1999~~ 2005 new construction roll is calculated as follows:

1999 2005 Value (before homeowner’s exemption)	\$90,000
1999 Homeowner’s Exemption	\$45,000>
1999 Taxable Value (after homeowner’s exemption)	\$45,000
1997 2004 Value Already Reported on New Construction Roll	\$10,000>
1999 2005 New Construction Roll Value (this improvement)	\$ 35 80,000

(7-1-99)()

05. Change in Exemption Status. (5-3-03)

a. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W, Idaho Code. (7-1-99)

b. For any rural subdivision parcels of land changing use as a result of removal of the exemption under Section 63-602FF, Idaho Code, the increase in value resulting from the removal of this exemption shall not be listed on the new construction roll when the increase in value was already listed on any previous year’s new construction roll. (5-3-03)

06. Value of Annexation to Exclude New Construction. When determining the maximum property tax funded budget that may be certified under Section 63-802, Idaho Code, the annexation value shall include all taxable value within the annexed area except the value of new construction. The value of new construction within the annexed area shall be excluded from the value of the annexed area but included on the new construction roll for the taxing district annexing the area where the property is located, thereby preventing double counting of new construction value within the annexed area. ()

067. Notification of New Construction Roll and Annexation Values. On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

805. PENALTY FOR FAILURE TO PROVIDE NOTICE OF BUDGET HEARING (RULE 805).

Section 63-802A, Idaho Code.

(3-15-02)

01. Penalties for Noncompliance. Effective January 1, 2003, penalties shall be applied to any taxing district that fails to provide each appropriate county clerk with written notification of the budget hearing information required pursuant to Section 63-802A, Idaho Code. The penalties provided by this section apply only to failure to comply with the April 30 notification deadline. (3-15-02)

a. Noncomplying Nonschool Districts. There shall be no increase in the portion of the budget subject to the limitations of Section 63-802, Idaho Code. This restriction shall apply to otherwise available budget increases from the three percent (3%) growth factor, new construction or change of land use classification, and annexation. There shall also be no increase resulting from adding previously accrued foregone increase amounts to the budget and the total accrued foregone amount shall not change for a noncomplying district. (3-15-02)

b. Noncomplying School Districts. The maintenance and operation portion of the budget is the portion that shall not increase. School tort and tuition funds shall be permitted to increase, subject to the limitations of Section 63-802, Idaho Code. (3-15-02)

02. Exceptions. Voter approved budget increases permitted pursuant to Section 63-802(4), Idaho Code, shall be allowed. (3-15-02)

03. County Clerks to Submit Lists. By the ~~first~~ fourth Monday of ~~August~~ May, each county clerk shall submit to the State Tax Commission a list of noncomplying taxing districts along with other documents required pursuant to Rule 803 of these rules and Section 63-808, Idaho Code. (~~3-15-02~~)(____)

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 010: Amend Motor Fuels Rule 010 by adding a definition for an Indian-owned retail outlet. This allows Idaho-licensed fuel distributors to identify which retailers qualify as Indian-owned retail outlets in order to make nontaxable fuel sales to them. It also helps consumers identify which retailers do not charge the Idaho motor fuels tax because they are Indian-owned retail outlets.

Rule 130: Amend Motor Fuels Rule 130 to add "delivered to an Indian-owned retail outlet tax not collected" to the list of disbursements in Paragraph 130.01.c., and inform Idaho-licensed fuel distributors that the deduction in Paragraph 130.01.j., is "limited to 10% of the total volume."

Rule 140: Amend Motor Fuels Rule 140 to clarify that only taxable and nontaxable fuel sales can be included in the calculation of fuels tax bad debt when applying partial payments on a first-in/first-out or prorated basis. Inform Idaho-licensed fuel distributors of the statute of limitations for fuels tax bad debt claims.

Rule 150: Amend Motor Fuels Rule 150 to require licensed fuel distributors who use credit card receipts as their sales invoices to comply with the invoice documentation requirements in this rule.

Rule 170: Amend Motor Fuels Rule 170 by removing "federal government" because they cannot use dyed low-sulfur diesel in their motor vehicles on a highway and update who can use low-sulfur dyed diesel fuel in their motor vehicles.

Rule 180: Amend Motor Fuels Rule 180 to remove the requirement for a statement in Subsection 180.02 that is not required for a licensed fuel distributor to receive a refund.

Rule 270: Amend Motor Fuels Rule 270 to add a new paragraph that states no Idaho motor fuels tax is paid when fuel is purchased from an Indian-owned retail outlet. Add the word "Idaho" in front of "tax-paid fuel."

Rule 292: Amend Motor Fuels Rule 292 to add language that states no Idaho motor fuels tax is paid when fuel is purchased from an Indian-owned retail outlet and to add language for a standard power take-off (PTO) or auxiliary engine allowance for concrete pumping trucks.

Rule 400: Amend Motor Fuels Rule 400 to correct a reference to an Idaho Code section that was renumbered in a previous year.

Rule 510: Amend Motor Fuels Rule 510 to replace the word "biodiesel" with the phrase "biodiesel blended fuels."

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy Nilson, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-0501

010. DEFINITIONS (RULE 010).

The definitions provided by statute, including the definitions in Section 63-2401, Idaho Code, apply to these rules. Additionally, the following definitions shall apply. (6-23-94)

01. Bond. A person required to post a bond may, instead of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the bond required: (3-30-01)

a. Lawful money. Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order or other certified funds that are payable to the Idaho State Tax Commission. A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a distributor license. (3-30-01)

b. Letters of credit. Irrevocable standby letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Idaho State Tax Commission. The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. The letter must include the following items: (3-30-01)

- i. Issuing institution; (3-30-01)
- ii. Taxpayer's name; (3-30-01)
- iii. Effective date; (3-30-01)
- iv. Expiration date and place; (3-30-01)
- v. Idaho State Tax Commission as the payee; (3-30-01)
- vi. Dollar amount covered; (3-30-01)

- vii. Terms of letter; (3-30-01)
- viii. Letter number; and (3-30-01)
- ix. Authorized signatures. (3-30-01)

c. Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission" and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission. (3-30-01)

d. Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the name of the taxpayer and the "Idaho State Tax Commission". Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following: (3-30-01)

- i. No Automatic Teller Machine (ATM) card may be issued to the account; and (3-30-01)
- ii. Withdrawals require both signatures of the parties of the joint account or by the Idaho State Tax Commission alone. (3-30-01)

02. Commercial Motor Boat. A commercial motor boat, as defined in Section 63-2401(4), Idaho Code, includes a motor boat used in a business that rents boats to others who use the boats for pleasure. (6-23-94)

03. IFTA. Means the International Fuel Tax Agreement referred to in the Intermodal Surface Transportation Act of 1991, Public Law 102-240 section 4008, 105 Stat. 1414, codified as 49 USC Sections 31701 through 31708, and in Section 63-2442A, Idaho Code. (3-30-01)

04. Indian-Owned Retail Outlet. An Indian-owned retail outlet is: ()

a. Located within the boundaries of a federally recognized Indian reservation and ()

b. Owned and operated by: ()

i. The Coeur d'Alene, Kootenai, Nez Perce, Shoshone/Bannock, or Shoshone/Paiute tribe; or ()

ii. An enterprise owned by one (1) of the tribes listed above; or ()

iii. An enrolled member of one (1) of the listed tribes on whose reservation the retail outlet is located. ()

045. Pay, Paid, Payable or Payment. When used in reference to any amount of tax, penalty, interest, fee or other amount of money due to the State Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Idaho State Tax Commission of lawful money of the United States. As used herein, lawful money of the United States means currency or coin of the United States at face value and negotiable checks that are payable in money of the United States; provided however, acceptance by the State Tax Commission of any check that is subsequently dishonored by the bank upon which it is drawn shall not constitute payment. Additionally, nothing herein shall limit the authority of the State Tax Commission to refuse to accept any check drawn upon the account of a taxpayer who has previously tendered any check that was dishonored by the bank upon which it was drawn. All amounts due the state must be paid by electronic funds transfer whenever the total amount of tax due plus any related fee, interest, penalty or other additional amount is one hundred thousand dollars (\$100,000) or more, according to

rules promulgated by the Idaho State Board of Examiners. (3-30-01)

056. These Rules. The term “these rules” refers to this chapter, IDAPA 35.01.05, of rules relating to the Idaho Motor Fuels Tax and the Idaho Petroleum Transfer Fee. (6-23-94)

(BREAK IN CONTINUITY OF SECTIONS)

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

- a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)
- b. The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)
- c. The total quantity of motor fuels and other petroleum products disbursed ~~to licensed distributors tax not collected or exported, and motor fuel sold to the Idaho National Guard~~ during the month; ~~Disbursements include motor fuel that is:~~ (3-30-01)()
 - i. Delivered to licensed distributors tax and transfer fee not collected; ()
 - ii. Exported; ()
 - iii. Delivered to the Idaho National Guard tax exempt; or ()
 - iv. Delivered to an Indian-owned retail outlet tax not collected. ()
- d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)
- e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g. The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h. The tax-paid purchases; (7-1-98)
- i. The net taxable gallons; (7-1-98)
- j. The gallons of ethanol and biodiesel reported in ethanol ~~and blends~~, biodiesel blends, ~~and biodiesel (limited to ten percent (10%) of the total volume);~~ (5-3-03)()

k. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. See Rule 140 of these rules; (7-1-99)

l. The tax computation; (7-1-98)

m. The bad debt amounts, refer to Rule 140 of these rules; (7-1-98)

n. The gaseous fuels permit fees; and (~~7-1-98~~)(____)

o. The net tax due; and (~~7-1-98~~)(____)

02. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (7-1-99)

03. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

04. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

05. Timely Reporting. Any petroleum product shipments that are: (7-1-98)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

06. Motor Fuels Receipts. All gasoline, gasohol, aircraft engine fuel, and undyed diesel fuel received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

140. DEDUCTIONS (RULE 140).

01. Motor Fuels and Petroleum Products Presumed to Be Distributed. Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and/or transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the

petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products. (7-1-98)

02. Distributor's and Retail Dealer's Allowances for Motor Fuels. The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrinkage, evaporation, spillage or handling losses for motor fuel. The State Tax Commission shall then allow the additional one percent (1%) deduction unless a retail dealer claims that he did not receive the credit allowance. If such claim is made, the State Tax Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. In the case of sales of motor fuel to retail dealers, to establish that the allowance of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: (4-6-05)

- a. That the amount of the allowance has been passed on; or (7-1-98)
- b. A statement that the allowance has been deducted in determining the price. (7-1-98)

03. Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: (7-1-98)

- a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and (7-1-98)
- b. Common carrier shipping documents, bills of lading, manifests, and cost billings; or (7-1-98)
- c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or (7-1-98)
- d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. (7-1-98)
- e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. (7-1-98)

04. Bad Debt Write-Off. ~~A tax credit may be taken on the distributor's fuel tax report for fuel taxes paid on sales made after July 1, 1995. The credit is claimed when the debt has been written off for income tax purposes in the business records of the distributor. The credit may be claimed on distributor's fuel tax report each month or at the end of the distributor's tax year after a debt has been written off. A distributor may take a bad debt tax credit for fuel taxes paid on sales made after July 1, 1995. After the debt has been written off for income tax purposes in the distributor's records, the distributor may claim the credit on its fuel tax report for the month in which it made the bad debt adjustment.~~ (7-1-98)()

a. First-in/first-out method for partial payments. When a distributor receives partial payments ~~are received~~ on a specific fuel account that includes taxable fuel sales, and nontaxable fuel sales, ~~and/or other sales~~, the distributor must apply the payments to the unpaid fuel sales on a first-in/first-out basis before ~~claiming a~~ calculating the amount of the bad debt credit. (7-1-98)()

b. Proration of partial payments. When a distributor receives partial payments ~~are received~~ on a specific fuel account, before and/or after claiming a bad debt credit ~~has been claimed~~ on ~~the distributor's~~ its fuel tax report, the distributor must prorate the taxable fuel sales, and nontaxable fuel sales, ~~and/or other sales which that~~ occurred on the same day or on the same invoice for each such account. (7-1-98)()

c. Amount of credit allowed. A distributor may claim a credit or refund on its monthly fuels tax report for fuels tax that is found to be uncollectible. If both nontaxable and taxable fuel sales are included in the fuel account, a distributor may take credit only for the portion of the bad debt that represents unpaid fuels tax. ()

d. Multiple accounts - allocation of unspecified payments. If a distributor receives an unspecified payment from a customer that may be applied to an unpaid fuel account and nonfuel accounts, the distributor must allocate the payment to the various accounts upon receipt of the partial payment. If the distributor fails to make the allocation at the time the payment is received, the entire amount of the payment will be allocated to the customer's fuel account for purposes of calculating the amount of the credit. ()

e. Statute of limitations for bad debt claim. A distributor may receive a credit or refund of fuels taxes in Subsection 140.04 of this rule if a written claim is filed with the State Tax Commission within three (3) years from the date the tax was paid to the State Tax Commission. The State Tax Commission will review all such refund claims. ()

(BREAK IN CONTINUITY OF SECTIONS)

150. DOCUMENTATION REQUIRED (RULE 150).

01. Retail Sales Invoices for Delivered, Bulk Plant, and Station Sales. Any distributor who sells motor fuels and other petroleum products in this state must issue an original invoice to the purchaser; provided, however, that when sales are accounted for on a monthly basis the invoices may be issued to the purchaser at the time of billing. All sales invoices (including a credit card receipt used as a sales invoice) for motor fuels and other petroleum products sold at retail stations, bulk plants, or delivered to the customer's location must contain the following: (7-1-98)()

a. A preprinted serial identification number, except when invoices are automatically assigned a consecutive serial unique identification number by a computer or similar machine when issued; (7-1-98)()

b. Name and address of the distributor; (7-1-98)

c. Name of the purchaser; (7-1-98)

d. Date of sale or delivery; (7-1-98)

e. Type of fuel; (7-1-98)

f. Gallons invoiced - reported as required in Section 120 of these rules; (7-1-98)

g. Price per gallon and total amount charged. When taxable motor fuels products are sold, at least one (1) of the following must be used to establish that the Idaho state fuel tax has been charged: (7-1-98)

i. The amount of Idaho state fuels tax; (7-1-98)

ii. The rate of Idaho state fuels tax; or (7-1-98)

iii. A statement that the Idaho state fuels tax is included in the price. (7-1-98)

h. Delivered sales invoices must also contain the purchaser's address along with the Origin and Destination of the motor fuels and other petroleum products. (7-1-98)

i. The sales invoice shall contain double-faced carbons on the original of the first copy, unless invoices are automatically prepared by a computer or similar machine when issued. (7-1-98)

02. Correcting Sales Invoice Errors. When an original invoice is issued containing incorrect information, it may be canceled by a credit invoice and cross-referenced to all copies of the invoice covering the transaction being corrected. If a second sales invoice is issued, it shall show the date and serial number of the original

invoice and that the second invoice is in replacement or correction thereof. (7-1-98)

03. Documentation Is Required. Failure to include all the above documentation will result in an invalid sales invoice for a tax-paid fuel claim by the distributor's customer. (7-1-98)

04. Documentation Requirements for Dyed Diesel Fuel. The state of Idaho is following the Internal Revenue Service requirements for sales of dyed diesel fuel. The Internal Revenue Code requires that a notice stating "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" must be: (7-1-98)

a. Provided by the terminal operator to any person who receives dyed diesel fuel at a terminal rack of that operator; and (7-1-98)

b. Provided by any seller of dyed diesel fuel to the buyer if the fuel is located outside the bulk transfer/terminal system and is not sold from a posted retail pump; and (7-1-98)

c. Posted by a seller on any retail pump where the dyed diesel fuel is sold for use by the buyer. (7-1-98)

d. The documentation notice found in this rule must be provided at the time of removal or sale and must appear on shipping papers, bills of lading, and sales invoices accompanying the sale or removal of the fuel. Any person who fails to provide or post the required notice is presumed to know that the fuel will be used for a taxable use and is subject to penalties imposed by the Internal Revenue Service. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

170. ADDITIONAL INFORMATION (RULE 170).

01. Undyed Diesel Fuel Used for Heating Purposes. The consumer must apply directly to the State Tax Commission for a refund of the special fuels taxes paid on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: (7-1-98)

a. Properly documenting information on the sales invoice; and (7-1-98)

b. Providing the customer with a Form 75-HF "Heating Fuel Only". (7-1-98)

02. Red-Dyed High-Sulfur Fuel. It is illegal to use red-dyed high-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state. (7-1-98)

03. Red-Dyed Low-Sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the ~~federal government~~, state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur diesel fuel may be used: ~~(7-1-98)(_____)~~

a. By state and local governments (political subdivisions of the state) for their exclusive use; (7-1-98)

b. In the engine of a train; (7-1-98)

c. In a school bus while the bus is engaged in the transportation of students and school employees; (7-1-98)

d. ~~By a qualified local bus while the bus is engaged in furnishing intracity passenger land~~

~~transportation for compensation, if the bus is available to the general public, operates along scheduled, regular routes, has a seating capacity of at least twenty (20) adults (not including the driver), and is under contract with, or receiving more than a nominal subsidy from, any state or local government to furnish such transportation; and In a vehicle (such as a ground servicing vehicle for aircraft) owned by an aircraft museum; (7-1-98)()~~

~~e. By an intercity bus to furnish, for some level of compensation, passenger transportation that is available to the general public, and the transportation is scheduled and follows regular routes, or the seating capacity of the bus is at least twenty (20) adults (not including the driver). In a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any state or foreign country and is used in the operator's trade or business or for the production of income; (7-1-98)()~~

~~f. The buses identified in Subsections 170.03.d. and 170.03.e. above are available to the general public if the buses are available for hire to more than a limited number of persons, groups, or organizations. In a highway vehicle owned by the United States that is not used on a highway; (7-1-98)()~~

~~g. Exclusively by a nonprofit educational organization as defined in Internal Revenue Code Section 4221 (d)(5). ()~~

04. Motor Fuels Exemption From Sales Tax. Any sale of motor fuels by any fuel distributor which is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If fuel, including dyed diesel fuel, is sold without the motor fuels tax, the sale is subject to Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of fuel delivered into bulk storage tanks, where the motor fuels tax is not charged, are exempt from Idaho sales tax only if the distributor has taken from the purchaser a sales tax exemption certificate in the manner required by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 128. However, if the fuel delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. (5-3-03)

171. -- 179. (RESERVED).

180. REFUNDS TO LICENSED FUEL DISTRIBUTORS (RULE 180).

01. Refund Claim. Any licensed fuel distributor believing that he has paid motor fuels taxes or transfer fees in any amount more than properly imposed may file a claim with the State Tax Commission for a refund of such excess motor fuels taxes or transfer fee on forms prescribed by the State Tax Commission. The claim for refund must conform with the requirements of this rule. (3-15-02)

02. Refund Claim Documentation. The claim must be filed on a distributor's fuel tax report and must include the full name and address of the claimant and his fuel distributor's license number. If the claim is for a casualty loss, the claim must include a detailed statement of the reason the claimant believes a refund is due. The statement should include a description of the transactions, if any, to which the motor fuel tax relates and must be filed on a distributor's fuel tax report for the period for which the claimed excess motor fuel tax or transfer fee amount was paid. ~~The claim for refund must include a statement that the amount refunded to the licensed fuel distributor has been, or will be, refunded by the fuel distributor to the purchaser, or that such motor fuel tax or transfer fee have never been collected from the purchaser.~~ (3-15-02)()

03. Refund as a Credit. A claimant may claim a bad debt credit for motor fuels taxes as a credit against motor fuels taxes or transfer fee due on the distributor's fuel tax report. (3-15-02)

04. Statute of Limitation. No claim for refund will be allowed by the State Tax Commission if it is filed more than three (3) years from the time the payment of the claimed excess motor fuels taxes or transfer fee was made. The time the payment was made is the date upon which the distributor's fuel tax report relating to the payment was filed or was required to be filed, whichever occurred first. (3-15-02)

05. Appeal Procedures. No claim for refund may be filed relating to any motor fuels taxes or transfer fees that have been asserted by a Notice of Deficiency Determination. A taxpayer contending that motor fuels taxes or transfer fee have been erroneously or illegally collected by the State Tax Commission pursuant to a Notice of Deficiency Determination must seek a redetermination by using the appeal procedures required by law. (3-15-02)

06. Notice of Denial. All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or any part of the claim should not be allowed to the claimant, notice of denial of the claim shall be mailed to the claimant by certified mail. The notice shall include a statement of the reasons for the denial. When seeking an appeal or redetermination of a denial of a claimed refund or credit, the notice of denial shall be the equivalent of a Notice of Deficiency Determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must do so by filing a petition for redetermination in the manner prescribed in Idaho Administration and Enforcement Rule 300, as incorporated herein by Rule 330 of these rules. Such a petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to, or served upon, the claimant. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

270. REFUND CLAIMS--DOCUMENTATION (RULE 270).

01. Refunds to Consumers. Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. Each invoice must contain or show the following. In addition to the requirements outlined above, ~~each invoice must contain or show the following:~~ (7-1-98)()

- a. A preprinted ~~serial~~ identification number; (7-1-98)()
- b. Name and address of seller; (7-1-98)
- c. Name of purchaser; (7-1-98)
- d. Date of delivery; (7-1-98)
- e. Type of motor fuel; (7-1-98)
- f. Gallons invoiced; (7-1-98)
- g. Price per gallon; (7-1-98)
- h. At least one (1) of the following to establish that tax has been charged: (7-1-98)
 - i. The amount of Idaho state fuels tax; (7-1-98)
 - ii. The rate of Idaho state fuels tax; or (7-1-98)
 - iii. A statement that the Idaho state fuels tax is included in the price. (7-1-98)

02. Indian-Owned Retail Outlet. Motor fuels purchased from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase. See definition of Indian-owned retail outlet in Rule 010 of these rules. ()

023. Corrected Invoices. No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided and retained by the seller for at least three (3) years from the date issued. (7-1-98)

034. Invoice Retention. The original invoices required by Subsection 270.01 of this rule shall be

retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (7-1-98)

045. Refund Documents. For refund claims under Section 63-2410(5)(c), Idaho Code, an original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (7-1-98)

056. Records Required for Motor Fuels Tax Refunds. Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both ~~refundable taxable~~ and ~~nonrefundable nontaxable~~, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (~~7-1-98~~)()

a. Use of Fuel from a Single Storage Tank. ~~Idaho~~ tax-paid fuel (other than fuel purchased by persons who operate motor vehicles that are licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 292 of these rules) purchased and delivered into a single bulk storage tank and withdrawn for both nontaxable and taxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty-five percent (25%) of all taxed gasoline delivered into bulk storage shall be presumed to be for exempt uses unless another percentage is requested by the taxpayer and authorized by the State Tax Commission. The request shall itemize anticipated uses by type of equipment based on previously experienced use. The State Tax Commission will refund taxes paid on the percentage of taxed fuel presumed to be exempt. If refunds are claimed based on records of actual use, the records must be made available upon request. In either case, invoices showing the fuel purchases on which tax was paid must be retained to support each refund claim. The proration or another percentage granted by this paragraph cannot be used if you have separate storage tanks for undyed diesel and dyed diesel. (~~3-20-04~~)()

b. Use of Fuel from Multiple Storage Tanks. When separate bulk storage tanks are maintained for both exempt and taxable uses, the seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Detailed withdrawal records will only be required if fuel is used by motor vehicles licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 292 of these rules. All fuel invoices must be retained as required by Subsection 270.03 of this rule. Exempt fuel may not be used in motor vehicles licensed or required to be licensed. (3-20-04)

c. Use of Fuel for Other Than Bulk Storage. Fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motorboats, or vehicles other than licensed motor vehicles, must be identified on the purchase invoice. No other records will be required. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

292. CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES. (RULE 292).

01. Fuel Records Required for Refund Claims. Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power take-off (PTO) equipment. Records must be kept as described in Subsection 290.01 of these rules. (4-5-00)

02. Nontaxable Miles Defined. Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property

owner, or defined in Subsection 292.03 of this rule. Miles driven on a construction site would also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 130 of these rules regarding application of Idaho Sales and Use Taxes. (4-6-05)

03. Additional Nontaxable Roadways. Roadways defined in Section 63-2401, Idaho Code, include those constructed and maintained by the United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. The special fuels user must maintain records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision, unless using the “standard MPG” for its industry found in Subsection 290.02 of these rules. When special fuels users compute their special fuels tax liability or refund, they may exclude from total taxable miles traveled in Idaho the miles traveled on these roadways if the cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them or if the special fuel user is a subcontractor of a prime contractor required by contract to bear the primary cost of maintaining the roadway. (3-15-02)

04. Calculation. Determine the number of taxable miles driven in Idaho following the procedure established in Subsection 290.01 of these rules. Divide this number by the actual MPG, the statutory MPG established by Subsection 290.01 of these rules, or the industry standard MPG provided by Subsection 290.02 of these rules. Subtract this number of gallons from the total Idaho tax-paid gallons purchased for the subject vehicles. Motor fuels purchased from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase. See definition of Indian-owned retail outlet in Rule 010 of these rules. (~~4-5-00~~)()

05. Power Take-Off and Auxiliary Engine Allowances (Allowances). Power-take-off (PTO) allowances are available for special fuels powered vehicles. Auxiliary engine allowances are available for both special fuels and gasoline-powered vehicles. (4-5-00)

a. Standard Allowances for Special Fuels. Nontaxable gallons of special fuels may be claimed when special fuels are used for purposes other than to operate, propel, or idle, as defined in Section 63-2401, Idaho Code, a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for allowances are turning a vehicle-mounted cement mixer or off-loading product. (4-6-05)

b. Standard Allowances for Gasoline. Nontaxable gallons of gasoline may be claimed when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the licensed motor vehicle. No claim for gasoline is allowed when gasoline is used by the licensed motor vehicle’s main engine even to operate the motor vehicle’s PTO unit. (3-15-02)

c. Rates for Standard Allowances. The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (4-5-00)

i. Allowances based on unit quantities:

Allowance Type	Allowance Rates	x	Unit Quantities
Gasoline/fuel oil	0.00015 gallons	x	Gallons pumped
Bulk cement	0.1858 gallons	x	Tons pumped
Refrigeration unit/reefer	0.75 gallons	x	Hours unit operated
Tree length timber/logs	0.0503 gallons	x	Tons Hauled
Tree length timber/logs	3.46 gallons	x	Hours unit operated
Carpet cleaning	0.75 gallons	x	Hours unit operated
<u>Concrete Pumping</u>	<u>0.142857 gallons</u>	<u>x</u>	<u>Yards pumped</u>

(~~3-15-02~~)()

- ii. Allowances based on percentages:

Allowance Type	Percentage Per Gallon	x	Gallons Consumed
Concrete mixing	30%	x	Gallons consumed
Garbage compaction	25%	x	Gallons consumed

(3-15-02)

06. Nonstandard Allowances. A request for an allowance not listed in Subsection 292.05 of this rule, or greater than those listed must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. Taxpayers must send requests for approval to:

FUELS TAX POLICY
IDAHO STATE TAX COMMISSION
P. O. BOX 36
BOISE, ID 83722-0410

The Idaho State Tax Commission may request additional information or documentation as needed in order to make a determination on the request. (4-6-05)

07. Nontaxable Gallons of Fuel Claimed by Non-IFTA Licensees. The nontaxable gallons of fuel claimed by non-IFTA licensees may be the allowance gallons listed in Subsections 292.05 and ~~292.06~~ 292.06 of this rule and/or the gallons calculated under Subsection 292.04 of this rule. Only actual MPGs, computed by adjusting total fuel as defined in Subsection 290.01 of these rules by the allowance gallons, may be used to calculate a fuels tax refund based on both nontaxable miles and allowances. Fuels tax refunds based solely on an allowance may be calculated without regard to mileage and fuel consumption (MPG) information. (~~4-6-05~~)(_____)

08. IFTA Licensees. Qualifying for Power Take-Off (PTO) And Auxiliary Engine Allowances (Allowances). Allowances listed in Subsection 292.05 of this rule or established as provided in Subsection 292.06 of this rule may be granted for IFTA licensees by recomputing the total gallons of fuel consumed in all jurisdictions. IFTA licensees claiming refunds of Idaho fuels tax resulting from the allowances established in Subsections 292.05 and 292.06 of this rule, must file the claim on an Idaho Fuels Use Report Form 75 with the relevant supplemental worksheet. (4-6-05)

a. The IFTA licensee must recompute the total taxable fuel for Idaho by deducting the gallons determined by the allowances in all jurisdictions from the total number of gallons of fleet fuel consumed that was reported on the IFTA return. Using the new net gallons consumed, recompute the fleet miles per gallon. Apply the new fleet miles per gallon to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho nontaxable gallons available for refund, the licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. (4-5-00)

b. Additionally, a copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to review and audit, therefore, adequate documentation must be retained by the licensee. (4-5-00)

c. IFTA licensees that used an assumed MPG when preparing their original IFTA return may not claim any additional refund. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

400. IFTA LICENSING AND SPECIAL FUELS PERMITTING REQUIREMENTS FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND POUNDS MAXIMUM GROSS WEIGHT (RULE 400).

The following rules relate to the special fuels tax licensing system provided in Sections 63-2438 through 63-2440, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA. (7-1-98)

01. In General. It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels as defined in Section 63-2401(20), Idaho Code, on the highways of this state without having obtained one (1) of the following: (~~7-1-98~~)()

a. A registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code. (7-1-98)

b. A temporary permit from the Idaho Transportation Department. (3-15-02)

c. An IFTA license. (7-1-98)

d. In the case of vehicles powered by gaseous fuels, a gaseous fuel permit as provided by Section 63-2424, Idaho Code. (7-1-98)

02. Federal or In-State Governmental Vehicles. Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. (3-15-02)

03. Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. (7-1-98)

04. Temporary Permits. Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code, or IFTA licensed, shall secure a temporary permit from the Idaho Transportation Department in the manner provided and required by that department. (3-15-02)

05. Failure to Obtain an IFTA License or a Temporary Permit. Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code, an IFTA license or an Idaho temporary permit is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections 63-2434 and 63-3065, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a temporary permit. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

510. APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (RULE 510).

01. Application. (6-23-94)

a. The Petroleum Transfer Fee applies to the receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$0.01) for each gallon of petroleum or petroleum product received. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. (7-1-99)

b. The legal incident of the fee is on the distributor required to report it to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. (6-23-94)

02. Receipt of Petroleum Products. Receipt of petroleum or petroleum products shall be determined according to Section 63-2403, Idaho Code. (7-1-99)

03. Exemption to Application of the Transfer Fee. The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

a. Returned to the refinery or pipeline terminal. (6-23-94)

b. Exported from this state. No fuel will be considered exported, unless the distributor can prove the export by documentation required by Rule 140 of these rules. (7-1-99)

c. Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Petroleum Transfer Fee unless the petroleum or petroleum products are "received" by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation. (7-1-99)

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

04. Casualty Loss and Shrinkage Not Deductible. All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. The deductions allowed to motor fuel distributors for fuel lost by fire or similar casualty, see Section 63-2407(3), Idaho Code; and the two percent (2%) discount for cost of collection and loss by shrinkage or evaporation, see Section 63-2407(4), Idaho Code; are not deductions applicable to the Petroleum Transfer Fee. (7-1-99)

05. Petroleum and Petroleum Products. The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to motor gasoline, alcohol blended fuels, such as gasohol and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), biodiesel blended fuels, such as B-20, including the biodiesel content of the blended fuel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. (~~7-1-99~~)(____)

06. Licensed Distributors and Limited Licenses. Any person holding a distributor's license issued by the State Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the State Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-99)

07. Reporting Requirements. (6-23-94)

a. Distributors licensed under Section 63-2427A, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2402 and 63-2408, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report the tax on the same fuel. (5-3-03)

b. Persons holding a limited license shall file a monthly report with the State Tax Commission on forms prescribed by the State Tax Commission on or before the last day of the month following the month to which the report relates. (7-1-99)

c. The provisions of Rule 130 of these rules, apply to reports of the Petroleum Transfer Fee. (7-1-99)

08. Payment. (6-23-94)

a. Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

b. Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

09. Incorporation of Other Relevant Rules. Section 41-4909, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full. (4-6-05)

IDAPA 35 - STATE TAX COMMISSION

35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 011: To strike the current wording of the rule and replace it with a statement that distribution of free tobacco products is unlawful and include a cross-reference to the statute.

Rule 018: To amend Rule 015 to state that tax must be reported on the return for the month in which the stamps are affixed.

Rule 021: To amend Rule 021 to state that the first distributor is liable for the tax and must indicate the tax was paid on the invoice. The second distributor will then not be liable for the tax.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Husted, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0110-0501

011. DISTRIBUTION OF FREE ~~CIGARETTES~~ OR BELOW COST TOBACCO PRODUCTS (RULE 011).

01. ~~**Reporting.** When a manufacturer distributes cigarettes within this state, without charge, for sampling, or any other purpose, the manufacturer must make a report to the State Tax Commission not later than twenty (20) days after the calendar month in which the distribution occurs. The report shall include: name of manufacturer, number of cigarettes distributed, method of distribution, name and address of each wholesaler or retailer involved in such distribution, the number of cigarettes distributed through each, and the method of packaging.~~ **Distribution of Free or Below Cost Tobacco Products.** The distribution of tobacco products for free or below the cost of such products to the sellers or distributors of the products is prohibited by Section 39-5707, Idaho Code. If a free package is given away in a sales promotion that requires the purchaser to buy a specified number of packages, such as buy two (2) get one (1) free, all the packages must bear an Idaho tax stamp. (7-1-93)(____)

02. ~~**Packaging.** When a manufacturer distributes cigarettes within this state without charge, the package shall indicate in a clear and indelible manner, that the cigarettes are free and that all applicable taxes will be paid.~~ (7-1-93)

03. ~~**Tax Assessed.** Reports of cigarettes distributed without charge must be accompanied by the tax assessed at the rate in Section 63-2506, Idaho Code. Discounts allowed in Section 63-2509, Idaho Code, will not apply.~~ (7-1-93)

04. ~~**Without Charge or Obligation.** For purposes of this rule, cigarettes must be wholly without charge or obligation to the receiver. Each cigarette package involved in programs such as buy one (1) get one (1) free must bear an Idaho tax stamp.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

018. CIGARETTE TAX RETURN (RULE 018).

01. **Cigarette Tax Return.** All cigarette wholesalers required to affix Idaho stamps to cigarettes, or who make sales to U.S. military or Indians on reservations, or who have a stamping warehouse or business located within this state and sell cigarettes in interstate commerce are required to file an Idaho cigarette tax return. (7-1-93)

02. **Filing Returns.** The return shall be in a form prescribed by the Commission and shall be filed on a monthly basis. (7-1-93)

03. **Due Date.** The return will be filed by the wholesaler on or before the twentieth (~~20th~~) day of the month immediately following the month to which the return applies. If the twentieth (~~20th~~) day falls on a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday, or legal holiday. The return must account for and tax must be paid on all cigarette stamps affixed during the month to which the return applies. (7-1-93)(____)

04. **Requirements of a Valid Return.** A tax return or other documents required to be filed in accordance with Section 63-2510, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

a. All cigarette tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the cigarette tax return form. (7-1-93)

b. All cigarette tax returns or other documents filed by the taxpayer must include his cigarette wholesaler's permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A cigarette return that does not provide sufficient information to compute a tax liability does not constitute a valid cigarette tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

05. Failure to File a Return. Any wholesaler required to file a return who fails to file such return shall be in violation of this regulation and shall be required to appear before the Commission to show cause as to why his permit should not be revoked. See Section 63-2518, Idaho Code. (7-1-93)

06. Implementation of Tobacco Master Settlement Agreement. Chapter 78, Title 39, Idaho Code, enacted as part of the settlement agreement with several cigarette manufacturers requires nonparticipating manufacturers to place certain funds in escrow accounts. The State Tax Commission is required to ascertain the amount of state excise tax paid on cigarettes manufactured by manufacturers that are not participating in the Master Settlement Agreement. Therefore, as part of the cigarette tax return, cigarette wholesalers must report separately the number of Idaho cigarette stamps affixed to products manufactured by manufacturers that are not participating in the Master Settlement Agreement. (4-5-00)

07. Wholesale Sales of Stamped Cigarettes. Every distributor who imports unstamped cigarettes into this state must file a return, however; a cigarette distributor who buys only stamped cigarettes for resale is not required to file a return. ()

(BREAK IN CONTINUITY OF SECTIONS)

021. SALES TO OTHER IDAHO DISTRIBUTORS (RULE 021).

01. Sales for Eventual Resale. When a ~~registered~~ Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state, ~~the tobacco tax shall be deducted from the sales price~~ the incidence of the tax is on the distributor who first causes the tobacco products to be shipped to Idaho. (7-1-93)()

02. First Receiver. The first receiver, the tobacco products distributor ~~making the sale, will claim a deduction of the wholesale sales price on line three (3) of~~ who first causes the tobacco products to be shipped to Idaho will report the tax on his tobacco products tax return for the month in which the sales ~~occurred~~ occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax. (7-1-93)()

03. Second Subsequent Receiver. ~~The second~~ Any subsequent receiver, ~~the tobacco products distributor making the purchase, will be required to report the purchase as a nontaxed tobacco products purchase and remit the tax on his tobacco products tax return for the month in which the purchase occurred will not be required to report or pay the tax as long as he maintains records showing that the first receiver has paid the tax.~~ (7-1-93)()

IDAPA 35 - STATE TAX COMMISSION

35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

DOCKET NO. 35-0111-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 005: To amend Rule 005 to provide the mailing address for unclaimed property, an updated e-mail address, an updated Web site address, and to update office hours available.

Rule 015: To amend Rule 015 to state that holders must send the stock certificate or its electronic equivalent.

Rule 016: To amend Rule 016 to add language adapted from Oregon's Administrative Rule 141-010-0212. The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0111-0501

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- WEB SITE ADDRESS -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. The telephone number for Taxpayer Services is (208) 334-7660, or toll free at 1 (800) 972-7660, and the facsimile number is (208) 334-7846. The e-mail address is taxrep@tax.state.id.us. All offices are open from 8 a.m. to 5 p.m. ~~except Saturday, Sunday and Monday through Friday~~ except for legal holidays. (3-15-02)()

02. Unclaimed Property's Address and Phone Numbers. P.O. Box 70112, Boise, Idaho 83707-0112. The telephone number is (208) 334-7627. The facsimile number is (208) 364-7392. ()

023. Regional Field Offices. The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005." (3-15-02)

034. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1 (800) 377-3529. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

015. REPORT OF ABANDONED PROPERTY (RULE 015).

01. Incomplete Report. A report filed with the State Tax Commission must meet the requirements of a valid tax return as set out in Administrative and Enforcement Rule 150. A report that does not meet the requirements of a valid tax return may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code. (7-1-98)

02. Voluntary Payments of Unclaimed Property. A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of fifty dollars (\$50) or less to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code. The administrator will remit the funds to the appropriate state. (3-20-04)

03. Underlying Shares and Cumulative Dividends. The holder must report and remit total cumulative dividends to date, together with the stock certificate or the electronic equivalent of the stock certificate, when the certificate or equivalent is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is more than fifty dollars (\$50). (3-20-04)()

016. FILING A CLAIM WITH ADMINISTRATOR (RULE 016).

01. Interest. Interest on interest bearing items will accrue from March 31, 1980, or date received, whichever is later, for a maximum of ten (10) years. No interest will be paid on items that are reported as interest bearing, unless the holder reports the rate of interest. (7-1-98)

02. Payment of Claims - Claims Process. (8-24-94)

a. Warrants will be authorized and payment made: (8-24-94)

i. In the name of, and mailed to, the established owner; or (8-24-94)

ii. To the court appointed estate administrator, administratrix, executor, executrix, or personal representative; or (8-24-94)

- iii. To the court appointed guardian; or (8-24-94)
- iv. In accordance with a court decree of distribution; or (8-24-94)
- v. To an heir for distribution to other heirs; if any. (8-24-94)
- b.** Owner, Cashier's Checks: (8-24-94)
 - i. The owner of a cashier's check is presumed to be the payee unless the remitter has in his possession the cashiers check. (8-24-94)
 - ii. A payee is presumed to have received payment for a cashier's check or other instrument, and the payee must establish that the check was not cashed and that the owner is not, in fact, a holder in due course. (8-24-94)
- c.** It shall be the responsibility of the payee to disburse any funds or property in accordance with any existing contract or agreement. (8-24-94)
- d.** When one (1) claimant, who has proven that he has an interest in the unclaimed property, has been paid the full amount of unclaimed property held by the State Tax Commission, there is no requirement that the State Tax Commission pay other subsequent claimants. The State Tax Commission is not required to locate all heirs of owners of unclaimed property. (7-1-98)
- e.** If there are two (2) or more owners of unclaimed property, or the reported account is in the name of the tenants in common, or the holder report does not specify the percentage or share of co-owners, the State Tax Commission shall pay each owner an equal share of the account. (7-1-98)
- f.** Before payment of a claim for lost stock or bond certificates, a surety bond may be required of the owner/claimant which bond shall indemnify the State Tax Commission against claims by third parties. (7-1-98)
- g.** Approved utility deposit claim forms and proof of payment to the claimant shall be retained by the utility company for a period of seven (7) years from the date the claim is paid. (7-1-98)
- h.** The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim. ()

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION RULES GOVERNING ADMINISTRATION AND ENFORCEMENT

DOCKET NO. 35-0201-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Rule 010: Amend Administration and Enforcement Rule 010 to refine the definition of pay, paid, payable or payment, by specifying that checks received as payment must be drawn on a United States bank or financial institution and that the definition excludes drafts drawn on a foreign bank or other foreign financial institution in regard to which a processing fee may be incurred by the state of Idaho.

Rule 131: Promulgate new Administration and Enforcement Rule 131 to provide the Tax Commission with the authority to reject certain types of payments.

Rule 310: Section 63-3045, Idaho Code, establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. Amend Administration and Enforcement Rule 310 to add the interest rate for calendar year 2006.

Rule 600: HB 14, passed by the 2005 Legislature, amended Section 63-3049, Idaho Code, to change the requirement for a deposit the taxpayer makes when appealing a State Tax Commission decision to the district court or to the board of tax appeals. Previously the deposit was required to be 20% of the amount in controversy when the State Tax Commission issued the notice of deficiency. The bill changed the requirement to 20% of the amount asserted when the State Tax Commission issues its decision. Amend Administration and Enforcement Rule 600 to conform to the new requirements for the deposit.

Rule 704: Amend Administration and Enforcement Rule 704 to include the Administrator of the Division of Building Safety as an official the Tax Commission can exchange information with related to public works contracts in accordance with Section 54-1904A, Idaho Code, as amended in HB 337, passed by the 2005 Idaho Legislature.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-0501

010. DEFINITIONS (RULE 010).

Section 63-3003, Idaho Code. (3-20-97)

01. Date of Filing or Payment. (4-6-05)

a. When returns or other documents or payments are delivered to the Tax Commission by United States mail, the date of filing or payment means the date shown by the post office cancellation mark. If a cancellation mark is omitted, illegible or erroneous, the document will be deemed filed on the date the taxpayer establishes by competent evidence that the material was deposited with the United States Postal Service. A postage meter cancellation shall not be deemed a post office cancellation mark. Refer to Section 63-217, Idaho Code. (4-6-05)

b. When returns or other documents or payments are delivered to the Tax Commission by a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, the date of filing or payment means the date treated as the postmark date for purposes of Section 7502, Internal Revenue Code, as provided by the special rules in Notice 97-26, 1997-1 C.B. 413 and subsequent Notices. (4-6-05)

c. Materials not mailed with the United States Postal Service or a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, are filed when physically received by the Tax Commission. (4-6-05)

d. Returns or other documents or payments transmitted electronically are deemed received or paid on the date provided in Section 63-115, Idaho Code. (4-6-05)

02. Pay, Paid, Payable or Payment. When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. ()

a. As used herein, lawful money of the United States means; ()

i. eCurrency or coin of the United States at face value; and ()

ii. ~~n~~Negotiable checks drawn on a United States bank or other financial institution that are payable in full in money of the United States. ()

b. The words pay, paid, payable, or payment do not include: ()

i. ~~Acceptance by~~ Submission to the Tax Commission of a check or draft that is subsequently dishonored by the bank institution on which it is drawn ~~does not constitute payment. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the bank on which it was drawn.~~ (3-20-97)()

ii. Submission to the Tax Commission of a check or draft drawn on a foreign bank or other financial

institution in regard to which any processing fees may be incurred by the state of Idaho. ()

03. Return or Tax Return. Return and tax return mean a form or other document that an individual, corporation or other legal entity reports information, including information necessary to calculate taxes due to the Tax Commission or another governmental agency that requires a return be filed. See Rule 150 of these rules for the requirements of a valid tax return. (3-20-97)

04. Tax Commission. Tax Commission means the Idaho State Tax Commission established by Article VII, Section 12 of the Idaho Constitution and referred to in Sections 63-101 and 63-3038, Idaho Code. (3-20-97)

05. These Rules. The term these rules refers to IDAPA 35.02.01, relating to the administration and enforcement of taxes. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

131. UNACCEPTABLE PAYMENTS (RULE 131).
Section 63-3034, Idaho Code.

01. Checks and Drafts Previously Dishonored. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the institution on which it was drawn. ()

02. Checks and Drafts From Foreign Institutions. The Tax Commission may reject a check or draft drawn on a foreign bank or other foreign financial institution. ()

03. Checks and Drafts That Result in Processing Fees. The Tax Commission may reject a check or draft that, if accepted, may result in the state of Idaho incurring a processing fee. ()

~~132.~~ -- 139. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

310. INTEREST RATES (RULE 310).
Sections 63-3045 and 63-3073, Idaho Code. (3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
<u>Calendar Year 2006</u>	<u>6% simple interest</u>	<u>Revenue Ruling 2005-57</u>

(4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

600. JUDICIAL REVIEW -- REQUIRED SECURITY (RULE 600).

Section 63-3049(b), Idaho Code.

(3-20-97)

01. Acceptable Security. For purposes of obtaining judicial review, the taxpayer must submit one (1) of the following securities: (3-20-97)

a. Cash in the form of a cashier's check, money order, or other certified funds that are payable to the Tax Commission. (3-20-97)

b. A bond executed by a surety company licensed and authorized to do business in Idaho, conditioned on the payment of any tax, penalty, and interest that may be found due by the court. (3-20-97)

c. Bearer bonds or other similar obligations of the United States having a market value not less than twenty percent (20%) of the ~~total deficiency~~ amount asserted. (3-20-97)()

d. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation. They must be made in the name of the depositor, payable to the Tax Commission, and contain a provision that interest earned shall be payable to the depositor. (3-20-97)

e. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in Idaho and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the Tax Commission, along with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Tax Commission. (3-20-97)

f. Irrevocable letters of credit not exceeding the federally insured amount, issued by a bank doing

business in Idaho and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Tax Commission. The terms of the letter of credit must permit the Tax Commission to make demand directly against the issuer of the letter of credit for not less than twenty percent (20%) of ~~all taxes, penalties, and interest due and unpaid~~ the amount asserted, on which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (3-20-97)(____)

02. Other Security. Other security may be accepted by the Tax Commission to secure a taxpayer's right of appeal if the Tax Commission has previously agreed in writing to accept the other security in lieu of a cash payment. (3-20-97)

03. Amount Asserted. For purposes of this rule, amount asserted is defined in Section 63-3049, Idaho Code. (____)

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).

Sections 39-8405, 50-1049, ~~54-1904A~~, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3634A, and 67-4917C, Idaho Code. (4-6-05)(____)

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

- 03. Exchange of Information.** Information may be exchanged between the Tax Commission and:
- a. The Internal Revenue Service, as allowed by Section 63-3077(1)(a), Idaho Code; (5-3-03)
 - b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
 - c. County assessors, limited to: (3-20-04)
 - i. Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
 - ii. Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
 - d. Department of Commerce and Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
 - e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
 - f. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
 - g. Idaho Transportation Department, relating to: (3-20-04)

- i. Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
- ii. Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
- h. Financial Management Services of the U. S. Department of the Treasury, as allowed by Section 63-3077(1)(a), Idaho Code; (5-3-03)
- i. Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
- j. Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)
- k. Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
- l. Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
- m. Auditorium districts, as allowed by Section 67-4917C, Idaho Code; *and* (~~4-6-05~~)()
- n. County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (~~4-6-05~~)()
- o. The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. ()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.04.02 - RULES GOVERNING MARKING OF HAZARDS TO AIR FLIGHT
DOCKET NO. 39-0402-0501
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

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 Sections 21-515 and 21-519, 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 October 19, 2005.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

House Bill 40, 2005, amended several sections of Title 21, Idaho Code, to revise the definition of an "airport hazard" and related language to be consistent with Federal Code. The height at which a structure is considered a hazard to safe airflight and will require notification of construction is increased from 150 feet to 200 feet and the minimum size requirement for marker balls is reduced from 54 inches to 36 inches, also to be consistent with Federal requirements.

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

Compliance with 2005 House Bill 40.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There is no fee or charge associated with this rule-making.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact to the general fund.

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because this rule-making is necessary for compliance with Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Mark Lessor, Aviation Technician, 334-8895.

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 October 26, 2005.

DATED this 24th day of August, 2005.

Linda L. Emry, Management Assistant
Budget, Policy, and Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone – 208-334-8810
FAX – 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0402-0501

39.04.02 - RULES GOVERNING MARKING OF ~~OBSTRUCTIONS~~ HAZARDS TO AIR FLIGHT

(BREAK IN CONTINUITY OF SECTIONS)

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.04.02 “Rules Governing Marking of Hazards to Air Flight.” IDAPA 39, Title 04, Chapter 02. (7-1-05)T

02. Scope. This rule establishes the requirements for marking of ~~obstructions~~ hazards to air flight through the airspace of and over the state of Idaho in order to protect and ensure the general public safety, and the safety of persons operating, using or traveling in aircraft pursuant to Section 21-515, Idaho Code. (~~11-28-90~~)(7-1-05)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. (7-1-05)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01. “Idaho Rules of Administrative Procedure of the Attorney General”. (7-1-05)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (7-1-05)T

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. The Division of Aeronautics offices are located at 3483 Rickenbacker Street, Boise ID 83707-1129. (7-1-05)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (7-1-05)T

03. Telephone and FAX Numbers. The Aeronautics offices may be contacted during office hours at 208-334-8775 or by fax at 208-334-8789. (7-1-05)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (7-1-05)T

~~0027~~. -- 099. (RESERVED).

100. REQUIREMENTS.

01. Hazardous Structures. Any structure which obstructs the airspace more than ~~one~~ two hundred ~~fifty~~ (~~150~~200) feet above the ground or water level, or at any height near an established airport as defined by Section 21-101(c), Idaho Code, when determined by the Transportation Board or the Aeronautics Division Administrator acting in behalf of the Board, to be a hazard or a potential hazard to the safe flight of aircraft shall be plainly marked, illuminated, painted, lighted, or designated in a manner approved by the Board. (~~1-2-93~~)(7-1-05)T

02. Lines, Wires, and Cables. Power lines, communication lines, wires, or cable more than ~~one~~ two hundred ~~fifty~~ (~~150~~200) feet above the terrain crossing canyons, rivers, navigable bodies of water, terrain undulations, or guy structures or any height where such wire, cable or obstruction cross navigable bodies of water near established seaplane bases, if determined by the Board to be a hazard to air navigation, shall be marked a two hundred (200) feet intervals of spacing by sphere-type markers having a minimum diameter of ~~fifty-four~~ thirty-six (~~54~~36) inches. Said sphere to be of the split-sheet, clamp-on type which are to be alternated in three (3) contrasting solid colors of gloss white, gloss yellow, and international orange and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. (~~1-2-93~~)(7-1-05)T

03. Spans Between Support Piers. Long spans that exceed lengths of one-half (1/2) mile between support piers, ~~the~~ each pier shall be marked with flashing strobe or beacon lights of a type and brilliance acceptable to the Board if such is deemed pertinent to safety and recognition of obstructions. (~~11-28-90~~)(7-1-05)T

04. Construction. Any construction sponsor is required to submit a notice to the Aeronautics Division Administrator if his construction exceeds one (1) or more of the following conditions: (1-2-93))

a. Greater than ~~one~~ two hundred ~~and fifty~~ (~~150~~200) feet in height. If the proposed object would be more than ~~one~~ two hundred ~~and fifty~~ (~~150~~200) feet above ground level at its location. (~~11-28-90~~)(7-1-05)T

b. Near an established airport or seaplane base. If the proposed object would be within twenty thousand (20,000) feet of an airport (*) or seaplane base with more than three thousand two hundred (3,200) feet in length; and would exceed one (1) foot in height for each one hundred (100) feet (100:1) horizontally from the nearest point of the nearest runway. * To qualify, an airport as defined in Section 21-101(c), Idaho Code, must be listed in the Idaho Airport Facilities Directory, or in the Airport /Facility Directory published by the US-DOT, National Charting Office or operated by a public entity. (~~11-28-90~~)(7-1-05)T

c. If the proposed object would be within ten thousand (10,000) feet of an airport having no runway more than three thousand two hundred (3,200) feet in length; and would exceed one (1) foot in height for each fifty (50) feet (50:1) horizontally from the nearest runway. (11-28-90)

d. Near a Heliport. If the proposed object would be within five thousand (5,000) feet of a heliport listed in the "Airport Facilities Directory" or operated by a public entity; and would exceed one (1) foot in height for each twenty-five (25) feet (25:1), horizontally from the nearest landing and take-off area of that heliport. * To qualify, an airport as defined in Section 21-101(c), Idaho Code, must be listed in the Idaho Airport Facilities Directory, or in the "Airport Director" of the current Airman's Information Manual or operated by a public entity. (~~11-28-90~~)(7-1-05)T

e. Highways and Railroads. If the proposed object is a traverse way which would exceed at least one (1) of the standards listed in Subsections 100.04.a. through 100.04.c. above, after its height is adjusted upward seventeen (17) feet for an Interstate Highway, fifteen (15) feet for any other public roadway, ten (10) feet (or the height of the highest mobile objects that would normally traverse the road) for a private road, twenty-three (23) feet for a railroad, or an amount equal to the height of the highest mobile objects that would traverse a waterway or any other thoroughfare not previously mentioned. (11-28-90)

- 05. Notice Submittal.** The notice required under Subsection 100.04 of this rule must be submitted: (1-2-93))
- a.** At least thirty (30) days before the construction or alteration is to begin; or the application for construction permit is to be filed. (11-28-90)
 - b.** Immediately by telephone or other expeditious means, with written notification submitted within five (5) days thereafter, if immediate construction or alteration is required as in cases involving public services, health, or safety. (1-2-93))
- 06. Notice of Proposed Construction.** A notice of proposed construction or alteration is required so that the State Transportation Board may: (11-28-90)
- a.** Depict obstructions on aeronautical charts. (11-28-90)
 - b.** Recommend appropriate markings as required by Section 21-515, Idaho Code. (11-28-90)
 - c.** Be made aware of potential aeronautical hazards in order to minimize their danger to the flying public. (11-28-90)
 - d.** Protect the lives and property of persons in the air and on the ground. (11-28-90)
- 07. Submittal of Notice.** Notice must be given in writing of intended construction or alteration to the Aeronautics Division Administrator, 3483 Rickenbacker Street, Boise, Idaho 83705. (1-2-93)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-0506

NOTICE OF FINAL DECISION ON THE NORTH FORK PAYETTE SUBBASIN TMDL

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the North Fork Payette River Subbasin Total Maximum Daily Load (TMDL).

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the North Fork Payette River Subbasin TMDL. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5) and 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the North Fork Payette River Subbasin TMDL (Hydrologic Unit Codes 17050122 and 17050123) addresses one (1) reservoir and thirteen (13) streams and their associated assessment units within the Payette River subbasin on Idaho's 1998 Section 303(d) list. DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at www.deq.idaho.gov/water/data_reports/surface_water/tmdls/payette_river_nf/payette_river_nf.cfm or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, marti.bridges@deq.idaho.gov.

Dated this 16th day of August, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0505

NOTICE OF EXTENSION OF COMMENT PERIOD

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has extended the period for public comment. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

DESCRIPTIVE SUMMARY: The proposed rule was published in the Idaho Administrative Bulletin, Volume 05-8, August 3, 2005, pages 340 through 349 with a public comment deadline of September 7, 2005.

This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho will remain consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2005, which includes the final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 51,267 (May 18, 2005) (codified at 40 CFR Part 60, Subpart HHHH). In addition, this proposed rule makes a correction in Subsection 209.05.a.iv. The reference to Section 269 should be Section 369.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2006 session of the Idaho Legislature if approved by the Legislature.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 26, 2005.

DATED this 2nd day of September, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0508

NOTICE OF RULEMAKING - PROPOSED RULE

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

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

November 4, 2005, 3 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho

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

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) announced a negotiated rulemaking in the March 3, 2004 issue of the Idaho Administrative Bulletin under Docket 58-0101-0401 to review, and revise as necessary, the structure and efficiency of the air quality permitting rules to modernize, update, and clarify appropriate portions.

This proposed rule addresses the process for permitting air quality minor sources (i.e., sources that are not major for Prevention of Significant Deterioration or New Source Review) that wish to obtain a facility-wide emission cap. This will be a voluntary option that will provide facilities increased operational flexibility while maintaining air quality.

The text of the rule has been developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Industry representatives, special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho may wish to submit comments on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, March 3, 2004, Vol. 04-3, page 42, under Docket No. 58-0101-0401.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before November 4, 2005.

DATED this 18th day of August, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0508

165. -- ~~19974.~~ (RESERVED).

175. PROCEDURES AND REQUIREMENTS FOR PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

The purpose of Sections 176 through 181 is to establish uniform procedures to obtain a Facility Emissions Cap (FEC) for stationary sources or facilities (hereinafter referred to as facility or facilities). A permit establishing a FEC will be issued pursuant to Sections 200 through 228 or Sections 400 through 410. ()

176. FACILITY EMISSIONS CAP.

01. Optional Facility Emissions Cap. An owner or operator of a facility may request a FEC to establish an enforceable facility-wide emission limitation. ()

02. Applicability. ()

a. The owner or operator of any facility, which is not a major facility as defined in Sections 204 or 205, may apply to the Department for a permit to establish a FEC. ()

b. FECs are available to new sources, existing sources undergoing a modification, and existing sources that request a FEC. ()

03. Definitions. For the purposes of Sections 175 through 181, the following terms shall be defined as below. ()

a. Baseline actual emissions. As defined in Section 007. ()

b. Design concentration. The ambient concentration used in establishing the FEC. ()

c. Facility emissions cap (FEC). A facility-wide emission limitation expressed in tons per year, for any criteria pollutant or hazardous air pollutant established in accordance with Sections 176 through 181. A FEC is calculated using baseline actual emissions plus an operational variability component and a growth component. ()

d. FEC pollutant. The pollutant for which a FEC is established. ()

e. Growth component. The level of emissions requested by the applicant and approved by the Department to allow for potential future business growth or facility changes that may increase emissions above baseline actual emissions plus the operational variability component. ()

f. Operational variability component. The level of emissions up to the significant emission rate (SER)

minus one (1) ton per year but no more than the facility's potential to emit (PTE). If the proposed FEC pollutant does not have a SER listed in Section 006 or has a SER less than or equal to ten (10) tons per year, the operational variability component is the level of emissions requested by the applicant and approved by the Department. ()

177. APPLICATION PROCEDURES.

In addition to the information required pursuant to Sections 202 or 402, whichever is applicable, applications requesting a FEC must include the information required under Sections 176 through 181 and Subsections 177.01 through 177.03. ()

01. Estimates of Emissions. A proposed FEC for each pollutant requested by the facility, including the basis for calculating the FEC. ()

02. Estimates of Ambient Concentrations. ()

a. Estimates of ambient concentrations will be based on the most recent applicable and technically appropriate methods and most representative data available to the Department unless otherwise approved by the Department. ()

b. Estimates of ambient concentrations may include projections of alternative future changes within the proposed FEC. ()

c. For a new, existing, or modified facility, a demonstration that for each FEC pollutant, the FEC will not cause or significantly contribute to a violation of any ambient air quality standard. ()

d. For renewal of terms and conditions establishing a FEC, it is presumed that the previous permitting analysis is satisfactory, unless the Department determines otherwise. ()

03. Monitoring and Recordkeeping. The application must include proposed means for the facility to determine facility emissions on a rolling twelve (12) month consecutive basis. ()

178. STANDARD CONTENTS OF PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

In addition to the elements required by Sections 203 and 211 or Sections 403 and 405, whichever is applicable, the Department shall have the authority to impose, implement and enforce the terms in Subsections 178.01 through 178.05 and conditions establishing a FEC. ()

01. Emission Limitations and Standards. All permits establishing use of a FEC shall contain annual facility wide emissions limitations for each FEC pollutant. ()

02. Monitoring. All permits establishing a FEC shall contain sufficient monitoring to ensure compliance with the FEC on a rolling twelve (12) month consecutive basis. ()

03. Recordkeeping. All permits establishing a FEC shall include the following: ()

a. Sufficient recordkeeping to assure compliance with the FEC. ()

b. Retention of required monitoring records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Supporting information includes, but is not limited to, calibration and maintenance records and original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit. ()

04. Reporting. All permits establishing a FEC shall include the following: ()

a. Sufficient reporting to assure compliance with the permit establishing the FEC. ()

b. Submittal of an annual report each year on or before the anniversary date of permit issuance. All required reports must be certified in accordance with Section 123. ()

05. Duration. Each permit establishing a FEC shall state that the terms and conditions establishing the FEC are effective for a fixed term of five (5) years. ()

179. PROCEDURES FOR ISSUING PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

01. General Procedures. Procedures for issuing permits establishing a FEC will follow Sections 209 or 404, whichever is applicable. ()

02. Renewal. The renewal of the terms and conditions establishing a FEC are subject to the same procedural requirements for issuing permits (Subsection 179.01) and Subsections 179.02.a. through 179.02.d.: ()

a. The permittee shall submit a complete application to the Department for a renewal of the terms and conditions establishing the FEC at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing permit. To ensure that the term of the permit does not expire before the terms and conditions are renewed, the permittee is encouraged to submit the application nine (9) months prior to expiration. ()

b. If a timely and complete application for a renewal of the terms and conditions establishing the FEC is submitted, but the Department fails to issue or deny the renewal permit before the end of the term of the previous permit, then all the terms and conditions of the previous permit shall remain in effect until the renewal permit has been issued or denied. ()

c. Expiration of the terms and conditions establishing a FEC may be grounds to terminate the facility's right to operate pursuant to Sections 176 through 181, unless a timely and complete renewal application has been submitted. ()

d. On renewal, the Department may adjust a FEC with an unused growth component in accordance with the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. ()

03. Reopening the FEC. The Department may reopen a FEC to: ()

a. Reduce the FEC to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the issuance of the permit establishing the FEC. ()

b. Reduce the FEC consistent with any other requirement that is enforceable as a practical matter, and that the state may impose on the facility under the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. ()

04. FEC Termination. The Director may approve a revision of a permit establishing a FEC to terminate the FEC, provided the permittee complies with Subsections 209.04 or 404.04, as applicable, and Subsections 179.04.a. through 179.04.c.: ()

a. The permittee may request a revision of the permit establishing the FEC to terminate the FEC at anytime prior to the expiration of the permit. The permittee is encouraged to submit an application for a permit to construct or Tier I operating permit, as applicable, six (6) months prior to the time the permittee wishes to terminate the FEC. ()

b. The FEC established in the permit shall remain in effect until the Department issues a new permit to construct or Tier I operating permit, as applicable. ()

c. Nothing in Section 179 prohibits a permittee from requesting a permit revision to terminate the FEC during the permit renewal process. ()

180. REVISIONS TO PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

Section 180 requires revisions to terms and conditions establishing a FEC. The permittee is exempt from Sections 200 through 228 unless the permittee chooses to use those rules to process any change to the permit, except as provided in Subsection 180.02. ()

- 01. Criteria.** A permit revision is required for the following: ()
- a.** A change to existing monitoring, reporting or recordkeeping requirements in the permit establishing the FEC: ()
- b.** A change to the FEC; or ()
- c.** A change to the facility that would impose new requirements not included in the permit establishing the FEC. ()
- 02. Permit Revision Application Procedures.** A permittee may initiate a permit revision by submitting a permit revision application to the Department or by complying with other applicable sections (Sections 200 or 400). For revision of terms and conditions establishing the FEC, it is presumed that the previous permitting analysis is satisfactory unless the Department determines otherwise. A permit revision application shall: ()
- a.** Meet the standard application requirements of Section 177; ()
- b.** Describe the proposed permit revision; ()
- c.** Describe and quantify the change in emissions above the FEC permit limit; and ()
- d.** Identify new requirements resulting from the change. ()
- 03. Permit Revisions.** The Department will process permit revisions pursuant to Section 209 or Section 404. ()

181. NOTICE AND RECORD-KEEPING OF ESTIMATES OF AMBIENT CONCENTRATIONS.
Section 181 authorizes facility changes that comply with the terms and conditions establishing the FEC, but that are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC. No permit revision shall be required for facility changes implemented in accordance with Section 181. ()

- 01. Notice.** For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. ()
- a.** In the event that the facility change would result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, but does not cause or significantly contribute to a violation to any ambient air quality standard, the permittee shall provide notice to the Department in accordance with Subsection 181.01.b. ()
- b.** Notice procedures. The permittee may make a facility change under Section 181 if the permittee provides written notification to the Department so that the notification is received at least seven (7) days in advance of the proposed change or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. For each such change, the written notification shall: ()
- i.** Describe the proposed change; ()
- ii.** Describe and quantify expected emissions; and ()
- iii.** Provide the estimated ambient concentration analysis. ()
- 02. Recordkeeping.** For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. In the event the facility change would not result in a significant contribution above the design concentration determined by the estimate of ambient

concentration analysis approved for the permit establishing the FEC, the permittee shall record and maintain documentation on-site of the review. ()

03. Estimates of Ambient Concentrations. Estimates of ambient concentrations shall be consistent with the estimate of ambient concentration analysis approved for the permit establishing the FEC unless the Department determines that other technical methods are appropriate. The permittee shall include any changes to the facility that are not included in the originally approved estimate of ambient concentration analysis. ()

182. -- 199. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

201. PERMIT TO CONSTRUCT REQUIRED.

No owner or operator may commence construction or modification of any stationary source, facility, major facility, or major modification without first obtaining a permit to construct from the Department which satisfies the requirements of Sections 200 through 228 unless the source is exempted in any of Sections 220 through 223, or the owner or operator complies with Section 213 and obtains the required permit to construct, or the owner or operator complies with Sections 175 through 181, or the source operates in accordance with all of the applicable provisions of a permit by rule. (7-1-02)()

(BREAK IN CONTINUITY OF SECTIONS)

401. TIER II OPERATING PERMIT.

01. Optional Tier II Operating Permits. The owner or operator of any stationary source or facility which is not subject to (or wishes to accept limitations on the facility's potential to emit so as to not be subject to) Sections 300 through 399 may apply to the Department for an operating permit to: (7-1-02)

- a. Authorize the use of alternative emission limits (bubbles) pursuant to Section 440; (5-1-94)
- b. Authorize the use of an emission offset pursuant to Sections 204.02.b. or 206; (4-6-05)
- c. Authorize the use of a potential to emit limitation, an emission reduction or netting transaction to exempt a facility or modification from certain requirements for a permit to construct; (4-5-00)
- d. Authorize the use of a potential to emit limitation to exempt the facility from Tier I permitting requirements. (4-5-00)
- e. Bank an emission reduction credit pursuant to Section 461; (5-1-94)

02. Required Tier II Operating Permits. A Tier II operating permit is required for any stationary source or facility which is not subject to Sections 300 through 399 with a permit to construct which establishes any emission standard different from those in these rules. (7-1-02)

03. Tier II Operating Permits Required by the Department. The Director may require or revise a Tier II operating permit for any stationary source or facility whenever the Department determines that: (5-1-94)

- a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or (4-5-00)
- b. Specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (5-1-94)

04. Multiple Tier II Operating Permits. Subject to approval by EPA, the Director may issue one (1) or more Tier II operating permits to a facility which allow any specific stationary source or emissions unit within that facility a future compliance date of up to three (3) years beyond the compliance date of any provision of these rules, provided the Director has reasonable cause to believe such a future compliance date is warranted. (4-5-00)

05. Tier II Operating Permits Establishing a Facility Emissions Cap. The owner or operator of any stationary source or facility may request a Tier II operating permit establishing a Facility Emissions Cap (FEC) pursuant to Sections 175 through 181. ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-0501

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Title 39, Chapters 1 and 36, Idaho Code.

MEETING SCHEDULE: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact Bill Jerrel at (208)373-0400 or william.jerrel@deq.idaho.gov.

October 11, 2005, 9:00 a.m.
Department of Environmental Quality, Conference Room D
1410 N. Hilton, Boise, Idaho

PRELIMINARY DRAFT: The preliminary draft rule can be obtained at http://www.deq.idaho.gov/rules/water_pollution_control_loans/58_0112_0501_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: Administration of the loan program is currently paid for by a 4% set-aside from the federal capitalization grants that DEQ receives from the U.S. Environmental Protection Agency (EPA). Federal capitalization grants have decreased substantially over the last few years thereby reducing the funding available from the set-aside to administer the loan program. The amount available from the set-aside each year is no longer sufficient to fund DEQ's costs for the year. This creates a dilemma for DEQ because, while the EPA grant funds available for administering the State Revolving Fund (SRF) are diminishing, the amount of funds available for loans is growing due to the increasing dollar amount of loan repayments each year. The work load to issue new loans is increasing as the SRF funds increase. The grant funds used to administer the program are being reduced by EPA.

The purpose of this rulemaking is to revise the Rules for Administration of Water Pollution Control Loans to allow DEQ to collect a fee in the form of a percentage (e.g., ½ of 1% of the outstanding balance) of each loan. The fees collected will be used to provide funds for loan program administration. The actual interest rate charged on SRF loans will be reduced by the amount of the fee charged so that there is no cost to the communities using the SRF loans. Cities, counties, districts and associations that own and operate public wastewater treatment systems may be interested in participating in this rulemaking.

DEQ intends to present the rule to the Board for temporary adoption in November 2005 with an effective date of January 4, 2006. If approved by the Board, DEQ intends to initiate proposed rulemaking by publishing the rule in the January 2006 issue of the Idaho Administrative Bulletin.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to protect public health. In addition, the Governor has found that the fee imposed in this rule meets the criteria set out in Section 67-5226(2), Idaho Code. Unless this fee is implemented in FY 2006, DEQ will run out of funds necessary to administer the SRF by the end of FY 2006 and will not be able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Sections 39-119 and 39-3627(4), Idaho Code.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Bill Jerrel at (208)373-0400 or william.jerrel@deq.idaho.gov.

Anyone may submit written comments during this negotiated rulemaking by mail, fax or e-mail at the address below. For information regarding submission of written comments on drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 12th day of September 2005.

Paula J. Wilson
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0106-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5222(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 59-1314(1), 33-1228, and 67-5339, 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 October 19, 2005.

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

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

The Board has determined, based on actuarial studies and utilization data, that the current contribution rates for funding the unused sick leave account for public school employees under Section 33-1228, Idaho Code, is inadequate to meet the future obligations created under that section. As a result, those contributions rates, which are expressed as a percentage of employees' salaries, are being increased. The Board has also determined that it is necessary to have multiple rates based on utilization, since some school districts grant more days of sick leave than other districts or permit more days to accrue, as currently permitted by Section 33-1218, Idaho Code, which disproportionately increases liabilities to the fund. The rate increases will be phased in over a three year period beginning July 1, 2006. Other changes have also been made to Rules 550 and 552 to avoid manipulation of hourly rates and daily rates used to calculate benefits under unused sick leave and to maintain equity in contribution rates in the event of non-traditional work weeks.

Other technical changes have also made to the rules to update the address of the Coeur d'Alene Office in Rule 2; to correct a typographic error in Rule 6; to clarify the retirement election requirements of Rule 122 and to provide for a default election when a member fails to make one; and to change terminology in Rules 142 and 147 that more accurately describes the effect of reemployment on retirement benefits.

Rule 701 has been changed to conform to a statutory change allowing inactive members to purchase service.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A. These rules do raise contribution rates to the unused sick leave fund for school districts but those increases come from sources other than the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan H. Winkle, Executive Director of PERSI, 334-3365.

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 October 26, 2005.

DATED this 22nd day of August, 2005.

Alan H. Winkle
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-334-3365
FAX: 208-334-3804

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0106-0501

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

Written interpretations of these rules, to the extent they exist, are available from PERSI, at the following locations:

PERSI Boise Office
607 North Eighth Street
Boise, Idaho 83702
Phone: 208/334-3365 or 1-800-451-8228
Fax: 208/334-4026

PERSI Pocatello Office
850 E. Center, Suite D
Pocatello, Idaho 83201
Phone: 208/236-6225 or 1-800-762-8228
Fax: 208/236-6159

PERSI Coeur d'Alene Office
2005 Ironwood Parkway, Suite ~~142~~ 226
Coeur d'Alene, Idaho 83814
Phone: 208/769-1474 or 1-800-962-8228
Fax: 208/769-1476

(Amended 5-6-94).

~~(5-6-94)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 59.01.06.000, et seq. For example, this section's citation is IDAPA 59.01.06.006. In documents submitted to PERSI or issued by PERSI these rules may be cited as PERSI Retirement Rule and ~~action~~ section number less leading zeros. For example, this rule may be cited as PERSI Retirement Rule 6.

(Amended 1-1-94).

~~(1-1-94)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

122. CONTINGENT ANNUITANT OPTION AND SPOUSAL CONSENT (RULE 122).

In accordance with federal statutes which provide for Internal Revenue Service Tax exempt plans, every member who retires under the provisions of Chapter 13, Title 59, Idaho Code, shall, prior to retirement, certify that he/she understands the contingent annuitant options and that he/she either elects one of those options or executes a waiver

~~of the election of one (1) of those options.~~ Except as provided in this rule, a member is required to complete and submit an approved retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying he/she understands and consents to the election made by the member. The spouse's signature must be notarized. If an inactive member reaches service retirement age, or an active member who has reached service retirement age separates from service, and has failed to complete and submit an approved retirement application and select either a regular or optional retirement allowance within ninety (90) days thereafter, the member shall be deemed to have selected a regular retirement allowance and no other selection shall be required or permitted. (Amended 1-1-94) ~~(1-1-94)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

142. RETIRED MEMBER BECOMING AN ACTIVE MEMBER (RULE 142).

A PERSI retired member employed in a position which involves service of normally twenty (20) hours or more per week for a period of five (5) or more consecutive months or longer will return to the status of an active member. Retirement benefits will ~~terminate~~ suspend on reemployment and employee and employer contributions will resume to provide additional retirement credits. If a retired member is reemployed in a position which involves service of twenty (20) hours or more per week for a period of less than five (5) consecutive months, their monthly retirement benefits will continue to be paid. If the member's reemployment should equal or exceed the five (5) month period for any reason, the member will be required to repay the retirement benefits paid during the five (5) month period which they were reemployed and they will return to the status of an active member. Employee and employer contributions will be due for the five (5) consecutive month period. (Amended 1-1-94)

Statutory Reference: Section 59-1356, Idaho Code.

~~(1-1-94)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

147. SEPARATION FROM EMPLOYMENT AFTER REEMPLOYMENT (RULE 147).

Upon subsequent separation from employment after reemployment, the member's original monthly retirement allowance will ~~be reinstated~~ resume with appropriate cost-of-living adjustments plus the addition of a separate allowance computed with respect to salary and service credited during the reemployment period. (Amended 1-1-94)

Statutory Reference: Section 59-1356, Idaho Code.

~~(1-1-94)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

550. COMPUTING VALUE OF SICK LEAVE (RULE 550).

For those members who accrue sick leave based upon each month of service, the rate of pay for purposes of computing the monetary value of a retired member's unused sick leave as outlined in Sections 59-1365, 67-5339, ~~33-1228~~, and 33-2109A, Idaho Code, shall be the base hourly rate of compensation reported by the employer during the month of separation from employment prior to retirement, not including any temporary increases, bonuses, or payoffs. For those members employed on a contract basis under Section 33-1228, Idaho Code, such as teachers, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work. No temporary increases, bonuses or payoffs shall be included in the contract amount. Where the daily rate is affected by changes in the work week such as adoption of a four (4) day work week or similar events, adjustments shall be made to convert the daily rate to maintain equity within the pool. No other forms of leave may be converted to sick leave or otherwise considered in computing the value of unused sick leave. (Amended 3-30-01)

~~(3-30-01)~~(____)

551. (RESERVED).

552. SICK LEAVE FUNDING RATES (RULE 552).

The sick leave pools shall be funded by employer contributions as follows: (3-30-01)

01. State Agencies and Junior College Districts. All employer groups participating in the pools established by Sections 33-2109A and 67-5339, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. (3-30-01)

02. Schools. All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute ~~one point fifteen~~ the percentage ~~(1.15%)~~ of employee covered payroll- based on the number of days of paid sick leave permitted during the contract year for certified teachers as set forth in the following table:

<u>Beginning:</u>	<u>July 1, 2006</u>	<u>July 1, 2007</u>	<u>July 1, 2008</u>
<u>9-10 days</u>	<u>1.16%</u>	<u>1.18%</u>	<u>1.21%</u>
<u>11-14 days</u>	<u>1.26%</u>	<u>1.35%</u>	<u>1.44%</u>
<u>More than 14 days</u>	<u>Individual rate to be set by the Retirement Board based on current cost and actuarial data and reviewed annually</u>		

Where a four (4) day work week or similar policies have been adopted adjustments shall be made to convert the number of days of paid sick leave to the contribution level necessary to maintain equity within the pool. (Amended 3-30-01).

~~(3-30-01)~~(____)

03. Subdivisions. All employer groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Rule 578. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

701. TIME OF RETIREMENT (RULE 701).

Within ninety (90) days before an ~~active~~ member's effective date of retirement, the member may request the cost of service to be purchased. Costs provided for purchased service are valid only for the effective date requested. Purchased service will be calculated into the member's benefit only to the extent that it is paid by the effective date. In no event shall service be credited for which payment has not been made. Service may be purchased with after-tax dollars or with eligible rollover distributions. The member's service class at the time of purchase determines the class of service that may be purchased. (Amended 3-30-01)

~~(3-30-01)~~(____)

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LEGAL NOTICE

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 01 - BOARD OF ACCOUNTANCY PO Box 83720, Boise, ID 83720-0002

01-0101-0501, Idaho Accountancy Rules. Updates incorporations by reference.

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701-0790

02-0303-0501, Rules Governing Pesticide and Chemigation Use and Application. Increases fee for annual pesticide registration to \$160 to fund pesticide Container Recycling Program.

02-0420-0501, Rules Governing Brucellosis. Updates incorporations by reference; clarifies calfhooed vaccination; updates vaccination protocol for imported adult cattle.

02-0421-0501, Rules Governing the Importation of Animals. Updates incorporations by reference; clarifies importation requirements for cattle not vaccinated for brucellosis; adds additional testing requirements for dairy cattle entering Idaho.

02-0424-0501, Rules Governing Tuberculosis. Updates incorporations by reference; clarifies identification requirements for tuberculosis reactors.

****02-0427-0501, Rules Governing Deleterious Exotic Animals.** Defines exotic hybrids; adds provisions for permit revocation, record keeping, annual inventories, and reporting; adds additional species to the list of deleterious exotic animals.

****02-0429-0501, Rules Governing Fur Farms.** New chapter sets requirements for classifying a facility as an agricultural fur farm; allows differentiation between agricultural fur farms and captive wildlife facilities or fur bearing animals kept as pets.

02-0617-0501, Rules Governing the Disposal of Cull Onions and Potatoes. Standardizes language relating to cull disposal methods.

02-0626-0501, Rules Governing Seed Potato Crop Management Areas. Defines geographical boundaries for a new Seed Potato Crop Management Area in Fremont County.

IDAPA 07 - DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Meridian, ID 83642

07-0101-0501, Rules Governing Electrical Inspection Tags. Clarifies that industrial accounts must designate a supervising master electrician.

07-0102-0501, Rules Governing Fees for Electrical Inspections. Establishes a \$10 "small-work" permit and inspection fee for jobs under \$200 with no change in service connection.

07-0103-0403, Rules of Electrical Licensing and Registration - General. Changes journeyman to master electrician and clarifies master electrician qualifications and duties.

07.01.04 - Rules Governing Electrical Specialty Licensing.

07-0104-0501, Increases the number of effluent pumps that serve family installations that a licensee in the well driller/pump installer category may install or work on under certain conditions.

07-0104-0502, Adds communications installations to the Limited Energy Electrical License.

07-0104-0503, Clarifies that specialty electrical contractors are required to have a supervising specialty journeyman to countersign while an electrical contractor must have a supervising master electrician.

07.03.01 - Rules of Building Safety – General.

07-0301-0501, Chapter repeal.

07-0301-0502, Chapter rewrite consolidates six existing building chapters (see below) and increases fees for processing and issuance of modular building insignia tags to out-of-state manufacturers to \$100.

07-0302-0501, Rules of the Idaho Building Code Board. Chapter repeal.

07-0303-0501, Rules Governing Modular Buildings. Chapter repeal.

07-0305-0501, Rules Governing Manufactured Homes. Chapter repeal.

07-0306-0501, Rules Governing the Use of the International Building Code. Chapter repeal.

07-0308-0501, Rules Governing Commercial Coaches. Chapter repeal.

07-0501-0501, Rules of the Public Works Contractors License Board. Allows public works contractors to qualify for licensing class upgrades by demonstrating work experience; eliminates the use of indemnification by applicants to satisfy minimum financial requirements for licensure.

07-0701-0502, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems. Establishes criteria for issuance of a specialty journeyman certificate of competency to include approved educational programs and on-the-job experience.

IDAPA 08 - DEPARTMENT OF EDUCATION

PO Box 83720, Boise, ID 83720-0027

****08-0203-0506, Rules Governing Thoroughness.** Increases math and science credits requirement for high school graduation; establishes middle school requirements and requires a cumulative C average in required courses.

IDAPA 11 – IDAHO STATE POLICE

PO Box 700, Meridian, ID 83680-0700

11-1003-0501, Rules Governing the Sex Offender Registry. Adds required sections; authorizes link from the State's site to the National Sex Offender Registry Internet site; changes sex offender registration forms.

IDAPA 12 – DEPARTMENT OF FINANCE

PO Box 83720 Boise, ID 83720-0031

12-0108-0501, Rules Pursuant to the Uniform Securities Act. Allows issuers with less than 1 year of operations to file reviewed financial statements until the end of the first fiscal year; conforms to disqualifications put forth by federal law; requires individuals to register as an issuer agent, unless exempt, if paid for certain activities; a broker-dealer or salesman, registered elsewhere, must register in Idaho; removes "by order" from renewal/application provision; administrator may defer effective date of registration of an investment adviser or his representative until 45th day after filing amendment to complete application.

IDAPA 13 – DEPARTMENT OF FISH AND GAME

PO Box 25, Boise, ID 83707

13-0104-0501, Rules Governing Licensing. Broadens military rain check and refund rule to include all military deployments and removes reference to a specific year.

13-0108-0501, Rules Governing the Taking of Big Game. Increases eligibility for left-over moose permits; allows use of round ball or conical lead bullets in traditional muzzleloader hunts; requires applicants for outfitter allocated controlled hunts to have a written agreement before submitting a controlled hunt application; develops application and drawing criteria, and marketing procedures for controlled hunt tags; grants priority to military personnel

returning from active duty for emergency depredation hunts.

13-0110-0501, Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife. Addresses requirements and specifications for possessing or raising wildlife for medical research; standardizes terminology; clarifies requirement for an importation permit and updates allowed species importation list; sets bird disease and bird marking standards for shooting preserves.

13-0117-0501, Rules Governing the Use of Bait for Taking Big Game Animals. Allows bear baiting 1 week prior to season opening in several wilderness areas.

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

****16-0224-0501, Clandestine Drug Laboratory Cleanup.** New chapter implements new law by establishing processes and standards for clandestine drug laboratory cleanup.

16-0301-0501, Eligibility for Health Care Assistance for Families and Children. Removes asset transfer penalty for any Family Medicaid Program; changes self-employment income calculation; excludes Idaho Tribal TANF from Family Medicaid Program eligibility; changes time period to request a hearing; removes asset requirement and minimum income requirement for CHIP B and the Children's Access Card to allow more uninsured children to be eligible.

16-0304-0501, Rules Governing the Food Stamp Program in Idaho. Clarifies language and brings rule into compliance with federal law; extends certification period for families with no income to 6 months; excludes grants from HUD's Family Self Sufficiency Initiative per federal law.

16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD).

16-0305-0502, Explains uses and limitations of revocable trusts and clarifies the description of and consideration of annuities and life estates when determining eligibility.

16-0305-0503, Conforms to federal law changes on asset definitions and criteria; establishes guidelines for required Medicare Part D Prescription Drug Program for certain low income applicants.

16-0309-0503, Rules Governing the Medical Assistance Program. Requires annual review of reimbursement rates with Medicaid mental health and developmental disability providers; identifies how rate comparisons with other state Medicaid programs will be conducted, how costs of Medicaid service providers of mental health and developmental disabilities will be obtained and evaluated, current access to services, and methods used to compile an annual report.

16.03.19 - Rules Governing Certified Family Homes.

****16-0319-0501,** Chapter repeal.

****16-0319-0502,** Chapter rewrite conforms to statutory changes that makes rule more appropriate for a family home rather than large facility.

16.03.22 - Rules for Licensed Residential or Assisted Living Facilities in Idaho.

****16-0322-0501,** Chapter repeal.

****16-0322-0502,** Chapter rewrite conforms to statutory changes and incorporates changes negotiated with the industry.

16-0503-0501, Rules Governing Contested Case Proceedings and Declaratory Rulings. Clarifies when an appeal is to be filed and that a hearing officer must dismiss an untimely appeal; and requires issuance of a proposed order of default if someone fails to appear for a hearing.

16-0602-0501, Rules Governing Standards for Child Care Licensing. Increases maximum length of time allowed between on-site licensing visit requirement to 12 months for foster homes, residential care facilities, children agencies and other programs; does not change other monitoring visits.

**IDAPA 17 – IDAHO INDUSTRIAL COMMISSION
PO Box 83720, Boise, ID 83720-0041**

****17-0208-0501, Miscellaneous Provisions.** Proposes using the Resource-Based Relative Value Scale and the

Relative Value Unit assigned for all medical services with a Physicians' Current Procedural Terminology code and a conversion factor for various categories of CPT coded services; deletes obsolete language. Comment by: 11/1/05.

**IDAPA 20 – DEPARTMENT OF LANDS
PO Box 83720, Boise, ID 83720-0050**

****20-0302-0502, Rules Governing Exploration and Surface Mining in Idaho.** Establishes rules for permanent closure of cyanidation facilities and performance bond requirements for permanent closure plans; allows operators of cyanidation facilities to apply to file permanent closure bonds in phases; includes requirements for nonpoint source control and best management practices to protect groundwater and surface water; allows director to request a geotechnical analysis and report for pit walls; deletes statutory language and replaces it with citations to Idaho Code.

**IDAPA 22 – BOARD OF MEDICINE
PO Box 83720, Boise, ID 83720-0058**

22-0101-0501, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Surgery in Idaho. Removes outdated language and references; removes language and time periods related to old state examinations; adds new volunteer, zero-fee license; adds and clarifies grounds for discipline; and eliminates outdated state examination fee.

22-0105-0501, Rules Governing Licensure of Physical Therapists and Physical Therapist Assistants. Conforms to statutory changes; provides for and defines "physical therapy licensure board"; removes language referencing advisory committee; adds continuing education requirements and requires proof of completion of CE requirements for renewal of active licenses.

22-0111-0501, Rules for the Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho. Updates and clarifies rules and allows for proration of licensure application or temporary permit fees.

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES
1109 Main St., Boise, ID 83702**

24-0101-0501, Rules of the Idaho Board of Architectural Examiners. Updates incorporation by reference and contact information; clarifies examination process; requires exams to be completed within a 5-year period.

24-0301-0501, Rules of the State Board of Chiropractic Physicians. Updates contact information; defines and sets standard for athletic trainer; provides for supervision of athletic trainers; sets deadline for appeals on reviews conducted by peer review committee.

24-0501-0501, Rules of the Board of Drinking Water and Wastewater Professionals. Updates contact information; reduces endorsement, renewal, and original license fees; clarifies requirements for licensure, continuing education, and reinstatement or renewal of licenses for operator-in-training, backflow assembly tester, and wastewater land application.

24-0601-0501, Rules Governing the Idaho Board of Hearing Aid Dealers and Fitters. Chapter repeal.

24-0801-0501, Rules of the State Board of Morticians. Updates contact information; defines funeral establishment and resident trainee; changes meeting criteria and examination dates; includes funeral director in application process; defines standard for pre-need trust account; clarifies minimum standards for funeral establishments; expands and clarifies responsibilities for record keeping; corrects language in fee section.

24-1101-0501, Rules of the State Board of Podiatry. Updates incorporations by reference and board contact information; amends podiatric residency requirements; changes exam dates; requires official certification of exam for licensure by endorsement; adds scope of practice.

24-1401-0501, Rules of the State Board of Social Work Examiners. Updates contact information; changes requirements for group supervision and for social work supervisor registration.

24-1501-0501, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Adds supervisory and continuing education requirements; increases number of supervisees; adds a deadline for application review; and adds an administrative fee for exam.

24-1801-0502, Rules of the Real Estate Appraiser Board. Updates incorporation by reference and board contact information; defines quorum for voting purposes; removes “certification” from licensing fee schedule; amends eligibility for exam requirements and licensure requirements; adds registered trainee real estate appraiser classification; amends qualifications criteria for certified residential and certified general real estate appraisers.

24-1901-0501, Rules of the Board of Examiners of Residential Care Facility Administrators. Updates contact information; revises qualifications for licensure; changes educational and training and continuing education course approval process; and increases annual license renewal fee.

24-2101-0501, Rules Governing the Idaho State Contractors Board. New chapter includes contact information, definitions, board duties, application requirements, and registration and renewal fees.

24-2201-0501, Rules Governing the Idaho Liquefied Petroleum Gas Safety Board. New chapter includes contact information, board duties, definitions, application and licensure requirements, license and renewal fees, required education and experience, exam requirements, facility licensure, and discipline.

24-2301-0501, Rules Governing the Idaho Board of Speech and Hearing Services. New chapter includes contact information, definitions, board duties, application requirements, licensure and renewal fees, exam and testing requirements, contracting, and continuing education requirements.

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

PO Box 83720, Boise, ID 83720-0065

26-0120-0501, Rules Governing Administration of Park and Recreation Areas and Facilities. Adds and expands definitions; changes campsite and facility fees; clarifies park and facility operational provisions.

26-0131-0501, Rules Governing Administration of Idaho Department of Parks and Recreation State and Federal Grant Funds. Clarifies existing terminologies; removes outdated definitions; eliminates obsolete references.

26-0137-0501, Rules Governing Test Procedures and Instruments for Noise Abatement of Off Highway Vehicles. Changes specifications that define “All Terrain Vehicle” (ATV).

IDAPA 27 – BOARD OF PHARMACY

PO Box 83720, Boise, ID 83720-0067

27.01.01 - Rules of the Idaho Board of Pharmacy.

27-0101-0501, Clarifies requirements and outlines the types of positive identification that are required for delivery of controlled substances; adds requirement that pharmacy prescription record reflect the means of positive identification used.

27-0101-0502, Eliminates reference to drug product selection for Medicaid patients to comply with Medicaid law.

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

PO Box 83720, Boise, ID 83720-0074

31-1101-0501, Safety and Accident Reporting Rules for Public Utilities Regulated by the Idaho Public Utilities Commission. Updates CFR incorporation by reference.

****31-2101-0402, Customer Relations Rules for Gas, Electric and Water Public Utilities Regulated by the Idaho Public Utilities Commission.** Changes contents of notices given to customers by utilities before terminating service during winter moratorium; amends eligibility requirements and operation of the winter moratorium; expands moratorium eligibility to households receiving financial assistance through LIHEAP; prohibits disconnection on weekends or holidays or any day immediately preceding a holiday and moves termination threshold on Friday to 12 noon; lists required contents of the annual summary of rules and requires PUC to provide utilities with a “model” of the annual summary of rules including a Spanish language model.

31-7103-0501, Railroad Safety/Sanitation Rules. Incorporates by reference new amendments to the federal hazardous materials regulations regarding the transport of HMRs.

IDAPA 33 – REAL ESTATE COMMISSION
PO Box 83720, Boise, ID 83720**33.01.01 - Rules of the Idaho Real Estate Commission.**

****33-0101-0501**, Removes rule text that is now in statute.

****33-0101-0502**, Reduces licensing fees for licensed individuals and business entities per licensing period.

IDAPA 35 – STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**35.01.01 - Income Tax Administrative Rules.**

35-0101-0501, Updates incorporation by reference; clarifies LLCs and members will be treated according to federal classification; adds table for 2005 income tax brackets and rates; adds new addback for state and local taxes deducted by individuals as itemized deductions; allows deduction for taxpayers who restore income under the federal claim of right and claimed the federal credit; changes how nonresident reports gain or loss from the sale or disposition of a partnership interest or stock in an S corporation; clarifies that unity can be established under any one of the judicially acceptable tests; provides exceptions that income producing activity for purposes of the sales factor does not include transactions and activities performed on behalf of the taxpayer; establishes exception that alternative apportionment may be required to represent the extent of the taxpayer's business activity in Idaho; changes due date for paying withholding for employers who are farmers.

35-0101-0502, Addresses qualifying entities and what investment in securities and activities incident thereto includes.

35-0101-0503, Adds to the list of priority of credits; adds rules to implement the Idaho Corporate Headquarters Incentive Act of 2005 and the Idaho Small Employer Incentive Act.

35.01.02 - Idaho Sales and Use Tax Administrative Rules.

35-0102-0501, Changes sales tax rate back to 5%; reduces amusement device fee to \$35.

35-0102-0502, Changes conform to federal law; sales of rafting trips aren't taxable if they occur on navigable waters unless courts find differently; changes sales tax rate back to 5%.

35-0102-0503, Allows for issuance of temporary sales tax permits; adds rule for construction equipment.

35.01.03 - Idaho Property Tax Administrative Rules.

35-0103-0501, Updates procedures for calculation of the county weighted average forestland levy.

35-0103-0503, Updates incorporations by reference; clarifies assessment of land for the rural speculative homesite exemption; improves equalization of manufactured homes; requires submission of exempt land values; clarifies exemption of homes on jointly owned land and exempt status of personal property; excludes new construction in annexed areas from the annexation value; modifies date for county clerks to submit notices of compliance.

35-0105-0501, Idaho Motor Fuels Tax Administrative Rules. Defines "Indian-owned retail outlet"; adds "delivered to an Indian-owned retail outlet tax not collected" to disbursements list and limits deduction to 10% of the total volume; only taxable and nontaxable fuel sales can be included in calculation of fuels tax bad debt when partial payments are made and sets statute of limitations for fuels tax bad debt claims; requires licensed fuel distributors using credit card receipts as sales invoices to comply with invoice documentation requirements; removes "federal government" from updated list of consumers who can use low-sulfur dyed diesel fuel; adds language for standard power take-off (PTO) and auxiliary engine allowance for concrete pumping trucks; corrects Idaho Code references and terminology.

35-0110-0501, Idaho Cigarette and Tobacco Products Tax Administrative Rules. Prohibits distribution of free or below cost tobacco products to sellers; taxes must be reported on the return for the month in which the stamps are affixed; first distributor is liable for tax and must indicate the tax was paid on the invoice.

35-0111-0501, Idaho Unclaimed Property Administrative Rules. Updates contact information; requires holders to report and remit total dividends and stock certificate or its electronic equivalent if under \$50; adds claimant has burden of proof to establish claim and must contact persons and search out documents relating to the claim.

35-0201-0501, Tax Commission Rules Governing Administration and Enforcement. Defines pay, paid, payable or payment and excludes drafts made on foreign banks; allows Commission to reject certain types of payments; establishes formula for calculating the yearly interest rate applied to deficiencies of tax and refunds; changes deposit requirement when appealing a decision; allows Commission to exchange information related to public works

contracts with Division of Building Safety Administrator.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise, ID 83707-1129**

39-0402-0501, Rules Governing Marking of Obstructions to Air Flight. Redefines “airport hazard” to be consistent with Federal Code; increases structure height considered a hazard to safe airflight to 200 feet and requires notice of construction of such structure; reduces minimum size for marker balls to 36 inches.

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255**

****58-0101-0508, Rules for the Control of Air Pollution in Idaho.** Addresses process for permitting air quality minor sources. Comment by: 11/4/05.

**IDAPA 59 – PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
PO Box 83720, Boise, ID 83720-0078**

59-0106-0501, Retirement Rules of the Public Employee Retirement System of Idaho (PERSI). Increases contribution rates for funding the unused sick leave account for public school employees; clarifies the retirement election requirements; and changes terminology to more accurately describe the effect of reemployment on retirement benefits.

**Scheduled Negotiated Rulemaking Public Meeting:
Dept of Environmental Quality**

58-0112-0501, Rules for Administration of Water Pollution Control Loans

**Scheduled Public Hearings on Proclamations:
Dept of Fish and Game**

13-0108-0501P, Rules Governing the Taking of Big Game Animals in the State of Idaho

13-0109-0501P, Rules Governing the Taking of Game Birds in the State of Idaho

**The Deadline For Submitting Written Comments For These Rulemakings
Is October 26, 2005, Unless Otherwise Listed.**

****Rulemakings with Scheduled Public Hearings.**

Please refer to the Idaho Administrative Bulletin, **October 5, 2005, Volume 05-10** for notices and text of all rulemakings, public hearing and meeting schedules, Governor’s executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at www.idaho.gov/adm/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK YOU HAVE
TO BE CONNECTED TO THE INTERNET**

**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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