

# 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 05-1 refers to the first Bulletin issued in calendar year 2005; Bulletin 06-1 refers to the first Bulletin issued in calendar year 2006. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 05-1 refers to January 2005; Volume No. 05-2 refers to February 2005; and so forth. Example: The Bulletin published in January of 2006 is cited as Volume 06-1. The December 2005 Bulletin is cited as Volume 05-12.*

## **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" a rule 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://adm.idaho.gov/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 "-", (38-0501-0501). 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. 38-0501-0501"**

"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).

"0501" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2005.

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" denotes the main Section number of the rule to which the citation refers.

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

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

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2006**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
06-1	January 2006	<b>*November 19, 2005</b>	January 4, 2006	January 25, 2006
06-2	February 2006	January 5, 2006	February 1, 2006	February 22, 2006
06-3	March 2006	February 3, 2006	March 1, 2006	March 22, 2006
06-4	April 2006	March 3, 2006	April 5, 2006	April 26, 2006
06-5	May 2006	March 31, 2006	May 3, 2006	May 24, 2006
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06-10	October 2006	<b>**August 23, 2006</b>	October 4, 2006	October 25, 2006
06-11	November 2006	October 6, 2006	November 1, 2006	November 22, 2006
06-12	December 2006	November 3, 2006	December 6, 2006	December 27, 2006

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2007**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
07-1	January 2007	<b>*November 15, 2006</b>	January 3, 2007	January 24, 2007
07-2	February 2007	January 5, 2007	February 7, 2007	February 28, 2007
07-3	March 2007	February 2, 2007	March 7, 2007	March 28, 2007
07-4	April 2007	March 2, 2007	April 4, 2007	April 26, 2007
07-5	May 2007	April 6, 2007	May 2, 2007	May 24, 2007
07-6	June 2007	May 4, 2007	June 6, 2007	June 28, 2007
07-7	July 2007	June 1, 2007	July 4, 2007	July 26, 2007
07-8	August 2007	June 29, 2007	August 1, 2007	August 23, 2007
07-9	September 2007	August 3, 2007	September 5, 2007	September 27, 2007
07-10	October 2007	<b>**August 22, 2007</b>	October 3, 2007	October 25, 2007
07-11	November 2007	October 5, 2007	November 7, 2007	November 22, 2007
07-12	December 2007	November 2, 2007	December 5, 2007	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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<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBER AND THE CURRENT ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
<b>IDAPA 25</b>	<b>Outfitters and Guides Licensing Board</b>	<b>VOLUME 6</b>
<b>IDAPA 50</b>	<b>Pardons and Parole, Commission for</b>	<b>VOLUME 9</b>
<b>IDAPA 26</b>	<b>Parks and Recreation, Department of</b>	<b>VOLUME 6 &amp; 7</b>
<b>IDAPA 27</b>	<b>Pharmacy, Board of</b>	<b>VOLUME 7</b>
<b>IDAPA 29</b>	<b>Potato Commission, Idaho</b>	<b>VOLUME 7</b>
<b>IDAPA 59</b>	<b>Public Employee Retirement System of Idaho - PERSI</b>	<b>VOLUME 9</b>
<b>IDAPA 41</b>	<b>Public Health Districts</b>	<b>VOLUME 8</b>
<b>IDAPA 31</b>	<b>Public Utilities Commission</b>	<b>VOLUME 7</b>
<b>IDAPA 56</b>	<b>Rangeland Resources Commission, Idaho</b>	<b>VOLUME 9</b>
<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>	<b>VOLUME 7</b>
<b>IDAPA 34</b>	<b>Secretary of State, Office of the</b>	<b>VOLUME 7</b>
<b>IDAPA 57</b>	<b>Sexual Offender Classification Board</b>	<b>VOLUME 9</b>
<b>IDAPA 49</b>	<b>Shorthand Reporters, Board of Certified</b>	<b>VOLUME 8</b>
<b>IDAPA 36</b>	<b>Tax Appeals, Board of</b>	<b>VOLUME 7</b>
<b>IDAPA 35</b>	<b>Tax Commission, State</b>	<b>VOLUME 7</b>
<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>	<b>VOLUME 8</b>
<b>IDAPA 21</b>	<b>Veterans Services, Division of</b>	<b>VOLUME 6</b>
<b>IDAPA 46</b>	<b>Veterinary Medical Examiners, Board of</b>	<b>VOLUME 8</b>
<b>IDAPA 55</b>	<b>Vocational and Technical Education, Division of</b>	<b>VOLUME 9</b>
<b>IDAPA 47</b>	<b>Vocational Rehabilitation, Division of</b>	<b>VOLUME 8</b>
<b>IDAPA 37</b>	<b>Water Resources, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 42</b>	<b>Wheat Commission</b>	<b>VOLUME 8</b>

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2006-22**

**INCLUDING GOVERNOR'S OFFICE STAFF UNDER THE DEFINITION OF  
"EXECUTIVE OFFICIAL" WITHIN TITLE 67, SECTION 6602 OF THE IDAHO CODE**

*WHEREAS, it is important to promote and achieve public confidence in government; and*

*WHEREAS, public confidence in government may be achieved by openness, especially concerning those giving financial support to promote or oppose legislation or attempting to influence executive or administrative actions; and*

*WHEREAS, the 2006 Idaho Legislature amended portions of title 67, chapter 66 of the Idaho Code to include, among other things, a broader definition of executive official and require lobbyists to report their activities with executive officials; and*

*WHEREAS, the Idaho Legislature's amendments to title 67, section 6602 of the Idaho Code under House Bill 707 do not expressly cover employees of executive officials, including the Governor; and*

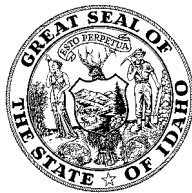
*WHEREAS, the Idaho Legislature's amendments to title 67, chapter 66 of the Idaho Code, including the expanded definition of "executive official" are effective July 1, 2006;*

*NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho, do hereby order:*

*That the amended definition of "executive official" under title 67, section 6602 of the Idaho Code, for the purposes of title 67, chapter 66, shall also include, within the Office of the Governor, the following positions:*

- 1. Chief of Staff*
- 2. Senior Deputy Chief of Staff*
- 3. Deputy Chief of Staff*
- 4. Legal Counsel*
- 5. Natural Resource Specialist*
- 6. Executive Assistant to the Governor*

*This Executive Order No. 2006-22 shall cease to be effective December 31, 2006.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 5<sup>th</sup> day of July in the year of our Lord two thousand and six, and of the independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.*

\_\_\_\_\_  
*JAMES E. RISCH  
GOVERNOR*

\_\_\_\_\_  
*BEN YSURSA  
SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2006-23**

**ESTABLISHING THE OFFICE AND POSITION OF DRUG CZAR  
WITHIN THE OFFICE OF THE GOVERNOR**

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*WHEREAS, abuse of illegal drugs and substance abuse in Idaho is a growing problem that threatens to destroy our core values and our way of life;*

*WHEREAS, illegal drug use and substance abuse are exacting a tremendous toll on State and local resources by filling our court systems, hospitals and prisons;*

*WHEREAS, the Idaho State Legislature has made many important efforts to address the drug and substance abuse problem in Idaho;*

*WHEREAS, there is a need for an individual to efficiently and effectively participate, observe, advise and assist the Governor in coordinating all drug and substance abuse initiatives in the State of Idaho;*

*NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by the authority vested in me under the Idaho Constitution and the laws of the State of Idaho, do hereby order:*

*The establishment of the office and position of "Drug Czar," within the Office of the Governor.*

*The Drug Czar shall be the official in the State designated to oversee and execute the coordination of all drug and substance abuse initiatives within the State of Idaho.*

*The Drug Czar shall be appointed by and serve at the pleasure of the Governor.*

*The duties, powers and authorities of the Drug Czar shall include:*

- a. Coordinating all boards, councils, commissions, and initiatives as directed by the Governor, within the Executive Office of the Governor with duties and responsibilities concerning such drug and substance abuse initiatives.*
- b. Coordinating the State of Idaho's efforts to educate, enforce and treat in relationship to drug and substance abuse, and coordinate these State efforts with local, federal and tribal efforts.*
- c. Identifying and recommending programs for a comprehensive delivery of effective, efficient and integrated anti-illegal drug and substance abuse policy including:
  - i) Promoting implementation of multi-agency strategic budgeting; common performance measures, and coordination of services;*
  - ii) Promoting an interagency funding system for the delivery of integrated services;*
  - iii) Addressing State strategies, priorities and outcome measures to meet the ever-changing challenges of combating drug abuse in Idaho.**
- d. Cooperating and consulting with State agencies and departments on programs, policies and issues combating Idaho's illegal drug and substance abuse problem, including but not limited to, the Department of Health and Welfare, the Idaho Army National Guard, Department of Corrections, Department of Juvenile Corrections, the State Department of Education, the Idaho State Police and the Department of Transportation.*

- e. *Cooperating and consulting with counties, cities and local law enforcement on programs, policies and issues combating Idaho's illegal drug and substance abuse problem.*
- f. *Participating in national, regional and statewide efforts to cooperatively address issues and policies affecting drug and substance abuse and Idaho anti-drug and substance abuse policy and initiatives.*
- g. *Developing a Statewide plan for combating drug and substance abuse in Idaho in conjunction with cities and counties, faith based and community organizations, State councils, boards and commissions, State agencies and departments, and federal organizations.*
- h. *Serving as a repository of agreements and plans concerning programs for combating illegal drug and substance abuse from community organizations and other relevant local, State and federal agencies and facilitating the exchange of this information and data with relevant interstate and intrastate entities.*
- i. *Provide input and comment on community, tribal and federal plans, agreements and polices relating to illegal drug and substance abuse.*
- j. *Accepting private contributions, federal funds, funds from other public agencies or any other source. The moneys shall be used solely for the purposes provided under this executive order and shall be expended and accounted for as provided by law.*



*IN WITNESS WHEREOF, I have hereunto set my hand, and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 11<sup>th</sup> day of July in the year of our Lord two thousand and six, and of the independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.*

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*JAMES E. RISCH*  
*GOVERNOR*

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*BEN YSURSA*  
*SECRETARY OF STATE*



**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2006-24**

**DESIGNATING THE IDAHO PUBLIC UTILITIES COMMISSION AS THE STATE AGENCY  
(CLEARINGHOUSE) TO RECEIVE NOTICES OF ENVIRONMENTAL  
AND ENERGY MATTERS UNDER THE SURFACE TRANSPORTATION BOARD'S  
IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969;  
AND DESIGNATING THE IDAHO PUBLIC UTILITIES COMMISSION AS THE AGENCY  
TO REPRESENT THE STATE ON MATTERS PERTAINING TO RAILROADS  
BEFORE THE SURFACE TRANSPORTATION BOARD**

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*WHEREAS, the issues of railroad abandonments, acquisitions, consolidations, and sales are significant to the State of Idaho and particularly its more sparsely populated rural areas; and*

*WHEREAS, it is the policy of the State of Idaho to promote the development and viability of railroad transportation within the State; and*

*WHEREAS, the State of Idaho has a significant interest in maintaining and promoting rail access to Idaho communities for vital goods, services, and markets; and*

*WHEREAS, the Surface Transportation Board (STB), under: (1) the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. Section 4332; (2) 49 U.S.C. Section 10502; (3) 49 U.S.C. Sections 10903-06; and (4) 49 C.F.R. Sections 1105, 1121, 1150, 1152, and 1180, requires railroads operating within the State of Idaho to serve notice of certain required actions upon a designated State agency; and*

*WHEREAS, Idaho Code title 62, section 424 vests the Idaho Public Utilities Commission with the authority to make findings and represent the State of Idaho before the STB.*

*NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this State do hereby order as follows:*

*To designate the Idaho Public Utilities Commission to represent the State on matters pertaining to railroads before the Surface Transportation Board and to receive notices of environmental and energy matters from railroads operating within the State of Idaho, as provided under the applicable federal statutes and regulations.*

*I further direct all State agencies to notify the Public Utilities Commission of information received by them of potential railroad abandonments and to cooperate with the Public Utilities Commission on all matters pertaining to railroads. The Public Utilities Commission is designated as the lead agency for railroad matters and shall approve all State agency submissions to the STB prior to transmittal.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 18<sup>th</sup> day of July in the year of our Lord two thousand and six, and of the independence of the United States of America the two hundred thirty-first and of the Statehood of Idaho the one hundred seventeenth.*

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*JAMES E. RISCH  
GOVERNOR*

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*BEN YSURSA  
SECRETARY OF STATE*

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.02.09 - RULES REQUIRING INSPECTION OF POTATOES INTENDED FOR SALE OR OFFERED FOR SALE IN RETAIL OUTLETS

DOCKET NO. 02-0209-0501

#### 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 Sections 22-901, 22-911 and 22-2006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 change is needed to update and clarify the requirements under the current rule and list specific exotic pests of concern to the Idaho Potato Industry for which a zero tolerance will be specified.

The proposed rule, with one exception, is the same as the temporary rule that was previously adopted and is currently in effect. The temporary rule was published in the Idaho Administrative Bulletin November 2, 2005, Vol. 05-11. Subsection 02.02.09.100.03.c. of the temporary rule regarding bacterial ring rot will not be included in this proposed 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 resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted because informal meetings with potato industry representatives concerning the adoption of this rule were held on September 8, 2005 and March 7, 2006.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Lee Stacey, Bureau Chief at (208) 332-8670 or Michael E. Cooper, Bureau Chief at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 20th day of July, 2006.

Phil Bandy  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

Pursuant to Section 67-5221(1) the text of this Proposed Rule docket is being published.

This docket has been previously published as a Temporary Rule.  
The temporary effective date is October 1, 2005.

The text of the Temporary Rule was published in the Idaho Administrative  
Bulletin, Volume 05-11, November 2, 2005, pages 15 through 17.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0209-0501

**02.02.09 - RULES REQUIRING THE INSPECTION OF POTATOES INTENDED  
FOR SALE OR OFFERED FOR SALE IN RETAIL OUTLETS**  
*(Chapter 9, Title 22, Idaho Code, Section 22-911)*

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Sections 22-901, 22-911, and 22-2006, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.02.09, "Rules Requiring the Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets." ( )

**02. Scope.** These rules specify the general requirements for the inspection, grading, marking and retail sales of potatoes in the state of Idaho. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 02.02.09 incorporates by reference: Federal Marketing Order Number 945 – U.S.D.A. Handling Regulations May 4, 2000 Until Revised. Copies of this document may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, P.O. Box 790, Boise, Idaho 83701. ( )

**005. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.**

**01. Physical Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ( )

**02. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701. ( )

**04. Telephone Number.** The telephone number of the central office is (208) 332-8500. ( )

05. Fax Number. The fax number of the central office is (208) 334-2170. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. ( )

007. -- 099. (RESERVED).

**100. ~~COMPULSORY INSPECTIONS, —WHOLESALE LEVEL— TIME VALIDITY OF CERTIFICATE DECLARED RESTRICTIONS, AND IDENTIFICATION REQUIRED.~~**

~~All potatoes packed for resale to retail outlets in Idaho shall be inspected and have a Federal-State Certificate issued as to marked grade of the container. Accountable lots: A packer of potatoes packing for sale to retail outlets in Idaho may if he so desires, establish a designated lot for inspection that may be later divided into several sales. Simple identity of the lot will be maintained to the satisfaction of the inspector. The original Federal-State certificate will be valid for a period of seventy-two (72) hours. All potatoes packed for resale to retail outlets in Idaho shall be inspected as outlined in Section 100.02 and shall meet the requirements of Federal Marketing Order number 945-USDA and the conditions outlined below:~~ (3-20-77)( )

**01. Certification and Markings.** Each shipment packed for resale to retail outlets in Idaho shall be accompanied by a valid inspection certificate, numbered note sheet or be marked with a positive lot identification number (PLI) number. ( )

**02. Inspections.** For other than Idaho or Oregon, inspections may be performed by any person or persons authorized under the USDA Agricultural Marketing Services Federal—State Service inspection program to inspect potatoes. ( )

**03. Restrictions.** All potatoes packed for resale to retail outlets in Idaho under the provision of this rule shall be inspected as outlined in Section 100.02 and found free from: ( )

a. Potato Tuberworm (Phthorimaea operculella (Zeller)). ( )

b. Potato Wart (Synchytrium endobioticum). ( )

**101. LOTS TAGGED NOT FOR SALE -- REMOVAL THEREOF.**

Retail outlets ~~will~~ may be periodically checked by the ~~Bureau of Market Inspections~~ Idaho State Department of Agriculture. Lots found failing to grade as marked or otherwise found out of compliance with the provisions of this rule will be tagged "Not For Sale" until removed from display and regraded, destroyed or remarked to a lower grade if feasible. (3-20-77)( )

**102. COMPLIANCE OR NON-COMPLIANCE CERTIFICATE.**

Each inspection at the retail outlet will be acknowledged by an ~~certificate~~ inspection report showing compliance or non-compliance. (3-20-77)( )

**103. SECOND NOTICE ACTION -- NON-COMPLIANCE.**

A second inspection showing evidence of non-compliance in any calendar year will constitute sufficient grounds to proceed with prosecution in accordance with Section 108 of this rule. (3-20-77)( )

(BREAK IN CONTINUITY OF SECTIONS)

**105. BULK LOTS LABELED NOT FOR SALE -- REMOVAL THEREOF.**

Bulk potatoes failing to meet the grade shown or otherwise found out of compliance with the provisions of this rule shall be labeled "Not For Sale" until removed. They may be regraded, destroyed or re-marked to a lower grade if feasible. (3-20-77)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. PENALTIES FOR VIOLATIONS.**

Any person violating the provisions of these rules shall be subject to the penalty provisions of Section 22-2020, Idaho Code. ( )

~~10#2.~~ -- 999. (RESERVED).

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**

**02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS**

**DOCKET NO. 02-0427-0601**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-207 and 25-3903, Idaho Code.

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

**Thursday, September 14, 2006 - 7:00 - 8:00 pm**  
**Nampa Civic Center**  
**311 Third Street South**  
**Nampa, ID 83651**

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: This rule provides authority to require the disposition of deleterious exotic animals that are being held without the required permits.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: It is necessary to protect the public health, safety, or welfare.

**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: 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: N/A

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted for this rule. On October 13, 2005 the Department held a public hearing to provide opportunity for input on an amendment to these rules. Other than testimony provided by Department personnel, no other testimony was provided.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 24th day of July, 2006.

Phillip J. Bandy  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790, Boise, ID 83701-0790  
(208) 332-8500, Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0427-0601

**112. DISPOSITION OF NON-PERMITTED DELETERIOUS EXOTIC ANIMALS.**

The Administrator may order non-permitted or illegally imported deleterious exotic animals to be removed from the state, moved to premises that are in compliance with this chapter, or destroyed. (10-1-06)T

~~1123.~~ -- 119. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**900. ADDITIONAL REQUIREMENTS OF ANIMALS.**

The Administrator may add ~~additional~~ or remove animals species to the deleterious exotic animals list in this chapter by issuing a written order listing animals and the reasons for adding them to or removing them from the deleterious exotic animals list. (~~3-20-04~~)(10-1-06)T

## **IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR**

### **09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES**

**DOCKET NO. 09-0130-0601**

#### **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) 67-4702, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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

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

IDAPA 09.01.30.100.01 and 100.04 would be amended to provide that if a claimant's illness lasts for more than one week, the claimant will be ineligible for benefits effective the week his accumulated missed wages (because of the illness) exceed one-half (½) of his weekly benefit amount.

IDAPA 09.01.30.425.10 would be amended to provide that employers will provide separation information to the Department when contacted by a Department representative, rather than mailing a report to the Department.

IDAPA 09.01.30.460 would be a new rule providing that professional athletes who are between seasons can't use their base period wages for services as athletes to establish a claim for benefits if they have a contract for the next season or intend to participate in the sport the next season, even without a formal offer of employment.

**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: This is a federally funded program and there is no financial impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 ext. 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 September 27, 2006.

DATED this August 2, 2006.

Roger Holmes  
UI Benefits Bureau Chief  
Department of Commerce and Labor  
Unemployment Insurance Benefits Administration  
317 W. Main Street  
Boise, ID 83735  
332-3570 ext. 3233  
334-6301 fax



THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-0601

**100. ABLE TO WORK.**

“Able to work” is defined as the physical and mental ability to perform work under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

**01. Able to Perform Some Type of Work.** A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance. If he becomes ill or disabled after he has filed an initial claim, the claim may be continued under the illness provision if no suitable work is available. If suitable work is offered or becomes available which would have provided wages greater than one-half (1/2) his weekly benefit amount and cannot be accepted because of the claimant's illness or disability, the claimant shall be ineligible for benefits. If the same illness or disability continues for more than one (1) week and the accumulation of missed wages exceeds one-half (1/2) his weekly benefit amount, the claimant shall be ineligible for benefits effective the week in which the accumulated missed wages exceed one-half (1/2) the weekly benefit amount. (~~3-19-99~~)( )

**02. Able to Work Part-Time.** A person who is able to work only part of the workday or part of the workweek is not considered “able to work” for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under the Americans with Disabilities Act. (3-19-99)

**03. Disability Compensation.** A claimant's receipt of disability compensation shall not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled. (3-19-99)

**04. Illness Provision.** A person who claims benefits under the illness provision must remain available for local office job referral, however, he may leave the area for treatment of ~~the~~ his illness and continue to be eligible under the illness provision. The claimant may continue reporting through the local office near his residence. If suitable work becomes available and is refused or missed because of the claimant's illness, or the claimant is unable to respond to a referral because of the illness, the claimant shall be ineligible if the work would have provided wages greater than one-half (1/2) his weekly benefit amount. If the same illness or disability continues for more than one (1) week and the accumulation of missed wages exceeds one-half (1/2) his weekly benefit amount, the claimant shall be ineligible for benefits effective the week in which the accumulated missed wages exceed one-half (1/2) the weekly benefit amount. (~~3-19-99~~)( )

**05. Illness Provision as Applied to Transitional or Reopened Claim.** Receipt of benefits during the same illness continues throughout a spell of unemployment, even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment. (3-19-99)

**06. Mental Illness.** A person who, after filing a valid claim, becomes unable to work because of mental illness is entitled to the same benefits under the illness provision as claimants who suffer from other types of illness or disability. (3-19-99)

**07. Withdrawing from Labor Market Because of Illness.** A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible until he is able to work and available for work. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**425. NEW CLAIMS/ADDITIONAL CLAIMS.**  
Ref. Sec. 72-1308, Idaho Code.

(3-19-99)

**01. Claims for Benefits, Delayed Filing.** When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

**02. Effective Date of Backdated Claims.** When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

**03. Filing of New Claims.** New intrastate and interstate claims may be filed electronically, in person at a local office or at an itinerant location, or by mail if permitted by a claims examiner. New interstate claims may also be filed by telephone. (3-30-01)

**a. Electronically Filed Claims.** Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

**b. In-person Filing.** A claimant may file a claim in person at the local office serving the claimant's area of residence. Local offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (4-11-06)

**c. Interstate Claims.** Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

**d. Itinerant Locations.** Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

**e. Mailed Claims.** A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

**04. Itinerant Claims.** Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution

for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

**05. Registration for Work.** All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

**06. Registration/Reporting Requirements -- Interstate Claimants.** Interstate claimants shall be required to register for work in the State in which they reside and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

**07. Requirement to Provide Information.** If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

- a. The claimant's legal name; (3-15-02)
- b. The claimant's Social Security Number; (3-15-02)
- c. The address where the claimant's mail is delivered; (3-15-02)
- d. The claimant's place of last employment; (3-15-02)
- e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)
- g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)
- h. Other information necessary for the proper processing of the claim. (3-15-02)
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)
- j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits may be denied for failure to provide proof of identity. A claimant notified by telephone of the need to provide proof of identity must provide the information to the Department within two (2) business days. A claimant notified by mail of the need to provide proof of identity must provide the information to the Department within five (5) business days of the date of mailing of the notice. (4-11-06)

**08. Right to Claim Benefits.** In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

**09. Separation Information.** Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed fourteen (14) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and

(14), Idaho Code. (4-11-06)

**10. Separation Notice.** (3-19-99)

**a.** ~~Request for~~ Notice to Employer of Separation-Information. At the time a claim for benefits is filed, the Department will review the claimant's employment subsequent to which the claimant has not earned fourteen (14) times his weekly benefit amount. The Department will mail a separation notification letter to each employer within that period. A Department representative will then contact the employer within seven (7) business days for a response, unless the claimant indicated he quit the job for reasons not attributable to the employer. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), after receiving a request for separation information from the Department because an individual has filed a claim for benefits when contacted by a Department representative for a response, shall submit respond to the Department a report of with the reasons for the separation whenever such the claimant: (4-5-00)(\_\_\_\_)

- i. Left his employment voluntarily; (3-19-99)
- ii. Was discharged from his employment due to misconduct; (3-19-99)
- iii. Is unemployed due to a strike, lockout, or other labor dispute; ~~or~~ (3-19-99)(\_\_\_\_)
- iv. Is not working due to a suspension; or (\_\_\_\_)
- v. Was separated for any other reason except lack of available work. (3-19-99)

**b.** Employer Response. The employer's response shall be ~~completed in accordance with instructions printed on the Department's request for separation information and shall be completed given~~ by the employer or on the employer's behalf by someone having personal knowledge of the facts ~~therein stated concerning the separation.~~ The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. (3-15-02)(\_\_\_\_)

**11. Filing of an Additional Claim or Reopening a Claim.** A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

**a.** In-person Filing. When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

**b.** Mailing. A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

**c.** Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

**d.** Telephone Filing. A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

**e.** Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

**12. Use of Wage Credits.** All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

**13. Valid Claim.** To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**451. -- 474. (RESERVED).**

**460. PROFESSIONAL ATHLETES BETWEEN SEASONS.**  
Ref. Sec. 72-1366(18), Idaho Code. ( )

**01. Base Period Wages.** No base period wages shall be used for the purposes of establishing a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods). ( )

**02. Reasonable Assurance.** Reasonable assurance is defined as any of the following: ( )

**a.** The claimant has a contract, either written or oral; ( )

**b.** The claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or ( )

**c.** The claimant expresses a readiness and willingness or intent to participate in the sport the following season. Reasonable assurance exists if the claimant asserts he or she intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment. ( )

**03. Substantially All Services.** For the purposes of Section 460, an individual shall be deemed to have performed "substantially all services" in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services. ( )

**461. -- 474. (RESERVED).**

**IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR**  
**09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES**

**DOCKET NO. 09-0135-0601**

**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 67-4702(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 September 20, 2006.

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

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

IDAPA 09.01.35.011.01 is being amended to expressly require employers who pay no wages in a quarter to file a quarterly report for the quarter with zero wages reported. IDAPA 09.01.35.011.11 is being amended to clarify that each covered employer's UI tax report shall be reported under the covered employer's account number, even if reported by a payroll service.

IDAPA 09.01.35.061 is being amended to add the definition of "willfully".

IDAPA 09.01.35.112.01, 09.01.35.112.03 & 09.01.35.112.04 are being amended to remove the mandatory language for the factors to be considered in determining a worker's status and replace with permissive language that allows the Department to consider any and/or all of the enumerated factors. IDAPA 09.01.35.112.03 is also being amended to clarify factors for the direction or control test. IDAPA 09.01.35.112.03 is further being amended to add consideration of direction or control an employer may have when a worker performs services under the alleged employer's license, permit or certificate, acquired under federal, state or local laws and/or regulations, and the employer under such laws is required to direct and control the activities of the worker. IDAPA 09.01.35.112.03 is further being amended by consideration of other factors to determine the existence of or lack of the employer's exercise of direction or control.

IDAPA 09.01.35.134.02 and 04 will be changed to eliminate duplication within the PEO rule.

A new section, IDAPA 09.01.35.263, will clarify that if an employer meets coverage requirements during a calendar year, the quarterly reports for the wages paid in prior quarters of the same calendar year will be due on the due date for the quarterly report in which the employer became a covered employer and quarterly reports for subsequent quarters are due at the end of each quarter.

**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 will be no impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Don Arnold, UI Compliance Bureau Chief, (208) 332-3570 ext. 3258.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this August 2, 2006.

Don Arnold  
UI Compliance Bureau Chief  
Department of Commerce and Labor  
317 W. Main Street  
Boise, ID 83735  
(208) 332-3570 ext. 3258  
(208) 334-6301 fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0135-0601**

**011. GENERAL PROVISIONS.**

The following Unemployment Insurance Tax Administration Rules are adopted pursuant to Section 67-4702, Idaho Code. (4-11-06)

**01. Quarterly Reporting.** Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Sec. 72-1337, Idaho Code. (3-19-99)( )

**02. Contribution Due Date.** Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

**03. Penalties and Interest on Bankruptcy.** Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Sec. 72-1356, Idaho Code. (3-19-99)

**04. Lien Interest.** Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Sec. 72-1360, Idaho Code. (3-19-99)

**05. Penalty and Interest During Controversy.** Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sec. 72-1354 and 72-1360, Idaho Code. (3-19-99)

**06. Confidential Information.** Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise provided by law or these rules. Ref. Sec. 9-340 and 72-1342, Idaho Code. (3-19-99)

**07. Filing of an Employer Appeal.** (3-30-01)

**a.** An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any Idaho Commerce & Labor local office or to

the ~~Tax and Benefit Control~~ UI Compliance Bureau of the Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a Idaho Commerce & Labor local office or the ~~Tax and Benefit Control~~ UI Compliance Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a Idaho Commerce & Labor local office or the ~~Tax and Benefit Control~~ UI Compliance Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Idaho Commerce & Labor local office or to the ~~Tax and Benefit Control~~ UI Compliance Bureau, Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Sec. 72-1361, Idaho Code. (4-11-06)( )

**b.** An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

**c.** In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if (i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

**08. Determinations.** Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing of the determination in accordance with Section 72-1361, Idaho Code. (3-30-01)

**09. Determination of Payment Date.** Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

**10. Release of Lien upon Payment in Full.** An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Sec. 45-1908, Idaho Code. (3-19-99)

**11. Contribution Reports.** Each contribution shall be accompanied by an employer's contribution report in a form or medium prescribed and furnished or approved for such purpose, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed or furnished by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Sec. 72-1349, Idaho Code. (4-11-06)

**a.** Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sec. 72-1325 and 72-1315, Idaho Code. ( )



**(BREAK IN CONTINUITY OF SECTIONS)**

**061. DEFINITIONS.**

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the *Tax and Benefit Control UI Compliance* Bureau. (4-11-06)(\_\_\_\_)

**01. Tolerance Amount.** A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

**02. Wages.** The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-19-99)

**a.** Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; (4-5-00)

**b.** Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-19-99)

**c.** Commissions for past services in covered employment; (3-19-99)

**d.** Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (4-5-00)

**e.** Salary advances against commissions; (3-19-99)

**f.** All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-19-99)

**g.** Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)

**h.** Vacation or "idle-time" pay, no matter when paid; (3-19-99)

**i.** Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)

**j.** The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

**k.** Noncash payments for farm work, if such payments would be classified as wages for federal tax purposes. Ref. Sec. 72-1328, Idaho Code. (3-15-02)

**03. Exclusions from Wages.** The term "wages" described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

**a.** Prizes or gifts for special occasions which are expressions of good will; (3-19-99)

**b.** Bonuses paid for signing a contract; (3-19-99)

**c.** Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-19-99)

- d.** Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)
- e.** Rental charge for personal equipment provided by the employee on the job: if (3-19-99)
- i.** There is a rental agreement; and (3-19-99)
- ii.** The worker has received a reasonable wage for services performed; and (3-19-99)
- iii.** The fees are held separately on the employer's records. (3-19-99)
- f.** Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)
- g.** Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)
- i.** To have paid or incurred reasonable job related expenses while performing services as employees; and (3-19-99)
- ii.** To account adequately to the employer for these expenses; and (3-19-99)
- iii.** To return any excess reimbursement or allowance. (3-19-99)
- h.** Payments for employee travel expenses, provided: (3-19-99)
- i.** Payments are job related expenses while performing services; and (3-19-99)
- ii.** Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)
- iii.** Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)
- i.** Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)
- j.** Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Sec. 72-1328, Idaho Code. (3-15-02)
- 04. Treatment of Limited Liability Companies.** For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. (4-5-00)
- 05. Domestic Employment.** Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by: (3-15-02)
- a.** Cooks; (3-15-02)
- b.** Waiters; (3-15-02)
- c.** Butlers; (3-15-02)

- d. Maids; (3-15-02)
- e. Janitors; (3-15-02)
- f. Laundresses; (3-15-02)
- g. Furnacemen; (3-15-02)
- h. Handymen; (3-15-02)
- i. Gardeners; (3-15-02)
- j. Housekeepers; (3-15-02)
- k. Housemothers; and (3-15-02)
- l. In-home caregivers. Ref. Sec. 72-1315, Idaho Code. (3-15-02)

**06. Casual Labor.** Services performed by an individual not in the course of the employer's trade or business who earns less than fifty dollars (\$50) per calendar quarter per service provided and is not regularly employed by that employer to perform such service, are exempt from unemployment insurance coverage. Ref. Sec. 72-1316A(19), Idaho Code. Domestic employment exempt as casual labor may not be exempt if the employer is covered for such service under Section 72-1315(8), Idaho Code. The term, "services not in the course of the employer's trade or business", refers to services that do not promote or advance the trade or business of the employer. The casual labor exemption found under Section 72-1316A(19), Idaho Code, does not apply to services performed for corporations because all services performed for a corporation are considered to be in the course of the trade or business of the corporation. (4-11-06)

**07. Willfully.** When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with "intentionally," "designedly," "without lawful excuse," and therefore not accidental. Ref. Sec. 72-1372, Idaho Code. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**112. DETERMINING STATUS OF WORKER.**

**01. Determining if Worker Is an Employee.** In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors ~~shall~~ may be considered: ~~(3-19-99)~~( )

- a. The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-19-99)
- b. Statements made to the department; (3-19-99)
- c. Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-19-99)
- d. Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-19-99)

**02. Determining if Worker Is an Independent Contractor.** If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an

“independent contractor” pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-19-99)

**03. Proving Worker Is Free from Control or Direction in His Work.** To meet the requirement of Section 72-1316(4)(a), Idaho Code, ~~the alleged employer must be prove~~ that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors ~~shall~~ may be considered in this determination: ~~(3-19-99)~~( )

- a. Whether the alleged employer has control over: (3-19-99)
  - i. The details of the work; (3-19-99)
  - ii. The manner, method or mode of doing the work; and (3-19-99)
  - iii. The means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-19-99)

b. ~~The freedom from~~ Whether the worker was free from the alleged employer's direction and control must exist both in theory (under a contract of service) and in fact; and ~~(4-11-06)~~( )

c. ~~The~~ Whether the alleged employer must demonstrate that it lacked a right to control the worker; ~~(4-11-06)~~( )

d. Whether the alleged employer has direction or control where the worker performs services under the alleged employer's license, permit, or certificate, acquired pursuant to federal, state or local laws and/or regulations, and the employer under such laws is required to direct and control the activities of the worker; and ( )

e. Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence of or lack of the employer's exercise of direction or control over a worker's performance of his work. ( )

**04. Proving Worker Is Engaged in Independently Established Business.** To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors ~~shall~~ may be considered in this determination: ~~(3-19-99)~~( )

- a. Skills, qualifications, and training required for the job; (3-19-99)
- b. Method of payment, benefits, and tax withholding; (3-19-99)
- c. Right to negotiate agreements with other workers; (3-19-99)
- d. Right to choose sales techniques or other business techniques; (3-19-99)
- e. Right to determine hours; (3-19-99)
- f. Existence of outside businesses or occupations; (3-19-99)
- g. Special licensing or regulatory requirements for performance of work; (3-19-99)
- h. Whether the work is part of the employer's general business; (3-19-99)
- i. The nature and extent of the work; (3-19-99)
- j. The term and duration of the relationship; (3-19-99)

- k.** The control of the premises; (3-19-99)
  - l.** Whether the worker has the authority to hire subordinates; (3-19-99)
  - m.** Whether the worker owns or leases major items of equipment or incurs substantial unreimbursed expenses, provided, that in a case where a worker leases major items of equipment from the alleged employer: (3-19-99)

    - i.** The terms of the lease; and (3-19-99)
    - ii.** The actions of the parties pursuant to those terms must be commercially reasonable as measured by applicable industry standards. (3-19-99)
  - n.** Whether either party would be liable to the other party upon peremptory or unilateral termination of the business relationship; and, (3-19-99)
  - o.** Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence or lack of an independently established trade occupation, profession or business. (3-19-99)
- 05. Meeting Criteria for Covered Employment.** A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-19-99)
- 06. Evidence of Contractual Liability for Termination.** For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Sec. 72-1316(4), Idaho Code. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**134. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

A professional employer organization shall fully comply with the requirements of the Professional Employer Recognition Act, Chapter 24, Title 44, Idaho Code in order to be eligible for any transfers of experience rating as allowed by Section 72-1349B, Idaho Code. (3-15-02)

**01. Methods of Reporting.** To report the wages and employees covered by the professional employer arrangement between a professional employer and client, professional employers and their clients shall make reports to the Department in one (1) of the following ways, subject to the conditions in Subsections 134.02 through 134.06 of this rule: (3-15-02)

**a.** Report the workers included in the professional employer arrangement under the employer account number of the professional employer and transfer the rate of the client to the professional employer; or (3-15-02)

**b.** Report the workers included in the professional employer arrangement under the employer account number of the client without an experience rate transfer. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

**02. Joint Transfer of Experience Rate.** In order to effect a transfer of a client's experience rate into the experience rate of a professional employer organization, both the client and the professional employer organization shall jointly apply for the transfer of the experience rate within the same timeframes as required of employers by Section 72-1351(4), Idaho Code, from the date of the contract entered into between the professional employer organization and the client required by Section 44-2405, Idaho Code. Failure to submit a timely joint request for transfer of experience rate shall result in the professional employer organization reporting wages for the client under the employer account number of the client. Ref. Sec. 72-1351(4), Idaho Code. (7-1-05)

**03. Partial Transfers of Experience Rate Prohibited.** In the event that a client and a professional employer organization jointly apply to transfer the experience rate of the client into that of the professional employer, the client's entire experience rate and factors of experience rate shall be transferred into that of the professional employer, and no partial transfers of experience factors or the experience rate shall be allowed. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

~~**04. Joint Application.** If the professional employer organization elects to report the workers assigned to a client under the experience rate account of the professional employer a joint application signed by the professional employer organization and the client employer must be submitted within one hundred eighty (180) days of the contract between the professional employer organization and the client. If the application is not received within this time frame, the workers assigned to the client employer must be reported under the experience rate account of the client without an experience rate transfer. Ref. Sec. 72-1351, and 72-1349B, Idaho Code. (4-11-06)~~

**054. Partial Reporting of Workers.** If some of the client's workers are included in the professional employer arrangement and some are not included, and the professional employer organization and the client elect to report the workers included in the professional employer arrangement under the employer account number of the client, then only one (1) quarterly report shall be remitted to the Department, which shall list or include all the client's workers whether or not included in the professional employer arrangement. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

**065. Combined Wages or Services for Purposes of Coverage.** If a client employer has employees or employment, or both, that does not independently meet the coverage or threshold requirements necessary to constitute covered employment, such employees, services or employment shall nonetheless be deemed to meet the coverage requirements of the Employment Security Law if, in combination with other employees, employment or services of such other employees of the professional employer organization or any of its clients, such wages, services or employees do jointly meet coverage requirements. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**263. DETERMINATION OF REPORTABLE QUARTERS.**

An employer shall be covered for all four (4) quarters in the calendar year in which the employer becomes a covered employer as well as for all four (4) quarters in the succeeding calendar year. Employers are not required to file quarterly reports until meeting the coverage criteria pursuant to Section 72-1315, Idaho Code. Upon becoming a covered employer within a calendar year, the quarterly report(s) for the quarter(s) prior to the employer becoming covered shall be filed with the quarterly report for the quarter in which the employer became covered. Quarterly reports for the periods subsequent to coverage shall be filed when due after the end of each quarter. Ref. Sec. 72-1315 and 72-1337, Idaho Code. ( )

~~2634.~~ -- 274. (RESERVED).

## **IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR**

### **09.02.01 - IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (ICDBG)**

**DOCKET NO. 09-0201-0601**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2006.

**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) 67-4702, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 proposed changes to IDAPA 09.02.01 are intended to clarify or change inaccurate terminology and grant application requirements and delete references that do not comply with federal HUD program regulations.

**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:

The changes are being made to IDAPA 09.02.01 to comply with changes to federal HUD program regulations, legislative committee requests and to clarify and make rules consistent with other program requirements.

**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: 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: There will be no impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is in response to federal program regulations and legislative committee requests.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dianna Clough, Community Development Manager, (208) 334-2650 ext. 2140.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this August 2, 2006.

Dianna Clough  
Community Development Manager  
Department of Commerce and Labor  
State Street Office  
700 W. State Street, Boise, ID 83720-0093  
(208) 334-2650 ext. 2140 / (208) 334-2631 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0201-0601

040. SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES.

01. **Economic Development Activities.** Grant funds may be used for economic development activities which directly assist a specific business firm. In authorizing activities, the Department will take into account the amount of permanent employment to be generated which is available to low and moderate income persons, the necessity of the assistance or activity to stimulate private investment and the degree of impact on the economic conditions of the applicant. (7-6-94)

02. **Eligible Activities.** The following are eligible activities that may be carried out: (7-6-94)

a. Acquisition, construction, reconstruction, or installation of publicly-owned commercial or industrial buildings and structures, and other publicly-owned real property equipment and improvements, including public facilities, utilities, and other on site improvements, including railroad spurs, electrical, gas and telephone services. Such activities may be carried out by the grantee, sub-grantee recipient, or private nonprofit firms. Rehabilitation of privately-owned commercial or industrial buildings is eligible under Subsection 040.02.b.; or Subsection 051.01. (~~3-20-97~~)(9-1-06)T

b. A project may include the provision of direct financial assistance to private-for-profit businesses including, but not limited to, assistance through grants, loans, loan guarantees, interest supplements, or technical assistance and other forms of support, for any eligible activities ~~necessary or appropriate~~ to carry out an economic development project, excluding those described as ineligible in Subsection 052.01. In order to ensure that any such assistance does not unduly enrich the for-profit business, an analysis shall be conducted to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project as described in 24 CFR Part 570.482(e) and (f). ~~The analysis shall document any factors considered in making the determination that the assistance is "necessary or appropriate" to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the grantee or through a sub-grantee;~~ (7-6-94)(9-1-06)T

~~c. Other activities eligible under Section 022 of these rules which are necessary or appropriate to carry out an economic development project; and (7-6-94)~~

~~d. When the grantee determines such ineligible activities listed in Subsection 052.02 are necessary or appropriate to achieve its community development strategy. (7-6-94)~~

041. -- 044. (RESERVED).

045. SUB-GRANTS TO NONPROFIT ORGANIZATIONS.

01. **Eligible Activities.** A grantee may subgrant ICDBG funds to any of the types of sub-grantees recipients specified below, to carry out a neighborhood revitalization or community economic development project. Such a project may include any eligible activity under these rules and ineligible activities listed in Subsection 052.02, but not those described as ineligible in Subsection 052.01, ~~when the grantee determines that such activities are necessary or appropriate to achieve its community development objectives.~~ (7-6-94)(9-1-06)T

02. **Grantee Responsibilities.** Grantees are wholly responsible for ensuring that ICDBG funds are utilized by sub-grantees recipients in a manner in compliance with the requirements of these rules and the other applicable federal, state or local laws. Grantees remain responsible for carrying out the environmental review and clearance responsibilities. (7-6-94)(9-1-06)T

03. **Sub-Grantee Recipient Eligibility.** Sub-grantees recipients eligible to receive grants under ~~this~~ Section 045: (7-6-94)(9-1-06)T



**a.** A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit (nonprofit) basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of its membership, clientele or governing body are residents of the neighborhood where activities assisted with ICDBG funds are to be carried out. A "neighborhood" is: a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents as a neighborhood; or the entire jurisdiction of a unit of general local government which is under twenty-five thousand (25,000) population.

(7-6-94)

**b.** Section 301(d) Small Business Investment Companies. A Section 301(d) Small Business Investment Company is an entity organized pursuant to Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

(7-6-94)

**c.** Local Development Corporations. A local development corporation is: an entity organized pursuant to Title VII of the Headstart, Economic Opportunity and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.); an entity eligible for assistance under Section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696); other entities incorporated under state law whose membership is representative of the area of operation of the entity (including non-resident owners of businesses in the area) and which is similar in purpose, function and scope to those specified in Subsection 045.03.a.; or a state development entity eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

(7-6-94)

**d.** Colleges and Universities. An institution of higher education having a demonstrated capacity to carry out eligible activities for the benefit of the grantee.

(7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**066. INVITATION TO SUBMIT APPLICATION ADDENDA.**

For public facility, housing and economic development downtown revitalization applications, the Council will review the staff recommendation and the information presented. The Council will assign their points and will direct the Department to invite the highest rated applicants to submit application Addenda, ~~if required and if funding is available.~~ (4-11-06)(9-1-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. FORMAT.**

An Application shall be submitted on eight and one-half inch (8-1/2") by eleven inch (11") white paper. It may be printed on both sides of the paper. Maps and larger sheets shall be folded to eight and one-half inch (8-1/2") by eleven inch (11") size. Left and right margins shall be one (1) inch. The text shall be typed single-spaced with double spaces between paragraphs. Pages shall be numbered. The types of headings and numbering systems are optional to the applicant. Supporting documents should be noted and placed in an appendix. ~~All Applications shall be bound. Type of binding is optional to the applicant.~~ The original and an electronic Application and the addendum, if required, shall be submitted to the Department of Commerce and Labor as prescribed in the ICDBG Application Handbook.

(4-11-06)(9-1-06)T

**073. (RESERVED).**

**074. SECTIONS.**

The Application shall consist of the following sections:

(7-6-94)

**01. Cover.** The cover shall contain "An application for an Idaho Community Development Block

Grant by the \_\_\_\_\_ (City/County) of \_\_\_\_\_ (Name) \_\_\_\_\_ Date: \_\_\_\_\_". (one (1) page) (7-6-94)

**02. Cover Letter.** A cover letter signed by the Mayor or the Chairman of the Board of County Commissioners on official stationery. This is the official letter of application for a grant. (one (1) page) (7-6-94)

**03. Table of Contents.** (one (1) page) (7-6-94)

**04. ICDBG Application Information Form.** Fully completed and signed by the applicant. (one (1) page) (7-6-94)

**05. Threshold Factors.** The first four (4) factors must all be answered in the affirmative before an Application is to be reviewed and ranked. For public facility, housing and downtown revitalization projects an Application shall include ~~only~~ Subsections 074.05.a. through 074.05.d. An Addendum, where required, shall include Subsections 074.05.e. through 074.05.g. All other application types must include Subsections 074.05.a. through 074.05.g. ~~(3-19-99)~~(9-1-06)T

**a.** The applicant must be an eligible applicant (Section 012). Describe how the applicant meets the eligibility criteria. If this is a joint or in-behalf-of application, describe agreements and arrangements for managing the grant and the project. (7-6-94)

**b.** The project shall be an eligible activity(ies). Describe why the project and the various activities are eligible according to the rules in Section 022. (7-6-94)

**c.** The applicant shall adopt a citizen participation plan and shall conduct a public participation process. Applicants shall submit a copy of the Citizen Participation Plan and results of citizen involvement in developing the project. A copy of the Citizen Participation Plan must be submitted with the Application. An ICDBG may be awarded only if the grantee certifies that it is following a detailed citizen participation plan which: provides for and encourages citizen participation, with particular emphasis on participation of persons of low and moderate income who are residents of slum and blight areas or provides for participation of residents in low and moderate income neighborhoods as defined by the applicant; provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed use of funds; provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including, at least, the development of needs, the review of proposed activities, and review of program performance. Hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for persons with disabilities; provides for a timely written answer to written complaints and grievances, within fifteen (15) working days where practicable; and identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. (3-19-99)

**d.** At least one (1) public hearing is required to permit public examination and appraisal of the Application. Public hearings shall be scheduled in ways and at times to provide for full participation of citizens. The building or facility must be accessible to persons with disabilities. All information presented in the hearings shall also be available, upon request, in a form usable by persons with disabilities. Proper notification shall be given by a public advertisement in a local newspaper no less than seven (7) days prior to the meeting date. The seven (7) days shall be counted beginning the date the advertisement appears and ending the day before the date of the hearing. The notice shall include: a brief description of the proposed project; the amount of funds being requested; the time and place of the public hearing, including a statement that the hearing will be held in a handicapped accessible facility; notification that both written and verbal comments will be accepted; and a description of the availability of services for persons with disabilities, upon request. It is recommended the applicant also post notification of the public hearing at various public locations and use other media notices of the hearing. At a minimum, applicants shall provide in the minutes of the meeting, evidence the following occurred at the public hearing: The Application and Application Handbook were available for review; the amount of funds available for local community development and housing activities was discussed; the range of activities to be undertaken was presented including community impact and benefit to low and moderate income (LMI) persons; verification that citizen's comments and views on the proposed Application were considered prior to submittal and, if determined appropriate, a description of how the Application was modified; a copy of the public notice, minutes and a list of those attending the public hearing(s); a description of any plans for the project regarding citizen participation, i.e., the formation of a citizen's advisory committee; and a

description of any assistance for persons with disabilities requested and provided.

(3-20-97)

e. The applicant shall have the administrative capacity to administer the grant. This means having completed the procurement process for a Department-approved grant ~~manager~~ administrator in accordance with ~~the~~ Section 212. The grant ~~manager~~ administrator shall be included in project development and Application writing efforts.

~~(3-20-97)~~(9-1-06)T

f. The applicant shall have adopted a Fair Housing Ordinance or resolution. This ordinance or resolution must have been adopted and publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Fair Housing Resolution or Ordinance has been adopted, applicants do not have to re-adopt the Resolution or Ordinance. The applicant will be required to show documentation the Resolution or Ordinance was published within the previous twelve (12) month period.

~~(3-19-99)~~(9-1-06)T

g. The applicant shall either certify it will follow the Idaho Department of Commerce and Labor's Anti-displacement Plan or have adopted an Anti-Displacement and Relocation Plan. If the applicant adopts its own plan, the ordinance or resolution must have been publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Anti-Displacement and Relocation Plan has been adopted, applicants do not have to re-adopt the Plan. The applicant will only be required to show documentation the Plan was published within the previous twelve (12) month period.

~~(4-11-06)~~(9-1-06)T

**06. General Project Description.** This is the critical section of the Application. It should include enough information for the reviewer to clearly understand the community, its needs, the project, and how the grant will help to solve the community problem. The information in each ranking section should substantively expand upon the project description. The narrative should, ~~in three (3) pages,~~ succinctly describe the following items: a description of the community as to size, location and economy; a thorough assessment of all the community's needs and how the proposed project is a priority in comparison with the other needs addressed. The applicant should also include a description which discusses how the existing condition came about, the number of people affected, and the seriousness of the problem(s); the particular project that is being proposed shall be described in detail. Describe the project, the various components, anticipated costs, schedule of activities, maps showing the location of the project to the community (detailed enough to locate it by car) and a map of the boundaries of the project area. This description shall be detailed enough that it can be used to write a contract scope of work; describe the benefits of the project, how it solves the identified need, and how it will enhance the community and its economy. Provide a demographic profile of the persons to benefit. This shall include gender, minority status, persons with disabilities, and female head of household. Describe how the project meets the state objectives of the ICDBG program (see Sections 000, 010, and 011); and if program income is expected to be generated, a re-use plan must be developed according to Section 175.

~~(3-19-99)~~(9-1-06)T

**07. ICDBG Budget Form Fully Completed by the Applicant.** (one (1) page)

(7-6-94)

**08. Assurances.** The applicant shall sign the Assurances Form certifying that it will comply with the following federal laws and regulations: National Environmental Policy Act of 1969; Civil Rights Act of 1964 Pub.L 88-352; Civil Rights Act of 1968 Pub.L 90-284; Age Discrimination Act of 1975; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended and the implementing regulations at 49 CFR Part 24; Rehabilitation Act of 1973, Section 504 "Handicapped Accessibility"; Housing and Community Development Act of 1974 as amended Pub. L 93-383; Davis-Bacon Act (40-USC 276a--5); Historic Preservation Act; Anti-Lobbying Certification; Excessive Force Certification; and Section 106 of the Housing and Urban Recovery Act of 1983, certifying they will: minimize displacement and follow a residential anti-displacement and relocation assistance plan, affirmatively further fair housing, provide citizen participation, not use assessments or fees on low and moderate income owner occupants to recover capital costs of ICDBG-funded public improvements; Prohibition of Use of Assistance For Employment Relocation, Section 588 of the Quality Housing and Work Responsibility Act of 1998 Pub. L 105-276. (one (1) page).

(3-30-01)

**09. Review and Ranking Narrative.** The applicant shall address each point category in the order given in the review and ranking section of the applicable grant category, referenced below. If a particular point category is not applicable or not selected, it should be indicated. (7-6-94)

- a.** Economic Development Grants: (4-11-06)
  - i. Infrastructure (Section 096). (7-6-94)
  - ii. Downtown Revitalization (Section 097). (7-6-94)
- b.** PFH (Sections 083 through 087) and SR (Section 101) Grants: (7-6-94)
  - i. Program Impact and Eligible Activity Point Form. (4-11-06)
  - ii. National Objectives. (4-11-06)
  - iii. Project Categories. (4-11-06)
  - iv. Advisory Council Points Narrative. (4-11-06)

**10. Additional Information from Applicant (Appendix).** Maps, letters of support, technical studies and appropriate background documentation should be placed in this section and bound into the Application (no page limit). (7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**090. PROJECT CATEGORIES.**

Two hundred and twenty (220) points. PFH Applications shall address each of the categories below. The project description and its benefits should be discussed in previous sections. This section is a measure of the preparedness of the project and the community to undertake the project. To earn points, the applicant must demonstrate that the appropriate actions, procedures, agencies, permits, financing and inspections to initiate and complete the project were discovered and show how much has been completed. The object is to have well thought out projects which will then be quickly executed if funded. The items identified in the following categories must be related to each other. (3-30-01)

**01. Planning, Previous Actions and Schedule (one hundred and eighty (180) points).** According to the categories listed below, the applicant shall describe and document the process used to plan the project and describe the components of the project. The completeness of the process and project detail earn more points. (4-11-06)

**a.** Design Professional (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed a design professional selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, proof of published notice if applicable, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

**b.** Grant Administration (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed the administrator selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, solicitation process, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

**c.** Plan/Studies (twenty (20) points). A maximum of twenty (20) points will be awarded in this category if the applicant documents a plan or a study has been completed which includes a survey of the existing condition of the system or facility, develops and screens alternatives to enable the system to meet future needs, selects

a recommended alternative, and evaluates the potential impact of the project on the environment. For pre-fab buildings, provide a letter from local building officials that the building meets state of Idaho building, electrical, and plumbing codes. Include additional information by project type: (4-11-06)

i. Water and sewer system projects. A conditional approval issued by DEQ on the facilities study or the project's specification and drawings. (4-11-06)

ii. Health care facility projects. A letter of intent submitted to the Idaho Bureau of Facilities Standards describing the proposed scope of work. Provide a copy of the letter and any response from the Bureau of Facilities Standards. (4-11-06)

iii. Road and transportation system projects. Conditional approval of construction plans by the Idaho Transportation Department or local highway district. (4-11-06)

iv. Housing projects. Project meets the community's comprehensive plan and zoning ordinance. Also, completed a financial performance and management plan. (4-11-06)

v. Fire or EMT station projects. A public works or design professional facilities review. The review shall include survey of existing condition of the building (if applicable), an analysis of costs including rehabilitation costs versus new construction, site location consideration including environmental issues, existing building problems, and the need for the size of the facility. (4-11-06)

d. Environmental Scoping (ten (10) points). A maximum of ten (10) points will be awarded if the applicant or sub-recipient has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook and mailed out environmental information request letters before submission of application. (4-11-06)

e. Agency Viability (thirty (30) points). A maximum of thirty (30) points will be awarded in this category if the applicant documents the following per project type: (4-11-06)

i. Sewer or water projects. Completion of ICDBG financial viability worksheet with the utility rate reviewed by at least one (1) of the following: The USDA Rural Development, Boise State University Environmental Finance Center, the Rural Community Assistance Corporation, or the Idaho Rural Water Association. (4-11-06)

ii. Health care, transportation, housing, fire/EMT, or other projects. The applicant's or sub-recipient's viability will be based on having the following components: A lawful governing body, completion of ICDBG financial viability profile, a stable funding source and positive cash flow, and capital improvement and facility management plans. (4-11-06)

iii. Youth center projects. Projects must ~~be modeled after the Boys and Girls Club of America and~~ assist youth ages six (6) to eighteen (18) in developing skills to overcome challenges and become responsible leaders. The applicant or sub-recipient must provide information on management and operation of the center, outreach activities, a cost analysis of rehabilitation versus new construction and document that local operating funds are committed. ~~(4-11-06)~~(9-1-06)T

f. Property Acquisition (twenty (20) points). A maximum of twenty (20) points shall be awarded if the applicant or sub-recipient has achieved project site control. (4-11-06)

i. The applicant or sub-recipient has ownership of the property including easements or right of way permits. Identify if there are existing buildings on the property and whether or not businesses, individuals, or farms will be displaced and provide documentation of site control; or (4-11-06)

ii. If property (land, buildings, rights of way, easements) is not secured but is identified on a plat map five (5) points will be awarded. Identify if individuals or businesses, including farms will be displaced. (4-11-06)

g. Funding Commitments (forty (40) points). A maximum of forty (40) points will be awarded if one hundred percent (100%) of match funds are committed to the project. A commitment letter must be included with the application addendum. A support letter is not a commitment. If match is a bond, provide documentation the bond has

passed and identify who will buy it. (4-11-06)

**h.** Schedule (five (5) points). A maximum of five (5) points will be awarded in this category if the dates to start and complete construction have taken into account weather conditions, other funding availability, environmental mitigation issues, real estate site control, and bidding time frame. (4-11-06)

**i.** Administrative Capacity (fifteen (15) points). A maximum of fifteen (15) points will be awarded in this category. (4-11-06)

**i.** ICDBG project track record and general stability of applicant and sub-recipient. Review may include financial audit reports, board make-up, staff turnover and recall elections (five (5) points). (4-11-06)

**ii.** Completion of Section 504 Self Evaluation and Transition plan. Submit the transition plan and the name of the ADA coordinator to certify which elements have been completed (five (5) points). (4-11-06)

**iii.** Document that Fair Housing Accessibility Standards have been adopted either separately or inclusively with the most current building code utilized by the applicant (five (5) points). (4-11-06)

**02. Cost Analysis (forty (40) points).** Cost estimates for the project should be an accurate and realistic analysis of the administrative, legal, accounting, engineering or architectural services, property acquisition, construction and closeout costs. The various sources of funding should be assigned to the appropriate parts of the project. In order to receive points, construction costs will need to be: (4-11-06)

**a.** Identified by a licensed design professional's cost estimate within four (4) weeks of the application due date; (4-11-06)

**b.** Completed Project Cost Estimate. Estimate should reflect: (4-11-06)

**i.** Acquisition costs including appraisals, land, relocation, and closing costs; (4-11-06)

**ii.** Construction costs including divisions 1 - 16 as described in the most recent MASTERFORMAT, Davis Bacon wage rate, overhead, profit, contingency, bonding, permits; (4-11-06)

**iii.** Design professional fees including design fees, construction administration, and reimbursable fees; (4-11-06)

**iv.** Grant administration fees including writing and administration; (4-11-06)

**v.** Soft costs including soil studies, market study, environmental; and (4-11-06)

**vi.** Financing expenses. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**096. REVIEW AND RANKING NARRATIVE FOR BUSINESS EXPANSION PROJECTS.**

The following are the review and ranking narrative requirements for those projects which assist business expansion through the provision of infrastructure and creation of jobs. The following minimum criteria must be included in the application by the application deadline in order for staff to review and rank the project and recommend it to the Economic Advisory Council for consideration. (3-30-01)

**01. Minimum Criteria.** (7-6-94)

**a.** The project must meet the national objective of benefiting LMI persons through job creation. Fifty-one percent (51%) of all the new jobs created or retained must be held by or made available to a member of a low and

moderate income family. (LMI as defined in Section 016). Family income must be certified by the employee at time of hire and must be able to be verified or may be documented through a Department of Commerce and Labor screening referral agency. (3-19-99)

b. The applicant must certify compliance with applicable federal circulars A-87, A-110, and A-122 and meet the necessary assurances as listed in Subsection 074.08 as applicable. (4-11-06)

c. A public hearing shall be held on the Application in accordance with Subsection 074.05.d. (7-6-94)

d. The project may qualify as a Special Economic Development Project under Subsection 040.02.a. ~~If the project qualifies under Subsection 040.02.b., a determination of Necessary or Appropriate is required and~~ 040.02.b. if the project meets the Public Benefit Standards described in 24 CFR Part 570.482 (e) and (f). (7-6-94)(9-1-06)T

e. Attach an eight and one-half inch (8-1/2") by eleven inch (11") map showing the location of the proposed project in the community. Attach a site plan of the proposed project showing existing and proposed improvements both business and infrastructure; existing and proposed land uses in the surrounding area and natural features and conditions on the site and nearby. (3-20-97)

f. Attach a brief analysis of the business to be assisted, including the market for the product/services to be produced, the business' position in the market, and the financial and managerial capabilities of the business(es) to be assisted. This should also include financial statements and balance sheets for the business(es) to be assisted indicating sales, income, and net position for the prior three (3) years, and the names and experience of senior managers of the business. (4-11-06)

g. Attach a letter of commitment from the business(es) stating their agreement to be part of the grant project, their ability to accomplish their expansion, their understanding of and compliance with all applicable federal regulations, their understanding of and compliance with the payback liability if the jobs creation does not meet federal standards; and their willingness to make available all records and information necessary to document all jobs created by completing and signing the Grant Assistance Agreement and Certification of Compliance with Grant Conditions. (4-11-06)

h. Attach a description of the type and number of all the jobs to be created, a calculation of fulltime equivalents (FTE), and a beginning payroll of the business(es) at the location of the proposed project, a detailed description of the hiring process and any training to be provided. The information should include both current job information and the job creation projected for two (2) years beyond the completion of the grant funded construction. If training is necessary, a training plan and schedule outlining the responsibilities must be included in the application. A description of the quality of new and retained jobs shall be included. A description of the median annual income and fringe benefits package for new or retained jobs shall be provided. (4-11-06)

**02. Ranking Criteria (one thousand (1,000) points possible).** (7-6-94)

a. Direct new or retained jobs, in fulltime equivalents (FTE's), created within two (2) years of grant construction completion. Net new jobs are those created as a result of the ICDBG, over and above employment at the business site prior to the grant, and which do not include relocated jobs from the assisted business in the same labor market area. Retained jobs are those that would be lost without the ICDBG assistance. A job creation cost of more than ten thousand dollars (\$10,000) ICDBG per job will not be considered. If jobs are not being created or retained, a project cannot be funded. (4-11-06)

b. Quality of New or Retained Jobs (one hundred (100) points). Points in this category are assigned based upon a comparison of the full time equivalent (FTE) wages or salaries created (excluding benefits, and the average county salary as determined by the most recent quarterly Idaho Department of Commerce and Labor survey. To convert part time or seasonal positions, take the total number of hours of employment created for a given pay rate and divide by one thousand five hundred sixty (1,560). If the average county wage exceeds the state average wage; comparison with the state average will be used. The grantee will be awarded points based upon the percentage of FTE's exceeding the state or county average salary. The formula is: Percentage of jobs above state or county average salary x one hundred (100) = Wage Quality Points. (4-11-06)

**c.** Fringe Benefits (one hundred (100) points). The businesses creating or retaining jobs as a result of ICDBG assistance shall document their fringe benefit plans. Points will be given as follows: fifty (50) points for an employer funded health plan and fifty (50) points for an employer funded pension plan. The business must provide both to receive full points. (4-11-06)

**d.** Business Risk and Management (zero (0) to one hundred twenty-five (125) points). The probability of achieving the projected jobs and payroll within one (1) and two (2) years, as determined by the Department. The determination may be made on the basis of: the business plan and schedule, the financial position and a credit analysis of the business; the performance record of senior management of the business project; and other criteria reasonably required by the Department. Projects receiving less than seventy-five (75) points in this category will be eliminated from further consideration. (4-11-06)

**e.** Planning, Schedule and Cost (one hundred and seventy (170) points possible). Describe planning efforts to enhance economic development. A detailed and reliable cost estimate and a project construction schedule is required of all Applications. Cost analysis and schedule will receive equal emphasis. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

**i.** Planning (fifty (50) points). Describe planning efforts to identify and detail all steps related to the implementation of the entire project. Identify all participants in the process. Describe all the partnerships and relationships involved in implementing the project. This will include local government actions, the business actions, other agency and utility actions, real estate, environmental, legal, financial and grant considerations. (4-11-06)

**ii.** Schedule (fifty (50) points). A detailed and reliable schedule of all actions identified in the plan. Also a separate grant funded project construction schedule is required of all Applications. (4-11-06)

**iii.** Cost (fifty (50) points). Detailed cost estimates of all actions, permits, construction, real estate, etc. should be prepared by an engineer or architect. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

**iv.** Environmental Scoping (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook. (4-11-06)

**f.** Minority Benefit (fifteen (15) points). Applicants for job creation projects that are for business expansion or retention shall receive minority points if the business documents minority hiring on their current payrolls. If the percentage of minority participation is equal to or greater than the county in which they are locating, they shall receive full points. (4-11-06)

**g.** Local Investment Leverage (maximum of one hundred (100) points). The total of all local match will be divided by the total of all local match plus the ICDBG amount requested to determine the percentage of local match in the project. This percentage will then be multiplied by one hundred (100) to determine the point value. Applicants shall state if there is a Revolving Loan Fund (RLF) available in their region and, if so, describe what attempts have been made to secure funds from the RLF for the project. Program Income from previous grants to be used in this project may be considered as local match. (4-11-06)

**h.** Distressed Areas (twenty (20) points). Maximum points will be given if the project is located in a historically underutilized business (HUB) zone. (4-11-06)

**i.** Existing Idaho Business (twenty (20) points). To qualify for points, a business must have a significant Idaho presence. (4-11-06)

**j.** Private Leverage (one hundred (100) points). The points in this category will be calculated by dividing the total of all private investment provided by the business in the project by the ICDBG amount requested and multiply it by one hundred (100). The business' private investment is the capital facilities, real estate and site development costs. Applicants shall provide documentation on the status of private investment, i.e. financing



approvals. Payroll and start-up costs are not included in this calculation. (4-11-06)

**k.** Activities (twenty-five (25) points). Points will only be awarded for the percentage of ICDBG dollars committed to the acquisition, construction, or reconstruction of public infrastructure (Section 024); and for publicly-owned commercial building acquisition and/or rehabilitation for the purpose of assisting a business or businesses. (4-11-06)

**l.** Grant Management (twenty-five (25) points). If the grant funded activities are managed by the grantee, twenty-five (25) points will be awarded. Grantee management includes management under contract with a Department approved Grant Manager. (4-11-06)

**m.** Economic Advisory Council Evaluation (two hundred (200) points). The EAC will evaluate each Application on the basis of overall value, including its ability to make a significant impact on the Idaho economy and the commitment of the community to the project. The EAC evaluation process shall be prescribed in the ICDBG Application Handbook. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. REVIEW AND RANKING PROCESS.**

The Application shall be reviewed according to the following point categories and shall be based upon the information submitted and any additional information requested by the Department. (one thousand (1,000) points possible). (7-6-94)

**01. Physical Conditions (three hundred fifty (350) points).** Points will be assigned to the needs of the center based upon the number of needs and the urgency of the needs. Department staff shall, upon review of the documentation and descriptions in the application, determine a rating from one (1) to three (3) based upon the criticalness and urgency of each of the following problems. The ratings will be totaled and ranked. Those Applications ranking the highest will receive the most points. *(The number of Applications divided into three hundred fifty (350) points equals the points per rank.)*

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/ Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical <del>4</del> 3	Urgent 2	Nice to Have <del>3</del> 1
	Physical Conditions: Structural Problems			
	Roof			
	Walls			
	Foundation			
	Floors			
	Weatherization			

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/ Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical 43	Urgent 2	Nice to Have 31
	Expansion for adult day care			
	New Center			
	Other			
	<b>Interior Problems:</b>			
	Asbestos/lead based paint			
	Bathrooms			
	Access for persons with Disabilities			
	Electrical/plumbing/lighting			
	Heating/air conditioning			
	Fire safety			
	Unusable space			
	New Center			
	Unusable space			
	Other			
	<b>Kitchen and Food Storage:</b>			
	Health inspection			
	Capacity of dry storage			
	Capacity of cold storage			
	Equipment			
	New Center			
	Other			
	Access for Persons with Disabilities			
	Parking			
	Entry			

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/ Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical 43	Urgent 2	Nice to Have 31
	Bathrooms			
	New Center			
	Other			
	<b>TOTALS:</b>			
		<b>ASSIGNED RANKING</b>		

(3-30-01)(9-1-06)T

**02. Planning and Schedule (two hundred (200) points).** Points will be assigned according to the apparent effort made to determine the needs of the center, the nature of the problems, the solutions, and the costs of the project and a realistic schedule for implementing the project. (7-6-94)

**a.** Pre-Planning (fifty (50) points). This is a measure of the effort made to quantify the problems through building code inspections, health inspections, and architectural and engineering review. (7-6-94)

**b.** Project Planning (fifty (50) points). This is a measure of the effort made to coordinate all of the various agencies that may be involved in funding and planning the project. Also included is all relevant information that all grant responsibilities and requirements have been included in the planning. (7-6-94)

**c.** Schedule (fifty (50) points). This is a measure of the effort to schedule all the project activities, including the different grant requirements and contractors that may be involved. (7-6-94)

**d.** Costs (fifty (50) points). This is a measure of the effort to determine reasonable cost estimates for the various elements of the project. (7-6-94)

**03. Benefits (one hundred fifty (150) points).** (7-6-94)

**a.** Activities Provided (one hundred (100) points). This is a measure of how well the center is meeting the needs of its members, neighborhood, or community. It is based upon the number and quality of activities and services the center is providing on an annual basis. Service days will be calculated by taking the number of days an activity or service is offered during the course of the month multiplied by twelve (12). Activities can include health, recreational, social, educational, and transportation services. Quartile points will be assigned to this area.

TABLE 6 - "Ranking By Quartiles"	
Highest Quartile	One hundred (100) points
Second Quartile	Sixty (60) points
Third Quartile	Thirty (30) points

TABLE 6 - "Ranking By Quartiles"	
Fourth Quartile	zero (0) points

(3-30-01)

b. Low and Moderate Income and Minority Outreach Activities (fifty (50) points). This is a measure of existing or proposed efforts made to include low and moderate income and minority participation in the center's activities. (7-1-98)

04. Match (one hundred (100) points). Cash and in-kind donations which are committed to the project shall receive points according to the percentage committed up to the total points in the category of match. (4-11-06)

a. The sixty (60) points for cash match shall be assigned on a quartile basis by taking the percentage resulting from the division of cash match by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of cash match in the project. (3-30-01)

- i. First Quartile -- sixty (60) points. (3-30-01)
- ii. Second Quartile -- thirty (30) points. (3-30-01)
- ii. Third Quartile -- fifteen (15) points. (3-30-01)
- iv. Fourth Quartile -- zero (0) points. (3-30-01)

b. The forty (40) points for in-kind match shall be assigned on a quartile basis by taking the percentage in-kind match divided by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of in-kind match in the project. (3-30-01)

- i. First Quartile -- forty (40) points. (3-30-01)
- ii. Second Quartile -- twenty (20) points. (3-30-01)
- iii. Third Quartile -- ten (10) points. (3-30-01)
- iv. Fourth Quartile -- zero (0) points. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. AWARD PROCESS.**

The Department shall review the Applications submitted with the EAC during its ~~March~~ April meeting. The EAC, after reviewing the Applications, and staff recommendations, will assign the points and recommend Applications to the Governor for funding and standby status. (~~4-11-06~~)(9-1-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. GRANT AWARD.**

01. Funding Allocations. Each year the Department will receive an allocation from the Department of Housing and Urban Development. This allocation is derived from the formula contained in 42 USC, Sec. 5301, the Housing and Community Development Act of 1974, as amended. The allocation shall be generally divided in the following manner to establish target amounts for decision making by the Economic Advisory Council (EAC): first,

one hundred thousand dollars (\$100,000) plus two percent (2%) of the total shall be reserved for the Department's administrative costs; second, one percent (1%) of the total shall be reserved for Technical Assistance ~~Grants~~; third, five percent (5%) or three hundred thousand dollars (\$300,000), whichever is less, of the total allocation shall be set aside for Imminent Threat (IT) grants; fourth, six percent (6%) or six hundred thousand dollars (\$600,000) whichever is less, of the total allocation, shall be set aside for Community Center (CC) or Senior Citizen Center (SR) grants; fifth, any program income, recaptured funds, or carryover funds from the previous fiscal years shall be added to the remainder; and finally, of the remainder, fifty percent (50%) shall be reserved for Public Facilities or Housing (PFH) grants and fifty percent (50%) for Economic Development (ED) grants. These targeted amounts may be more or less than the actual amount funded in each category depending on the needs and requests identified in the applications submitted and may shift according to Subsection 152.02. ~~(7-1-98)(9-1-06)T~~

**02. Shifting of Funds.** The above allocation divisions are to establish target amounts for decision making by the Economic Advisory Council (EAC). This division shall be made for the January EAC meeting. These targets may be modified at any time by the Department Director with the advice of the EAC depending on the needs and requests identified in the applications submitted. ~~The allocation system shall be updated quarterly before each quarterly EAC meeting to include any additional recaptured funds, program income, or carryover funds. Of the allocation for ED grants, one quarter of the amount shall be set aside for funding full applications during the quarter following each EAC meeting. The quarterly set-aside amount may be modified at the discretion of the Department Director upon the advice of the Council. Any funds not awarded in the PFH category shall be shifted to the first quarter ED category.~~ If in any quarter there are surplus funds in the ED category, the Department Director, with the advice of the EAC, may shift funds back to the PFH or CC and SR category to fund standby projects. Otherwise, surplus funds not awarded to ED projects in a quarter shall be carried into the succeeding quarter ED set-aside. ~~(7-1-98)(9-1-06)T~~

**03. Standby Applications.** At its quarterly meeting in April of each year, the Economic Advisory Council (EAC) may recommend PFH or CC and SR Applications for funding even though not enough funds are available to fund the project(s). These Applications become "standby projects". Standby projects shall be eligible for funding should additional funds become available or surplus funds exist in the ED category. At any subsequent quarterly meeting, the Advisory Council may review and recommend a standby project to the Governor for funding. Standby status shall continue through the fourth quarterly meeting. Any standby projects not funded shall automatically be invited to submit an Addendum for the next Fiscal Year, thus bypassing the Application stage of the application process. However, the Application must remain eligible and must continue to meet all requirements of the program rules. The standby applicant shall update its Application during the Addendum process. (7-1-98)

**04. Termination of Project Selection for Funding.** (7-6-94)

**a.** If, during the period between the award of a grant and signing of a grant contract, a project loses its viability, its status of being selected for funding may be terminated by the Department. The Department shall, by letter, notify the applicant that in the judgment of the Department, the applicant's project is no longer viable and that the applicant has a clearly stated period of time no less than fourteen (14) days to demonstrate the project's viability. If viability cannot be demonstrated within the stated period of time the award of the grant status shall be considered terminated and the funds be made available for the next standby project. (7-6-94)

**b.** After a grant contract has been executed, the Department shall periodically evaluate the progress of the project. If, at any time, the project loses viability and/or cannot be completed as described in the Application, the Department shall, by letter, notify the grantee that the grant contract shall be terminated within a clearly stated period of time of no less than fourteen (14) days from the date of the letter. The grantee may, within the stated period of time, demonstrate substantial progress on the project and request the Department revoke the termination. If viability cannot be demonstrated within the specified amount of time, the grant shall be considered terminated. (7-6-94)

**c.** Loss of viability will be defined to include: the inability to secure the other project financing; the lack of due diligence to pursue the implementation of project requirements; the lack of local coordination with all funding and regulatory agencies; the inability to develop agreements necessary to manage the cash flow and ownership of the project where several different entities are involved in the project; and the inability to complete a project of the same general size and benefits as presented in the application. (7-6-94)

**05. Excessive Funds.** In the event a project can be completed for less than the grant amount, the

difference between actual project costs and the grant amount shall be reserved by the Department for standby projects, or added to the total of the next fiscal year allocation for distribution. The Department shall amend the grant contract to reflect the reduced costs. In extraordinary circumstances the excess funds may be used for an eligible activity which further enhances the project as described in the Application. Before the Department decides to allow the additional activity, the grantee must demonstrate the activity will provide an equal or greater benefit than the original project; it will increase the benefits to low and moderate income persons, it will be completed within the original time frame, and the additional activity will be completed with the excess funds. The grantee must also show completion of the original project, its objectives and benefits. (7-6-94)

**06. Amendment of Project.** A funded project as described in the Application shall not be changed without prior approval from the Department Director. Any amendment of the project shall be reviewed to determine if the project will retain its competitive ranking in the Application review and ranking system. Any amendment shall provide equal or greater benefits than the original project. In unusual circumstances, the Department Director may approve a grant amendment increasing the grant amount, provided unobligated funds are available. In unusual circumstances the Department Director may waive the ten percent (10%) limitation on administrative costs when, in the opinion of the Department, the complexity of the project warrants an increase. (7-6-94)

**07. Allowable Costs.** Once an applicant has been invited to submit an Addendum and prior to the effective date of a grant contract an applicant submitting an Addendum may obligate and spend out of local funds for the purpose below. If awarded a grant and after the effective date of the grant contract, the grantee may be reimbursed for these costs provided such locally funded activities are undertaken in compliance with the program requirements (including but not limited to procurement, financial, acquisition, environmental and the ten percent (10%) limitation on administrative costs). Other project costs shall not be incurred until the Special Terms and Conditions of the contract are completed by the grantee and the funds released by the Department. (See Section 080.) (7-6-94)

**a.** Planning, Design and Administration. Procure and proceed with administrative and architectural or engineering services, adopting the Fair Housing Resolution and the Anti-Displacement Plan, and having public hearings. (7-6-94)

**b.** Project Costs, such as: preliminary and final Engineering Design, preliminary and final Architectural Design, conducting the Environmental Assessment, and completing procedural requirements for acquisition, but not the cost of the property. (7-6-94)

**08. Audit Requirements.** All ICDBG projects shall be audited annually or biannually in accordance with Sections 50-1010 and 31-1701, Idaho Code, the Single Audit Act of 1984, the implementing regulations in OMB Circular A-133, and all applicable federal audit standards, and other applicable state laws. Audits shall include any management letters associated with the audit. The audit shall be submitted to the Legislative Auditors Office within thirty (30) days of completion. Grantees shall require sub-grantees to provide audits conducted according to applicable federal and state laws, regulations and standards. The grantee shall have these audits reviewed as part of the grantee's audit. This review shall be commented and noted in the audit report. This review shall opine that sub-grantees are in compliance with the applicable program laws, regulations, contracts, and standards. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**212. APPROVED GRANT ~~MANAGERS~~ ADMINISTRATORS.**

**01. List of Approved ~~Managers~~ Administrators.** The Department requires all grantees to use approved grant ~~managers~~ administrators in all ICDBG projects. The Department will maintain a list of individuals which are approved by the Department to manage block grant projects. (7-6-94)(9-1-06)T

**02. Criteria.** The Department will use the following five (5) criteria to evaluate the qualifications of individuals desiring to become approved grant ~~managers~~ administrators: past record of experience with all types of grants; local government experience and background; record of past performance (if any) in administering ICDBG projects, including: monitoring findings, complaints, and commendations; timeliness of decision making, and

successful coordination of projects; successful completion of a technical examination developed and administered by the Department, which may modify the examination to reflect program changes; and division staff review of a person's ability to successfully administer a grant, communicate, solve problems, apply regulations and requirements, and complete project and program requirements in a timely manner. ~~(7-6-94)~~(9-1-06)T

**213. GRANT ~~MANAGER~~ ADMINISTRATOR APPLICATION PROCESS AND ANNUAL REVIEW.**

To apply for grant ~~manager~~ administrator certification status individuals shall submit an application to the Department. Applicants shall submit a letter requesting approval and a resume describing their experience and performance. The Department will review the application, the examination results and the Department's experience with the individual (Subsection 212.02). This application and review will occur on an annual basis beginning with the annual grant awards. The Department will determine when an individual has sufficient qualification and experience to be placed on the approved grant ~~manager~~ administrator list. ~~(7-6-94)~~(9-1-06)T

**214. SANCTIONS INVOLVING APPROVED GRANT ~~MANAGERS~~ ADMINISTRATORS.**

The Department, in order to ensure the highest level of performance by approved grant ~~managers~~ administrators, may require remedial actions be undertaken upon receipt of a valid complaint or finding. Such recommendation will be made only after a timely and impartial investigation process in which the rights of all parties are protected. ~~(7-6-94)~~(9-1-06)T

**215. BASIS OF IMPOSING SANCTIONS.**

The Department may take sanctions against an approved grant ~~manager~~ administrator as a result of any of the following actions: inability to complete project administration; findings of non-compliance or violation of federal or state rules and regulations; termination by a grantee of an administrative contract for cause; lack of cooperation in completing or complying with program requirements; or gross negligence. ~~(7-6-94)~~(9-1-06)T

**216. PROCESS TO IMPOSE SANCTIONS.**

**01. Written Complaint.** Upon receipt of a written complaint alleging conduct in the immediate preceding paragraph, or upon discovery of a problem through project monitoring, the Department shall immediately investigate the circumstances giving rise to such complaint, document the findings, and endeavor to make a determination of action within fifteen (15) days of the receipt of the complaint. The actions in Section 215 will serve as a conduct guide. (7-6-94)

**02. Response.** The approved grant ~~manager~~ administrator shall be given a copy of the complaint and the investigation report and have fifteen (15) days to respond to the complaint in writing. The Department shall then review the complaint and the response, and determine the appropriate sanction, if any, to be imposed. All parties to the complaint shall be notified in writing of the determination. ~~(7-6-94)~~(9-1-06)T

**03. Administrative Appeal.** Any person who is aggrieved by a decision regarding the imposition of sanctions shall be entitled to an administrative appeal pursuant to Title 67, Chapter 52, Idaho Code, Idaho Administrative Procedures Act. (7-6-94)

**217. REMEDIAL ACTIONS.**

The Department may decide to use any one (1) or all of the following remedial actions appropriate to approved grant ~~managers~~ administrators: issue a letter of warning to correct deficient actions; require mandatory ICDBG administrative training to maintain approved grant ~~manager~~ administrator status; remove an individual from the approved grant ~~managers~~ administrators list for a time period determined by the Department; require that corrective action be taken by the approved grant ~~manager~~ administrator to resolve the problem or conflict; or recommend initiation of appropriate legal proceedings in egregious situations. ~~(7-6-94)~~(9-1-06)T

## IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

### 09.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 09-0203-0601

#### 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) 67-4702, 67-4715, 67-4717 and 67-4718, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 changes to IDAPA 09.02.03 will standardize and clarify the documentation of grant costs for Familiarization Tours (FAMS); eliminate fulfillment documentation requirements by allowing 10% of the total grant award to be used for fulfillment costs; raising the amount of total project costs to \$20,000 before grantees must utilize a formal bid process for purchases or services or to secure a vendor; eliminates the requirement of an in-kind match as a part of the grant process and to make housekeeping changes.

**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 the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Carl Wilgus, Tourism Administrator, (208) 334-2470 ext. 2149.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this August 2, 2006.

Carl Wilgus  
Tourism Administrator  
Department of Commerce and Labor  
State Street Office  
700 W. State Street, Boise, ID 83720-0093  
(208) 334-2470 ext. 2149 / (208) 334-2631 fax

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0203-0601



**000. LEGAL AUTHORITY.**

These rules have been adopted pursuant to Sections 67-4715, 67-4717 and 67-4718, Idaho Code, which imposes a two percent (2%) tax on the sale of hotel/motel and private campground accommodations and created the Idaho Travel and Convention Industry Committee, herein referred to as the Idaho Travel Council (ITC). The revenues generated by this ~~new~~ tax are to be invested one-half (1/2) by the state and one-half (1/2) by the local regions within Idaho in well-planned promotional programs. The Idaho Travel Council, through the Idaho Department of Commerce and Labor (IDC), has been given the responsibility of administering this program which includes the local regional grant program. (5-3-03)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS, REGIONAL/LOCAL/SPECIAL INTEREST PROMOTION.**

The applicant must establish that the plan will attract more visitors to the region and keep them in the region longer. All plans must identify Idaho and market various attractions and events throughout the region. Regional applications must be a true region-wide promotion, and must promote the planning region as defined in the legislation. The following items are eligible projects: (5-3-03)

**01. Advertising.** Ranked Primary. Priority will be given to advertising that is image-driven and targets specific attractions or events within the region and ties to the state advertising plan. Markets, concepts, attractions and events will be defined in the application. If developed as a co-op, pre-approval is required by the Department of Commerce and Labor. Applicant must state in the application: (5-3-03)

- a. Objective and placement of advertising. (2-22-93)
- b. Geographic target audience. (2-22-93)
- c. Demographic target audience. (2-22-93)
- d. Fulfillment plans. (2-22-93)

**02. Hospitality.** Ranked Primary. Hospitality training will be an allowable item under the grant program. A detailed plan for the training must be included in the application. (2-22-93)

**03. Convention Promotion.** Ranked Primary. Trade shows (to be approved prior to the application process) and convention advertising. Concept and placement must be submitted with application. (2-22-93)

**04. Site Visits/Familiarization Tours (FAMS).** Ranked Primary. Tour Operators, Travel Writers, Convention Planners, Winters Sports Clubs and Airline Sales People are groups that can be invited for site visits and FAMS. Grant funds can be used for one hundred percent (100%) of travel and lodging expenses for FAM participants. Grant funds can also be used for in-state transportation, fuel expenses, rental vans, motorcoaches, invitations, baggage tags, information folders and miscellaneous snacks, such as coffee, soda pop, and candy bars. ~~Airfare for FAM participants, up to fifty percent (50%) of the total cost, and lodging at fifty percent (50%) of the state rate will be eligible with prior ITC staff approval.~~ Grant funds cannot be used to pay for alcoholic beverages, and attractions. ~~Familiarization tours will be allowed per diem for meals in accordance with state guidelines. Partial reimbursement, per state guidelines, will be made if participant is not being hosted on the FAM tour a complete day.~~ FAMS must be coordinated and approved in writing by the Department of Commerce and Labor. (5-3-03)(\_\_\_\_)

**05. Fulfillment.** Ranked Primary. Includes expenses directly related to implementing ITC funded plan. Eligible costs are for shipping, stuffing, sorting, envelopes, postage, eligible website costs per ITC guidelines, long distance phone calls and watts line. ~~(Only one 1-800 line per Region, and it must be centrally located and made available for use within the Region for travel and convention promotion). A distribution plan must be outlined in the application and expenses must be properly documented before reimbursement will be made.~~ Once the remaining elements of the grant are awarded, ten percent (10%) of the total award will be awarded for fulfillment.

~~(5-3-03)~~( )

**06. Travel and Trade Shows.** Ranked Primary. Specific shows and the number of attendees per show shall be approved prior to the application process. The applicant must identify in the application whether or not a portable display booth is available and what literature will be distributed at the show. (2-22-93)

**07. Slide Shows/Videos.** Ranked Tertiary. Applicant must state in the application the purpose of the slide show/video, how it will be used to promote the area, and how the slide show/video ties in with the applicant's overall marketing. (2-22-93)

**08. Marketing Research.** Ranked Primary. To allow marketing research in conjunction with the statewide marketing and research efforts. (2-22-93)

**09. Capital Outlay.** Ranked Secondary. Equipment with a useful life of more than one (1) year, costing one hundred fifty dollars (\$150) or more per unit. No more than one (1) piece of any like equipment per Region. (7-1-98)

**a.** Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant will vest upon acquisition with the grantee. (2-22-93)

**b.** Useful Life. The useful life of all equipment acquired through the travel grant program is five (5) years. (2-22-93)

**c.** Use. (2-22-93)

**i.** Equipment shall be used by the grantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the ITC. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by the ITC. (2-22-93)

**ii.** The grantee shall also make equipment available for use on other projects or programs currently or previously supported by the ITC, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the ITC. (2-22-93)

**iii.** The grantee may not use equipment acquired with grant funds to provide services for a fee. (2-22-93)

**iv.** When acquiring replacement equipment, the grantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property; or, the proceeds will be reinvested into the grantee's current grant program, subject to the approval of the ITC. Sale proceeds are not cash match. (2-22-93)

**d.** Management Requirements. Capital outlay purchased with grant funds must be accounted for on the property record supplied by the ITC. When the property is initially purchased, the grantee will provide all the required information on the property record. Send the original to the Department of Commerce and Labor and keep a copy for your files. The property is tracked through its useful life. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements: (2-22-93)

**i.** Property records maintained must include a description of the property; a serial number or other identification number; the acquisition date and cost of the property; the location, use and condition of the property; and any ultimate disposition information including the date of disposal and sale price of the property. (2-22-93)

**ii.** The grantee will conduct an annual physical inventory of the property and the results will be reported to the ITC for reconciliation with the property records. This report will accompany the final narrative progress report, and must be received before final ITC reimbursement, to the grantee, is made. The ITC will conduct

- a physical inventory of the property at least once every two (2) years. (2-22-93)
- iii. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. (2-22-93)
  - iv. Adequate maintenance procedures must be developed to keep the property in good condition. (2-22-93)
  - e. Disposition. Disposition of equipment purchased with ITC funds will be made as follows: (7-1-98)
    - i. Items of equipment which have exceeded their useful life may be retained, sold or otherwise disposed of. It is recommended the sale proceeds be used to acquire like equipment or enhance the grantee's current grant program. Sale proceeds are not cash match. (2-22-93)
    - ii. Items of equipment which have not exceeded their useful life may be sold with written authorization from the ITC. The grantee will be required to use the proceeds to purchase like equipment or to enhance the current grant program. (2-22-93)
  - f. Procurement. When procuring equipment under the travel grant program, the grantee will follow the same policies and procedures for purchases over five thousand dollars (\$5,000) as outlined in the Bid Process section of the administrative rules. (3-20-04)
  - g. Purchasable Equipment. A list of purchasable equipment under the travel grant program is listed below: (2-22-93)
    - i. Travel Show Booth (per ITC requirements). (2-22-93)
    - ii. Video Equipment: Player/Recorder, Television, Monitor, Camera. (2-22-93)
    - iii. Movie Projector. (2-22-93)
    - iv. Slide Projector. (2-22-93)
    - v. Computer Hardware per ITC guidelines. (5-3-03)
    - vi. Equipment not listed above may be fundable at the discretion of the ITC. (2-22-93)
  - h. Rental Costs. Grantees are encouraged to complete projects in the most cost effective manner. If the purchase of equipment is not feasible due to a low use factor, the grantee will be allowed to enter into rental agreements to meet their equipment needs. Rental costs exceeding five thousand dollars (\$5,000) will not be exempt from the travel grant program's bid process. (3-20-04)
  - i. Application. When applying for grant funds to acquire equipment, the applicant must stipulate need for equipment, its location, intended use, and contact person. (2-22-93)
- 10. Brochure.** Ranked Primary. Includes expenses for brochure photography, design, and printing. Applicant shall state the purpose of the brochure, indicate if it is a reprint or new design, provide an estimated amount to be printed, and give a brief description of its layout and design. Additionally, applicant shall indicate its target audience, distribution plan, and include samples of the brochure, if available. For printing requirements, see Subsection 204.08. (2-22-93)
- 11. Other Items.** Any other items not included above may be eligible as pre-approved by the Department of Commerce and Labor. (2-22-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. PLAN REQUIREMENTS.**

Applicants must follow these requirements: (2-22-93)

- 01. Goals/Objectives.** The needs of the plan must be consistent with the ITC Strategic Objectives. (2-22-93)
- 02. Adequate Management.** The applicant must show his/her ability to properly operate and maintain the management and accounting system for the plan. (7-1-98)
- 03. Previous Grant Versus New Application.** The ITC encourages successful applicants to complete all grants in a timely fashion. When considering applicants for funding, the ITC will scrutinize the applicant's historic grant record in terms of timeliness and effectiveness of implementation. (2-22-93)
- 04. Application Completeness.** The applicant must submit applications to the Department of Commerce and Labor on the appropriate forms which will be provided by the department. The application must include a complete plan, grant summary sheet signed by the grantee, a detailed scope of work and a budget which includes sufficient funds for sales tax and an audit. (7-1-98)
- 05. Application Amendments/Withdraws.** Amendments to either the scope of work or the budget on grant applications will be allowed only if changes are submitted to the Department of Commerce and Labor ten (10) working days prior to the grant awards utilizing the same format as the application submittal. Any other changes must occur on the floor during awards by the Council and can only be amended by a member of the Council. Applicants wishing to withdraw applications must provide written notice to the Department of Commerce and Labor ten (10) working days prior to grant awards. (3-20-04)
- 06. Plan Duration.** Applicants are encouraged to limit the duration of their plan to fourteen (14) months or less. (2-22-93)
- 07. Local/Regional Support.** Applicants may show local/regional support of the plan by submitting up to three (3) letters of support. One (1) letter summarizing local match must be submitted with the application. (2-22-93)
- 08. Credit Logo and Printing Identification.** All plans funded by the Idaho Regional Travel and Convention Grant Program shall credit said program. (5-3-03)

  - a.** A logo, as determined and provided by the ITC, with the following guidelines, will be placed on all ITC funded brochures. Special permission to adjust the size of the approved ITC logo, except where specified in these rules, must be granted by the state. (5-3-03)

    - i.** The approved ITC logo will be used in all publications in a color in keeping with the design of the piece and must be pre-approved by ITC staff before final printing. (5-3-03)
    - b.** Eight and one-half by eleven inch (8 1/2" x 11") or larger brochures will incorporate the use of a logo at least one-half inch (1/2") logo in height; eight by ten inch (8" x 10") or smaller brochures, will incorporate the use of a logo at least one-fourth inch (1/4") logo in height. ~~(5-3-03)~~( )
    - c.** Printing Identification: ITC grant year, assigned ITC grant number, printed quantity. (5-3-03)
    - d.** State 800 Telemarketing Number: "For additional information on Idaho, call 1-800-VISIT-ID." (2-22-93)
    - e.** The word "IDAHO" shall appear prominently on the front of the brochure. The ITC approved logo will appear on either the front cover, the inside front cover, or the back cover of the brochure. (5-3-03)

f. Other printed materials, websites, and print advertising shall include the approved ITC logo. Size of logo to be proportional to the size of the website or publication. ~~See [www.tourism.idaho.gov/grants](http://www.tourism.idaho.gov/grants) for current downloadable graphic elements.~~ Approved logos and graphic elements will be available on the Department's tourism grant web site. (4-11-06)(\_\_\_\_)

i. Slide shows, videos, films, TV productions or commercials will include the approved ITC logo. Size to be proportional to the size of the ~~grantee~~ approved content. (5-3-03)(\_\_\_\_)

ii. Radio advertisements will include the following ITC acknowledgement: "Visit Scenic Idaho". (3-20-04)

iii. Billboards will include the approved ITC logo. Size to be proportional to the size of the display. (5-3-03)

iv. Trade show booths will display the approved ITC logo in a size and location easily viewable by the public. (5-3-03)

g. FAMS funded by the Idaho Regional Travel and Convention Grant Program will credit that program with the approved ITC logo in materials appropriate to the event. (5-3-03)

h. Failure to comply with crediting the ITC for project funding could jeopardize payment for that project and future plan funding. (2-22-93)

**09. Consultants.** Indirect personnel costs are inherently eligible when applying for a specific project to be subcontracted to a consultant. The following regulations apply to hiring a consultant: (7-1-98)

a. The contract between the consultant and the grantee must be approved by the Department of Commerce and Labor and shall include language stating the contractor has sufficient Workmen's Compensation or liability insurance. Payment will not be reimbursed until the Department of Commerce and Labor has approved the contract. (2-22-93)

b. Consultant's billing must be itemized. Lump sum billings will not be eligible for payment. (2-22-93)

c. The Council will not fund retainers or other regular ongoing fees for consultant services or pay a consultant to administer a grant. (2-22-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**209. BID PROCESS.**

**01. Bids.** Regional Travel and Convention Program grantees must utilize a bid process for purchases or services over ~~five~~ twenty thousand dollars (\$~~5~~20,000). (3-20-04)(\_\_\_\_)

**02. Documentation.** Prior to reimbursement for each cost, the appropriate information shall be submitted to the Department of Commerce and Labor which documents the following: (2-22-93)

a. Item or service to be purchased. (7-1-98)

b. Informal bids are required for projects between one thousand five hundred dollars (\$1,500) and ~~five~~ twenty thousand dollars (\$~~5~~20,000). This consists of contacting three (3) vendors. Formal bids are required for projects greater than ~~five~~ twenty thousand dollars (\$~~5~~20,000). This requires three (3) written bids from vendors. (3-20-04)(\_\_\_\_)

- c. List vendors contacted and their response (list those contacted whether or not a response was received). (7-1-98)
- d. Justify why the successful vendor was selected. (2-22-93)
- e. Annual renewal of the subcontract can be made without rebidding, upon execution of a new contract between the grantee and the subcontractor and approval by the Department of Commerce and Labor. This can be done only after the initial three (3) bids have been processed. Subcontract renewal is authorized for up to three (3) years beyond the initial contract year. (7-1-98)
- f. If a vendor is going to donate part of his/her charges as match, he/she shall have been the lowest bidder. (2-22-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**221. PLAN EVALUATION.**

The plan application is evaluated by the following prior to selection by the Idaho Travel Council: (7-1-98)

**01. Department of Commerce and Labor.** Applications are submitted to the department initially for a technical and programmatic review. Strict attention is given to application content, strengths and weaknesses, cost analysis, and past performance. Comments are developed and presented to the ITC for its consideration prior to funding. (7-1-98)

**02. Idaho Travel Council.** The department provides each Idaho Travel Council member with a copy of all plan applications submitted for that grant period. ITC members review and evaluate all applications. Evaluation from the department is considered in the selection process. (7-1-98)

**03. Matching Funds.** Match must be documented in the application. (2-22-93)

**a.** The Idaho Regional Travel and Convention Grant Program requires match from all organizations applying for funding as a way to: increase the regional/local commitment to the plan, to assist in generating more dollars to tourism promotion, and to allow the ITC to participate in more promotional efforts. (2-22-93)

**b.** All regional and local/special interest plans must provide fifty percent (50%) cash match, two dollars (\$2) to one dollar (\$1) local/regional. Of the fifty percent (50%) required match, up to seventy five percent (75%) will be accepted as in-kind. Up to ten percent (10%) of ITC funds awarded will be allowed as in-kind match for administrative expenses of twelve and one-half percent (12.5%) of the amount awarded. All match must be outlined in the scope of work within the grant contract. Reimbursement will be made by the Department of Commerce and Labor as the match can be documented. Audits are exempt from match requirements. (7-1-98)(\_\_\_\_)

**c.** Cash match is defined as cash or in-kind (documented cash contributions/donations). Expenditures claimed for components necessary to the completion of the plan such as staff time, rent, travel, audits and warts line, will be allowed as match. Expenditures claimed for projects funded previously by the grantee, such as brochures and publications, will not be allowed as match. (2-22-93)(\_\_\_\_)

**04. Technical Review.** The following criteria are elements considered in the review of the application: (2-22-93)

**a.** Application Completeness: Summary sheet, scope of work, and budget filled out correctly. (2-22-93)

**b.** Agency/Jurisdiction Commitment: Evidence the plan has local/regional support. (2-22-93)

**c.** Demonstrated Accounting and Management System: History of adequate accounting and

- management system for monitoring the plan. (2-22-93)
- d.** Need: Addresses identified needs of the travel economy in the impacted region. (2-22-93)
  - e.** Regional Impact: Will increase local/regional awareness, encourage visitors to stay longer or promote intra-regional travel. (2-22-93)
  - f.** Continuing Benefits: Assurance that results will continue to be used beyond grant support. (2-22-93)
  - g.** Plan Design: Plan designed to enable achievement of anticipated benefits or results (achieving goals and objectives within a reasonable time frame). (2-22-93)
  - h.** Plan Innovation: Plan demonstrates clear solution to the stated needs. (2-22-93)
  - i.** Evaluation: Plan demonstrates a sound methodology for measuring achievement of the stated project objectives. (2-22-93)
  - j.** Cost Analysis: Applicant shows evidence that other resources are not available to support the plan fully, and requested funds are sufficient to accomplish plan objectives. (2-22-93)

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

**10.01.01 - RULES OF PROCEDURE**

**DOCKET NO. 10-0101-0601**

**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 54-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 amendments will define what courses would be required to be completed by an applicant for assignment to the Fundamentals of Surveying or Principles and Practice of Surveying examination if they do not have an approved degree in surveying but they do have a degree in a related science. The courses constitute the core technical curriculum of an approved four year surveying program.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees associated with these proposed amendments.

**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 will be no impact to the State General Fund or the agency dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the July 5, 2006 Idaho Administrative Bulletin, Volume 06-7, page 26. A public meeting was held on July 26, 2006 and three persons in attendance spoke in support of the preliminary language presented. No written comments were received.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis, P.E., Executive Director, at (208) 373-7210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 28nd day of July, 2006.

David L. Curtis, P.E., Executive Director  
Board of Registration of Professional Engineers  
and Professional Land Surveyors  
5535 W. Overland Road  
Boise, Idaho 83705-2728  
Phone (208) 373-7210 / Fax 373-7213

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0101-0601**



**017. EXAMINATIONS.**

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

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

**a.** In regard to educational requirements, the Board will consider as unconditionally approved only those engineering programs which are accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). Non-EAC/ABET accredited engineering programs and engineering technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. (3-20-04)

**b.** An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for assignment to the examination for certification as an Engineer-in-Training or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer. (3-20-04)

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

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

**c.** Beginning July 1, 2010, an applicant who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(4)(b), Idaho Code, for assignment to the examination for certification as a Land Surveyor-in-Training or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: ( )

- i.** Three (3) credits in Surveying Law and Boundary Descriptions; ( )
- ii.** Three (3) credits in Route Surveying; ( )
- iii.** Three (3) credits in Public Land Surveying; ( )
- iv.** Three (3) credits in Surveying Software Applications; ( )

- v. Three (3) credits in Research and Evidence in Surveying: ( )
- vi. Three (3) credits in Surveying Adjustments and Coordinate Systems: ( )
- vii. Three (3) credits in Subdivision Planning and Platting: ( )
- viii. Three (3) credits in Geodesy; and ( )
- ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. ( )

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

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

**de.** The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has received a master's degree from an U.S. institution which has a bachelor degree program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology in the discipline of the applicant's master's degree, and, in addition, has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-5-00)

**03. Notification to Applicant by Board.** Notification of assignment or non-assignment to the examination will be furnished to the applicant at least thirty (30) days prior to the date of the examination. (4-5-00)

**04. Notification to Board by Applicant.** The applicant shall, at least fifteen (15) days before an examination, notify the Executive Director of the Board whether or not he will appear for the examination. Examinations will be given only to those who have so notified the Board. (4-5-00)

**05. Excused Non-Attendance at Exam.** In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

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

**07. Fundamentals of Engineering.** The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The

examination may also cover subject matters that are specific to the engineering discipline of the applicants education. (4-5-00)

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

**09. Two Examinations for Land Surveying Registration.** The complete examining procedure for registration as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Land Surveying examination for land surveyors-in-training certification, and the second is the Principles and Practice of Land Surveying registration. Each examination will be a total of eight (8) hours in length. Having passed the Fundamentals of Land Surveying examination, applicants will be required to take the Principles and Practice of Land Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of Land Surveying examination may consist of separate modules, each of which must be passed. (4-5-00)

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

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

**12. Grading.** Each land surveyor-in-training, engineer-in-training and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire eight (8) hour examination before being awarded certification or registration. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each section of the examination. (4-5-00)

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

**14. Review of Examination by Examinee.** Due to security concerns about the examinations, examinees shall not be allowed to review their examination. Examinees who fail an examination will be provided a diagnostic analysis of their performance on the examination if such an analysis is available to the Board. (3-20-04)

**15. Disposal of Used Examination Pamphlets and Answer Sheets.** The Executive Director of the Board is authorized by the Board to dispose of used examination solution pamphlets and answer sheets after the first anniversary date after the examination was given. (3-30-01)

**16. Proctoring of Examinations.** Unless otherwise approved, the Board will not proctor an examination for another jurisdiction except State-Specific examinations. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. Interstate Registration Evaluation.** Each application for Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law. Graduates of programs accredited by organizations signatory to the "Washington Accord" and graduates from programs evaluated by ABET as being substantially equivalent to EAC/ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. Individuals who have passed examinations considered by the Board to be of comparable difficulty and duration as those utilized by the Board shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor. (3-20-04)

**a.** The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for a minimum of ten (10) years and has not had any disciplinary action against them and there is not pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-5-00)

**b.** An applicant who was originally licensed in another jurisdiction after June 30, 1996 and who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. ~~(3-20-04)~~( )

**c.** An applicant who was originally licensed in another jurisdiction after June 30, 2010 who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(2)(b), Idaho Code, for licensure as a professional land surveyor: ( )

- i.** Three (3) credits in Surveying Law and Boundary Descriptions; ( )
- ii.** Three (3) credits in Route Surveying; ( )
- iii.** Three (3) credits in Public Land Surveying; ( )
- iv.** Three (3) credits in Surveying Software Applications; ( )
- v.** Three (3) credits in Research and Evidence in Surveying; ( )
- vi.** Three (3) credits in Surveying Adjustments and Coordinate Systems; ( )
- vii.** Three (3) credits in Subdivision Planning and Platting; ( )

- viii. Three (3) credits in Geodesy; and ( )
- ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. ( )

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

**03. Business Entity Requirements.** No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a business entity authorized to practice professional engineering or professional land surveying or both in one (1) or more states, territories or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly registered to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. (3-15-02)

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.04.01 - RULES GOVERNING HORSE RACING**

**DOCKET NO. 11-0401-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, 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 complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 27 through 30.

Implement controlled substance and alcohol testing to protect the integrity of horseracing in the state.

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

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O Baker, telephone: 208-884-7080.

DATED this 26th of August, 2006.

Eugene O Baker  
Executive Director  
Idaho State Racing Commission  
PO Box 700, Meridian, ID 83680-0700  
208-884-7080/208-884-7090 (Fax)

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#### **DOCKET NO. 11-0402-0601 - ADOPTION OF PENDING RULE**

**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 06-7, July 5, 2006, pages 27 through 40.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

# **IDAPA 11 - IDAHO STATE POLICE**

## **11.04.01 - RULES GOVERNING HORSE RACING**

**DOCKET NO. 11-0401-0602**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, 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 complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 31 and 36.

Rules define and establish the recognized horsemen's group and alternate horsemen's groups.

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

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker, telephone 208-884-7080

DATED this 4th day of August, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
PO Box 700, Meridian, ID 83680-0700  
208-884-7080  
208-884-7090 Fax

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### **DOCKET NO. 11-0401-0602 - ADOPTION OF PENDING RULE**

**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 06-7, July 5, 2006, pages 31 and 36.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

**IDAPA 11 - IDAHO STATE POLICE**  
**RULES OF THE IDAHO STATE RACING COMMISSION**  
**11.04.01 - RULES GOVERNING HORSE RACING**  
**DOCKET NO. 11-0401-0603**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is April 27, 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 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 to the proposed rulemaking:

Adopt rules regarding bicarbonate testing in racing horses to be uniform with surrounding jurisdictions.

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

Bicarbonate or milkshaking has been used to enhance racing horses causing an unfair advantage. The adoption of this temporary rule protects the public health, safety and welfare and confers a benefit to the public and the industry.

**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: There will be no impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted April 27, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7050  
(208) 884-7090 (FAX)



**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0401-0603**

**071. BICARBONATE TESTING.**

**01. No Biocarbonate-Containing Substance or Alkalizing Substance.** No biocarbonate-containing substance or alkalizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall be administered to a horse on race day. (4-27-05)T

**02. Positive Test Level.** Test samples collected from a horse either before or within one (1) hour following a race shall not exceed thirty-seven point zero (37.0) millimoles of total carbon dioxide concentration per liter of serum or plasma. A serum total carbon dioxide level exceeding this value constitutes a positive test. (4-27-05)T

**03. Collection of Test Samples.** The official veterinarian, the board of stewards or the executive director acting on behalf of the commission may at their discretion and at any time order the collection of test samples from any horses ordered to the test barn to determine the serum or plasma pH or concentration of bicarbonate, carbon dioxide, or electrolytes. A sample consisting of at least thirteen (13) ml in a SST tube shall be taken from any horse either just prior to a race or up to one (1) hour after a race to determine the serum total carbon dioxide concentration. If the primary testing laboratory finds that the total carbon dioxide levels in the tubes exceed the standard test values of thirty-seven point zero (37.0) millimoles per liter, this may be grounds for disciplinary action. (4-27-05)T

**04. Split Sample Testing Prohibited.** When taking samples for total carbon dioxide levels, split samples shall be prohibited. The procedures for split sample testing shall not apply to bicarbonate testing procedures. (4-27-05)T

**072. -- 079. (RESERVED).**

**IDAPA 11 - IDAHO STATE POLICE**  
**RULES OF THE IDAHO STATE RACING COMMISSION**  
**11.04.01 - RULES GOVERNING HORSE RACING**  
**DOCKET NO. 11-0401-0604**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is April 27, 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 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 to the proposed rulemaking:

There is a shortage of available jockeys to ride on the fair circuits so there is a need to look for local riders. The local riders weigh more than those who ride continually. The Clerk of Scales will report the correct weight and the announcer will inform the betting public of the correct weights.

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

There is a shortage of available jockeys to ride on the fair circuits so there is a need to look for local riders. The local riders weigh more than those who ride continually. The adoption of this temporary rule confers a benefit to the public and the industry.

**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: There will be no impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted April 27, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 8th day of August, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700, Meridian, ID 83680-0700  
(208) 884-7050 / (208) 884-7090 (FAX)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0401-0604**

**160. WEIGHTS.**

- 01. Carried.** The following weights are carried when they are not stated in the condition of the race: (7-1-93)
- a.** In races of intermediate lengths, the weights for the shorter distance are carried. (7-1-93)
- b.** In all races, except handicaps and races where the conditions expressly state to the contrary, fillies two (2) years-old are allowed three (3) pounds, fillies and mares three (3) years-old and upward are allowed five (5) pounds before the first of September and three (3) thereafter. (7-1-93)
- c.** In all overnight races, except handicaps, not more than six (6) pounds may be deducted from the scale of weight for age, except allowances; but in no case shall the total of allowance of any type reduce the lowest weight below one hundred three (103) pounds, except that this minimum weight need not apply to two (2) year-olds or three (3) year-olds when racing older horses. (7-1-93)
- 02. Penalties.** Penalties and allowances of weight are not cumulative unless so declared by the conditions of the race. Horses not entitled to the first weight allowance in a race shall not be entitled to the second and so on. (7-1-93)
- 03. Jockey.** Every Jockey must be weighed for a specified horse no more than thirty (30) minutes before the time fixed for the race. (7-1-93)
- 04. Jockey Equipment.** A Jockey's weight includes riding clothes, saddle and pad but shall not include the safety helmet or whip. (7-1-93)
- 05. Overweight.** If a Jockey intends to carry overweight, the amount thereof must be declared at the time of weighing out or if in doubt as to the proper weight, the weight to be carried may be declared. (7-1-93)
- 06. More Than Two Pounds.** If a Jockey intends to carry overweight exceeding by more than two (2) pounds the weight which the horse is to carry, the Trainer consenting, the Jockey must declare the amount of overweight to the Clerk of the Scales at least forty-five (45) minutes before the time appointed for the race and the Clerk shall cause the overweight to be stated on the notice board immediately. Failure on the part of the Jockey to comply with this rule shall be reported to the Stewards. (7-1-93)
- 07. No More Than Seven Pounds.** (4-27-05)T
- a.** No horse shall carry more than seven (7) pounds overweight. (7-1-93)
- b.** However, at fair circuit racetracks, horses may carry more than seven (7) pounds overweight with the permission of the stewards. (4-27-05)T
- 08. Proceeds to Area for Post Race Weigh In.** After a race has been run and after the Jockey has pulled up the horse ridden, the Jockey shall ride promptly to the area designated by the Stewards and their dismount, after obtaining permission from the Judges, and present himself to the Clerk of the Scales to be weighed in. If a Jockey is prevented from riding a mount to the Judges stand because of an accident or an illness either to the Jockey or the horse, the Jockey may walk or be carried to the scales or may be excused by the Stewards by weighing. (7-1-93)
- 09. Preparation for Weigh In.** Except by permission of the Stewards, every Jockey must, upon returning to the Placing Judges stand, unsaddle the horse ridden and no person shall touch the Jockey or the horse, except by the bridle, nor cover the horse in any manner until the Jockey has removed the equipment to be weighed.

(7-1-93)

**10. Removing Equipment for Weigh In.** No person except by permission of the Stewards shall assist a Jockey in removing from the horse the equipment that is to be included in the Jockey weight. (7-1-93)

**11. Carrying Equipment.** Each Jockey shall in weighing in carry over to the Scales all pieces of equipment with which weighed out. Thereafter, the equipment may be given to the Jockey's attendant. (7-1-93)

**12. Time.** Each Jockey shall weigh in at the same weight as that which he weighed out and, if short of it by more than two (2) pounds, the mount shall be disqualified. (7-1-93)

**13. Fined.** If any Jockey weighs in at more than two (2) pounds over the proper or declared weight, the Jockey shall be fined or suspended or ruled off by the Stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the Commission for such action as it may deem proper. (7-1-93)

**14. Handicap.** The Handicapper or Board of Handicappers shall append to the weight for every handicap the day and hour in which winners will be liable to a penalty and no alteration shall be made after publication except in the case of omission through error of the name or weight of a horse duly entered; in which case, by permission of the Stewards, the omission may be rectified by the Handicapper. (7-1-93)

# **IDAPA 11 - IDAHO STATE POLICE**

## **11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0601**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, 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 complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 37 and 38.

Establish rules regarding simulcast purse money collection and distribution in accordance with Idaho Code 54-2508 and 54-2512 legislative changes.

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

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker, telephone 208-884-7080

DATED this 4<sup>th</sup> day of August 4, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
PO Box 700, Meridian ID 83680-0700  
208-884-7080  
208-884-7090 Fax

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### **DOCKET NO. 11-0402-0601 - ADOPTION OF PENDING RULE**

**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 06-7, July 5, 2006, pages 37 and 38.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2506, 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 complete text of the proposed rule was published in the July 5, 2006, Idaho Administrative Bulletin, Vol. 06-7, pages 39 and 40.

Deletes duplicate advance deposit wagering distribution language in rules.

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

**FISCAL IMPACT:** There will be no negative fiscal impact on the state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Eugene O. Baker at 208-884-7080.

DATED this 4th day of August 2006.

Eugene O. Baker  
Executive Director  
Idaho Racing Commission  
PO Box 700, Meridian, ID 83680-0700  
208-884-7080  
208-884-7090 Fax

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#### **DOCKET NO. 11-0402-0602 - ADOPTION OF PENDING RULE**

**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 06-7, July 5, 2006, pages 39 and 40.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.13.01 - THE MOTOR CARRIER RULES**

**DOCKET NO. 11-1301-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-2901A, 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. There has been no change to the text of the rule change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 42 through 44.

**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 attributable to this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Captain Lamont Johnston (208) 884-7221.

DATED this 31st day of July, 2006.

Colonel R. Dan Charboneau, Director  
Idaho State Police  
700 S. Stratford Drive  
P.O. Box 700  
Meridian Idaho 83680-0700  
(208) 884-7003  
(208) 884-7090 fax

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#### **DOCKET NO. 11-1301-0602 - ADOPTION OF PENDING RULE**

**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 06-7, July 2, 2006, pages 42 through 44.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.15 - IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-0601

#### 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 39-4801, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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:

These changes to the current school immunization rule are due to concerns raised by physicians that the current school immunization rules do not complement the current recommended Advisory Committee on Immunization Practices (ACIP) immunization schedule. The intent of this proposed rule change is to develop requirements that meet physician, school and public health priorities of protecting children.

The proposed changes include altering the fifth Diphtheria, Tetanus, and acellular Pertussis (DTaP) and second Measles, Mumps and Rubella (MMR) requirements to make sure they conform to the Center for Disease Control's Advisory Committee on Immunization Practices (ACIP) recommended immunization schedule, while meeting the needs of physicians, schools and public health. The term "preschool" was deleted from this rule to allow the physician to choose the most appropriate interval for the child's immunization schedule within the ACIP recommendations.

**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 fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A - There is no fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because concerns expressed by physicians regarding the current school immunization rules are being addressed in this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dieuwke Spencer at 334-5930.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 27th day of July, 2006.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@idhw.state.id.us e-mail



THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0215-0601

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is, IDAPA 16.02.15, "Immunization Requirements for Idaho School Children." (4-6-05)

02. **Scope.** These rules contain the legal requirements for the administration of an immunization program for children enrolled in grades ~~preschool~~, kindergarten through twelve (12) of any Idaho public, private, or parochial school. (~~10-13-92~~)(\_\_\_\_)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **ACIP.** The Center for Disease Control's Advisory Committee on Immunization Practices. (4-6-05)

02. **Admission.** Enrollment of a child who is admitted for the first time at the commencement of or during the regular school term to public, private or parochial school. (4-6-05)

03. **Child.** A minor who is enrolled in ~~preschool~~, kindergarten through grade twelve (12) in any Idaho public, private, or parochial school. (~~10-13-92~~)(\_\_\_\_)

04. **Department.** Idaho Department of Health and Welfare. (10-13-92)

05. **Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of test performed, the date of each test, and the results. Tests performed must meet the requirements of IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories". (4-6-05)

06. **Parent, Custodian or Guardian.** The legal parent, custodian or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (4-6-05)

07. **Pertussis.** An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough. (4-6-05)

08. **Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States. (4-6-05)

09. **Physician's Representative.** Any person appointed by, or vested with the authority to act on behalf of a physician in matters concerning health. (8-15-79)

10. **Private or Parochial School.** Any Idaho school maintained by an individual, organization or corporation, not at public expense, and open only to children selected and admitted by the individual, organization or corporation, or to children of a certain class or possessing certain qualifications, which may or may not charge tuition fees. (1-25-79)

11. **Public School.** Any Idaho school maintained at the public expense and open to all children within a given district, including those responsible for the education and training of exceptional children or those schools specially chartered. (1-25-79)

12. **School Authority.** An authorized representative designated by the Board of Trustees of a public school or a person or body designated to act on behalf of the governing body of a private or parochial school.

(8-15-79)

011. -- 099. (RESERVED).

100. IMMUNIZATION PROGRAM.

All immunizations, listed in Subsections 100.01 through 100.04 of these rules, are required of children ~~who are to attend preschool, kindergarten through grade twelve (12) in~~ upon admission to kindergarten through grade twelve (12) of any Idaho public, private, or parochial school. Immunizations will be recognized if administered according to the "General Recommendations on Immunizations" established by the ACIP or their equivalent. These recommendations are available from the Department. (4-6-05)( )

01. Measles, ~~Rubella, and~~ Mumps and Rubella (MMR). Two (2) doses of Measles, ~~Rubella and~~ Mumps and Rubella (MMR) or Measles, Mumps, Rubella and Varicella (MMRV) vaccine administered to the child according to ACIP recommendations for children ~~entering preschool or kindergarten~~ on or after the beginning of the 2005 school term. (4-6-05)( )

02. ~~Diphtheria, Tetanus, A-Cellular Pertussis (DTaP), Diphtheria, Tetanus (DT Pediatric) or Tetanus, Diphtheria (Td). Any combination of five (5) doses of DTaP (Diphtheria, Tetanus, a-cellular Pertussis), DT (Diphtheria, Tetanus) or Td (Tetanus, Diphtheria) vaccine are required for all children entering Preschool or Kindergarten on or after the beginning of the 2005 school term, unless fewer doses are medically recommended. See Section 110 of these rules. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed.~~ Diphtheria, Tetanus, and Pertussis. Any combination of five (5) doses of the following vaccines for Diphtheria, Tetanus, and Pertussis administered to the child according to ACIP recommendations on or after the beginning of the 2005 school term, unless fewer doses are medically recommended. See Section 110 of these rules for exemptions to the immunization requirements. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed. The approved combinations are: (4-6-05)( )

- a. Diphtheria, Tetanus, and acellular Pertussis (DTaP - Pediatric); ( )
- b. Diphtheria, Tetanus and Pertussis (DTP); ( )
- c. Tetanus, Diphtheria and acellular Pertussis (Tdap - Adolescent); ( )
- d. Diphtheria, Tetanus (DT - Pediatric); and ( )
- e. Tetanus, Diphtheria (Td - Adolescent). ( )

03. Polio. Three (3) doses of Polio vaccine, unless fewer doses are medically recommended. See Section 110 of these rules for exemptions to the immunization requirements. (4-6-05)( )

04. Hepatitis B. Three (3) doses of Hepatitis B vaccine administered to children born after November 22, 1991, unless fewer doses are medically recommended. See Section 110 of these rules for exemptions to the immunization requirements. (4-6-05)( )

(BREAK IN CONTINUITY OF SECTIONS)

150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.

01. Noncompliance. Any child not in compliance with this chapter upon admission ~~in preschool, kindergarten through grade twelve (12) in~~ to any Idaho public, private or parochial school, will be denied attendance by school authorities. (4-6-05)( )

02. Length of Exclusion. Any child denied attendance in accordance with Subsection 150.01 of these rules, will not be allowed to attend any Idaho public, private or parochial school until they are in compliance with the requirements of this chapter. (4-6-05)

**OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR  
IDAHO DEPARTMENT OF ADMINISTRATION**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.02.27 - IDAHO RADIATION CONTROL RULES**

**DOCKET NO. 16-0227-0600**

**NOTICE OF CORRECTION TO FINAL RULE**

**AUTHORITY:** In compliance with Sections 67-5204, 67-5224, and 67-5291, Idaho Code, notice is hereby given that the Office of the Administrative Rules Coordinator is correcting an error that occurred during the publication of the July 2, 1997, Idaho Administrative Bulletin and the 1998 Idaho Administrative Code. The original action is authorized pursuant to Sections Title 39, Chapters 1 and 30, Idaho Code.

**DESCRIPTIVE SUMMARY OF CORRECTION:** The following is a non-technical explanation of the substance of this correction notice:

This notice corrects errors that were made during the publication of Docket No. 16-0227-9701 in the July 2, 1997, Idaho Administrative Bulletin, Volume No. 97-7. During the publication of the docket, citations made to a subsection of the rule that had been removed in the rewrite of the chapter were inadvertently made to that same removed subsection of the rule.

The errors occurred in Subsections 110.04, 155.05, 203.03, and 354.02 of this chapter. Citations made in Subsections 110.04.a, 110.04.b., 110.04.c., 155.05.a.i., 155.05.b.iv., 203.03, and 354.02.b. incorrectly cited to Subsection 110.05 which was removed from the rule during the rewrite of the chapter. All citations should have been to Subsection 110.04 as rewritten.

Because of the non-substantive nature of these corrections, this notice corrects these citations to the final and effective rule in the Idaho Administrative Code.

**EFFECTIVE DATE:** The effective dates of the affected Subsections are the original effective dates on which the rules were promulgated and adopted in compliance with Title 67, Chapter 52, Idaho Code. The original effective date of those Sections is July 1, 1998.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this correction notice or the text of the rule, contact Dennis Stevenson at (208) 332-1820.

DATED this 14th day of August, 2006.

Dennis R. Stevenson  
Administrative Rules Coordinator  
Office of the Administrative Rules Coordinator  
Department of Administration  
P.O. Box 83720 - Boise, ID 83720-0306  
Phone: (208) 332-1820  
Fax: (208) 332-1896

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES**  
**DOCKET NO. 16-0322-0601**  
**NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amended temporary rule is July 20, 2006.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has amended a previously adopted temporary rule. The action is authorized pursuant to Section 39-3305, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for amending the temporary rule:

This rule change amends the date for final compliance in Section 152, Admission Policies, containing the grandfather clause related to fire-suppression sprinklers for certain facilities that accept residents who are incapable of self-evacuation. The date for final compliance has been changed from July 1, 2007, to July 1, 2010.

The text of the temporary rule is being amended in accordance with Section 67-5226, Idaho Code, and the section being amended is being republished following this notice. Only Section 152 in which the changes have been made is printed in this bulletin. The original text of the temporary and proposed rule was published in the August 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, pages 504 through 513.

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

This amendment is necessary to protect the public health, safety, or welfare.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

This rulemaking has no fiscal impact on Medicaid costs or the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this amendment to temporary rule, contact Randy May at (208) 334-5747.

DATED this 20th day of July, 2006.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone;  
(208) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0322-0601**

**152. ADMISSION POLICIES.**

**01. Admissions.** Each facility must develop written admission policies and procedures. The written admission policy must include; (3-30-06)

**a.** The purpose, quantity and characteristics of available services; (3-30-06)

**b.** Any restrictions or conditions imposed because of religious or philosophical reasons. (3-30-06)

**c.** Limitations concerning delivery of routine personal care by persons of the opposite gender. (3-30-06)

**d.** Notification of any residents who are on the sexual offender registry and who live in the facility. The registry may be accessed at "[http://www.isp.state.id.us/identification/sex\\_offender/public\\_access.html](http://www.isp.state.id.us/identification/sex_offender/public_access.html)". (3-30-06)

**e.** Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. (3-30-06)

**02. Fee Description.** A written description of how fees will be handled by the facility. (3-30-06)

**03. Resident Funds Policies.** When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. (3-30-06)

**a.** A statement if the facility does not manage resident funds. (3-30-06)

**b.** If the facility manages resident funds, how funds are handled and safeguarded. (3-30-06)

**04. Resident Admission, Discharge, and Transfer.** The facility must have policies addressing admission, discharge, and transfer of residents to, from, or within the facility. (3-30-06)

**05. Policies of Acceptable Admissions.** Written descriptions of the conditions for admitting residents to the facility must include: (3-30-06)

**a.** A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; (3-30-06)

**b.** No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: (3-30-06)

**i.** A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; (3-30-06)

**ii.** A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; (3-30-06)

**iii.** A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident can not get out of; (3-30-06)

**iv.** A resident who is comatose, except for a resident who has been assessed by a physician or authorized provider who has determined that death is likely to occur within fourteen (14) to thirty (30) days; (3-30-06)

- v. A resident who is on a mechanically supported breathing system, except for residents who use CPAP, (continuous positive airway pressure); (3-30-06)
- vi. A resident who has a tracheotomy who is unable to care for the tracheotomy independently; (3-30-06)
- vii. A resident who is fed by a syringe; (3-30-06)
- viii. A resident with open, draining wounds for which the drainage cannot be contained; (3-30-06)
- ix. A resident with a Stage III or IV pressure ulcer; (3-30-06)
- x. A resident with any type of pressure ulcer or open wound that is not improving bi-weekly; (3-30-06)
- xi. A resident who has MRSA (methicillin-resistant staphylococcus aureus) in an active stage (infective stage). (3-30-06)
- c. For any resident who has needs requiring a nurse, the facility must assure a licensed nurse is available to meet the needs of the resident. (3-30-06)
- d. A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; (3-30-06)
- e. A resident that is violent or a danger to himself or others; (3-30-06)
- f. Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; (3-30-06)
- g. Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and (3-30-06)
- h. Until July 1, 2007~~10~~, Waivered Level 3 Small Facilities will be exempt from complying with the requirements under Subsection 152.05.g. of this rule, including the requirement to have at least a residential fire sprinkler system. On July 1, 2007~~10~~, all Waivered Level 3 Small Facilities that admit or retain residents who are incapable of self-evacuation will be required to comply with the requirements under Subsection 152.05.g. of this rule. This includes being equipped with at least an operable residential fire sprinkler system. Any facility sold prior to July 1, 2007~~10~~, must meet the requirements under Subsection 403.03 of these rules before a new license will be issued.  
(~~7-1-06~~)(7-20-06)T

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.04.14 - RULES GOVERNING LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

**DOCKET NO. 16-0414-0601**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2006.

**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 56-202, Idaho Code, and 42 U.S.C. Sections 8621 to 8629, also known as the Low-Income Home Energy Assistance Act of 1981.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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:

The Department has been directed by the federal government to remove barriers to the Low Income Home Energy Assistance Program in order to participate in the program. The following changes to the rules are:

- 1) The requirement for energy conservation education and audit as a condition of participation is being removed;
- 2) To meet the current poverty levels, the benefit amounts and eligibility levels will be published and distributed through the Department's manual and website, and through community action agencies;
- 3) The LIHEAP Intake Manual was incorporated by reference to the chapter of rules; and
- 4) Households with children under six (6) years of age, individuals with disabilities, and individuals over sixty (60) years of age will be the target population for adjusted benefits.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) (b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To meet deadlines in federal regulations and to confer a benefit to low income residents of Idaho.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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: N/A

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

There is no anticipated fiscal impact to the state general fund and this program is 100% federally funded.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are required by federal law and are providing a benefit to low-income families in Idaho.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006

DATED this 3rd day of August, 2006.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT FOR DOCKET 16-0414-0601**

**000. LEGAL AUTHORITY.**

This program is authorized by *Section 2602, Title XXVI, Pub. L. No. 97-203, also known as* the Low-Income Home Energy Assistance Act of 1981, 42 U.S.C Sections 8621 to 8629, and by provisions of Sections 56-202 ~~and 56-203~~, Idaho Code, ~~which authorize the Department of Health and Welfare to assist low income people of the state with financial assistance and to enter into contracts with the federal government to provide assistance.~~ (7-1-99)(9-1-06)T

**001. TITLE, ~~AND~~ SCOPE, AND LIMITATIONS.**

**01. Title.** These rules are to be cited *in full* as *Idaho Department of Health and Welfare Rules*, IDAPA 16.04.14, “Rules Governing the Low Income Home Energy Assistance Program,” and may also be known as LIHEAP. (7-1-99)(9-1-06)T

**02. Scope.** The intent of the program is to provide assistance to eligible low income households particularly those with the lowest incomes, that pay the highest proportion of their income for home energy, primarily in meeting their immediate home energy needs. (7-1-99)

**03. Program Limitation.** This federally funded program does not entitle any household to a certain amount or form of assistance. An eligible participant household will receive one (1) benefit payment from the standard program funding each program year. (7-1-99)(9-1-06)T

**002. ~~POLICY~~ WRITTEN INTERPRETATIONS.**

*It is the policy of the Idaho Department of Health and Welfare, to serve the citizens of Idaho and to distribute the Low Income Home Energy Assistance benefits in accordance with acceptable standards. An eligible participant household will receive one (1) benefit payment from the regular program assistance. In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules.* (3-15-02)(9-1-06)T

**003. ADMINISTRATIVE APPEALS.**

Appeals and proceedings are governed by IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (9-1-06)T

**004. INCORPORATION BY REFERENCE.**

The following document is incorporated by reference in this chapter of rule: Low Income Home Energy Assistance Program (LIHEAP) Intake Manual, 2006. The manual is available on the Internet at <http://www.healthandwelfare.idaho.gov/Portals/Rainbow/Manuals/SRBenefits/SR eManuals.htm>. The manual is also available at the mailing address listed in Section 005 of this rule, and at Community Action Agencies. (9-1-06)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except



holidays designated by the State of Idaho. (9-1-06)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (9-1-06)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (9-1-06)T

**04. Telephone.** (208) 334-5500. (9-1-06)T

**05. Internet Website.** Department Internet address is: "http://www.healthandwelfare.idaho.gov." (9-1-06)T

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (9-1-06)T

**02. Public Records.** The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state or federal law. (9-1-06)T

**007. (RESERVED).**

**008. AUDIT, INVESTIGATION, AND ENFORCEMENT.**

In addition to any actions specified in these rules, the Department may audit, investigate, and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse, and Misconduct." (9-1-06)T

**009. (RESERVED).**

**00310. DEFINITIONS.**

Definitions applicable to ~~IDAPA 16.04.14~~ are listed in Subsections ~~003.01 through 003.23~~ this chapter of rules. (7-1-99)(9-1-06)T

**01. Application.** The action by which a participant indicates in writing to the Department a desire to receive Low Income Home Energy Assistance. The participant will be designated as the head of household on the application; and will be the recipient of benefits for the household. (7-1-99)

**021. Community Action Agency.** A private non-profit organization serving the low income population in specified counties of the state with which ~~DHHW~~ the Department has entered into a contract for the provision of services for purposes of LIHEAP. (7-1-99)(9-1-06)T

**02. Crisis Assistance.** Energy assistance provided to an eligible participant household to reduce or eliminate an energy related health threatening situation to the household. (9-1-06)T

**03. Department.** The Department of Health and Welfare or its designee. (7-1-99)(9-1-06)T

**04. Eligible Participant Household.** A participant household which meets the standard of eligibility set forth in these rules. (7-1-99)

**05. Eligible Subsidized Housing.** Public subsidized rental housing in which the tenant is responsible for all or a portion of their home energy costs. (7-1-99)

**06. Emergency Assistance.** Energy assistance provided to an eligible participant household to reduce/eliminate an energy related health threatening situation to the household. (3-15-02)

- ~~07.~~ **Energy Burden.** *The expenditures of the participant household for home energy when compared to the household's income.* (7-1-99)
- ~~08.~~ **Energy Supplier.** *A vendor supplying home heating energy who is not a member of an eligible participant household.* (7-1-99)
- ~~094.~~ **Fraud.** Recipient fraud is indicated where there appears to be a deliberate attempt to conceal or misrepresent pertinent information which could affect eligibility or grant amounts. (7-1-99)
- ~~10.~~ **Fuel.** *A latent form of energy used to produce residential heat.* (7-1-99)
- ~~105.~~ **Head of Participant Household.** The person designated by the household members to receive energy assistance benefit in behalf of the household and in whose favor the energy assistance warrant is written. (7-1-99)
- ~~12.~~ **Highest Home Energy Needs.** *The home energy requirements of participant household determined by taking into account both their energy burden and unique situation that results from having members of vulnerable populations, including very young children, individuals with disabilities and frail older individuals.* (7-1-99)
- ~~1306.~~ **Income.** Income is the gross amount of moneys actually received in the participant household from all sources. (4-5-00)
- ~~14.~~ **Ineligible Subsidized Housing.** *Public housing in which tenants' rental payments include all home energy costs.* (7-1-99)
- ~~15.~~ **Overpayment.** *An incorrect energy assistance payment.* (7-1-99)
- ~~07.~~ **Intake Manual.** Manual used by community action agencies for procedural policy and benefit calculation factors, which is published annually by the Department. (9-1-06)T
- ~~1608.~~ **Participant.** An individual or group of individuals ~~which~~ who has made application for the Low Income Home Energy Program from the state of Idaho. (7-1-99)(9-1-06)T
- ~~1709.~~ **Participant Household.** A participant household is one (1) of the following: (7-1-99)(9-1-06)T
- a. An individual ~~living~~ who lives alone; or (7-1-99)(9-1-06)T
- b. A group of individuals who are living together as one (1) economic unit where residential energy is customarily purchased in common or ~~who~~ they make undesignated payments for energy in the form of rent. (7-1-99)(9-1-06)T
- ~~180.~~ **Primary Fuel.** The type of fuel declared by the participant household to be the major source of their home heating. (7-1-99)
- ~~19.~~ **Proof of Income.** *Documentary proof to establish the participant household's financial eligibility for assistance.* (7-1-99)
- ~~20.~~ **Vendor.** *An energy supplier or utility supplying home energy and who is not a member of an eligible participant household.* (7-1-99)
- ~~21.~~ **Warrant.** *The document issued by the Department through the State Controller's Office as the benefit payment to LIHEAP eligible participant households.* (7-1-99)
- ~~22.~~ **Wood User.** *An individual who cuts or buys wood for use as the primary source of home heat. Such participant households will receive a one (1) party warrant.* (7-1-99)

~~2311.~~ **Undocumented Resident.** Individuals who entering the United States illegally ~~that and who~~ have not obtained legal resident status. ~~(3-15-02)(9-1-06)T~~

~~24.~~ **Utility.** A vendor of energy regulated by the Idaho Public Utilities Commission. (7-1-99)

~~004.~~ **ABBREVIATIONS.**  
~~Abbreviations applicable to IDAPA 16.04.14 are listed in Subsections 004.01 through 004.08.~~ (7-1-99)

~~01.~~ **AABD.** Aid to the Aged, Blind, and Disabled. (7-1-99)

~~02.~~ **CAA.** The Community Action Agency. (7-1-99)

~~03.~~ **Department.** The Department of Health and Welfare. (7-1-99)

~~04.~~ **FS.** The Food Stamp program. (7-1-99)

~~05.~~ **LIHEAP.** The Low Income Home Energy Assistance Program. (7-1-99)

~~06.~~ **OMB.** The Federal Office of Management and Budget. (7-1-99)

~~07.~~ **SSI.** The Supplemental Security Income Program. (7-1-99)

~~08.~~ **TAFI.** Temporary Assistance to Families in Idaho. (7-1-99)

**Section 005 has Been Renumbered and Moved to Section 105**

~~00611.~~ -- 099. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

~~0105.~~ **FORMS** ~~BY NUMBER AND A NAME.~~  
~~For the purposes of determining participant LIHEAP eligibility, Department prescribed forms will be used. A participant household will apply on Department prescribed forms and designate a head of household.~~ ~~(7-1-99)(9-1-06)T~~

~~1056.~~ -- 149. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. NONFINANCIAL ELIGIBILITY REQUIREMENTS.**  
For the purpose of assistance under LIHEAP, the participant household must meet the following non-financial eligibility requirements. (7-1-99)

**01. Residence.** At the time the application is completed, the participant must reside in the state of Idaho. ~~There is no durational residence requirement.~~ LIHEAP benefits are not transferable to an out-of-state residence. ~~(7-1-99)(9-1-06)T~~

**02. Living Situations.** The participant household must reside in housing where they are vulnerable to a responsible for home energy costs and incur the costs either directly or as an undesignated portion of their rent. Living situation ~~not vulnerable to~~ where residents are not responsible for energy costs include; hospitals; nursing

homes, shelter homes, commercial boarding homes, and rehabilitation centers. ~~(7-1-99)(9-1-06)F~~

**03. Native Americans.** Native American households whose tribe has entered into a separate agreement with the federal funding agency and the Department to receive LIHEAP grant funds, are not entitled to benefits under this program unless: (7-1-99)

**a.** Tribal funds are not available. (7-1-99)

**b.** Funds are depleted and an emergency exists. (7-1-99)

**04. Resident Status.** At least one (1) household member must be a citizen or legal resident of the United States. As part of the application process, participants must sign a declaration, under penalty of perjury, attesting to the residency or citizenship status of all household members. (3-15-02)

~~**05. Energy Conservation Education.** As part of the application for LIHEAP assistance, the participant must participate in an energy conservation education session. (7-1-99)~~

~~**06. Residential Weatherization Energy Audit.** Participant households must agree to have an energy audit performed on their residence to determine weatherization needs of the dwelling. When one (1) or more of the following conditions exist, a waiver to the energy audit will be granted to the household: (7-1-99)~~

~~**a.** The participant household residence has previously been weatherized by the CAA. (7-1-99)~~

~~**b.** The participant household does not own their residence and is unable to obtain an agreement from the property owner. (7-1-99)~~

~~**c.** The participant household can document the existence of a medical or other condition which prohibits the CAA from performing the energy audit on their residence. (7-1-99)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. BENEFIT DETERMINATION.**

Eligible participant households will have their LIHEAP benefit determined as follows: (3-20-04)

**01. Actual Consumption Method.** The actual consumption method is used if the eligible participant household heats its residence with either natural gas or electricity and has resided in the residence for one (1) year or longer. Household benefit is calculated by multiplying the energy consumption cost by an annual benefit calculation factor. Annual minimum and maximum benefits per household are published each year in the Intake Manual used for LIHEAP. (3-20-04)

**02. Average Annual Cost Method.** The average annual cost method is used when the eligible participant household's actual consumption cost is unknown, or it uses a heating source other than electricity or natural gas. Average cost is determined by information provided by energy suppliers throughout the state and is published as the Annual Heating Cost Chart which is available from the Department of Health and Welfare. The average cost is specific to county of residence and the household's heating source. Household benefit is calculated by multiplying the Average Annual Cost by an annual benefit calculation factor. (3-20-04)

**03. Annual Benefit Calculation Factor.** Annual benefit calculation factors are determined each year based on the amount of federal funding for the upcoming program year. The particular factor used for a household's benefit calculation is determined by the household's energy cost burden (high, medium or low) expressed as a percentage of annualized income. A heating burden of zero percent (0%) to five percent (5%) is ~~considered~~ low, six percent (6%) to ten percent (10%) is medium, and eleven percent (11%) or greater is high. Benefit calculation methodology and the current benefit calculation factors are published in the Intake Manual used for LIHEAP, available at the Department ~~of Health and Welfare~~ or on its website, and at community action agencies.

~~(3-20-04)(9-1-06)T~~

**04. Adjusting LIHEAP Benefit.** ~~Add an adjusted benefit of twenty five dollars (\$25) to the base benefit of~~ Households containing at least one (1) of the following: may be eligible for an adjusted benefit. The adjusted benefit amounts and eligibility levels will be published annually in the Intake Manual used for LIHEAP, available at the Department or on its website, and at community action agencies. ~~(3-20-04)(9-1-06)T~~

- a. Child under six (6) years of age. (4-5-00)
- b. Individual with disabilities as declared on the LIHEAP application form. (4-5-00)
- c. Individual sixty (60) years of age or older. (4-5-00)
- ~~d. More than one (1) member. (3-20-04)~~

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.06.04 - RULES FOR STATEWIDE AND REGIONAL INTERDEPARTMENTAL SUBSTANCE ABUSE COORDINATING COMMITTEES**

**DOCKET NO. 16-0604-0601 (CHAPTER REPEAL)**

#### **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 Chapter 3, Title 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a non-technical explanation of the substance and purpose of the proposed rulemaking: This chapter of rule is being repealed due to new legislation adopted by the 2006 Legislature under HB833. The new statute replaces the text in this chapter of rule with new guidelines for the substance abuse coordinating committees eliminating the need for this chapter.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. The repeal of this chapter of rule by itself does not create a fiscal impact; however, the amendments to Idaho Code found in HB833 do create a fiscal impact. The Department of Health and Welfare determined an estimated fiscal impact to the Department of \$14,500. This amount is being redirected from existing funds that were being used for other costs associated with substance abuse issues. In addition to the cost for Health and Welfare, it is estimated that the partnering agencies would incur a cost of approximately \$75,000 annually. This cumulative amount will come from existing funds since no additional funding has been provided. All identified funds in this fiscal impact are general funds.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes to rule are being made to implement legislation passed during the 2006 legislative session.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Bethany Gadzinski at (208) 334-5756.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 28th day of July, 2006.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**IDAPA 16.06.04 IS BEING REPEALED IN ITS ENTIRETY.**

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.74 - COORDINATION OF BENEFITS

DOCKET NO. 18-0174-0601

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211, 41-2141 and 41-2216, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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:

Sections 41-2141 and 41-2216, Idaho Code, charge the Director of the Department of Insurance with adopting rules for coordination of benefits that are consistent with model regulations of the National Association of Insurance Commissioners (NAIC). These rules coordinate benefit payments when a person is covered by more than one health plan to avoid confusion and unnecessary delays in payments. The changes made by this proposed rulemaking will make the Idaho rule consistent with the current version of the NAIC model regulation. The changes clarify which types of plans are allowed to coordinate benefit payments and how coordination is to be applied among plans.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are made to comply with the law requiring that the rule be in accordance with the NAIC model regulation.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Joan Krosch at (208) 334-4300.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 27th of July, 2006.

Shad Priest, Acting Director  
Idaho Department of Insurance  
700 W State Street, 3rd Floor  
P O Box 83720  
Boise ID 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0174-0601**

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited in full as Idaho Department of Insurance Rules, IDAPA 18.01.74, "Coordination of Benefits". (7-1-98)

**02. Scope.** The purpose of this rule is to permit, but not require, plans to include a coordination of benefits (COB) provision unless prohibited by federal law; establish a uniform order of benefit determination under which plans pay claims; provide authority for the orderly transfer of necessary information and funds between plans; reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, pursuant to these rules, do not pay their benefits first; reduce claims payment delays; and require that COB provisions be consistent with this rule; and provide greater efficiency in the processing of claims when a person is covered under more than one plan. (7-1-98)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

All ~~contested cases shall be governed by the provisions of~~ administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.01.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 000 through 099. (7-1-98)( )

**004. INCORPORATION BY REFERENCE.**

This rule incorporates by reference the full text of the National Association of Insurance Commissioners Model Coordination of Benefits Contract Provisions and the National Association of Insurance Commissioners Consumer Explanatory Booklet, published as part of the 2005 model rules of the National Association of Insurance Commissioners, 2301 McGee Street, Suite 800 Kansas City, MO 64108-2662, and available on the Idaho Department of Insurance web site at <http://www.doi.idaho.gov>. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ( )

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. ( )

**04. Web Site Address.** The department's web address is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provision of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**007. -- 009. (RESERVED).**

**00410. DEFINITIONS.**

As used in this rule, these words and terms have the following meanings, unless the context clearly indicates otherwise: (7-1-98)



**01. Allowable Expense.** “Allowable expense” means any health care ~~service or~~ expense including ~~deductibles,~~ coinsurance or copayments, and without reduction for any applicable deductible that is covered in full or in part by any of the plans covering the person, ~~except as set forth below or where a statute requires a different definition.~~ If a plan is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan’s deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223 (c) (2) (C) of the Internal Revenue Code of 1986. An expense that a provider by law or in accordance with contractual agreement is prohibited from charging a covered person is not an allowable expense. This means that a ~~An expense or service or a portion of an expense or service~~ that is not covered by any of the plans is not an allowable expense. (7-1-98)(\_\_\_\_)

**a.** The following are examples of expenses ~~of~~ services that are not an allowable expense: (7-1-98)(\_\_\_\_)

i. If a covered person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room (unless the patient’s stay in the private hospital room is medically necessary in terms of generally accepted medical practice, or one of the plans ~~routinely~~ provides coverage for private hospital rooms) is not an allowable expense. (7-1-98)(\_\_\_\_)

ii. If a person is covered by two (2) or more plans that compute their benefit payments on the basis of usual and customary fees, or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest of the usual and customary fee reimbursement amount for a specified benefit is not an allowable expense. (7-1-98)(\_\_\_\_)

iii. If a person is covered by two (2) or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense. (7-1-98)

iv. If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan’s payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan’s payment arrangement and if the provider’s contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits. (7-1-98)(\_\_\_\_)

**b.** The definition of the “allowable expense” may exclude certain types of coverage or benefits such as dental care, vision care, prescription drug or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of Allowable Expenses in its contract to ~~services or~~ expenses that are similar to the ~~services or~~ expenses that it provides. When COB is restricted to specific coverages or benefits in a contract the definition of “Allowable Expense” shall include similar ~~services or~~ expenses to which COB applies. (7-1-98)(\_\_\_\_)

**c.** When a plan provides benefits in the form of service, the reasonable cash value of each service will be considered as an allowable expense and a benefit paid. (7-1-98)

**d.** The amount of the reduction may be excluded from allowable expense when a covered person’s benefits are reduced under a primary plan: (7-1-98)

i. Because the covered person does not comply with the plan provisions ~~covering~~ concerning second surgical opinions or precertification of admissions or services: ~~or~~ (7-1-98)(\_\_\_\_)

ii. Because the covered person has a lower benefit because ~~he or she~~ the covered person did not use a preferred provider. (7-1-98)(\_\_\_\_)

~~e.~~ *If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the*

~~secondary plan shall pay or provide benefits as if it were primary when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan. (7-1-98)~~

**02. Birthday.** “Birthday” refers only to month and day in a calendar year and does not include the year in which the individual is born. ( )

**023. Claim.** “Claim” means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of: (7-1-98)

- a. Services (including supplies); (7-1-98)
- b. Payment for all or a portion of the expenses incurred; (7-1-98)
- c. A combination of Subsections ~~004.02.a. and 004.02.b.~~ 010.03.a. and 010.03.b. of this chapter; or (7-1-98)( )
- d. An indemnification. (7-1-98)

~~**03. Claim Determination Period.** “Claim determination period” means a period of not less than twelve (12) consecutive months, over which allowable expenses shall be compared with total benefits payable in the absence of COB, to determine whether overinsurance exists and how much each plan will pay or provide. (7-1-98)~~

~~**a.** The claim determination period is usually a calendar year, but a plan may use some other period of time that fits the coverage of the contract. A person is covered by a plan during a portion of a claim determination period if that person’s coverage starts or ends during the claim determination period. (7-1-98)~~

~~**b.** As each claim is submitted, each plan determines its liability and pays or provides benefits based upon allowable expenses incurred to that point in the claim determination period. That determination is subject to adjustment as later allowable expenses are incurred in the same claim determination period. (7-1-98)~~

**04. Closed Panel Plan.** “Closed panel plan” means a ~~health maintenance organization (HMO), preferred provider organization (PPO), exclusive provider organization (EPO), managed care plan, or other~~ plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the plan, and that ~~limits or~~ excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member. (7-1-98)( )

**05. Consolidated Omnibus Budget Reconciliation Act of 1985.** “Consolidated Omnibus Budget Reconciliation Act of 1985” or “COBRA” means coverage provided under a right of continuation pursuant to federal law. ( )

**056. Coordination of Benefits.** “Coordination of benefits” (COB) means a provision establishing an order in which plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses. (7-1-98)( )

**067. Custodial Parent.** “Custodial parent” means the parent awarded custody by a court decree. In the absence of a court decree, the parent with whom the child resides more than one half of the calendar year without regard to any temporary visitation ~~is the custodial parent.~~ (7-1-98)( )

**08. Group-Type Contract.** Group-type contract means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage. Group-type contract does not include an individually underwritten and issued guaranteed renewable policy even if the policy is purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer. ( )

**079. Hospital Indemnity Benefits.** “Hospital indemnity benefits” means the benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered

to give the insured the right to elect indemnity-type benefits at the time of claim. (7-1-98)

~~0010.~~ **Plan.** “Plan” means a form of coverage with which coordination is allowed. ~~The definition of plan in the contract must state the types of coverage that will be considered in applying the COB provision of that contract. The right to include a type of coverage is limited by the rest of this definition.~~ Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan. If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term “plan,” or some other term such as “program,” the contractual definition may be no broader than the definition of “plan” in Subsection 010.10. The definition of “plan” in the model COB provision in the National Association of Insurance Commissioners Model Coordination of Benefits Contract Provisions is an example. The National Association of Insurance Commissioners Model Coordination of Benefits Contract Provisions can be found on the Department of Insurance Internet web site at <http://www.doi.idaho.gov>, Consumer Services link. (7-1-98)(\_\_\_\_)

~~a.~~ This rule uses the term “plan”. However, a contract may use “program” or some other term. (7-1-98)

**ba.** Plan ~~may~~ includes: (7-1-98)(\_\_\_\_)

i. Group and nongroup insurance contracts and ~~group~~ subscriber contracts; (7-1-98)(\_\_\_\_)

ii. Uninsured group or group-type coverage arrangements; (7-1-98)(\_\_\_\_)

iii. Group ~~or~~ and nongroup-type coverage through closed panel plans; (7-1-98)(\_\_\_\_)

iv. Group-type contracts; ~~Group-type contracts are contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group, including franchise or blanket coverage. Individually underwritten and issued guaranteed renewable policies are not “group-type” even if purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer.~~ (7-1-98)(\_\_\_\_)

~~v.~~ The amount by which group or group-type hospital indemnity benefits exceed two hundred dollars (\$200) per day. (7-1-98)

~~vi.~~ The medical care components of long-term care contracts, such as skilled nursing care; (7-1-98)(\_\_\_\_)

~~vii.~~ Medicare or other governmental benefits, except as provided in Subsection ~~004.08.e.vii~~ 010.10.b.ix. of this chapter. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program. (7-1-98)(\_\_\_\_)

~~viii.~~ The medical benefits coverage in automobile “no fault” and traditional automobile “fault” type contracts. No plan is required to coordinate benefits provided that it pays benefits as a primary plan. If a plan coordinates benefits, it shall do so in compliance with the provisions of this chapter. (\_\_\_\_)

~~viii.~~ Individual or family insurance contracts. (7-1-98)

~~ix.~~ Individual or family subscriber contracts. (7-1-98)

~~x.~~ Individual or family coverage through closed panel plans. (7-1-98)

~~xi.~~ Individual or family coverage under other prepayment, group practice and individual practice plans. (7-1-98)

**eb.** Plan shall not include: (7-1-98)

- i. ~~Group or group-type~~ Hospital indemnity ~~benefits of two hundred dollars (\$200) per day or less.~~ coverage or other fixed indemnity coverage; (7-1-98)(\_\_\_\_)
- ii. School accident-type coverages; ~~These such as~~ contracts ~~that~~ cover students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis or on a “to and from school” basis; (7-1-98)(\_\_\_\_)
- iii. Specified disease or specified accident coverage; (\_\_\_\_)
- iv. Accident only coverage; (\_\_\_\_)
- ~~iii~~v. Benefits provided in long-term care insurance policies for non-medical service; for example, personal care, adult daycare, homemaker services, assistance with activities of daily living, respite care, and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services; (7-1-98)(\_\_\_\_)
- ~~iv~~v. ~~Medical benefits coverage in individual automobile “no fault” and traditional automobile “fault” type contracts.~~ (7-1-98)(\_\_\_\_)
- vi. Limited benefit health coverages, ~~such as, but not limited to, accident only, specified disease, disability income, hospital indemnity, credit insurance benefits, dental insurance, vision insurance, coverages issued to supplement liability insurance; and worker’s compensation or similar insurance.~~ as defined in IDAPA 18.01.30, “Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule,” Sections 012 and 029. (7-1-98)(\_\_\_\_)
- vii. Medicare supplement policies; (7-1-98)(\_\_\_\_)
- viii. A state plan under Medicaid; ~~or~~ (7-1-98)(\_\_\_\_)
- ~~viii~~ix. A governmental plan which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan. (7-1-98)
- ~~ix~~x. ~~Nonrenewable short-term coverages issued for a period of twelve (12) months or less.~~ (7-1-98)

**11. Policyholder.** “Policyholder” means the primary insured named in a non-group insurance policy. (\_\_\_\_)

~~09~~12. **Primary Plan.** “Primary plan” means a plan whose benefits for a person’s health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if; ~~either of the following is true:~~ (7-1-98)(\_\_\_\_)

a. The plan either has no order of benefit determination rules, or its rules differ from those permitted by this rule; ~~or~~ (7-1-98)(\_\_\_\_)

b. All plans that cover the person use the order of benefit determination required by this rule, and under those rules the plan determines its benefits first; (7-1-98)(\_\_\_\_)

~~10~~13. **Secondary Plan.** “Secondary plan” means a plan that is not a primary plan. ~~If a person is covered by more than one secondary plan, the order of benefit determination of this rule decides the order in which secondary plans benefits are determined in relation to each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under this rule, has its benefits determined before those of the secondary plan.~~ (7-1-98)(\_\_\_\_)

~~11~~ **This Plan.** “This plan” means, in a COB provision, the part of the contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. ~~Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one~~

~~COB provision to certain of its benefits (such as dental benefits), coordinating only with similar benefits, and may apply another COB provision to coordinate with other benefits.~~ (7-1-98)

~~00514.~~ -- ~~0720.~~ (RESERVED).

~~0421.~~ COB CONTRACT PROVISION.

**01. Coordination of Benefits. “Model Coordination of Benefits Contract Provisions.”** The National Association of Insurance Commissioners Model Coordination of Benefits Contract Provisions contains a model COB provision for use in contracts. The use of this model COB provision is subject to the provisions of Subsections 021.02 through 021.04, of this chapter, and the provisions of Section 022 of this chapter. The National Association of Insurance Commissioners Model Coordination of Benefits Contract Provisions is incorporated by reference and can be found on the Department of Insurance website at <http://www.doi.idaho.gov>. ( )

**02. Coordination of Benefits Attachment “National Association of Insurance Commissioners Consumer Explanatory Booklet.”** The National Association of Insurance Commissioners Consumer Explanatory Booklet is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which two (2) or more plans will pay for or provide benefits. The National Association of Insurance Commissioners Consumer Explanatory Booklet is incorporated by reference and can be found on the Department of Insurance website at <http://www.doi.idaho.gov>. ( )

**03. Application of Requirements.** The COB provision contained in the the National Association of Insurance Commissioners Model Coordination of Benefits Contract Provisions and the plain language explanation in the National Association of Insurance Commissioners Consumer Explanatory Booklet do not have to use the specific words and format shown in the National Association of Insurance Commissioners Model Coordination of Benefits Contract Provisions or the National Association of Insurance Commissioners Consumer Explanatory Booklet. Changes may be made to fit the language and style of the rest of the contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. No substantive changes are permitted. ( )

**04. Limits on COB Provisions.** A COB provision may not be used that permits a plan to reduce benefits on the basis that: (7-1-98)

- a. Another plan exists and the covered person did not enroll in that plan; (7-1-98)
- b. A person is or could have been covered under another plan, except with respect to Part B of Medicare; or (7-1-98)
- c. A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected. (7-1-98)

**05. “Always Excess” or “Always Secondary”.** No plan may contain a provision that its benefits are “always excess” or “always secondary” except in accordance with the order of benefit determination permitted by this rule. (7-1-98)( )

**06. Closed Panel Provider.** Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, COB does not occur if a covered person is enrolled in two (2) or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability. However, COB may occur during the claim determination period plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use the provisions of Section 023 of this chapter to determine the amount it should pay for the benefit. (7-1-98)( )

**07. Plan Requirements.** No plan may use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of plan under Subsection 010.10 of this rule. ( )

~~012. 015. (RESERVED).~~

**01622. RULES FOR COORDINATION OF BENEFITS.**

**01. Order of Benefit Payments.** When a person is covered by two (2) or more plans, the rules for determining the order of benefit payments are as follows: (7-1-98)

a. The primary plan ~~must~~ shall pay or provide its benefits as if the secondary plan or plans did not exist. (7-1-98)( )

b. ~~A plan that does not contain a coordination of benefits provision that is consistent with this rule is always primary. There are two (2) exceptions: If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a non-panel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.~~ (7-1-98)( )

c. When multiple contracts providing coordinated coverage are treated as a single plan under this rule, Section 022 of this chapter applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one (1) carrier pays or provides benefits under the plan, the carrier designated as primary within the plan shall be responsible for the plan's compliance with this rule. ( )

d. If a person is covered by more than one (1) secondary plan, the order of benefit determination requirements of this rule decide the order in which secondary plan benefits are determined in relation to each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the requirements of this rule, has its benefits determined before those of that secondary plan. ( )

**02. Consistent Order of Benefit Provisions.** Except as provided in Subsection 022.02.a. of this chapter, a plan that does not contain order of benefit determination provisions that are consistent with this rule is always the primary plan unless the provisions of both plans, regardless of the provisions of Subsection 022.02 of this chapter, state that the complying plan is primary. ( )

~~ia.~~ Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits. (7-1-98)

~~ii. Individual plans as they shall always be secondary to group plans.~~ (7-1-98)

~~eb.~~ A plan may take into consideration the benefits paid or provided by another plan only when, under the requirements of this rule, it is secondary to that other plan. (7-1-98)( )

**023. Order of Benefit Determination.** Each plan determines its order of benefits using the first of the following rules that describes which plan pays its benefits before another plan is the rule that shall be applied. (7-1-98)( )

~~a. A group plan shall always be primary to an individual plan.~~ (7-1-98)

~~ba.~~ Non-dependent or dependent; The plan that covers the person other than as a dependent, for example, as an employee, member, subscriber, policyholder or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan. However, if the person is a Medicare beneficiary and, as a result of the provisions of Title XVIII of the Social Security Act and implementing rules, Medicare is: (7-1-98)( )

i. Secondary to the plan covering the person as a dependent; and (7-1-98)

ii. Primary to the plan covering the person as other than a dependent (e.g. a retired employee), then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree, is the secondary plan and the other plan covering the person as a dependent is the primary plan. (7-1-98)( )

**eb.** Dependent Child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child shall determine the order of benefits as follows: (7-1-98)( )

*i:* The primary plan is the plan of the parent whose birthday is earlier in the year if: (7-1-98)

(1) The parents are married; (7-1-98)

i. For a dependent child whose parents are married or are living together, whether or not they have ever been married: ( )

(1) The plan of the parent whose birthday falls earlier in the calendar year is primary plan; or ( )

(2) The parents are not separated (whether or not they ever have been married); or If both parents have the same birthday, the plan that has covered the parent longest is the primary plan. (7-1-98)( )

(3) A court decree awards joint custody without specifying that one parent has the responsibility to provide health care coverage. (7-1-98)

ii. If both parents have the same birthday, the plan that covered either of the parents longer is primary. For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married: (7-1-98)( )

~~iii.(1)~~ If the specific terms of a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with financial responsibility has no health care coverage for the dependent child's health care services or expenses, but that parent's spouse does, the that parent's spouse's plan is the primary plan. This shall not apply with respect to any claim determination period or plan year during which benefits are paid or provided before the entity has actual knowledge: of the court decree provisions: (7-1-98)( )

(2) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of Subsection 022.03.b.i. of this chapter shall determine the order of benefits: ( )

(3) If a court decree states that the parents have joint custody without specifying that one (1) parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of Subsection 022.03.b.i. of this chapter shall determine the order of benefits, or ( )

(4) If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child are as follows: ( )

*iv:* If the parents are not married or are separated (whether or not they ever have been married) or are divorced and there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parent and the parent's spouse (if any) is: (7-1-98)

(1a) The plan of covering the custodial parent; (7-1-98)( )

(2b) The plan of covering the spouse of the custodial parent's spouse; (7-1-98)( )

(3c) The plan of covering the noncustodial parent; and then (7-1-98)( )

(4d) The plan of covering the spouse of the noncustodial parent's spouse. (7-1-98)( )

(5) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits shall be determined, as applicable under Subsections 022.03.b.i. or 022.03.b.ii. of this chapter as if those individuals were parents of the child. (\_\_\_\_)

~~dc.~~ Active/Inactive Employee; Employee or Retired or Laid-Off Employee. The plan that covers a person as an active employee; that is, an employee who is neither laid-off nor retired ~~for as that a dependent of an active employee's dependent~~ is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan. If the other plan does not have this rule; and if, as a result, the plans do not agree on the order of benefits, this rule is ignored. Coverage provided an individual as a retired worker and as a dependent of that individual's spouse as an active worker will be determined under Subsection ~~016-01.b~~ 022.03.a. of this chapter. (7-1-98)(\_\_\_\_)

~~ed.~~ Continuation coverage. If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to federal or state law also is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree ~~for as that person's dependent~~ or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan and the plan covering that same person pursuant to COBRA or under a right of continuation coverage pursuant to state or other federal law is the secondary plan. If the other plan does not have this rule and if, as a result, the plans do not agree on the order of benefits, this rule is ignored. This provision does not apply if the rule in Subsection 022.03.a. of this chapter can determine the order of benefits. (7-1-98)(\_\_\_\_)

~~fe.~~ Longer/shorter length of coverage. If none of the above preceding rules do not determines the order of benefits, the plan that covered the person as an employee, member, subscriber or retiree for the longer period of time is the primary plan and the plan that covered the person for a longer period of time is primary shorter period of time is the secondary plan. (7-1-98)(\_\_\_\_)

i. To determine the length of time a person has been covered under a plan, two (2) successive plans shall be treated as one (1) if the covered person was eligible under the second plan within twenty-four (24) hours after the coverage under the first plan ended. (7-1-98)(\_\_\_\_)

ii. The start of a new plan does not include: (7-1-98)

(1) A change in the amount of or scope of a plan's benefits; (7-1-98)(\_\_\_\_)

(2) A change in the entity that pays, provides or administers the plan's benefits; or (7-1-98)

(3) A change from one type of plan to another ~~(such as from a single employer plan to that of a multiple employer plan).~~ (7-1-98)(\_\_\_\_)

iii. The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force. (7-1-98)

g. If none of these preceding rules determines the primary plan order of benefits, the allowable expenses shall be shared equally between the plans. (7-1-98)(\_\_\_\_)

~~017-020.~~ (RESERVED)

~~0243.~~ PROCEDURE TO BE FOLLOWED BY SECONDARY PLAN.

~~01.~~ **Individual Plan Reduction.** Individual plans may reduce benefits in accordance with Section 022. (7-1-98)

~~021.~~ **Secondary Plan Reduction Procedure to Calculate Benefits and Pay Claims.** When a plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than one hundred percent (100%) of total allowable expenses. As each claim is



~~submitted, the secondary plan must:~~ In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan shall calculate the benefits it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by the amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed one hundred percent (100%) of the total allowable expense for that claim. In addition, the secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other benefit care coverage. (7-1-98)(\_\_\_\_)

- ~~a. Determine its obligation pursuant to its contract.~~ (7-1-98)
- ~~b. Determine whether there are any unpaid allowable expenses during that claims determination period.~~ (7-1-98)
- ~~c. Pay up to one hundred percent (100%) of total allowable expenses incurred during the claim determination period.~~ (7-1-98)

~~032. Reduction of Secondary Plan Benefits. The benefits of the secondary plan shall be reduced when the sum of the benefits that would be payable for the allowable expenses under the secondary plan in the absence of this COB provision and the benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made, exceeds the allowable expenses in a claim determination period. In that case, the benefits of the secondary plan shall be reduced so that they and the benefits payable under the other plans do not total more than the allowable expenses. Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one (1) health benefit plan, you should file all your claims with each plan."~~ Reduction of Secondary Plan Benefits. (7-1-98)(\_\_\_\_)

- ~~a. When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of the plan.~~ (7-1-98)
- ~~b. The requirements of Subsection 021.02.a. do not apply if the plan provides only one (1) benefit, or may be altered to suit the coverage provided.~~ (7-1-98)

~~022. INDIVIDUAL PLANS. Individual plans may provide for a reduction in covered benefits due to the existence of another plan by including language in the contract, policy or certificate that is consistent with this rule.~~ (7-1-98)

~~023.—025. (RESERVED).~~

**0264. MISCELLANEOUS PROVISIONS.**

**01. Benefits in the Form of Services.** A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services. (7-1-98)

**02. Complying Plan Versus Noncomplying Plan.** A plan with order of benefit determination rules that comply with this rule (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in this rule (noncomplying plan) on the following basis: (7-1-98)

- a. If the complying plan is the primary plan, it shall pay or provide its benefits first; (7-1-98)
- b. If the complying plan is the secondary plan, it shall, ~~nevertheless,~~ pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability; and (7-1-98)(\_\_\_\_)

c. If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own and shall pay its benefits accordingly. If, within two (2) years of payment, the complying plan receives information as the actual benefits of the noncomplying plan, it shall adjust payments accordingly. (7-1-98)

i. If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than ~~he or she~~ the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to ~~or on behalf of~~ the covered person or on behalf of the covered person an amount equal to the difference. (7-1-98)(\_\_\_\_)

ii. In no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or services. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan shall also be without prejudice to any claim it may have against the noncomplying plan in the absence of such subrogation. (7-1-98)

**03. COB Versus Subrogation.** ~~The~~ COB differs from subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other. (7-1-98)(\_\_\_\_)

**04. Timely Payment of Benefits.** If the plans cannot agree on the order of benefits within thirty (30) calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been primary. (7-1-98)

~~0275.~~ -- 030. (RESERVED).

**031. EFFECTIVE DATE; EXISTING CONTRACTS.**

**01. Effective Date of Rule.** This rule is applicable to every plan that provides health care benefits and that is issued on or after the effective date of this rule, ~~which is July 1, 1998.~~ (7-1-98)(\_\_\_\_)

**02. Contract Compliance.** A contract that provides health care benefits and that was issued before the effective date of this rule shall be brought into compliance with this rule by the later of: (7-1-98)

a. The ~~next~~ anniversary date or renewal date of the plan following the effective date of this rule; or (7-1-98)(\_\_\_\_)

b. The expiration of any applicable collectively bargained contract pursuant to which it was written. (7-1-98)

**03. Transition Period.** For the transition period between the adoption of this rule and the timeframe for which plans are to be in compliance pursuant to Subsection 031.02. of this chapter, a plan that is subject to the prior COB requirements shall not be considered a noncomplying plan by a plan subject to the new COB requirements and if there is a conflict between the prior COB requirements under the prior rule and the new COB requirements under the amended rule, the prior COB requirements shall apply. (\_\_\_\_)

~~0372.~~ -- 999. (RESERVED).

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE**

**DOCKET NO. 21-0101-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-202, 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 complete text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 69 through 73.

**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 this pending rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

DATED this 1st day of August 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise ID 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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#### **DOCKET NO. 21-0101-0601 - ADOPTION OF PENDING RULE**

**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 06-7, July 5, 2006, pages 69 through 73.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE**

**DOCKET NO. 21-0101-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-202, 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 complete text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 74 through 77.

**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 this pending rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

DATED this 1st day of August 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise ID 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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#### **DOCKET NO. 21-0101-0602 - ADOPTION OF PENDING RULE**

**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 06-7, July 5, 2006, pages 74 through 77.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

**IDAPA 21 - DIVISION OF VETERANS SERVICES**  
**21.01.03 - RULES GOVERNING MEDICAID QUALIFIED UNITS**  
**IN IDAHO STATE VETERANS HOMES**  
**DOCKET NO. 21-0103-0601 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-202, 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 complete text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, page 78. This chapter is repealed in its entirety.

**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 this pending rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

DATED this 1st day of August, 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise ID 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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**DOCKET NO. 21-0103-0601 - ADOPTION OF PENDING RULE**

**This chapter is repealed in its entirety.**

**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 06-7, July 5, 2006, page 78.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.04 - RULES GOVERNING THE IDAHO STATE VETERANS CEMETERY**

**DOCKET NO. 21-0104-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-202, 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 complete text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 79 through 81.

**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 this pending rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

DATED this 1st day of August 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise ID 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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#### **DOCKET NO. 21-0104-0601 - ADOPTION OF PENDING RULE**

**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 06-7, July 5, 2006, pages 79 through 81.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.05 - RULES GOVERNING MEDICAL TRANSPORTATION PAYMENT FOR WHEELCHAIR CONFINED VETERANS**

**DOCKET NO. 21-0105-0601**

#### **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 65-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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:

Since its inception in 2003, the transportation program has not been used by a significant number of wheelchair confined veterans because few providers have participated. The current program requires that transportation providers enter into an agreement with the Division of Veterans Services prior to the veteran using the provider and makes the provider responsible for seeking reimbursement for the transportation from the Division of Veterans Services. The proposed program would allow the veteran to receive a voucher for transportation and to use any private provider for the transportation. The veteran would be responsible for submitting the costs of transportation for reimbursement by the Division of Veterans Services. All other safeguards built into the program will remain. This rulemaking will revise the rules to encourage use of the program by providing direct reimbursement to wheelchair confined veterans who use a private provider for transportation to medical appointments.

**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 of the non-controversial nature of the rule revisions.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule contact Joe Bleymaier, Administrator, (208) 334-3513.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 19th day of July, 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise, Idaho 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0105-0601**

**010. DEFINITIONS.**

**01. Bona Fide Resident.** A person who maintains a principal or primary home or place of abode in the state of Idaho coupled with the present intent to remain at that home or abode and return to it after any period of absence. Bona fide resident status is determined as of the date of application for transportation voucher payment. (5-3-03)

**02. Commercial Carrier.** A for profit or not-for-profit ground transportation provider that operates a motor vehicle accommodating wheelchairs ~~and that has entered into a written agreement with the Division to provide transportation pursuant to these rules.~~ A commercial carrier shall not include an ambulance service or an operator of a private or personal vehicle. (5-3-03)(\_\_\_\_)

**03. Covered Transportation.** Transportation meeting the requirements of Subsection 012. (5-3-03)

**04. Division.** The Idaho Division of Veterans Services. (5-3-03)

**05. Eligible Veteran.** An individual meeting the requirements of Subsection 011. (5-3-03)

**06. Medical Appointment.** A regularly scheduled medical appointment with individuals licensed, registered or certified by national certification standards in their respective discipline, or otherwise qualified within the state in which the service is provided. A medical appointment does not include treatment for a medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (5-3-03)

**07. Veteran.** Shall have the meaning as defined in Section 65-203(1), Idaho Code. (5-3-03)

**08. Veterans Service Officer.** An employee of the Division's Office of Veterans Advocacy or an employee of a county, as provided in Section 65-601, Idaho Code, appointed to give aid and assistance to veterans. (5-3-03)

**09. Wheelchair Confined.** A person who is confined to a wheelchair due to a physical or mental inability to walk independently. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. PAYMENT.**

**01. Payment Amount.** Payment pursuant to these rules shall not exceed one hundred dollars (\$100) for transportation to and from a medical appointment or fifty dollars (\$50) for transportation to or from a medical appointment. (5-3-03)

**02. Payment Voucher.** Upon approval of an application, the Division will provide a voucher to the eligible veteran. ~~The Division will make payment for covered transportation provided to an eligible veteran directly to the commercial carrier as set forth in the agreement between the commercial carrier and the Division.~~ (5-3-03)(\_\_\_\_)

**03. Payment.** The Division will reimburse the veteran for covered transportation upon submission by the veteran of a voucher and a corresponding receipt from a commercial carrier. With prior approval, the Division will make payment for covered transportation provided to an eligible veteran directly to the commercial carrier upon submission by the commercial carrier of the voucher and a corresponding receipt from the commercial carrier. A corresponding receipt shall mean a receipt containing information confirming the charges are for the covered transportation for which the Division issued the voucher. (\_\_\_\_)



## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

#### DOCKET NO. 23-0101-0601

#### 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 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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:

These rule changes update and clarify Board rules to assist with licensing and enforcement functions. The proposed rules clarify definitions and elaborate on various licensing procedures; they add failure to cooperate with authorities and engaging in a pattern of poor practice as grounds for discipline; revise the limited license provisions to spell out the categories and requirements and explain the summary suspension provisions; set forth a description of the peer review process required of the advanced practice nurses; establish titles for graduate APPNs; relocate, without change in amount, an existing records verification fee; and include some general updating and housekeeping provisions.

**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 of the relatively simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, (208) 334-3110.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 8th day of August, 2006.

Sandra Evans, MAEd., R.N.  
Executive Director  
Idaho Board of Nursing  
280 N. 8<sup>th</sup> St., Ste. 210  
P. O. Box 83720  
Boise, Idaho 83720-0061  
Phone: (208) 334-3110; Fax: (208) 334-3262

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-0601

**000. LEGAL AUTHORITY.**

This chapter is adopted in accordance with Section 54-1404(~~9~~10), Idaho Code.

(~~3-30-01~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. WRITTEN INTERPRETATIONS.**

In accordance with Sections 54-1401 through 54-141~~7~~8, Idaho Code, this Board has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection at the Board office.

(~~3-30-01~~)(    )

**004. ADMINISTRATIVE APPEALS**

The Idaho Rules of Administrative Procedure of the Attorney General on contested cases, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure," Section 100, et seq., shall apply in addition to Board of Nursing Rules, IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," ~~Sections 090 through 164.~~

(~~7-1-93~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

~~3401.~~ **Wrongful Abandonment.** The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care ~~by others.~~ The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not ~~wrongful~~ abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to an attending physician or to a staff supervisor, prior to leaving the assignment, ~~is sufficient to permit~~ constitutes termination of the nurse/patient relationship.

(~~5-3-03~~)(    )

~~042.~~ **Accreditation.** The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing.

(7-1-93)

~~023.~~ **Administration of Medications.** The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology and pharmacology. Licensed nurses may administer medications and treatments as prescribed by health care providers authorized to prescribe medications.

(5-3-03)

~~034.~~ **Approval.** The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board.

(5-3-03)

~~045.~~ **Assist.** To aid or help in the accomplishment of a prescribed set of actions.

(7-1-93)

~~056.~~ **Assistance With Medications.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications.

(5-3-03)

~~067.~~ **Board.** The Idaho Board of Nursing.

(7-1-93)

~~078.~~ **Board Staff.** The Executive Director and other such personnel as are needed to implement the Nursing Practice Act and these Rules.

(7-1-93)

~~089.~~ **Charge Nurse.** A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care.

(5-3-03)

- ~~0910.~~ **Clinical Preceptor.** A licensed professional nurse who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. (5-3-03)
- ~~101.~~ **Competence.** Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)
- ~~112.~~ **Curriculum.** The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)
- ~~123.~~ **Delegation.** The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)
- ~~134.~~ **Disability.** Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)
- ~~145.~~ **Emeritus License.** A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)
- ~~156.~~ **Licensing Examination.** A licensing examination that is acceptable to the board. (5-3-03)
- ~~167.~~ **License in Good Standing.** A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)
- ~~178.~~ **Limited License.** A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)
- ~~189.~~ **Nursing Assessment.** The systematic collection of data related to the patient's health care needs. (5-3-03)
- ~~1920.~~ **Nursing Diagnosis.** The clinical judgment or conclusion regarding patient/client/family/community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)
- ~~201.~~ **Nursing Intervention.** An action deliberately selected and performed to support the plan of care. (5-3-03)
- ~~212.~~ **Nursing Service Administrator.** A licensed professional nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)
- ~~223.~~ **Organized Program of Study.** A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)
- ~~234.~~ **Patient.** An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)
- ~~245.~~ **Patient Education.** The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)
- ~~256.~~ **Plan of Care.** The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)
- ~~267.~~ **Practice Standards.** General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)
- ~~278.~~ **Probation.** A period of time set forth in an order in which certain restrictions, conditions or

limitations are imposed on a licensee. (5-3-03)

~~289.~~ **Protocols.** Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)

~~2930.~~ **Revocation.** Termination of the authorization to practice. (5-3-03)

~~301.~~ **Scope of Practice.** The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)

~~372.~~ **Supervision.** Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)

~~323.~~ **Suspension.** An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)

~~34.~~ **Technician/Technologist.** These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. ( )

~~335.~~ **Universal Standards.** The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as "Standard Precautions." (5-3-03)

**011. -- 039. (RESERVED).**

**040. TEMPORARY LICENSE.**

A temporary license is a nonrenewable license ~~of limited duration.~~ (5-3-03)( )

**01. Issued at Discretion of Board.** Temporary licenses are issued, and may be extended, at the discretion of the Board. (6-1-78)( )

**02. Temporary Licensure by Interstate Endorsement.** ~~A license issued by interstate endorsement is a license issued by the board of this state, based on the fact of licensure in another state.~~ A temporary license may be issued to an applicant for interstate endorsement on proof of current licensure in good standing in another state, satisfactory documentation of employment within the three (3) years immediately preceding application, and compliance with the requirements of Section 242 of these rules. (5-3-03)( )

**03. Temporary Licensure by Examination.** A temporary license to practice nursing until notification of examination results and completion of criminal background check may be issued to an applicant for Idaho licensure following graduation from a nursing education program recognized by the professional licensing board for nursing of any state or territory of the United States, and compliance with Section 221 of these rules. (5-3-03)( )

**a.** The practice of nursing by new graduates holding temporary licensure shall be limited as follows: (3-30-01)

**i.** Direct supervision by a licensed professional nurse must be provided. (3-30-01)

**ii.** May not act as charge nurse. (5-3-03)

**b.** ~~Terms of~~ Temporary licenses issued to examination candidates ~~are as follows:~~ will be issued for a period not to exceed three (3) months. (3-30-01)( )

~~i. Temporary licenses will be issued for a period of no more than three (3) months; and~~ (5-3-03)

~~ii. Temporary licenses are not renewable.~~ (3-30-01)

- 04. Unsuccessful Examination Candidates.** (6-11-93)
- a.** An applicant who fails to pass the licensing examination shall not be eligible for further temporary licensure. (3-30-01)
- b.** In the event that such applicant subsequently passes the licensing examination after twelve (12) months or more have elapsed following completion of the educational program, a temporary license with conditions may be issued until verification of clinical competence is received. (3-30-01)
- 05. Applicants Not in Active Practice.** A temporary license with specific terms and conditions may be issued to a person who has not actively engaged in the practice of nursing in any state for more than three (3) years immediately prior to the application for licensure or to an applicant whose completed application indicates the need for confirmation of the applicant's ability to practice safe nursing. (3-30-01)
- 06. Applicants from Other Countries.** Upon final evaluation of the completed application, the Board may, at its discretion, issue a temporary license to a graduate from a nursing education program outside of the United States or its territories, pending notification of results of the licensing examination. (6-11-93)
- 07. Fee.** The applicant must pay the temporary license fee, as prescribed in Subsection 901.07 of these rules. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**061. ~~LATE RENEWAL OR LICENSE REINSTATEMENT OF A LICENSE.~~**

- 01. ~~Reinstatement Within One Year (Late Renewal).~~** A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: ~~(3-30-01)~~(\_\_\_\_)
- a.** Filing a completed renewal application; and (3-30-01)
- b.** Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.05 of these rules. (4-2-03)
- 02. ~~Reinstatement After One Year.~~** After one (1) year, but less than three (3) years, a person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: ~~(3-30-01)~~(\_\_\_\_)
- a.** Filing a completed reinstatement application; and (3-30-01)
- b.** Payment of the ~~verification of records fees and the renewal fee as~~ prescribed in Subsection 900.035 of these rules; and ~~(7-1-93)~~(\_\_\_\_)
- c.** Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)
- d.** A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (\_\_\_\_)
- 03. ~~Reinstatement After Three Years.~~** After three (3) years, a person whose license has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: ~~(3-30-01)~~(\_\_\_\_)
- a.** Filing a completed reinstatement application; and ~~(3-30-01)~~(\_\_\_\_)
- b.** Payment of the ~~verification of records fees and the renewal fee as~~ prescribed in Subsection 900.05

of these rules; and (4-2-03)( )

c. Payment of the temporary license fee prescribed in Subsection 901.07 of these rules, if required; and (4-2-03)

d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (3-30-01)( )

e. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

**04. ~~Reinstatement~~ After Discipline.** A person whose license has been subject to disciplinary action by the board may apply for reinstatement of the license to active and unrestricted status by: (4-2-03)( )

a. Submitting a completed application for reinstatement; and (4-2-03)

b. Payment of ~~a verification of records~~ the fees; and renewal fee as prescribed in Subsection 900.05 of these rules; and (4-2-03)( )

c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and (4-2-03)( )

d. Providing ~~proof~~ evidence, satisfactory to the board, of the applicant's ~~competency~~ ability to practice safely and competently. (4-2-03)( )

e. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

f. A person whose license has been revoked may not apply for reinstatement until two (2) years following the order of revocation. ( )

**05. Reinstatement of Emeritus License to Current Status.** A person who holds a current emeritus license in good standing may apply for reinstatement of the license to active and unrestricted status by: (4-2-03)

a. Submitting a completed application for reinstatement; and (4-2-03)

b. Payment of the ~~verification of records~~ fees and renewal fee as prescribed in Subsection 900.05 of these rules; and (4-2-03)( )

c. Providing ~~proof~~ evidence, satisfactory to the board, of the applicant's current competency to practice. (4-2-03)( )

**062. -- 075. (RESERVED).**

**076. PERSONS EXEMPTED BY BOARD.**

Licensure to practice nursing shall not be required, nor shall the practice of nursing be prohibited for persons exempted by the Board including: (11-28-84)

**01. Technicians and Technologists.** ~~Technicians and technologists who are enrolled in Board-recognized programs of training or who are registered or certified by Board-recognized appropriate national bodies and are employed in state licensed or certified health care facilities, performing within the ordinary and customary roles in their field~~ comply with Section 491 of these rules. (6-1-78)( )

**02. Non-Resident Nurses.** Non-resident nurses currently licensed in good standing in another state or territory, who are in Idaho on a temporary basis because of enrollment in or presentation of a short term course of instruction recognized or approved by the Board and who are performing functions incident to formal instruction. (3-30-01)( )

- 03. Family Members and Others.** (7-1-93)
- a.** Family members providing care to a person to whom they are related by blood, marriage, adoption, legal guardianship or licensed foster care. (5-21-89)
- b.** Non-family members who provide gratuitous care to a person on a temporary basis in order to give respite to family members who regularly provide care to that person. (5-21-89)
- c.** Live-in domestics, housekeepers and companions, provided they do not represent themselves as nor receive compensation as licensed nurses or other nursing care providers and so long as any health care provided is incidental to the services for which they are employed. (3-30-01)
- 04. Nurse Apprentice.** A nurse apprentice is a currently enrolled nursing student who is employed for remuneration in a non-licensed capacity by a Board approved health care agency. (3-30-01)
- a.** Applicants for nurse apprentice shall: (3-30-01)
- i.** Be enrolled in an accredited/approved nursing education program that is substantially equivalent to Idaho's approved programs for practical/professional nursing. (6-20-92)
- ii.** Be in good academic standing at the time of application and notify the Board of any change in academic standing. (6-20-92)
- iii.** Meet the employing agency's health care skills validation requirements. (3-30-01)
- iv.** Satisfactorily complete a basic nursing fundamentals course. (3-30-01)
- v.** Use obvious designations that identify the applicant as a nurse apprentice. (3-30-01)
- b.** A completed application for nurse apprentice shall consist of: (3-30-01)
- i.** Completed application form provided by the Board, to include a fee of ten dollars (\$10); and (7-1-93)
- ii.** Verification of satisfactory completion of a basic nursing fundamentals course; and (3-30-01)
- iii.** Validation of successful demonstration of skills from a nursing education program; and (3-30-01)
- iv.** Verification of on-going good academic standing in nursing education program. (3-30-01)
- c.** An individual whose application is approved shall be issued a letter identifying the individual as a nurse apprentice for a designated time period. (3-30-01)
- d.** A nurse apprentice may, under licensed professional nurse supervision, perform all functions approved by the Board of Nursing for unlicensed assistive personnel as set forth in ~~Subsection 400.04~~ Section 490 of these rules. (3-30-01)( )
- 05. Employer Application.** (3-30-01)
- a.** A completed application for health care agencies wishing to employ nurse apprentices shall consist of: (3-30-01)
- i.** Completed application form provided by the Board; and (6-20-92)
- ii.** Job descriptions for apprentice; and (3-30-01)

- iii. A written plan for orientation and skill validation; and (6-20-92)
- iv. The name of the licensed professional nurse who shall be accountable and responsible for the coordination or management of the nurse apprentice program; and (3-30-01)
- v. Assurance that a licensed professional nurse is readily available when nurse apprentice is working. (3-30-01)
- vi. A written procedure for the nurse apprentice who is asked to perform a task that could jeopardize a patient and who declines to perform the task; and (3-30-01)
- vii. A fee of one hundred dollars (\$100). (3-30-01)
- b.** Following application review, the Board may grant approval to a health care agency to employ nurse apprentice for a period of up to one (1) year. (3-30-01)
- c.** To insure continuing compliance with Board requirements, each approved agency shall submit an annual report to the Board on forms provided by the Board. Based on their findings, the Board may grant continuing approval annually for an additional one (1) year period. (6-20-92)
- d.** At any time, if the employing agency fails to inform the Board of changes in conditions upon which approval was based or otherwise fails to comply with established requirements, the Board may notify the agency of withdrawal of approval. (6-20-92)

**077. MULTISTATE LICENSURE.**

- 01. Definitions.** In Section 077, the following terms have the meanings indicated. (3-15-02)
  - a.** Board means the regulatory body responsible for issuing nurse licenses. (3-15-02)
  - b.** Compact means the Nurse Multistate Licensing Compact. (3-15-02)
  - c.** Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)
  - d.** Home state means the party state that is the nurse's primary state of residence. (3-15-02)
  - e.** Party state means a state that is a signatory on the compact. (3-15-02)
  - f.** Primary state of residence means the state of an individual's declared, fixed, and permanent residence. (3-15-02)
  - g.** Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)
- 02. Examination.** No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination) examination: (4-6-05)
  - a.** NCLEX-RN for professional nursing; or (4-6-05)
  - b.** NCLEX-PN for practical nursing. (4-6-05)
- 03. Issuance of License in Compact Party State.** (3-15-02)
  - a.** A nurse applying for a license in a home party state shall produce evidence of the nurse's primary



state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)

- i. Driver's license with a home address; (3-15-02)
- ii. Voter registration card displaying a home address; or (3-15-02)
- iii. Federal income tax return declaring the primary state of residence. (3-15-02)

**b.** A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days. (3-15-02)

**c.** The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the thirty (30) day period in Subsection 077.023.b. of these rules shall be stayed until resolution of the pending investigation. ~~(3-15-02)~~(\_\_\_\_)

**d.** The former home state license is not valid upon the issuance of a new home state license. (3-15-02)

**e.** If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)

**04. Multistate Licensure Privilege Limitations.** (3-15-02)

**a.** Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendency of the disciplinary order or agreement. (3-15-02)

**b.** The requirement referred to in Subsection 077.034.a. of these rules may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. ~~(3-15-02)~~(\_\_\_\_)

**05. Information System.** (3-15-02)

**a.** Levels of Access. (3-15-02)

i. Public access to nurse licensure information shall be limited to: (3-15-02)

- (1) The licensee's name; (3-15-02)
- (2) Jurisdictions of licensure; (3-15-02)
- (3) Licensure expiration date; (3-15-02)
- (4) Licensure classification and status; (3-15-02)

(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)

(6) The status of multistate licensure privileges. (3-15-02)

ii. Non-party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)

iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (3-15-02)

- b.** Right to Review. (3-15-02)

  - i. The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (3-15-02)
  - ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)
  - iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (3-15-02)
- c.** Changes in Disciplinary Data. (3-15-02)

  - i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)

    - (1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (3-15-02)
    - (2) Dismissal of the complaint; and (3-15-02)
    - (3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)
  - ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)

    - (1) A disciplinary action; (3-15-02)
    - (2) An agreement or order requiring participation in alternative programs; (3-15-02)
    - (3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)
    - (4) Dismissal of a complaint. (3-15-02)
  - iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)

**078. -- 089. (RESERVED).**

**090. DENIAL OF LICENSE.**

- 01. Grounds for Denial of License.** (3-15-02)

  - a.** Failure to meet any requirement or standard established by law or by rules adopted by the Board; or (3-15-02)
  - b.** Failure to pass the licensing examination; or (3-15-02)
  - c.** False representation of facts on an application for licensure; or (3-15-02)
  - d.** Having another person appear in his place for the licensing examination; or (3-15-02)
  - e.** Engaging in any conduct which would be grounds for discipline under Nursing Practice Act, Section 54-1413 (1), Idaho Code or Sections 100 or 101, of these rules. (3-15-02)
  - f.** Revocation, suspension, limitation, reprimand, voluntary surrender or any other disciplinary action

or proceeding, including investigation against a license, certificate or privilege to practice by another state or jurisdiction. (3-15-02)

**02. Notification of Denial.** The Board of Nursing shall give any applicant whose application for licensure is denied written notice containing a statement: (3-15-02)

**a.** That the applicant has failed to qualify to be examined or licensed; and (6-1-78)

**b.** A description of the reason(s) for denial; and (3-15-02)

**c.** Directing the applicant's attention to his rights under Proceedings, Section 54-1413(23)(a), Idaho Code. ~~(3-15-02)~~(\_\_\_\_)

**a.** Reapplication for a license previously denied must include evidence, satisfactory to the Board, of rehabilitation, or elimination or cure of the conditions for denial. (3-15-02)

**b.** Evaluation of reapplication for a license denied under Section 54-1413, Idaho Code, shall include consideration of at least the following factors: (3-15-02)

**i.** The nature and severity of the act or omission which resulted in the denial of license; and (7-1-93)

**ii.** The conduct of the applicant subsequent to the denial of license; and (7-1-93)

**iii.** The lapse of time since denial of license; and (7-1-93)

**iv.** Compliance with any conditions the Board may have stipulated as a prerequisite for reapplication; and (7-1-93)

**v.** The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; and (7-1-93)

**vi.** Personal interview by the Board, at its discretion. (3-15-02)

**c.** Reapplication files will remain open and active for a period of twelve (12) months from date of receipt. After expiration of the twelve (12) months, the file will be closed and any subsequent reapplication will require submission of a new application form and payment of required fees. (3-15-02)

**091. -- 099. (RESERVED).**

**100. GROUNDS FOR DISCIPLINE.**

**01. False Statement.** A false, fraudulent or forged statement or misrepresentation in procuring a license to practice nursing shall mean, but need not be limited to: (6-1-78)

**a.** Procuring or attempting to procure a license to practice nursing by filing forged or altered documents or credentials; or (3-15-02)

**b.** Falsifying, misrepresenting facts or failing to verify and accurately report any and all facts submitted on any application for licensure, examination, relicensure, or reinstatement of licensure by making timely and appropriate inquiry of all jurisdictions in which licensee has made application for, or obtained, licensure or certification or engaged in the practice of nursing; or (3-15-02)

**c.** Impersonating any applicant or acting as proxy for the applicant in any examination for nurse licensure. (6-1-78)

**02. Conviction of a Felony.** Conviction of, or entry of a withheld judgment or a plea of nolo contendere

to, conduct constituting a felony. (3-15-02)

**03. False or Assumed Name.** Practicing nursing under a false or assumed name shall mean, but need not be limited to, carrying out licensed nursing functions while using other than the individual's given or legal name. (3-15-02)

**04. Offense Involving Moral Turpitude.** An offense involving moral turpitude shall mean, but need not be limited to, an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (6-1-78)

**05. Gross Negligence or Recklessness.** Gross negligence or recklessness in performing nursing functions shall mean, but need not be limited to, a substantial departure from established and customary standards of care which, under similar circumstances, would have been exercised by a licensed peer; an act or an omission where there is a legal duty to act or to refrain from acting that a reasonable and prudent practitioner of nursing under same or similar facts and circumstances would have done, would have refrained from doing or would have done in a different manner and which did or could have resulted in harm or injury to a patient/client. An exercise of so slight a degree of care as to justify the belief that there was a conscious or overt disregard or indifference for the health, safety, well-being, or welfare of the public shall be considered a substantial departure from the accepted standard of care. (6-1-78)

**06. Habitual Use of Alcohol or Drugs.** Habitual use of alcoholic beverages or narcotic, hypnotic, or hallucinogenic drugs shall mean, but need not be limited to, the use of such substances to the extent that the nurse's judgment, skills, or abilities to provide safe and competent nursing care are impaired; or that the individual is unable to care for himself or his property or his family members because of such use; or it is determined by a qualified person that the individual is in need of medical or psychiatric care, treatment or rehabilitation or counseling because of drug or alcohol use. (7-1-91)

**07. Physical or Mental Unfitness.** Physical or mental unfitness to practice nursing shall mean, but need not be limited to, a court order adjudging that a licensee is mentally incompetent, or an evaluation by a qualified professional person indicating that the licensee is mentally or physically incapable of engaging in professional or practical nursing in a manner consistent with sound patient care; or uncorrected physical defect that precludes the safe performance of nursing functions. (6-1-78)

**08. Violations of Standards of Conduct.** Violations of standards of conduct and practice adopted by the Board shall mean, but need not be limited to, any violation of those standards of conduct described in Section 101 of these rules. (3-15-02)

**09. Conduct to Deceive, Defraud or Endanger.** Conduct of a character likely to deceive, defraud, or endanger patients or the public shall include, but need not be limited to: (3-15-02)

**a.** Violating the standards of conduct and practice adopted by the Board. (3-15-02)

**b.** Being convicted of any crime or act substantially related to nursing practice and including but not limited to sex crimes, drug violations, acts of violence and child or adult abuse. (3-15-02)

**10. Action Against a License.** Action against a license shall mean entry of any order restricting, limiting, revoking or suspending or otherwise disciplining a license or privilege to practice nursing by any jurisdiction. A certified copy of an order entered in any jurisdiction shall be prima facie evidence of the matters contained therein. (3-15-02)

**11. Failure to Make Timely and Appropriate Inquiry.** Failing to make timely and appropriate inquiry verifying licensure status in all jurisdictions in which the applicant has ever applied for licensure, certification or privilege to practice, including those jurisdictions in which the applicant is currently or was ever licensed, or in which applicant has practiced, prior to filing any application, verification or other statement regarding licensure status with the Board. (3-15-02)

**12. Failure to Cooperate With Authorities.** Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, failure to provide information on request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. ( )

**13. Patterns of Poor Practice.** Repeatedly engaging in conduct that departs from the customary standards of care. ( )

**101. STANDARDS OF CONDUCT.**

**01. Violations.** Any violation of these Standards of Conduct shall be grounds for disciplinary action in accordance with Section 54-1413(1), Idaho Code, of the Idaho Nursing Practice Act and Section 090 or 100, of the Rules of the Board of Nursing. *Actions based on the violation of any standard of conduct may include, but are not limited to, monitoring, issuance of letters of concern, caution or reprimand, and suspension or revocation of license.* (3-15-02)( )

**02. Classification.** For purposes of convenience only, the standards of conduct are grouped generally into one (1) of three (3) categories: license, practice, and professional responsibility. The fact that any particular standard is so classified in any particular category will not be relevant for any purpose other than ease of use. (3-15-02)

**03. License.** (3-15-02)

**a. Period of Practice.** The nurse shall practice professional or practical nursing in Idaho only with a current Idaho license or during the period of valid temporary licensure or as otherwise allowed by law. (3-15-02)

**b. Aiding in Violation of Law.** The nurse shall not aid, abet, or assist any other person to violate or circumvent laws or rules pertaining to the conduct and practice of nursing. (11-28-84)

**c. Reporting Grossly Negligent or Reckless Practice.** The nurse shall report to the Board of Nursing any licensed nurse who is grossly negligent or reckless in performing nursing functions or who otherwise violates the Nursing Practice Act or the Board of Nursing's Rules. (7-1-93)

**d. Unlawful Use of License.** The nurse shall not permit his license to be used by another person for any purpose or permit unlicensed persons under his jurisdiction or supervision to indicate in any way that they are licensed to perform functions restricted to licensed persons. (7-1-93)

**e. Impairment of Ability.** The nurse shall not practice nursing while the ability to practice is impaired by alcohol or drugs or physical, mental or emotional disability. (11-28-84)

**04. Practice.** (3-15-02)

**a. Perform Acts.** The nurse shall have knowledge of the statutes and rules governing nursing and shall function within the defined legal scope of nursing practice. The nurse shall not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained. (3-15-02)

**b. Delegating Activities to Others.** The nurse shall delegate activities only to persons who are competent and qualified to undertake and perform the delegated activities and shall not delegate to non-licensed persons functions that are to be performed only by licensed nurses, to the detriment of patient safety. (11-28-84)

**c. Supervision.** The nurse delegating functions shall supervise the persons to whom the functions have been assigned or delegated. (11-28-84)

**d. Safeguarding Patient.** The nurse shall act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person. (7-1-93)

**e. Prescription Drugs.** The nurse shall not obtain, possess, furnish or administer prescription drugs to

any person, including self, except as directed by a person authorized by law to prescribe drugs. (11-28-84)

**f.** Leaving Assignment. The nurse shall not abandon patients in need of nursing care in a negligent or wanton manner. The nurse shall leave a nursing assignment only after properly reporting and notifying appropriate personnel and shall transfer responsibilities to appropriate personnel or care giver when continued care is required by the patient's condition. (7-1-91)

**g.** Respecting Patient's Privacy. The nurse shall respect the patient's privacy. (7-1-91)

**h.** Confidentiality. The nurse shall not disseminate information about the patient to individuals not entitled to such information except where such information is required by law or for the protection of the patient. (7-1-91)

**i.** Observe and Report. The nurse shall observe the condition and signs and symptoms of a patient, record the information, and report to appropriate persons any significant changes. (7-1-91)

**j.** Collaboration. The nurse shall function as a member of the health team and shall collaborate with other health team members as necessary to meet the patient's health needs. (7-1-91)

**k.** Universal Standards. The nurse shall adhere to universal standards and carry out principles of asepsis and infection control and shall not place the patient, the patient's family or the nurse's coworkers at risk for the transmission of infectious diseases. (3-15-02)

**05. Professional Responsibility.** (3-15-02)

**a.** Disclosing Contents of Licensing Examination. The nurse shall not disclose contents of any licensing examination, or solicit, accept, or compile information regarding the contents of any examination before, during, or after its administration. (11-28-84)

**b.** Considerations in Providing Care. In providing nursing care, the nurse shall respect and consider the individual's human dignity, health problems, personal attributes, national origin, and handicaps and shall not discriminate on the basis of age, sex, race, religion, economic or social status or sexual preferences in the rendering of nursing services. (11-28-84)

**c.** Responsibility and Accountability Assumed. The nurse shall be responsible and accountable for his nursing judgments, actions and competence. (7-1-93)

**d.** Witnessing Wastage of Controlled Substances Medication. Controlled substances may not be wasted without witnesses. The nurse shall not sign any record as a witness attesting to the wastage of controlled substance medications unless the wastage was personally witnessed. The nurse shall not solicit the signatures on any record of a person as a witness to the wastage of controlled substance when that person did not witness the wastage. The nurse shall solicit signatures of individuals who witnessed the wastage in a timely manner. ~~(3-15-02)~~(\_\_\_\_)

**e.** Record-keeping. The nurse shall make or keep accurate, intelligible entries into records required by law, employment or customary practice of nursing, and shall not falsify, destroy, alter or knowingly make incorrect or unintelligible entries into patients' records or employer or employee records. (11-28-84)

**f.** Diverting or Soliciting. The nurse shall respect the property of the patient and employer and shall not take or divert equipment, materials, property, or drugs without prior consent or authorization, nor shall the nurse solicit or borrow money, materials or property from patients. (3-15-02)

**g.** Exploit, Solicit, or Receive Fees. The nurse shall not exploit the patient or the patient's family for personal or financial gain or offer, give, solicit, or receive any fee or other consideration for the referral of a patient or client. (3-15-02)

**h.** Professionalism. The nurse must not abuse the patient's trust. The nurse shall respect the dignity of the profession and maintain appropriate professional boundaries with respect to patients, the patients' families, and

the nurse's coworkers. The nurse will not engage in violent, threatening or abusive behavior towards patients, patients' families or the nurse's coworkers. The nurse must be aware of the potential imbalance of power in professional relationships with patients, based on their need for care, assistance, guidance, and support, and ensure that all aspects of that relationship focus exclusively upon the needs of the patient. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**132. LIMITED LICENSES.**

Limited licenses may be issued to qualified individuals in four (4) categories: post-discipline, non-practicing status, restricted status, and impairment-related disability. Failure to comply with the terms and conditions of a limited license will be cause for ~~immediate discipline, including summary suspension or revocation of licensure.~~ (3-15-02)(\_\_\_\_)

**01. ~~Reinstatement After~~ Following Disciplinary Action.** (3-15-02)(\_\_\_\_)

**a.** After evaluation of an application for licensure reinstatement, the Board may issue a limited license to a nurse whose license has been revoked. (3-15-02)

**b.** The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. (3-15-02)

**02. Non-Practicing Status.** (3-15-02)

**a.** Individuals who are prevented from engaging in the active practice of nursing may be issued a limited license. (3-15-02)

**b.** The Board shall specify that the license being issued does not entitle the licensee to engage in the active practice of nursing. The non-practicing status shall be noted on the license. (3-15-02)

**c.** The non-practicing limitation may be removed by the Board following receipt and evaluation of evidence satisfactory to the Board confirming that the licensee's physical or mental health status no longer prevents the individual from engaging in the active practice of nursing. (3-15-02)

**03. Restricted Status.** (3-15-02)

**a.** Individuals whose disabilities restrict or inhibit their ability to provide a full range of nursing services may be issued a limited license. (3-15-02)

**b.** In order to determine the appropriate limitations, the Board may evaluate statements from qualified professional persons who have personal knowledge of the applicant or licensee. The Board may also evaluate job descriptions and statements from potential employers and consider input from the applicant for the limited license. (3-15-02)

**c.** The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. The conditions may include, but are not limited to: (3-15-02)

**i.** Notifying the Board of changes in employment status. (3-15-02)

**ii.** Submission of regular reports by the employer or by such other entities or individuals as the Board may desire. (3-15-02)

**iii.** Meeting with Board representatives. (3-15-02)

**iv.** Specific parameters of practice, excluding the performance of specific nursing functions. (3-15-02)

d. The conditions of limited practice may be removed by the Board following receipt and evaluation of satisfactory evidence confirming that the health status of the licensee no longer restricts or inhibits the person's ability to provide a full range of nursing services. (3-15-02)

**04. Disability Due to Alcohol or Drug Use or Emotional or Mental Impairment.** (3-15-02)

a. Individuals disabled due to alcohol or drug use or to emotional or mental impairment may qualify for issuance of a limited license as an alternative to discipline. (3-15-02)

b. The executive director may issue a limited license for a period not to exceed five (5) years to an individual who voluntarily surrenders his license by reason of a disability relating to alcohol or drug use or relating to emotional or mental impairment and who: (3-15-02)

i. Holds a current ~~Idaho~~ license to practice in Idaho as a professional or practical nurse or is otherwise eligible and is in the process of applying for licensure; and ~~(3-15-02)~~(\_\_\_\_)

ii. Abused drugs and/or alcohol or demonstrated mental disability such that ability to safely practice is/may be impaired; and (3-15-02)

iii. Sign a written statement admitting to all facts which may constitute grounds for disciplinary action or demonstrate impairment of the safe practice of nursing, and waiving the right to a hearing and all other rights to due process in a contested case under the Idaho Administrative Procedures Act and the Nursing Practice Act; and (3-15-02)

iv. Submit reliable evidence, satisfactory to the executive director, that he is competent to safely practice nursing. (3-15-02)

c. If required, the applicant shall satisfactorily complete a ~~Board approved~~ treatment program accepted by the Board. ~~(3-15-02)~~(\_\_\_\_)

d. The applicant must agree to participation in the Board's monitoring program to include: (3-15-02)

i. Evaluation of disability; (5-21-89)

ii. Approval of treatment program regimen; (5-21-89)

iii. Monitoring of progress; (5-21-89)

iv. Determination of when return to the workplace will be allowed. (7-1-96)

e. Admission to the Program for Recovering Nurses and/or issuance of a limited license may be denied for any reason including, but not limited to the following: (3-15-02)

i. The applicant diverted controlled substances for other than self administration; or (3-15-02)

ii. The applicant creates too great a safety risk; or (3-15-02)

iii. The applicant has been terminated from this, or any other, alternative program for non-compliance. (3-15-02)

f. ~~In the event an applicant is determined to be ineligible for a limited license, the executive director shall refer the applicant's surrendered license to the Board for action.~~ Upon satisfactory compliance with all of the terms of the limited license, and provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall reinstate the renewable nursing license voluntarily surrendered. ~~(3-15-02)~~(\_\_\_\_)

**§05. Compliance Required.** Limited licensure shall be conditioned upon the individual's prompt and



faithful compliance with the following: (3-15-02)(\_\_\_\_\_)

- ~~iv~~a. Satisfactory progress in any required continuing treatment or rehabilitation program. (3-15-02)
- ~~iv~~b. Regular and prompt notification to the Board of changes in name and address of self or any employer. (7-1-96)
- ~~iv~~c. Obtaining of performance evaluations prepared by the employer to be submitted at specified intervals and at any time upon request. (7-1-96)
- ~~iv~~d. Continuing participation in, and compliance with all recommendations and requirements of, the approved treatment or rehabilitation program, and obtaining of reports of progress submitted by the person directing the treatment or rehabilitation program at specified intervals and at any time upon request. (7-1-96)
- ~~iv~~e. Submission of written self-evaluations and personal progress reports at specified intervals and at any time upon request. (7-1-93)
- ~~iv~~f. Submission of reports of supervised random alcohol/drug screens at specified intervals and at any time upon request. Participant is responsible for reporting as directed, submitting a sufficient quantity of sample to be tested, and payment for the screening. (7-1-96)
- ~~iv~~g. Meeting with the Board's professional staff at any time upon request. (7-1-93)
- ~~iv~~h. Working only in approved practice settings. (7-1-96)
- ~~iv~~i. Authorization by licensee of the release of applicable records pertaining to assessment, diagnostic evaluation, treatment recommendations, treatment and progress, performance evaluations, counseling, random chemical screens, and after-care at periodic intervals as requested. (7-1-93)
- ~~iv~~j. Obedience to all laws pertaining to nursing practice, all nursing standards, and all standards, policies and procedures of licensee's employer(s) relating to any of the admitted misconduct or facts as set out in the written statement signed by licensee, or relating to the providing of safe, competent or proper nursing service. (7-1-93)
- ~~iv~~k. Compliance with other specific terms and conditions as may be required by the executive director. (3-15-02)

**06. Summary Suspension - Lack of Compliance.** (\_\_\_\_\_)

~~**iv**a. Summary Suspension. Any failure to comply with the terms and conditions of a limited license issued based upon an admission of misconduct or facts evidencing impairment of the licensee's ability to safely practice nursing by reason of drug, alcohol or other disability, shall be deemed to be an immediate threat to the health, safety, and welfare of the public and the executive director shall, upon receiving evidence of any such failure, immediately withdraw summarily suspend the limited license and refer to the advisory committee for re-evaluation.~~ (3-15-02)(\_\_\_\_\_)

i. ~~Termination~~ Summary suspension of a limited license may occur if, during participation in the program, information is received which, after investigation, indicates the individual may have violated a provision of the law or Board Rules governing the practice of nursing. (3-15-02)(\_\_\_\_\_)

ii. Upon ~~termination~~ summary suspension of a limited license, the executive director shall provide prompt written notice to the licensee stating the reason for the ~~termination~~ suspension, setting forth the evidence relied upon and notifying the licensee of his right to a hearing upon request at the earliest possible date in accordance with Section 54-1413(23)(a) ~~and (b)~~, Idaho Code. (3-15-02)(\_\_\_\_\_)

~~iv~~b. Right to Hearing. An individual whose limited license has been ~~terminated~~ summarily suspended by the executive director may request a hearing regarding the ~~termination~~ suspension by certified letter addressed to

the Board. If the individual fails to ~~so~~ request a hearing within twenty (20) days after notice of ~~termination~~ suspension by the executive director, or ~~if upon~~ after hearing ~~a determination is made that is unfavorable to him, if one is requested,~~ the Board shall enter ~~its~~ an order ~~confirming termination~~ affirming or rejecting summary suspension of the limited license and enter such further orders revoking, or suspending, or otherwise disciplining the ~~surrendered~~ nursing license as may be necessary. (3-15-02)(\_\_\_\_)

**j.** Other Orders. The Board may, for good cause, stay any order of the executive director or may modify the terms and conditions of a limited license as deemed appropriate to regulate, monitor or supervise the practice of any licensee. (3-15-02)(\_\_\_\_)

**k.** Upon satisfactory compliance with all of the terms of the limited license, and provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall reinstate the renewable nursing license voluntarily surrendered. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**135. -- 14964. (RESERVED).**

**150. PLACE OF HEARING.**

~~Hearings shall be held at the Idaho State Board of Nursing offices, Boise, Idaho or such other place as the Board shall designate.~~ (7-1-93)

**151. BOARD ACTION ON HEARING.**

- 01. Evidence Presented.** ~~Based upon evidence presented at the hearing, the Board may:~~ (7-1-93)
  - ~~a. Dismiss the complaint.~~ (11-28-84)
  - ~~b. Reprimand the licensee.~~ (11-28-84)
  - ~~c. Deny licensure.~~ (11-28-84)
  - ~~d. Deny renewal or reinstatement of a license.~~ (11-28-84)
  - ~~e. Suspend the license.~~ (11-28-84)
  - ~~f. Revoke the license.~~ (11-28-84)
  - ~~g. Enter an order of suspension or revocation but stay the order subject to probation for a designated period.~~ (11-28-84)
  - ~~h. Limit or restrict the license.~~ (7-1-93)
  - ~~i. Such other action as may be deemed appropriate.~~ (7-1-93)

**152. 163. (RESERVED).**

**164. PROBATION.**

**01. Stay of Suspension or Revocation Order.** ~~An order for suspension or revocation may be stayed for a designated period to be fixed by the Board. The Board shall determine such terms and conditions as deemed appropriate to regulate, monitor or supervise the practice of the licensee during the probation.~~ (7-1-93)

**02. Board Decision.** ~~Prior to expiration of the probation period, the Board may review and evaluate~~

~~the licensee's file and reports and may take action to reinstate the license. At any time that the terms or conditions of probation are violated or that progress and performance are unsatisfactory, the Board may summarily take action to extend the period of probation or to invoke the order of suspension or revocation.~~ (11-28-84)

**165. PETITION FOR REHEARING OR RECONSIDERATION.**

**01. Petition for Rehearing or Reconsideration.** An individual may petition for reconsideration of any final order or rehearing based upon the following grounds: (7-1-93)

- a. Newly discovered or newly available evidence relevant to the issue; (11-28-84)
- b. Error in the proceeding or Board decision that would be grounds for reversal or judicial review of the order; (11-28-84)
- c. Need for further consideration of the issues and the evidence in the public interest; or (11-28-84)
- d. A showing that issues not considered ought to be examined in order to properly dispose of the matter. (11-28-84)

~~02. **Action on Petition Administrative Procedure.** The Board may deny the petition, order a rehearing or direct such other proceedings as deemed appropriate. The Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, shall govern proceedings on petitions for reconsideration.~~ (11-28-84)( )

~~03. **Limitation of Hearing.** The hearing shall be confined to those grounds upon which reconsideration or rehearing was ordered.~~ (11-28-84)

~~04. **Board Action.** Based upon evidence submitted for rehearing or reconsideration, the Board may reaffirm, stay, withdraw, reverse, modify or amend the prior order.~~ (11-28-84)

**(BREAK IN CONTINUITY OF SECTIONS)**

**222. EXAMINATION AND RE-EXAMINATION.**

**01. Applicants for Professional or Practical Nurse Licensure.** Applicants must successfully take the National Council Licensure Examination (NCLEX) for professional nurse licensure or for practical nurse licensure, as applied for and approved. (6-11-93)( )

**02. Passing Score.** The passing ~~score for each examination series or form~~ standard will be ~~determined that established by the Board examining entity.~~ (6-1-78)( )

**03. Retaking Examination.** Candidates who do not pass an examination will be notified of the procedure for applying to retake. (6-11-93)

**04. Equivalent Exams.** In lieu of the NCLEX, the Board may accept documentation that the applicant has taken and successfully passed the State Board Test Pool examination. ( )

**223. -- 239. (RESERVED).**

**240. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT.**

An applicant for Idaho licensure by interstate endorsement must: (7-1-93)

**01. Graduation Required.** Be a graduate of a state approved/accredited practical or professional nursing education program that is substantially equivalent to Idaho's board-approved practical or professional nursing education program. Applicants for practical nurse licensure may also qualify under the provisions of Section 241 of

these rules. (7-1-93)

**02. Minimum Requirements.** Have qualifications that are substantially equivalent to Idaho's minimum requirements; and (7-1-91)

**03. Licensing Examination.** Have taken the same licensing examination as that administered in Idaho and achieved scores established as passing for that examination by the Board, unless the applicant was licensed by examination prior to 1950; and (6-11-93)

**04. Current Practice Experience.** Have actively practiced nursing at least eighty (80) hours within the preceding three (3) years. ( )

**045. License from Another State or Territory.** Hold a license in good standing from another state or territory of the United States. The license of any applicant subject to official investigation or disciplinary proceedings shall not be considered in good standing. (7-1-91)

**241. ~~PRACTICAL NURSE~~ LICENSURE BY EQUIVALENCY AND ENDORSEMENT LICENSURE.**

**01. Application by Equivalency.** An applicant for practical nurse licensure by interstate endorsement based on equivalency must meet the following requirements: (~~11-28-84~~)( )

**01a. Licensing Examination.** Have successfully taken the same licensing examination as that administered in Idaho; and (7-1-93)

**02b. License from Another State or Territory.** Hold a license in another state or territory based on successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses to include a course(s) in personal and vocational relationships of the practical nurse (or equivalent experience) and additional courses equivalent to those same courses included in a practical nursing program approved by the board, and provide evidence thereof. (~~7-1-93~~)( )

**02. Applicants Licensed in Another State or Territory.** Graduates of schools of nursing located outside the United States or its territories who are licensed in a state or territory who meet the requirements of Subsections 240.02 through 240.05 of these rules may be processed as applicants for licensure by endorsement from another state. ( )

**24203. Application for Licensure by Endorsement.** A completed application for licensure by interstate endorsement must include all of the following: (7-1-93)

**01a. Application Form.** Completed, notarized application form provided by the Board; and (6-1-78)

**02b. Verification.** Verification and documentation of licensure status from state of applicant's original licensure; and (3-15-02)

**03c. Employment Reference.** One (1) satisfactory nursing employment reference from the three (3) year period immediately preceding the application; and (3-15-02)

**04d. Census Questionnaire.** Completed Census Questionnaire; and (6-1-78)

**05e. Fee.** Payment of all required fees. (3-15-02)

**06f. Criminal Background Check.** A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

**2432. -- 259. (RESERVED).**

**260. QUALIFICATIONS FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES OR ITS TERRITORIES.**

A graduate from a nursing education program outside of the United States or its territories must: (3-30-01)

**01. Examination Qualifications.** ~~Pass examination(s), approved by the Board, which~~ Demonstrate nursing knowledge and written and spoken English proficiency. ~~(4-6-05)(\_\_\_\_)~~

**02. Education Credentials.** Have education qualifications that are substantially equivalent to Idaho's minimum requirements at the time of application. (3-30-01)

**03. License.** Hold a license or other indication of authorization to practice in good standing, issued by a government entity or agency from a country outside the United States or its territories. ~~(3-30-01)(\_\_\_\_)~~

**04. Examination/Re-Examination.** Take and achieve a passing score on the licensing examination required in Subsection ~~26322.01~~ and achieve the score determined as passing for that examination by the Board of these rules. ~~(3-30-01)(\_\_\_\_)~~

~~**05. Applicants Licensed in Another State or Territory.** Graduates of schools of nursing located outside the United States or its territories who are licensed in a state or territory who meet the requirements of Section 240 may be processed as applicants for licensure by endorsement from another state. (3-30-01)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~262. (RESERVED).~~

~~263. EXAMINATION AND RE-EXAMINATION OF GRADUATES OF FOREIGN SCHOOLS OF NURSING.~~

~~**01. Applicants for Professional Nurse or Practical Nurse Licensure.** Applicants must successfully take the approved examination for professional nurse licensure or for practical nurse licensure, as applied for and approved. (6-11-93)~~

~~**02. Examination Written Previously.** Graduates of schools of nursing located outside the United States or its territories, who have successfully taken the State Board Test Pool Examination or the National Council Licensure Examination, may be processed as applicants for licensure by endorsement from another state in the United States. (3-30-01)~~

~~264. -- 270. (RESERVED).~~

**271. DEFINITIONS RELATED TO ADVANCED PRACTICE PROFESSIONAL NURSING.**

**01. Accountability.** Means being answerable for one's own actions. (7-1-99)

**02. Advanced Practice Professional Nurse.** Means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a post-basic program of study as defined herein and is authorized to perform advanced nursing practice, which may include acts of diagnosis and treatment, and the prescribing, administering and dispensing of therapeutic pharmacologic and non-pharmacologic agents, as defined herein. Advanced practice professional nurses shall include certified nurse-midwives, clinical nurse specialists, nurse practitioners, and registered nurse anesthetists. Advanced practice professional nurses, when functioning within the recognized scope of practice, assume primary responsibility for the care of their patients. This practice incorporates the use of professional judgment in the assessment and management of wellness and conditions appropriate to the advanced practice professional nurse's area of specialization. (7-1-99)

**03. Authorized Advanced Practice Professional Nurse.** Means an advanced practice professional nurse authorized by the board to prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to Section 315. (7-1-99)

**04. Certification.** Means recognition of the applicant's advanced knowledge, skills and abilities in a defined area of nursing practice by a national organization recognized by the board. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with generally accepted standards of validation and reliability. (7-1-99)

**05. Certified Nurse-Midwife.** Means a licensed professional nurse who has graduated from a nationally accredited nurse-midwifery program, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a nurse-midwife from a national organization recognized by the board. (7-1-99)

**06. Clinical Nurse Specialist.** Means a licensed professional nurse who has graduated from a nationally accredited graduate program in nursing with a clinical focus, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a clinical nurse specialist from a national organization recognized by the board. (7-1-99)

**07. Collaboration.** Means the cooperative working relationship with another health care provider, each contributing his respective expertise in the provision of patient care, and such collaborative practice includes the discussion of patient treatment and cooperation in the management and delivery of health care. (7-1-99)

**08. Consultation.** Means conferring with another health care provider for the purpose of obtaining information or advice. (7-1-99)

**09. Diagnosis.** Means identification of actual or potential health problems and the need for intervention based on analysis of data collected. Diagnosis depends upon the synthesis of information obtained during the interview, physical exam, or diagnostic tests. (7-1-99)

**10. Intervention.** Means measures to promote health, protect against disease, treat illness in its earliest stages, manage acute and chronic illness, and treat disability. Interventions may include, but are not limited to ordering diagnostic studies, performing direct nursing care, prescribing pharmacologic or non-pharmacologic or other therapies and consultation with or referral to other health care providers. (7-1-99)

**11. Nurse Practitioner.** Means a licensed professional nurse who has graduated from a nationally accredited nurse practitioner program, passed a qualifying examination recognized by the board, and has current initial certification or current recertification as a nurse practitioner from a national organization recognized by the board. (7-1-99)

**12. Peer Review Process.** The systematic process by which one assesses, monitors, and makes judgments about the quality of care provided to patients by other peers measured against established practice standards. Peer review: ( )

**a.** Measures on-going practice competency of the advance practice professional nurse (APPN);( )

**b.** Is performed by a licensed APPN, Physician, PA, or other professional certified by a recognized credentialing organization; and ( )

**c.** Focuses on a mutual desire for quality of care and professional growth incorporating attitudes of mutual trust and motivation. ( )

**123. Prescriptive and Dispensing Authorization.** Means the legal permission to prescribe, deliver, distribute and dispense pharmacologic and non-pharmacologic agents to a client in compliance with board rules and applicable federal and state laws. Pharmacologic agents include legend and Schedule II through V controlled substances. (7-1-99)

**134. Referral.** Means directing a client to a physician or other health professional or resource. (7-1-99)

**145. Registered Nurse Anesthetist.** Means a licensed professional nurse who has graduated from a

nationally accredited nurse anesthesia program, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a nurse anesthetist from a national organization recognized by the board. (7-1-99)

**156. Scope of Practice of Advanced Practice Professional Nurse.** Means those activities that the advanced practice professional nurse may perform. Those activities shall be defined by the board according to the advanced practice professional nurse's education, preparation, experience and the parameters set forth by the advanced practice professional nurse's recognized, national certifying organization. (7-1-99)

**167. Specialization.** Means focusing the advanced practice professional nurse's clinical area of practice, including but not limited to, family health, mental health, child health, gerontological health, adult health or other. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**290. APPLICATION FOR LICENSURE -- ADVANCED PRACTICE PROFESSIONAL NURSE.**  
The advanced practice professional nurse requesting licensure to practice as a certified nurse-midwife, clinical nurse specialist, nurse practitioner or registered nurse anesthetist must submit an application to the board which includes: (7-1-99)

**01. Application Form.** Completed, notarized application form provided by the board. (7-1-99)

**02. Official Transcript.** Official transcript from the advanced practice nursing education program verifying successful completion. (7-1-99)

**03. National Certification.** Verification of current national certification from the board-recognized certifying agent; and (7-1-99)

**04. Enrollment in Continuing Competency Assessment Program.** In addition to verification of national certification, a certified nurse-midwife must submit proof of enrollment in the continuing competency assessment program of the American College of Nurse-Midwives which bears a current expiration date. At the end of five (5) years, the certified nurse-midwife must submit evidence of completion of the continuing competency requirement of the program. (7-1-99)

**05. Fee.** ~~A non-refundable The fee of ninety dollars (\$90) prescribed in Subsection 901.02 of these rules.~~ (7-1-99)( )

**06. Criminal Background Check.** A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

**291. -- 294. (RESERVED).**

**295. TEMPORARY LICENSURE -- ADVANCED PRACTICE PROFESSIONAL NURSE.**  
A temporary license to engage in advanced practice professional nursing as a certified nurse-midwife, clinical nurse specialist, nurse practitioner, or registered nurse anesthetist may be issued to the following: (7-1-99)

**01. Applicants Awaiting Initial Certification Examination Results.** An otherwise qualified applicant who is eligible to take the first available certification examination following completion of an approved advanced practice professional nurse education program. Verification of registration to write a board-recognized national certification examination must be received from the national certifying organization. (7-1-99)

**a.** Temporary licensure to practice shall be deemed to expire upon failure of the certification examination. An applicant who fails the national certification exam shall not engage in advanced practice professional nursing until such time as all requirements are met. (7-1-99)

b. An applicant who is granted a temporary license to practice as an advanced practice professional nurse must submit notarized results of the certification examination within ten (10) days of receipt. Failure to submit required documentation shall result in the immediate expiration of the temporary license. (7-1-99)

c. The temporary license of an applicant who does not write the examination on the date scheduled shall immediately expire and the applicant shall not engage in advanced practice professional nursing until such time as all requirements are met. (7-1-99)

**02. Applicants Whose Certification Has Lapsed.** A licensed professional nurse applying for re-entry into advanced professional nursing practice, who is required by the national certifying organization to meet certain specified practice requirements under supervision. The length of and conditions for temporary licensure shall be determined by the board. (7-1-99)

**03. Applicants Holding a Temporary Professional Nursing License.** An advanced practice professional nurse currently authorized to practice advanced practice professional nursing in another state upon issuance of a temporary license to practice as a professional nurse, and upon evidence of current initial certification or recertification as an advanced practice professional nurse from a board-recognized national certifying organization. (7-1-99)

**04. Applicants Without Required Practice Hours.** An advanced practice professional nurse who has not practiced the minimum required period of time during the renewal period may be issued a temporary license in order to acquire the required number of hours and demonstrate ability to safely practice. (7-1-99)

**05. Application Processing.** An APPN whose application has been received but is not yet complete may be issued a temporary license. ( )

**056. Expiration Term of Temporary License.** The A temporary license expires ~~when the~~ at the conclusion of the term for which it is issued, or the issuance of a renewable ~~advanced practice professional nurse license is granted,~~ whichever occurs earlier. (7-1-99)( )

296. -- 299. (RESERVED).

**300. RENEWAL AND REINSTATEMENT OF ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.**

The advanced practice professional nurse license may be renewed every two (2) years as prescribed in the Section 54-1411, Idaho Code, provided that the advanced practice professional nurse: (7-1-99)

**01. Current Professional License.** Maintains a current professional nurse license, or privilege, to practice in Idaho. (3-15-02)

**02. Evidence of Certification.** Submits evidence of current certification by a national organization recognized by the Board; and (7-1-99)

**03. Evidence of Continuing Education.** Provides documentation of thirty (30) contact hours of continuing education during the renewal period. Continuing education completed may be that required for renewal of national certification if documentation is submitted confirming the certifying organization's requirement is for at least thirty (30) contact hours. These contact hours may include the requirements identified in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 315.02.b. in a two (2) year period. (7-1-99)

**04. Hours of Practice.** Attests, on forms provided by the board, to a minimum of two hundred (200) hours of advanced professional nursing practice within the preceding two (2) year period. (7-1-99)

**05. Fee.** ~~Remits a non-refundable renewal~~ Pays the fee of fifty dollars (\$50) prescribed in Subsection 900.05 of these rules. (7-1-99)( )

**06. Criminal Background Check.** Submits a current fingerprint based criminal history check as set



forth in Section 54-1401(3), Idaho Code. (4-6-05)

**07. Peer Review Process.** Provides evidence, satisfactory to the board, of completion of a peer review process acceptable to the board. Applies to: (4-6-05)

a. CNM, Certified Nurse Midwife; (4-6-05)

b. CNS, Clinical Nurse Specialist; and (4-6-05)

c. NP, Nurse Practitioner. (4-6-05)

**08. Exemption From Requirements.** Nurse practitioners not certified by a national organization recognized by the board and approved prior to July 1, 1998 shall be exempt from the requirement set forth in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 300.02. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**306. DISCIPLINARY ENFORCEMENT.**~~

~~The board may revoke, suspend or otherwise discipline the advanced practice professional nurse license of a licensee who fails to comply with current recognized scope and standards of practice, who fails to maintain national certification or competency requirements, or who violates the provisions of the Nursing Practice Act or rules of the board.~~ (7-1-99)

~~**307. -- 309. (RESERVED).**~~

**Section 310 is being renumbered to Subsection 390.02**

~~**310. -- 314. (RESERVED).**~~

**315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE PROFESSIONAL NURSES.**

**01. Initial Authorization.** An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. (7-1-99)

a. An advanced practice professional nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice category, shall: (7-1-99)

i. Be currently licensed as an advanced practice professional nurse in Idaho; and (7-1-99)

ii. Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, which are related to the applicant's advanced practice category scope of practice and include: (7-1-99)

(1) Pharmacokinetic principles and their clinical application; (7-1-99)

(2) The use of pharmacologic agents in the prevention of illness, restoration, and maintenance of health; (7-1-99)

(3) Federal and state laws relating to the purchasing, possessing, prescribing, administering, and disposing of pharmacologic and nonpharmacologic agents; (7-1-99)

(4) Prescription writing; (7-1-99)

- (5) Drug selection, dosage and route of administration; and (7-1-99)
- (6) Drug interactions. (7-1-99)
- iii. Submit a completed, notarized application form provided by the board; and (7-1-99)
- iv. Remit ~~a non-refundable~~ fees ~~of fifty dollars (\$50)~~ prescribed in Subsection 901.05 of these rules. (7-1-99)(\_\_\_\_)
- b. Exceptions to the pharmacotherapeutic education may be approved by the board. (7-1-99)
- c. Prescriptions written by authorized advanced practice professional nurses shall comply with all applicable state and federal laws and be signed by the prescriber with the abbreviation for the applicable category of advanced nursing practice, the identification number assigned by the board and where applicable, the Idaho controlled substance registration number and the federal Drug Enforcement Agency registration number. (7-1-99)
- d. Advanced practice professional nurse authorization shall expire and may be renewed at the same time as the advanced practice professional nurse license. (7-1-99)
- 02. Authorization Renewal.** Authorization may be renewed provided the applicant: (7-1-99)
- a. Maintains a valid advanced practice professional nurse license; (7-1-99)
- b. Has completed ten (10) contact hours of approved pharmacology-related continuing education in the twenty-four (24) months immediately preceding application for renewal; and (7-1-99)
- c. Has not engaged in any act or omission in the exercise of prescriptive authority which demonstrates a threat to the public. (7-1-99)
- 03. Temporary Authorization.** The board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice professional nurse license and who meets the requirements for initial authorization pursuant to IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 315.01. (7-1-99)
- 04. Expiration of Temporary Prescriptive Authorization.** Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice professional nurse license. (7-1-99)
- 05. Dispensing Authorization.** All authorized advanced practice professional nurses may dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws, subject to the following conditions: (7-1-99)
- a. Valid Advanced Practice Professional Nurse/Patient Relationships. An advanced practice professional nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice professional nurse/patient relationship has been established. A valid relationship will exist when the advanced practice professional nurse has obtained sufficient knowledge of the patient's medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-99)
- b. Restrictions on the Dispensing of Controlled Substances. Dispensing of Schedule II controlled substances shall be limited to emergency periods to be determined on the basis of individual circumstances. The emergency period will extend only until the Schedule II prescription can be filled from a pharmacy. (7-1-99)
- 06. Accountability.** The advanced practice professional nurse when exercising prescriptive and dispensing authority is accountable for: (7-1-99)
- a. Patient selection; (7-1-99)

- b. Problem identification through appropriate assessment; (7-1-99)
- c. Medication and device selection; (7-1-99)
- d. Patient education for use of therapeutics; (7-1-99)
- e. Knowledge of interactions of therapeutics; (7-1-99)
- f. Evaluation of outcome; and (7-1-99)
- g. Recognition and management of complications and untoward reactions. (7-1-99)

**316. GROUNDS FOR DISCIPLINE OF AN ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.**

In addition to the grounds set forth in Section 54-1413, Idaho Code and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," subject to Section 100, an advanced practice professional nursing license may be suspended, revoked, placed upon probation, or other disciplinary sanctions imposed by the board on the following grounds:~~(7-1-99)~~(\_\_\_\_)

- 01. Prescribing or Dispensing Controlled Substances.** Prescribing, dispensing, or selling any drug classified as a controlled substance to a family member or to himself. (7-1-99)
- 02. Violating Governing Law.** Violating any state or federal law relating to controlled substances. (7-1-99)
- 03. Outside Scope of Practice.** Prescribing or dispensing outside the scope of the advanced practice professional nurse's practice. (7-1-99)
- 04. Other Than Therapeutic Purposes.** Prescribing or dispensing for other than therapeutic purposes. (7-1-99)
- 05. Violation of Nursing Practice Act or Board Rules.** Violating the provisions of the Nursing Practice Act or the rules of the board. (7-1-99)

**317. ~~WITHDRAWAL~~ SUMMARY SUSPENSION OF ADVANCED PRACTICE PROFESSIONAL NURSE PRESCRIPTIVE AUTHORIZATION.**

Failure to maintain active licensure as an advanced practice professional nurse shall result in the ~~automatic withdrawal~~ summary suspension of prescriptive authorization. ~~(7-1-99)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**390. USE OF TITLES, ABBREVIATIONS, AND DESIGNATIONS FOR THE PRACTICE OF NURSING.**

- 01. ~~Temporary License Title for Graduates.~~ Temporary License Title for Graduates. ~~The~~ A new graduate issued a temporary license ~~pending notification of examination results~~ pursuant to Section 040 of these rules shall use the title graduate nurse, abbreviated G.N., or graduate practical nurse, abbreviated G.P.N., or graduate nurse midwife, abbreviated G.N.M., or graduate clinical nurse specialist, abbreviated G.C.N.S., or graduate nurse practitioner, abbreviated G.N.P., or graduate nurse anesthetist, abbreviated G.N.A., whichever is appropriate, until the renewable license is ~~granted~~ issued. ~~(5-21-79)~~(\_\_\_\_)**
- 02. ~~Temporary License for New Graduate.~~ Temporary License for New Graduate. ~~A new graduate practicing on a temporary license must be provided direct supervision by a licensed professional nurse and may not assume charge responsibilities.~~ ~~(11-28-84)~~**

~~03. **Failure to Pass Examination.** If the new graduate fails to pass the licensing examination, licensed nursing functions may not be carried out and the individual must use the title aide, nursing assistant, etc., as appropriate for auxiliary workers in the employment setting. (5-21-79)~~

~~02. **Titles.** An individual who has successfully met all requirements for licensure as an advanced practice professional nurse shall have the right to use the title corresponding to the category of advanced nursing practice for which the individual is licensed. (7-1-99)~~

~~01a. **Title of Certified Nurse-Midwife.** Individuals who have successfully met all requirements for licensure as a certified nurse-midwife shall have the right to use the title certified nurse-midwife, abbreviated C.N.M. (7-1-99)~~

~~02b. **Title of Clinical Nurse Specialist.** Individuals who have successfully met all requirements for licensure as a clinical nurse specialist shall have the right to use the title clinical nurse specialist, abbreviated C.N.S. (7-1-99)~~

~~03c. **Title of Nurse Practitioner.** Individuals who have successfully met all requirements for licensure as a nurse practitioner shall have the right to use the title nurse practitioner, abbreviated N.P. (7-1-99)~~

~~04d. **Title of Registered Nurse Anesthetist.** Individuals who have successfully met all requirements for licensure as a registered nurse anesthetist shall have the right to use the title registered nurse anesthetist, abbreviated R.N.A. (7-1-99)~~

~~043. **Registered Nurse Title.** Individuals who have successfully met all requirements for licensure as professional nurses shall have the right to use the title Registered Nurse, abbreviated R.N. (5-21-79)~~

~~054. **Licensed Practical Nurse Title.** Individuals who have successfully met all requirements for licensure as practical nurses shall have the right to use the title Licensed Practical Nurse, abbreviated L.P.N. (5-21-79)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. LICENSED PROFESSIONAL NURSE FUNCTIONING IN SPECIALITY AREAS.**  
A licensed professional nurse may carry out functions beyond the basic educational preparation under certain conditions. (7-1-96)

**01. Conditions for Licensed Professional Nurses Functioning in Specialty Practice Areas.** A licensed professional nurse may carry out functions beyond the educational preparation described in Sections 600 through ~~6821 of these rules~~ when the nurse: ~~(5-3-03)(\_\_\_\_\_)~~

**a.** In addition to completion of the curriculum requirements of Sections 600 through ~~6821 of these rules~~, has completed any specific education, training, and supervised practice as may be required in the Nursing Practice Act or rules; and ~~(5-3-03)(\_\_\_\_\_)~~

**b.** Conforms to recognized standards for practice of the specialty; and (5-3-03)

**c.** Follows written protocols approved by medical staff, nursing administration, and the employing agency administration. (5-3-03)

**02. Recognized Specialty Practice Areas.** Additional education, training, and practice: (5-3-03)

**a.** Flight/Transport Nurse. A flight/transport nurse is a licensed professional nurse who provides critical care services with a duly licensed transporting agency. (5-3-03)

- i. Basic qualifications include at least two (2) years (four thousand (4,000) hours) of critical care nursing experience in the specialty area pertinent to the type of service being provided. (5-3-03)
  - ii. Licensed professional nurses who regularly provide care in the pre-hospital setting must maintain emergency medical technician credentialing. (5-3-03)
  - iii. Individual educational requirements commensurate with the specialty care being provided may include, but are not limited to: Neonatal Resuscitation Program (“NRP”), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), Trauma Nurse Core Curriculum (TNCC) or Flight Nurse Advanced Trauma Course (FNATC) and radio communications. (5-3-03)
  - iv. Flight nurses must also have course work in flight physiology, aircraft safety and survival. (5-3-03)
  - v. A flight/transport nurse must have received a minimum of forty (40) hours of supervised clinical experience before functioning independently. (5-3-03)
- b.** Surgical First Assistants. A surgical first assistant is a licensed professional nurse who, under direct supervision, assists the operating surgeon. (5-3-03)
- i. Nurses acting as surgical first assistants may not concurrently serve as scrub or instrument nurses. (5-3-03)
  - ii. A licensed professional nurse first surgical assistant in cardiovascular surgery may harvest saphenous veins after completing additional educational instruction acceptable to the board and supervised practice under direct supervision of the operating physician. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**490. UNLICENSED ASSISTIVE PERSONNEL (UAP).**

The term unlicensed assistive personnel, also referred to as “UAP”, is used to designate unlicensed personnel employed to perform nursing care services under the direction and supervision of licensed nurses. The term unlicensed assistive personnel also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. (5-3-03)

**01. Not a Substitute for the Licensed Nurse.** Unlicensed assistive personnel may complement the licensed nurse in the performance of nursing functions, but may not substitute for the licensed nurse; unlicensed assistive personnel may not redelegate a delegated act. (5-3-03)

**02. Delegation.** The nursing care tasks that may be delegated to unlicensed assistive personnel shall be stated in writing in the practice setting. Decisions concerning delegation will be determined in accordance with the provisions of Section 400. (5-3-03)

**03. Training.** The following training requirements apply to all unlicensed assistive personnel. The training program shall: (5-3-03)

- a. Include written objectives which describe the expected outcomes for the learner and which can be evaluated by written or oral examination and by clinical demonstration of competency or application; and (5-3-03)
- b. Incorporate learning experiences appropriate to the stated objectives; and (5-3-03)
- c. Be conducted by licensed professional nurses and other licensed health professionals, including, but not limited to, physicians, pharmacists, psychologists, social workers, and dieticians; and (5-3-03)

- d. Include an evaluation mechanism to determine the effectiveness of the program; and (5-3-03)
- e. Address the general unlicensed assistive personnel curriculum content areas set forth in Subsection 681.04.h. (5-3-03)
- 04. Nurse Aide Registry.** In addition to the foregoing training requirements, UAP desiring placement on the Nurse Aide Registry must comply with the requirements set forth in Sections 600 through 681. (5-3-03)
- 05. Assistance with Medications.** Where permitted by law, after completion of a Board-approved training program, unlicensed assistive personnel in care settings may assist patients who cannot independently self-administer medications, provided that: (5-3-03)
  - a. A plan of care has been developed by a licensed professional nurse; and (7-1-96)
  - b. The act has been delegated by a licensed nurse; and (7-1-96)
  - c. Written and oral instructions have been given to the unlicensed assistive personnel by a licensed nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency; and (7-1-96)
  - d. The medication is in the original pharmacy-dispensed container with proper label and directions or in an original over-the-counter container or the medication has been removed from the original container and placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container. Inventories of narcotic medications must be maintained; and (7-1-96)
  - e. Any medication dosages not taken and the reasons thereof are recorded and reported to appropriate supervisory persons; and (5-3-03)
  - f. Assistance with medication may include: breaking a scored tablet, crushing a tablet, instilling eye, ear or nose drops, giving medication through a pre-mixed nebulizer inhaler or gastric (non nasogastric) tube, assisting with oral or topical medications and insertion of suppositories. (7-1-96)
- 06. Prohibitions and Limitations.** Unlicensed assistive personnel are prohibited from performing any licensed nurse functions that are specifically defined in Section 54-1402-~~(b)~~, Idaho Code. (~~5-3-03~~)(      )
  - a. Unlicensed assistive personnel may not be delegated procedures involving acts that require nursing assessment or diagnosis, establishment of a plan of care or teaching, the exercise of nursing judgment, or procedures requiring specialized nursing knowledge, skills or techniques. (5-3-03)
  - b. Examples of procedures that should not be delegated to unlicensed assistive personnel include, but are not limited to: (5-3-03)
    - i. Sterile procedures; and (5-3-03)
    - ii. Preparation or administration of injections; and (5-3-03)
    - iii. Start, stop or adjust any IV therapy; and (5-3-03)
    - iv. Oxygen adjustment without clear direction from a licensed nurse; and (5-3-03)
    - v. Nasogastric tube feedings or medication administration; and (5-3-03)
    - vi. Mixing or compounding medications; and (5-3-03)
    - vii. Prepare, apply or adjust intermittent positive-pressure breathing machines; and (5-3-03)
    - viii. Assisting with either preparation or administration of non-routine medications; and (5-3-03)

- ix. Any act not consistent with Subsection 490.02. (5-3-03)

**491. TECHNICIANS/TECHNOLOGISTS.**

*These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants.* (5-3-03)

**01. Functions.** Technicians/technologists may perform limited nursing functions within the ordinary, customary, and usual roles in their fields and are exempted from licensure by the Board of Nursing under Section 54-1412, Idaho Code, (Nursing Practice Act), provided they are: (5-3-03)

- a. Enrolled in or have completed a formal training program acceptable to the board; or (5-3-03)
- b. Registered with or certified by a national organization acceptable to the board. (5-3-03)

**02. Supervision.** Technicians/technologists providing basic nursing care services on an organized nursing unit in an institutional setting must function under the supervision of a licensed professional nurse. *A licensed professional nurse shall be responsible for the development of the job description, guidelines/protocols under which the technician/technologist provides nursing care.* (5-3-03)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**900. RENEWAL AND REINSTATEMENT FEES.**

Fees will be assessed for renewal of licensure, ~~for late renewal~~ or for reinstatement of a lapsed ~~license, or reinstatement of a~~ disciplined, limited, or emeritus license. Any person submitting the renewal application and fee post-marked later than August 31 shall be considered delinquent and the license lapsed and therefore invalid: (4-2-03)( )

**01. Licensed Professional Nurse Renewal Fee.** Licensed professional nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year; and (3-30-06)

**02. Licensed Practical Nurse Renewal Fee.** Licensed practical nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each even-numbered year; and (3-30-06)

**03. Advanced Practice Professional Nurse.** Licensed advanced practice professional nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year; and (3-30-06)

**04. Emeritus License.** Emeritus status nurses will be assessed a renewal fee of twenty dollars (\$20) due by August 31 of the renewal year. (4-2-03)

**05. ~~Late-Renewal/Reinstatement Fee.~~** ~~Advanced practice professional nurses, licensed professional nurses, licensed practical nurses, and emeritus status~~ Nurses; requesting ~~a late renewal,~~ reinstatement of a lapsed ~~license, or reinstatement of a~~ disciplined, limited, or emeritus license, ~~and or reinstatement of an~~ emeritus license to active status ~~nurses seeking reinstatement of a license to active practice,~~ will be assessed ~~a fee of thirty five dollars (\$35) for~~ the records verification and ~~a fifty dollar (\$50) renewal fees which will be due upon application.~~ (4-2-03)( )

**06. Delay in Processing.** Processing of renewal applications not accompanied by cash, cashier's check, a money order, or other guaranteed funds may be delayed in order to allow clearance of personal checks through the licensee's bank. (3-30-01)

**901. LICENSURE FEES.**

Fees will be assessed for licensure of professional and practical nurses by examination and endorsement, and for temporary licenses and verification of licensure to another state. (6-1-78)

01. **Licensure by Examination.** A fee will be assessed applicants for licensure by examination as follows: (3-30-01)
- a. Professional nurse applicants: ninety dollars (\$90). (3-30-01)
  - b. Practical nurse applicants: seventy-five dollars (\$75). (3-30-01)
02. **Advanced Practice Professional Nurses.** Advanced practice professional nurse applicants: ninety dollars (\$90). (3-30-01)
03. **Licensure by Endorsement.** The fee assessed for licensure by endorsement of licensed professional and licensed practical nurses will be one hundred ten dollars (\$110). (3-30-06)
04. **Verification of Licensure Fee.** Licensed professional and licensed practical nurses requesting verification of licensure to another state will be assessed a fee of thirty dollars (\$30) which will be due upon request. (3-30-01)
05. **Authorization Fee.** Advance practice professional nurses will be assessed an authorization fee of fifty dollars (\$50) which will be due upon application. (3-30-01)
06. **Emeritus License Fee.** Applicants requesting emeritus status will be assessed a fee of twenty-five dollars (\$25), which will be due upon application. (4-2-03)
07. **Temporary License Fee.** Professional and practical nurses requesting a temporary license will be assessed a fee of twenty-five dollars (\$25) which will be due upon application. (3-30-01)
08. **Limited License Fee.** Persons who are issued a limited license following disciplinary action or temporary voluntary surrender of a license will be assessed a fee of one hundred dollars (\$100) which will be due upon issuance of the limited license. (3-30-01)
09. **Records Verification Fee.** Thirty-five dollars (\$35). ( )



## IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

### 25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

#### DOCKET NO. 25-0101-0602

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) (36-2107(b) and (d), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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: As provided for in Section 36-2106, Idaho Code, this rule change will give the Board greater flexibility in scheduling Board meetings. The proposed change amends Section 071 by removing existing language that restricts the Board from scheduling meetings at times other than those now stipulated in rule. This proposed rule will have minimal impact on the outfitting and guiding industry and the public.

**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: 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule change will have minimal impact on the outfitting and guiding industry and on the public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 14th day of July, 2006.

Jake Howard, Executive Director  
Outfitters and Guides Licensing Board  
1365 North Orchard, Suite 172  
Boise, ID 83706  
(208) 327-7380 / FAX (208) 327-7382

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 25-0101-0602

##### **071. BOARD MEETINGS.**

Board meeting dates shall be established for the conduct of regular Board business ~~on a calendar year basis. Such meetings shall be held beginning the fourth Monday of February, April, June and August. Additional meetings may be scheduled at other times during the year~~ in accordance with the Idaho Open Meeting Law, Idaho Code 67-2340 through 67-2347. (9-1-90)( )

## **IDAPA 27 - BOARD OF PHARMACY**

### **27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY**

#### **DOCKET NO. 27-0101-0603**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 31, 2006.

**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 Sections 54-1717 and 37-2715, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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:

Pharmacies in Idaho have requested specificity regarding the positive identification records to be kept by pharmacies when filling prescriptions for controlled substances. Clarification was also requested by the legislative committee which reviewed the rule during the 2006 legislative session. There is an immediate need for the rule change to assist pharmacies to protect the public health and welfare of Idaho citizens by maintaining appropriate records for law enforcement and the Board of Pharmacy with respect to regulation of controlled substance prescription drugs. The proposed rule changes specifically delineate the positive identification information that pharmacies must keep when dispensing controlled substance prescription drugs directly to individuals at the pharmacy. The proposed rule changes also specifically set out the standards to be met by the pharmacies with respect to retrieval of the positive identification information.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(2)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This temporary rule is necessary to protect the public health and welfare and to comply with deadlines in amendments to governing law.

**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: 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the immediate need for the rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact R. K. "Mick" Markuson, Director, (208) 334-2356.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 13th day of July, 2006.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0603**

**464. FILLING OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE.**

**01. Filling and Dispensing.** 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. (7-31-06)T

**02. Identification.** 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.

**03. Each Controlled Substance Prescription Dispensed.** For each controlled substance prescription dispensed directly to an individual at the pharmacy, the pharmacy shall maintain a record of: (7-31-06)T

**a. The name of the person receiving the prescribed controlled substance (if other than the patient);** (7-31-06)T

**b. The type of positive identification presented by such person, the state, military branch, or other governmental entity issuing the identification; and** (7-31-06)T

**c. The specific identification number of the drivers license, identification card or passport.** (7-31-06)T

**04. Other Means of Positive Identification.** 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; ~~in such instances, the pharmacy shall maintain a record of:~~ (4-11-06)(7-31-06)T

**a. The name of the person receiving the prescribed controlled substance (if other than the patient);** (7-31-06)T

**b. A notation indicating that the patient or other person receiving the prescribed controlled substance was known to the pharmacy staff; and** (7-31-06)T

**c. The name of the pharmacy staff person making the identification.** (7-31-06)T

**05. Retrieval of Identification Records.** The identification records required under Subsection 464.02 of this rule may be maintained by the pharmacy in any fashion provided that the pharmacy must be able to produce such records upon any lawful request, and match the prescription filled with the positive identification records for the person receiving the prescribed controlled substances, within no more that two (2) business days from the date of the request. (7-31-06)T

## **IDAPA 33 - REAL ESTATE COMMISSION**

### **33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION**

#### **DOCKET NO. 33-0101-0601 (FEE RULE)**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 54-2007 and 54-2020(1), Idaho Code.

**PUBLIC HEARING:** Public hearing concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 24, 2004.

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

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

This rule reduces the individual licensing fee by twenty dollars (\$20) per bi-annual licensing period, from \$180 per bi-annual licensing period, to \$160. The Commission decided to reduce the fee amount after conducting an analysis of its budget and the impact of this rule change.

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

This rulemaking confers a benefit, by reducing the individual licensing fee.

**FEE SUMMARY:** No new fee or charge is being imposed. Rather, this rule reduces the fee amount by twenty dollars (\$20) per bi-annual licensing period.

**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: No no impact to the general fund; IREC is a self-governing agency. The impact to the Special Real Estate Account is an estimated revenue reduction of \$283,000 for the two-year period FY07 and FY08.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Donna M. Jones, (208) 334-3285.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 24th day of July, 2006.

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  
(208) 334-3285  
(208) 334-2050 (fax)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0601**

**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 one hundred ~~eighty six~~ sixty dollars (\$1860) per license period, which fees include the twenty dollar (\$20) fee prescribed in Section 54-2070, Idaho Code. ~~(10-1-05)~~(7-1-06)T

**02. Fees For Licensed Legal Business Entities.** The fee for an initial or renewing license for each legal business entity shall be fifty dollars (\$50) per license period. (10-1-05)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0606

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of this temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105 and 63-105A.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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

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

**Rule 609:**

To implement new legislation (HB421) and the procedures to index the homeowner's exemption each year and to update the examples for consistency with this legislation.

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

This temporary rule is needed to be in compliance with governing state law. The temporary rule implements the provisions of House Bill 421 that became law July 1, 2006. The rule outlines the procedures to index the homeowner's exemption each year and updates examples for consistency with this legislation.

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

There is no fee or charge being imposed through the adoption of this temporary rule.

**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 implementing the provisions of a governing state law.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule, contact Alan Dornfest (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

Alan Dornfest  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0606

**609. PROPERTY EXEMPT FROM TAXATION -- ~~RESIDENTIAL IMPROVEMENTS~~ HOMESTEAD (RULE 609).**

Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. ~~(4-6-05)~~(1-1-06)T

**01. Homeowner's Homestead Exemption.** ~~This exemption~~ The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. ~~(3-15-02)~~(1-1-06)T

**02. Idaho Annual Housing Price Index Change.** Annually, the State Tax Commission shall calculate the maximum dollar-value limit for the homeowner's exemption based on the change in the Idaho annual housing price index published by the United States office of federal housing enterprise oversight. The following procedure shall be used: (1-1-06)T

**a.** Step 1. Calculate the average Idaho housing price index of the four (4) most recently available quarters as of September 15. (1-1-06)T

**b.** Step 2. Calculate the average Idaho housing price index of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (1-1-06)T

**c.** Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (1-1-06)T

**d.** Step 4. Multiply the factor determined in Step 3 by the current maximum dollar-value limit on the homeowner's exemption to produce the new dollar-value limit. (1-1-06)T

**023. 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. (4-11-06)

**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:

Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Occupied by Mr. Smith
Prorated Ownership Interest ( <u>land and improvement</u> )	<del>\$446</del> 2,000	Mr. Smith's interest
Homeowner's Exemption	<del>\$20,500</del> 31,000	For Mr. Smith as owner occupant
Residential Improvement	\$67,000	Occupied by Mr. Anderson
Prorated Ownership Interest ( <u>land and improvement</u> )	<del>\$335</del> 4,500	Mr. Anderson's interest

Description	Value	Notes
Homeowner's Exemption	<del>\$16,750</del> <u>27,250</u>	For Mr. Anderson as owner occupant

~~(4-11-06)~~(1-1-06)T

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:

Item Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	<del>\$41,000</del> <u>51,500</u>	For Mr. Smith <del>as occupant and sole owner</del>
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	<del>\$33,500</del> <u>44,000</u>	For Mr. Anderson <del>as occupant and sole owner</del>

~~(4-11-06)~~(1-1-06)T

**034. 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. (4-11-06)



## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0607

#### 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 63-105A.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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:** To provide references to the correct publications for tax year 2007.
- Rule 114:** To collect from assessors, homeowners' information by value brackets and business type information.
- Rule 115:** To provide for assessors to submit to the tax commission information on the property tax value within cities.
- Rule 130:** To identify five primary categories simplifying the equalization of values by county and making the equalization of values by county and by school district more consistent.
- Rule 131, 315:** To enhance equalization by reducing the non-occurrence of equalization for property types within which fewer sales occur and by helping taxable values keep pace with the local market.
- Rule 217:** To direct the assessors to be consistent with a recent Idaho Supreme Court decision by basing income on actual rents plus the financial benefits of tax credits for section 42, low-income housing projects when using the income approach.
- Rule 225:** To implement new legislation (HB763), requiring each fire district to submit to the tax commission the approvals from existing fire districts and/or cities when annexing.
- Rule 317:** To make the examples consistent with new legislation (HB421) and to clarify that the occupancy tax and occupancy tax exemptions only apply to the value of improvements.
- Rule 509:** To clarify what value information the assessors need to submit to the tax commission and to update statutory reference based on new legislation (HB413).
- Rules 510, 511 and 512:** To describe the secondary categories that the assessors will use to notify property owners of the values being assessed on land, improvements, and other property and to report values assessed on land, improvements, and other property to the tax commission.
- Rule 613:** To provide a formula for the calculation of the five (5) year average farm credit system interest rate, delete examples, and add cross references.
- Rule 614:** To provide a separate shorter rule with examples relating to the calculation of the taxable value of land and add cross references.
- Rule 615:** To clarify that tax credits for section 42, low-income housing projects are not contracts or contract rights and reference the recent Idaho Supreme Court decision on which this is based.
- Rule 635:** To be consistent with the repeal of Section 63-602FF, Idaho Code, by HB676, this rule is being deleted.
- Rule 645:** To add cross references to all other property tax rules relating to land actively devoted to agriculture.
- Rule 700:** To implement new legislation, HB422 (providing definitions relating to annuity) and HB421 (updating examples for the increase in the homeowner's exemption).
- Rule 717:** To provide for county assessors and county auditors to submit the property tax reduction data electronically as well as hard copy.
- Rule 801:** To clarify that the school plant facilities levy resulting from action by the state department of education under House Bill 743.
- Rule 802:** To clarify new construction roll for consistency with new legislation (HB676).
- Rule 803:** To add the definition of new taxing district for budget and levy purposes.
- Rule 902:** To provide for county treasurers to mail property tax bills with zero balance due to property tax reduction applicants.
- Rule 939:** To provide direction to taxing districts so judgment levies are used within two years of an order by court or Board of Tax Appeals.

**Rule 968:** To create a new rule that replaces prior provisions of property tax rule 614, relating to clarifications for exemptions from yield tax and categorizing land used to grow Christmas trees and other annual forest crops, and to add cross references.

**Rule 989:** To provide for consistency with new legislation (HB443), clarifying payment date for recapture of qualified investment exemption, and to make corrections to the “Table for Reduction of Property Tax Benefit Subject to Recapture.”

**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 (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

Alan Dornfest  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0607**

**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 200~~5~~6

for the September through December period by the National Appraisal Guides Incorporated. ~~(4-11-06)~~( )

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 200~~56~~ for the September through December period by the National Appraisal Guides Incorporated. ~~(4-11-06)~~( )

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 200~~56~~ and the first quarter in 200~~67~~ by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. ~~(4-11-06)~~( )

**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)**

**114. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 114).**

Sections 63-105A and 63-509, Idaho Code. To provide needed value information under Subsection 63-105A(2), Idaho Code, each assessor will to the extent practicable report the following information to the State Tax Commission in the same manner and at the same time as the abstracts under Section 63-509, Idaho Code. ( )

**01. Homeowner’s Exemption Information.** Beginning in 2007 and each year thereafter, each county assessor will to the extent practicable report the total market value and exempted value of all property (land and improvements) used for residential purposes and granted the homeowner’s exemption under Section 63-602G, Idaho Code, for the current year’s assessment roll. Additionally, beginning in 2007 and each year thereafter, each county assessor will to the extent practicable report to the State Tax Commission the following stratification for improved properties granted the homeowner’s exemption. ( )

**a.** Total quantity and total market value of all properties less than or equal to twenty-five thousand dollars (\$25,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner’s exemption that are individually less than or equal to twenty-five thousand dollars (\$25,000) in market value. ( )

**b.** Total quantity and total market value of all properties more than twenty-five thousand dollars (\$25,000) but less than or equal to fifty thousand dollars (\$50,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner’s exemption that are individually more than twenty-five thousand dollars (\$25,000) but less than or equal to fifty thousand dollars (\$50,000) in market value. ( )

**c.** Total quantity and total market value of all properties more than fifty thousand dollars (\$50,000)

but less than or equal to seventy-five thousand dollars (\$75,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than fifty thousand dollars (\$50,000) but less than or equal to seventy-five thousand dollars (\$75,000) in market value. ( )

d. Total quantity and total market value of all properties more than seventy-five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than seventy-five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000) in market value. ( )

e. Total quantity and total market value of all properties more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty-five thousand dollars (\$125,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty-five thousand dollars (\$125,000) in market value. ( )

f. Total quantity and total market value of all properties more than one hundred twenty-five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred twenty-five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000) in market value. ( )

g. Total quantity and total market value of all properties more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy-five thousand dollars (\$175,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy-five thousand dollars (\$175,000) in market value. ( )

h. Total quantity and total market value of all properties more than one hundred seventy-five thousand dollars (\$175,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred seventy-five thousand dollars (\$175,000) in market value. ( )

**02. Personal Property Data.** Beginning in 2008 and each year thereafter, each county assessor will to the extent practicable separately report to the State Tax Commission the total market value and any exempt value of personal property for each of the following classifications or subclassifications thereof from the North American Industry Classification System (NAICS) and will separately detail this value by applicable secondary categories. ( )

a. Forestry and logging personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all forestry and logging personal property within NAICS classifications 113, 115, and 1133 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

b. Mining personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all mining personal property within NAICS classifications 21, 212, and 213 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

c. Heavy construction personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all heavy construction personal property within NAICS classification 234 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

d. Food manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary

categories for all food manufacturing personal property within NAICS classification 311 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

e. Dairy product manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all dairy product manufacturing personal property within NAICS classification 3115 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

f. Wood product manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all wood product manufacturing personal property within NAICS classification 321 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

g. Chemical manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all chemical manufacturing personal property within NAICS classification 325 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

h. Computer and electronic product manufacturing (high tech) personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all computer and electronic product manufacturing (high tech) personal property within NAICS classification 334 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

i. Locally assessed telecommunications personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all locally assessed telecommunications personal property within NAICS classifications 5133 and 51332 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

j. Other personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all other personal property within NAICS classification 81 or any other NAICS classification not listed in Paragraphs 114.02.a. through 114.02.i. as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

03. Cross Reference. For the descriptions of secondary categories, see Rules 510, 511, and 512 of these rules. ( )

**115. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 115).**  
Sections 63-105A and 63-509, Idaho Code. ( )

**01. City Values by Secondary Category.** To provide needed value information under Subsection 63-105A(2), Idaho Code, each assessor will report to the county auditor the market value and exempted value of all property within any city or the portion of any city within the county by secondary categories, described in Rules 510, 511, and 512 of these rules, in the same manner as the abstracts required for each county and each school district under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**02. City Abstracts to Accompany Abstracts.** Each county auditor will include the city abstract described in Subsection 115.01 of this rule when submitting to the State Tax Commission the abstracts required under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**03. Cross Reference.** For the descriptions of secondary categories and clarification of responsibilities relating to listing and reporting values by secondary categories, see Rules 509, 510, 511, and 512 of these rules. ( )

(BREAK IN CONTINUITY OF SECTIONS)

130. ~~**EQUALIZATION BY CATEGORY — IDENTIFICATION AND REAPPRAISAL DESCRIPTION OF PRIMARY CATEGORIES USED TO TEST FOR EQUALIZATION (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. The State Tax Commission establishes the primary categories listed herein for the purpose of testing values in each county and each school district for equalization by the State Tax Commission under Section 63-109, Idaho Code.~~

~~(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 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.~~

~~**Definitions.** The following definitions apply for the purposes of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code.~~

~~(4-11-06)( )~~

~~a. **Primary Category.** Primary category means the five categories established and described in Subsections 130.02 through 130.06 of this rule and used by the State Tax Commission to test for equalization under Section 63-109, Idaho Code.~~

~~( )~~

~~b. **Secondary Category.** Secondary category means the categories established and described in Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules.~~

~~( )~~

~~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.~~

~~**Vacant Residential Land Category.** Vacant residential land is all vacant land used for residential purposes. The assessor listed this land in secondary categories 12, 15, 18, or 20, as described in Rule 510 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules.~~

~~(4-11-06)( )~~

~~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 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.~~

~~**Improved Residential Property Category.** Improved residential property is all improvements used for residential purposes and the land upon which these improvements are located. The assessor listed this property in secondary categories 10 and 31, 46, or 48, 12 and 34, 46, or 48, 15 and 37, 46, or 48, 18 and 40, 20 and 41, 46, or 48, 26, 46, 48, or 50 together with secondary category 47 as appropriate for inclusion when valuing this property, as described in Rules 510 and 511 of these rules, for the purposes of listing property on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission~~

under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-11-06)( )

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. **Vacant Commercial or Industrial Land Category.** Vacant commercial or industrial land is all vacant land used for commercial or industrial purposes. The assessor listed this property in secondary categories 11, 13, 14, 16, 17, 21, or 22, as described in Rule 510 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-11-06)( )

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. **Improved Commercial or Industrial Property Category.** Improved commercial or industrial property is all improvements used for commercial or industrial purposes and the land upon which these improvements are located. The assessor listed this property in secondary categories 11 and 33, 13 and 35, 14 and 36, 16 and 38, 17 and 39, 21 and 42, 22 and 43, 27, or 51, as described in Rules 510 and 511 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-11-06)( )

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. **Manufactured Homes on Leased Land Category.** Manufactured homes on leased land are all manufactured homes on leased land that the assessor listed in secondary categories 49 or 65 together with secondary category 47 as appropriate for inclusion when valuing this property, as described in Rule 511 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-11-06)( )

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. **Conversion Table: Secondary Categories to Primary Categories.**

Conversion Table: Secondary Categories to Primary Categories	
Secondary Categories	Primary Categories
12, 15, 18, or 20	Vacant Residential Land
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	Improved Residential Property
11, 13, 14, 16, 17, 21, or 22	Vacant Commercial or Industrial Land

Conversion Table: Secondary Categories to Primary Categories	
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	Improved Commercial or Industrial Property
47, 49, or 65	Manufactured Housing on Leased Land

(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. **Cross Reference.** For clarification of responsibilities relating to listing values on the valuation assessment notices or reporting values on the abstracts, see Rule 114, 115, 509, 510, 511, and 512 of these rules. For descriptions of secondary categories used to list land values on the valuation assessment notices and report land values on the abstracts, see Rule 510 of these rules, used to list improvement values on the valuation assessment notices and report improvement values on the abstracts, see Rule 511 of these rules, and used to list values for all property other than land or improvements on the valuation assessment notices and report these values on the abstracts, see Rule 512 of these rules. (4-11-06)(\_\_\_\_)

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)~~

**131. USE OF RATIO STUDY ~~IN~~ TO TEST FOR EQUALIZATION IN COUNTIES (RULE 131).**  
Section 63-109, Idaho Code. (5-3-03)(\_\_\_\_)

**01. 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 primary categories ~~of property~~ established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the “Standard on Ratio Studies” 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 the median for equalization ratio studies conducted beginning October 1, 2006. (4-11-06)(\_\_\_\_)

**02. Tested For Equalization.** Beginning with the 2007 ratio study to be complete prior to the first Monday in April, 2008, categories ~~which will~~ to be tested for equalization purposes ~~will include the following~~ are the primary categories, described in Subsections 130.02 through 130.06 of these rules, 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. (4-11-06)~~

~~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)~~

~~e. 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. (4-11-06)~~

**043. 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 primary category ~~of property~~ as ~~defined~~ described in Subsections 131.02 ~~and through~~ 131.036 of ~~this~~ these rules ~~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. (4-11-06)(\_\_\_\_)

**054. 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 testing assessments ~~of property by category~~ for equalization purposes under Section 63-109, Idaho Code. When the results of any ratio study on any property primary category, ~~as defined~~ described in Subsections 131.02 ~~and through~~ 131.036 of ~~this~~ these rules, show, with reasonable statistical certainty as defined in Subsection 131.087 of this rule, that the appropriate measure of level of any primary category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that primary 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 primary 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.~~ Within any primary category except as provided in Subsection 131.05 of this rule, adjustment will not be considered for any secondary category, described in Rule 510, 511, or 512 of these rules, that does not have at least one (1) observation in the ratio study conducted for ~~the combined~~ that primary categories. (4-11-06)(\_\_\_\_)

**05. Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (\_\_\_\_)

**06. Use of Alternate Ratio Study.** When the follow-up ratio study required by Subsection 131.043 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 primary 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%). (4-11-06)(\_\_\_\_)

**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~~ Rule 131 and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any primary category is not equalized

shall mean that the appropriate measure of level determined by the ratio study for the primary category must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Such a determination shall occur if: ~~(4-11-06)~~(\_\_\_\_)

**a.** The appropriate measure of level for the primary 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 primary 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 primary 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%). No ratio study conducted prior to January, 2007 will be considered as one of the most recent previous two (2) ratio studies. ~~(3-30-01)~~(\_\_\_\_)

**09. Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. (\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**217. RULES PERTAINING TO MARKET VALUE DUTY OF COUNTY ASSESSORS (RULE 217).** Section 63-208, Idaho Code. (\_\_\_\_)

**01. Market Value Definition.** Market value is the most probable amount of United States dollars or equivalent for which a property would exchange hands between a knowledgeable and willing seller, under no compulsion to sell, and an informed, capable buyer, under no compulsion to buy, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. (7-1-97)

**a.** The assessor shall value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions shall be subtracted. (7-1-97)

**b.** Personal property shall be valued at retail level. (7-1-93)

**02. Appraisal Approaches.** Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are: ~~(3-30-01)~~(\_\_\_\_)

**a.** The sales comparison approach; (3-30-01)

**b.** The cost approach; and (3-30-01)

**c.** The income approach. (3-30-01)

**03. Appraisal Procedures.** Market value for assessment purposes shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. ~~This includes the use of market rent, not contract rent.~~ ~~(3-30-01)~~(\_\_\_\_)

**a.** The appraisal procedures, methods, and techniques using the income approach to determine the market value for assessment purposes of income producing properties, except those described in Paragraph 217.03.b. of this rule, must use market rent, not contract rent. (\_\_\_\_)

**b.** When considering all three approaches to value, the appraisal procedures, methods, and techniques, using the income approach to determine the market value for assessment purposes of low-income housing properties

receiving tax credits under Section 42 of the Internal Revenue Service Code, must use actual rent plus the monetary benefit of any income tax credits. ( )

**04. Cross Reference.** For clarification of the income to include when using the income approach to value low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).**

Sections 31-1411, 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3029B, and 63-3638, Idaho Code. ~~(4-6-05)~~( )

**01. Definitions.** The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. (3-15-02)

**a.** Taxing Districts. The term taxing districts as used in this rule means taxing districts and taxing units. (3-15-02)

**b.** Alter. Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. (3-15-02)

**c.** Contiguous. Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. (3-15-02)

**d.** Deannex. Deannex means to delete or remove a portion but not all of a boundary for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA. (4-6-05)

**e.** Disincorporate. Disincorporate or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. (4-6-05)

**f.** Dissolve. Dissolve or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. (4-6-05)

**g.** Legal Description. Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: (3-15-02)

i. Section, township, range and meridian. (3-15-02)

ii. An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. (3-15-02)

iii. A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. (3-15-02)

iv. Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure requirement may be approved by the State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: (3-15-02)

(1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or

- (3-15-02)
- or
- (2) References to cardinal directions, government survey distances, and section or aliquot part corners; (3-15-02)
  - (3) References to recorded subdivision or town site plats, with copies of such plats; or (3-15-02)
  - (4) Legislatively established boundaries as defined by reference to Idaho Code sections. (3-15-02)
- v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. (3-15-02)
- h.** Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)
- i. Section, township, range, and meridian identifications. (3-15-02)
  - ii. North arrow, bar scale, and title block. (3-15-02)
  - iii. District name and ordinance number or order date. (3-15-02)
  - iv. Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)
  - v. Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)
  - vi. Variations from the requirements of Paragraph 225.01.h., of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (4-6-05)

**02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs.**  
The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than January 10 of the following year when any action creating or altering said boundary occurs after December 10. (3-15-02)

- a.** A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)
- b.** A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)
- c.** A copy of the ordinance or order effecting the formation or alteration. (4-5-00)
- d.** For fire districts annexing territory within an existing fire district and/or city, a copy of the written approval from that existing fire district and/or city. ( )

**03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs.**  
(3-15-02)

- a.** No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3029B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the

disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. If the disincorporating or dissolving entity can provide a map showing the last known boundaries of the entity, this map should accompany the ordinance or order. (4-6-05)

**b.** Upon receipt of the ordinance or order without an accompanying map of the boundaries from a disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) and send a copy of a map showing the affected tax code area(s) to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list and map shall be sent by the fourth Friday of January. (3-15-02)

**c.** After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). (3-15-02)

**04. Digital Map Information.** Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. (3-15-02)

**05. Deadline for Completion.** December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (3-15-02)

**06. Approval of Property Tax Levy or Revenue Allocation.** For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it: (3-15-02)

**a.** Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or (3-15-02)

**b.** Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or (4-5-00)

**c.** Has boundaries which overlap with like cities, taxing districts or RAAs. (3-15-02)

**07. Notification of Approval or Disapproval.** The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to any affected urban renewal agency and the auditor(s) and assessor(s) of the involved county(ies). In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. The State Tax Commission shall send such letter within thirty (30) days of receipt of the document to which the disapproval relates, but not later than the fourth Friday of January except during the first quarter of the calendar year for documents relating to the next tax year. (4-6-05)

**08. One Uniform System.** The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. (4-5-00)

**09. Tax Code Areas.** The State Tax Commission shall create a separate, unique number for each tax code area. Only the State Tax Commission shall initiate or change a tax code area number. (3-15-02)

**10. Furnished By The State Tax Commission.** The State Tax Commission will furnish annually, without charge, one (1) set of updated tax code area maps, a listing of cities, taxing districts or RAAs included in each tax code area, and a list of changes in city, taxing district or RAA boundaries to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other tax code area maps. (3-15-02)



(BREAK IN CONTINUITY OF SECTIONS)

315. USE OF RATIO STUDIES ~~BY~~ EQUALIZE - 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" referenced in Rule 006 of these rules. The following specific procedures will be used. (4-11-06)

**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 primary categories, ~~of property and described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, within~~ 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. ~~(4-11-06)~~(\_\_\_\_)

**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~~ described in Subsection 315.02 of this rule in each school district and appropriate measures of central tendency, uniformity, reliability, and normality computed. ~~(4-11-06)~~(\_\_\_\_)

**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 primary and each applicable secondary 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. ~~Primary and secondary 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:

<b>Category</b>	<b>Property Category</b>	<b>Ratio Study Designation</b>
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, & 65	Manufactured Homes and Attachments	Residential
48 & 49	Manufactured Homes Declared to be Real Property	Residential
26	Residential Condominiums	Residential
27	Commercial Condominiums	Commercial

<b>Secondary Categories</b>	<b>Primary Categories</b>	<b>Ratio Study Designations</b>
12, 15, 18, or 20	Vacant Residential Land	Residential
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	Improved Residential Property	Residential
47, 49, or 65	Manufactured Home on Leased Land	Residential
11, 13, 14, 16, 17, 21, or 22	Vacant Commercial or Industrial Land	Commercial
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	Improved Commercial or Industrial Property	Commercial

(4-11-06)( )

j. For all ~~other property~~ secondary categories, described in Rule 510, 511, or 512 of these rules but not contained in the list in ~~Subsection~~ Paragraph 315.01.i. of this rule, adjusted market value will equal taxable value.  
(4-11-06)( )

k. “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; ~~or commercial; or manufactured housing~~ and shall assign appropriate ~~property~~ primary categories, ~~defined described in Rule Subsections 130.02 through 130.06~~ of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, to these designations as shown in Paragraph 315.01.i. of this rule. 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 primary and secondary category of property assigned to a designation. Except as provided in Subsection 315.06 of this rule, for the taxable value in any secondary category to be included in said sum, at least one (1) observation (sale or appraisal) from that secondary 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 secondary categories included in that designation shall be the adjusted market value for said designation for said school district. (4-11-06)(\_\_\_\_)

**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.** Within each county, 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~~ that 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 primary or secondary 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 63-602G, 63-602K, 63-602P, 63-602X, 63-602AA, 63-602BB, 63-602CC, ~~and 63-602FF~~ 63-602DD, 63-602GG, 63-602HH, 63-602II, 63-606A, or 63-3029B, Idaho Code. (4-11-06)(\_\_\_\_)

**06. Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one (1) observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (\_\_\_\_)

**07. Certification of Values.** The values required to be certified to the county clerk by the first Monday in April each year under Section 63-315, Idaho Code, shall be published on the State Tax Commission's web site or provided in an alternate format on request by the first Monday in April each year to satisfy this required certification. (\_\_\_\_)

**08. Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. (\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**509. CITY, COUNTY, AND SCHOOL DISTRICT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES ~~ON COUNTY AND SCHOOL DISTRICT ABSTRACTS OF VALUE~~ (RULE 509).** Sections 63-105A and 63-509, Idaho Code. (5-3-03)(\_\_\_\_)

**01. Definitions.** The following definitions apply for the purposes of testing for equalization under

Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. ( )

**a.** Increment Value. Increment value means, as defined in Section 50-2903, Idaho Code, the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is positive. ( )

**b.** Primary Category. Primary category means the categories established and described by Subsections 130.02 through 130.06 of these rules and used by the State Tax Commission to test for equalization under Section 63-109, Idaho Code. ( )

**c.** Secondary Category. Secondary category means the categories established and described by Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the State Tax Commission under Section 63-509, Idaho Code, and this Rule. ( )

**042.** County and School District Abstracts to Balance. The taxable value of property in each secondary 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 secondary 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.** Indicate 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, ~~63-602FF, 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 secondary category of property on each city, county and school district abstract. (4-11-06)( )

**04.** Cross Reference. See Rule 115 of these rules for requirements to submit city abstracts. For the descriptions of the primary categories used to test for equalization, see Subsections 130.02 through 130.06 of these rules. For descriptions of secondary categories used to list and report land values, see Rule 510 of these rules, used to list and report the value of improvements, see Rule 511 of these rules, or used to list and report all property values other than that for land or improvements, see Rule 512 of these rules. ( )

**510. SECONDARY CATEGORIES FOR LAND - LISTING AND REPORTING (RULE 510).**  
Section 63-509, Idaho Code. County assessors will use the secondary categories described in the following subsections, indicated by numbers, to list land values on the valuation assessment notices under Sections 63-301 and 63-308, Idaho Code. County assessors will use these secondary categories described in the following subsections, indicated by numbers, and the secondary categories described in the following paragraphs, indicated by letters, to report land values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**01.** Secondary 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 secondary category. This irrigated land must be capable of and normally 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. ( )

**02.** Secondary 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 secondary 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. ( )

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

**04. Secondary 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 secondary 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. ( )

**05. Secondary 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 secondary 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. ( )

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

**07. Secondary 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. ( )

**08. Secondary Category 8 - Speculative Homesite.** No value shall be reported in this category on any abstract submitted to the State Tax Commission after the property roll, subsequent property roll, and missed property roll abstracts have been submitted for calendar year 2005. ( )

**09. Secondary 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. ( )

**10. Secondary Category 10 - Homesite Land.** Land being utilized for homesites with secondary categories 1 through 9. Note: This land is always land with improvements located on it since land with no improvements should be in one (1) or more of categories 1 through 9. ( )

**11. Secondary Category 11 - Recreational Land.** Rural land used in conjunction with recreation but not individual homesites. ( )

**a. Secondary Category 11 - Vacant Recreational Land.** Vacant rural land used for recreational purposes but not individual homesites or in a properly recorded subdivision. ( )

**b. Secondary Category 11 - Improved Recreational Land.** Rural land with improvements, including exempt improvements, used for recreational purposes on that land but not individual homesites or in a properly recorded subdivision. ( )

**12. Secondary Category 12 - Rural Residential Tracts.** Rural residential land not in a properly recorded subdivision. ( )

**a. Secondary Category 12 - Vacant Rural Residential Tracts.** Vacant rural land used for residential purposes but not in a properly recorded subdivision. ( )

**b. Secondary Category 12 - Improved Rural Residential Tracts.** Rural land with improvements, including exempt improvements, used for residential purposes on that land but not in a properly recorded subdivision. ( )

**13. Secondary Category 13 - Rural Commercial Tracts.** Rural commercial land not in a properly recorded subdivision. ( )

**a. Secondary Category 13 - Vacant Rural Commercial Tracts.** Vacant rural land used for commercial purposes but not in a properly recorded subdivision. ( )

**b. Secondary Category 13 - Improved Rural Commercial Tracts.** Rural land with improvements, including exempt improvements, used for commercial purposes on that land but not in a properly recorded subdivision. ( )

**14. Secondary Category 14 - Rural Industrial Tracts.** Rural industrial land not in a properly recorded subdivision. ( )

**a. Secondary Category 14 - Vacant Rural Industrial Tracts.** Vacant rural land used for industrial purposes but not in a properly recorded subdivision. ( )

**b. Secondary Category 14 - Improved Rural Industrial Tracts.** Rural land with improvements, including exempt improvements, used for industrial purposes on that land but not in a properly recorded subdivision. ( )

**15. Secondary Category 15 - Rural Residential Subdivisions.** Rural residential land in a properly recorded subdivision. ( )

**a. Secondary Category 15 - Vacant Rural Residential Subdivisions.** Vacant rural land used for residential purposes and in a properly recorded subdivision. ( )

**b. Secondary Category 15 - Improved Rural Residential Subdivisions.** Rural land with improvements, including exempt improvements, used for residential purposes on that land and in a properly recorded subdivision. ( )

**16. Secondary Category 16 - Rural Commercial Subdivisions.** Rural commercial land in a properly recorded subdivision. ( )

**a. Secondary Category 16 - Vacant Rural Commercial Subdivisions.** Vacant rural land used for commercial purposes and in a properly recorded subdivision. ( )

**b. Secondary Category 16 - Improved Rural Commercial Subdivisions.** Rural land with

improvements, including exempt improvements, used for commercial purposes on that land and in a properly recorded subdivision. ( )

**17. Secondary Category 17 - Rural Industrial Subdivisions.** Rural industrial land in a properly recorded subdivision. ( )

**a.** Secondary Category 17 - Vacant Rural Industrial Subdivisions. Vacant rural land used for industrial purposes and in a properly recorded subdivision. ( )

**b.** Secondary Category 17 - Improved Rural Industrial Subdivisions. Rural land with improvements, including exempt improvements, used for industrial purposes on that land and in a properly recorded subdivision. ( )

**18. Secondary Category 18 - Other Land.** Land not compatible with other secondary categories. ( )

**a.** Secondary Category 18 - Vacant Other Land. Vacant land not compatible with other secondary categories. ( )

**b.** Secondary Category 18 - Improved Other Land. Land with improvements, including exempt improvements, on that land but not compatible with other secondary categories. ( )

**19. Secondary Category 19 - Waste.** Public Rights-of-Way includes roads, ditches, and canals. Use this secondary category to account for total acres of land ownership. Only list acres, not value, in this secondary category on the abstract. ( )

**20. Secondary Category 20 - Residential Lots or Acreages.** Land used for residential purposes and inside city limits. ( )

**a.** Secondary Category 20 - Vacant Residential Lots Or Acreages. Vacant land used for residential purposes and inside city limits. ( )

**b.** Secondary Category 20 - Improved Residential Lots Or Acreages. Land with improvements, including exempt improvements, used for residential purposes on that land and inside city limits. ( )

**21. Secondary Category 21 - Commercial Lots or Acreages.** Land used for commercial purposes and inside city limits. ( )

**a.** Secondary Category 21 - Vacant Commercial Lots Or Acreages. Vacant land used for commercial purposes and inside city limits. ( )

**b.** Secondary Category 21 - Improved Commercial Lots Or Acreages. Land with improvements, including exempt improvements, used for commercial purposes on that land and inside city limits. ( )

**22. Secondary Category 22 - Industrial Lots or Acreages.** Land used for industrial purposes and inside city limits. ( )

**a.** Secondary Category 22 - Vacant Industrial Lots Or Acreages. Vacant land used for industrial purposes and inside city limits. ( )

**b.** Secondary Category 22 - Improved Industrial Lots Or Acreages. Land with improvements, including exempt improvements, used for industrial purposes on that land and inside city limits. ( )

**23. Secondary Category 25 - Common Area Vacant Land.** Common area vacant land not included in individual property assessments. ( )

**24. Secondary Category 45 - Utility System Vacant Land.** Vacant land used for locally assessed utility systems not under the jurisdiction of the State Tax Commission for appraisal. ( )

**25. Secondary Category 57 - Equities In Vacant Land Purchased From the State.** For identification purposes under Section 63-211, Idaho Code, vacant land purchased from the state under contract. ( )

**26. Secondary Category 81 - Exempt Land.** Category 81 is for county use to keep an inventory, including acreage, of exempt land. ( )

**27. Cross Reference.** For descriptions of secondary categories used to list values for improvements, see Rule 511 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ( )

**511. SECONDARY CATEGORIES FOR IMPROVEMENTS - LISTING AND REPORTING (RULE 511).**

Section 63-509, Idaho Code. County assessors will use the following secondary categories to list improved property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and to report improved property values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**01. Secondary Category 25 - Common Area Land and Improvements.** Common area land and improvements on that land not included in individual property assessments. ( )

**02. Secondary Category 26 - Residential Condominiums.** Land and improvements included in individual assessments of condominiums or townhouses and used for residential purposes. ( )

**03. Secondary Category 27 - Commercial or Industrial Condominiums.** Land and improvements included in individual assessments of condominiums and used for commercial or industrial purposes. ( )

**04. Secondary Category 30 - Improvements.** Improvements, other than residential, located on secondary category 20. ( )

**05. Secondary Category 31 - Improvements.** Improvements used for residential purposes and located on secondary category 10. ( )

**06. Secondary Category 32 - Improvements.** Improvements, other than residential, located on secondary categories 1 through 12 and 15. ( )

**07. Secondary Category 33 - Improvements.** Improvements used in conjunction with recreation but not associated with homesites and located on secondary category 11. ( )

**08. Secondary Category 34 - Improvements.** Improvements used for residential purposes and located on secondary category 12. ( )

**09. Secondary Category 35 - Improvements.** Improvements used for commercial purposes and located on secondary category 13. ( )

**10. Secondary Category 36 - Improvements.** Improvements used for industrial purposes and located on secondary category 14. ( )

**11. Secondary Category 37 - Improvements.** Improvements used for residential purposes and located on secondary category 15. ( )

**12. Secondary Category 38 - Improvements.** Improvements used for commercial purposes and located on secondary category 16. ( )



13. Secondary Category 39 - Improvements. Improvements used for industrial purposes and located on secondary category 17. ( )

14. Secondary Category 40 - Improvements. Improvements located on secondary category 18. ( )

15. Secondary Category 41 - Improvements. Improvements used for residential purposes and located on secondary category 20. ( )

16. Secondary Category 42 - Improvements. Improvements used for commercial purposes and located on secondary category 21. ( )

17. Secondary Category 43 - Improvements. Improvements used for industrial purposes and located on secondary category 22. ( )

18. Secondary Category 44 - Improvements. Taxable improvements located on otherwise exempt property under the same ownership. No later than January 1, 2008, county assessors will use the appropriate land and improvement secondary categories based on use. ( )

19. Secondary Category 45 - Utility System Land and Improvements. Locally assessed land and improvements used as utility systems and not under the jurisdiction of the State Tax Commission for appraisal. ( )

20. Secondary 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 as real property has been filed but becomes effective the following year. ( )

21. Secondary Category 47 - Improvements to Manufactured Housing. Additions not typically moved with manufactured housing. ( )

22. Secondary 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. ( )

23. Secondary 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. ( )

24. Secondary Category 50 - Residential Improvements on Leased Land. Improvements used for residential purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land under separate ownership, or any other land under different ownership than the improvements. No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for residential purposes and discontinue use of secondary categories 60, 61, and 62. ( )

25. Secondary Category 51 - Commercial or Industrial Improvements on Leased Land. Improvements used for commercial or industrial purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land under separate ownership, or any other land under different ownership than the improvements. No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for commercial or industrial purposes and discontinue use of secondary categories 60, 61, and 62. ( )

26. Secondary Category 57 - Equities in Land With Improvements Purchased From the State. Land with the improvements on that land that are purchased from the state under contract. ( )

**27. Secondary Category 60 - Improvements on Railroad Rights-of-Way.** Improvements located on railroad rights-of-way under separate ownership. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes. ( )

**28. Secondary Category 61 - Improvements by Lessee Other Than Secondary Category 62.** Improvements made by the tenant or lessee to landlord's property. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes. ( )

**29. Secondary Category 62 - Improvements on Exempt or Public Land.** Taxable improvements, owned separately from exempt or public land on which they are located. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes. ( )

**30. Secondary Category 65 - Manufactured Housing.** Manufactured housing not designated real property and located on exempt, rented or leased land under separate ownership. 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. ( )

**31. Secondary Category 69 - Recreational Vehicles.** Unlicensed recreational vehicles. ( )

**32. Secondary Category 81 - Exempt Improvements.** Category 81 is for county use to keep an inventory of exempt improvements. ( )

**33. Cross Reference.** For descriptions of secondary categories used to list land values, see Rule 510 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ( )

**512. SECONDARY CATEGORIES, OTHER THAN LAND OR IMPROVEMENTS - LISTING AND REPORTING (RULE 512).**

Section 63-509, Idaho Code. County assessors will use the following secondary categories to list property values, other than that for land or improvements, on assessment notices under Sections 63-301 and 63-308, Idaho Code, and will use these secondary categories to report values for property, other than land or improvements, to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**01. Secondary Category 54 - Utility System Personal Property.** Personal property that is part of locally assessed utility systems not under the jurisdiction of the State Tax Commission for appraisal. ( )

**02. Secondary Category 55 - Boats or Aircraft.** Unlicensed watercraft or unregistered aircraft. ( )

**03. Secondary 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. ( )

**04. Secondary Category 57 - Equities in Personal Property Purchased From the State.** Personal property purchased from the state under contract. ( )

**05. Secondary 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. ( )

**06. Secondary Category 63 - Logging Machinery, Tools, and Equipment.** Unlicensed logging machinery, shop tools, and equipment not assessed as real property. ( )

07. Secondary Category 64 - Mining Machinery, Tools, and Equipment. Unlicensed mining machinery, shop tools, and equipment not assessed as real property. ( )

08. Secondary 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. ( )

09. Secondary Category 67 - Operating Property. Property assessed and apportioned by the State Tax Commission. ( )

10. Secondary 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. ( )

11. Secondary Category 70 - Reservations and Easements. Reservations, including mineral rights reserved, divide ownership of property rights. Easements convey use but not ownership. ( )

12. Secondary Category 71 - Signs and Signboards. Signs and signboards, their bases and supports. ( )

13. Secondary Category 72 - Tanks, Cylinders, Vessels, Containers. ( )

14. Secondary Category 81 - Exempt Property, Other Than Land or Improvements. Category 81 is for county use to keep an inventory of exempt property other than land or improvements. ( )

15. Cross Reference. For descriptions of secondary categories used to list land values on the valuation assessment notice or report land values on the abstracts, see Rule 510 of these rules or used to list values for improvements on the valuation assessment notice or report improvement values on the abstracts, see Rule 511 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (RULE 613).**

Section 63-602K, Idaho Code. (4-6-05)

**01. Definitions.** (4-5-00)

**a.** Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (4-5-00)

**b.** Speculative Portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. (4-5-00)

**c.** Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. (4-5-00)

**d.** Net Income. Net income is determined by deducting the landlord's share of current expenses from economic rent per acre. (4-5-00)

**02. Calculation of Net Income from Cash Rent.** Net Income from cash rent is calculated in the following manner. (4-5-00)

- a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)
- b. Economic Rent. Determine the average per acre gross income from individual crop rents typical to the area over the immediate past five (5) years. (4-5-00)
- c. Landlord's Expenses. Determine the landlord's share of typical contracted expenses paid in the immediately preceding growing season. (4-5-00)
- d. Landlord's Net Income. Subtract the landlord's share of typical contracted expenses from the average gross income per acre for the immediately preceding growing season to determine net income. (4-5-00)

**03. Calculation of Net Income from Crop Share Rent.** Net income from crop share rent is calculated in the following manner. (4-5-00)

- a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)
- b. Average Crop Production. Determine average crop production per acre based on the most recent five (5) years. (4-5-00)
- c. Average Commodity Prices. Determine average commodity prices based on the most recent five (5) years. (4-5-00)
- d. Gross Income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. (4-5-00)
- e. Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the area. (4-5-00)
- f. Expenses. Determine the landlord's share of water, fertilizer, chemical, seed and harvest cost per acre for the immediately preceding growing season. (4-5-00)
- g. Net Income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. (4-5-00)

**04. Determination of Five Year Average Crop Prices.** The State Tax Commission shall determine five (5) year average crop prices to be used in determining net income by surveying publicly available data from various sources, including the annual crop summary published by the Idaho Agricultural Statistics Service. Average crop prices determined in this manner by the State Tax Commission should be considered guidelines subject to modification based on local market data. (4-6-05)

~~**05. Examples of Calculation of Taxable Value of Agricultural Land.** The following examples show calculations for the taxable value of agricultural land. Example in Paragraph 613.05.a. shows one calculation of capitalization rate (cap rate), example in Paragraph 613.05.b. shows calculations using cash rent agreements and example in Paragraph 613.05.c. shows calculations using crop share agreements. (4-6-05)~~

~~a. Capitalization rate calculation example:~~

TAX CODE AREAS	PROPERTY TAX RATES
8	1.1323951%
9	1.1186222%

TAX CODE AREAS	PROPERTY TAX RATES
40	1.1226782%
41	1.1714841%
42	1.1674300%
43	1.0692041%
45	1.1603100%
46	1.1323951%
47	1.1323951%

AVERAGE = 1.13%

FARM CREDIT SYSTEM INTEREST RATE = 8.22%

TOTAL CAPITALIZATION RATE (CAP RATE) = 9.35%

(4-6-05)

b. Cash rent agreement calculation example:

CROPS	CONTRACT RENTS PER ACRE	ROTATION IN PERCENT	WEIGHTED INCOME PER ACRE
Barley	\$100.00	14.42%	\$ 14.42
Beans	\$100.00	22.46%	\$ 22.46
Beets	\$170.00	20.33%	\$ 34.56
Corn/Grain	\$100.00	0.00%	\$ 0.00
Corn/Silage	\$110.00	0.00%	\$ 0.00
Hay/Alfalfa	\$120.00	21.32%	\$ 25.58
Potatoes	\$200.00	0.00%	\$ 0.00
Wheat	\$100.00	21.48%	\$ 21.48
Peas	\$125.00	0.00%	\$ 0.00
Oats	\$110.00	0.00%	\$ 0.00
<b>TOTAL INCOME PER ACRE</b>			<b>\$118.50</b>

Value per acre equals net income per acre divided by CAP rate:

TOTAL INCOME PER ACRE	\$118.50
LESS WATER COSTS	\$ 23.00
LESS MANAGEMENT (@ 5%)	\$ 5.93
NET INCOME PER ACRE	\$ 89.57
CAP RATE	9.35%
VALUE PER ACRE	\$958

(4-6-05)

e. Crop share agreement calculation example:

<b>Crop</b>	<b>Yield</b>	<b>Price</b>	<b>Gross Income</b>	<b>Landlord Share</b>	<b>Landlord-Share-Gross-Income</b>	<b>Rotation Percent</b>	<b>Per-Acre Share-of-Gross-Inc.</b>
Barley	100.00	\$ 2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	-20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.74
Beets	-23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.46
G/Corn	-0.00	\$ 3.22	\$ 0.00	33.33%	\$ 0.00	-0.00%	\$ 0.00
S/Corn	-0.00	\$24.40	\$ 0.00	33.33%	\$ 0.00	-0.00%	\$ 0.00
Hay	-5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.31
Potatoes	-0.00	\$ 4.74	\$ 0.00	25.00%	\$ 0.00	-0.00%	\$ 0.00
Wheat	-98.00	\$ 3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.17
Peas	-0.00	\$ 8.68	\$ 0.00	33.33%	\$ 0.00	-0.00%	\$ 0.00
Oats	-0.00	\$ 1.66	\$ 0.00	33.33%	\$ 0.00	-0.00%	\$ 0.00
<b>TOTAL INCOME PER ACRE</b>						100.00%	\$167.28

Value per acre equals net income per acre divided by CAP rate:

<b>Total Income Per Acre \$167.25</b>	<b>Expenses</b>
	Water = \$23.00
	Fertilizer = \$14.77
	Chemicals = \$9.04
	Seed = \$2.05
	Management = \$8.36
	Harvest = \$14.67
	<b>TOTAL EXPENSE PER ACRE = \$71.89</b>
	<b>NET INCOME = \$95.39</b>
	<b>CAP RATE = 9.35%</b>
	<b>VALUE PER ACRE = \$1,020</b>

(4-6-05)

**05. Farm Credit System Interest Rate.** Annually, the State Tax Commission shall calculate the five (5) year rolling average Farm Credit System interest rate (FSCIR). Using the twenty (20) year fixed rate interest rates received bi-monthly from Northwest Farm Credit Services in Spokane, Washington, calculate the average Farm Credit System interest rate for the prior year applying the formula in Paragraph 613.05.a. of this rule. Calculate the five (5) year rolling average Farm Credit System interest rate applying the formula in Paragraph 613.05.b. of this rule.

**a.** Formula for Calculating Average Farm Credit System Interest Rate for Prior Year.  $FCSIR5 = (R_1 + R_2 + R_3 + R_4 + R_5 + R_6 + R_7 + R_8 + R_9 + R_{10} + R_{11} + R_{12})/12.$

<u>FCSIR<sub>5</sub></u>	<u>is the average Farm Credit System interest rate for the prior year.</u>
<u>R<sub>1</sub></u>	<u>is the interest rate received for January of the prior year.</u>
<u>R<sub>2</sub></u>	<u>is the interest rate received for February of the prior year.</u>
<u>R<sub>3</sub></u>	<u>is the interest rate received for March of the prior year.</u>
<u>R<sub>4</sub></u>	<u>is the interest rate received for April of the prior year.</u>
<u>R<sub>5</sub></u>	<u>is the interest rate received for May of the prior year.</u>
<u>R<sub>6</sub></u>	<u>is the interest rate received for June of the prior year.</u>
<u>R<sub>7</sub></u>	<u>is the interest rate received for July of the prior year.</u>
<u>R<sub>8</sub></u>	<u>is the interest rate received for August of the prior year.</u>
<u>R<sub>9</sub></u>	<u>is the interest rate received for September of the prior year.</u>
<u>R<sub>10</sub></u>	<u>is the interest rate received for October of the prior year.</u>
<u>R<sub>11</sub></u>	<u>is the interest rate received for November of the prior year.</u>
<u>R<sub>12</sub></u>	<u>is the interest rate received for December of the prior year.</u>

( )

**b.** Formula for Calculating Five (5) Year Rolling Average Farm Credit System Interest Rate.  $FCSIR = (FCSIR_1 + FCSIR_2 + FCSIR_3 + FCSIR_4 + FCSIR_5)/5$ .

<u>FCSIR<sub>5</sub></u>	<u>is the average Farm Credit System interest rate for the prior year.</u>
<u>FCSIR<sub>4</sub></u>	<u>is the average Farm Credit System interest rate for two (2) years ago.</u>
<u>FCSIR<sub>3</sub></u>	<u>is the average Farm Credit System interest rate for three (3) years ago.</u>

FCSIR <sub>2</sub>	is the average Farm Credit System interest rate for four (4) years ago.
FCSIR <sub>1</sub>	is the average Farm Credit System interest rate for five (5) years ago.

( )

~~06.~~ **Cross Reference.** See Rule 645 of these rules. (4-6-05)

~~07.~~ **Notification.** In addition to providing notification of the Farm Credit System interest rate, the State Tax Commission will annually notify each county assessor of the most recent five (5) year average crop prices for the state. (4-6-05)

~~07.~~ **Cross Reference.** For agricultural land taxable value calculation examples, see Rule 614 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. ( )

**614. VALUATION OF CHRISTMAS TREE FARMS SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND - EXAMPLES (RULE 614).**

~~Christmas tree farms shall be categorized on the tax rolls under the applicable agricultural category. Section 63-1708, Idaho Code, shall only apply to Christmas trees harvested from designated lands. Sections 63-602K and 63-604, Idaho Code. The following examples show calculations for the taxable value of agricultural land. The example in Subsection 614.01 of this rule shows one (1) calculation of an average property tax rate, the example in Subsection 614.02 of this rule shows one (1) calculation of a capitalization rate (cap rate), the example in Subsection 614.03 of this rule shows calculations using cash rent agreements, and the example in Subsection 614.04 of this rule shows calculations using crop share agreements.~~ (7-1-97)( )

**01. Average Property Tax Rate Calculation Example.**

	TAX CODE AREAS	PROPERTY TAX RATES
	8	1.1323951%
	9	1.1186222%
	10	1.1226782%
	11	1.1714841%
	12	1.1674300%
	13	1.0692041%
	15	1.1603100%
	16	1.1323951%
	17	1.1323951%
<b>AVERAGE PROPERTY TAX RATE</b>		<b>1.1341015%</b>

( )

**02. Capitalization Rate Calculation Example.**

AVERAGE PROPERTY TAX RATE	1.13%
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5-YEAR AVERAGE FARM CREDIT BANK INTEREST RATE	8.22%
TOTAL CAPITALIZATION RATE (CAP RATE)	9.35%

( )

**03. Cash Rent Agreement Calculation Example.**

<u>CROPS</u>	<u>CONTRACT RENTS PER ACRE</u>	<u>ROTATION IN PERCENT</u>	<u>WEIGHTED INCOME PER ACRE</u>
Barley	\$100.00	14.42%	\$ 14.42
Beans	\$100.00	22.46%	\$ 22.46
Beets	\$170.00	20.33%	\$ 34.56
Corn/Grain	\$100.00	0.00%	\$ 0.00
Corn/Silage	\$110.00	0.00%	\$ 0.00
Hay/Alfalfa	\$120.00	21.32%	\$ 25.58
Potatoes	\$200.00	0.00%	\$ 0.00
Wheat	\$100.00	21.48%	\$ 21.48
Peas	\$125.00	0.00%	\$ 0.00
Oats	\$110.00	0.00%	\$ 0.00
<b>TOTAL INCOME PER ACRE</b>			<b>\$118.50</b>

Value per acre equals net income per acre divided by CAP rate:

TOTAL INCOME PER ACRE	\$118.50
LESS WATER COSTS	\$ 23.00
LESS MANAGEMENT(@ 5%)	\$ 5.93
NET INCOME PER ACRE	\$ 88.57
CAP RATE	9.35%
<b>VALUE PER ACRE</b>	<b>\$958</b>

( )

**04. Crop Share Agreement Calculation Example:**

<u>Crop</u>	<u>Yield</u>	<u>Price</u>	<u>Gross Income</u>	<u>Landlord Share</u>	<u>Landlord Share Gross Income</u>	<u>Rotation Percent</u>	<u>Per Acre Share of Gross Inc.</u>
Barley	100.00	\$ 2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.74
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.46
G/Corn	0.00	\$ 3.22	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
S/Corn	0.00	\$24.40	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00

<u>Crop</u>	<u>Yield</u>	<u>Price</u>	<u>Gross Income</u>	<u>Landlord Share</u>	<u>Landlord Share Gross Income</u>	<u>Rotation Percent</u>	<u>Per Acre Share of Gross Inc.</u>
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.31
Potatoes	0.00	\$ 4.74	\$ 0.00	25.00%	\$ 0.00	0.00%	\$ 0.00
Wheat	98.00	\$ 3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.17
Peas	0.00	\$ 8.68	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Oats	0.00	\$ 1.66	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
<b>TOTAL INCOME PER ACRE</b>						<b>100.00%</b>	<b>\$167.28</b>

Value per acre equals net income per acre divided by CAP rate:

<u>Total Income Per Acre \$167.28</u>		<u>Expenses</u>
	Water	≡ \$ 23.00
	Fertilizer	≡ \$ 14.77
	Chemicals	≡ \$ 9.04
	Seed	≡ \$ 2.05
	Management	≡ \$ 8.36
	Harvest	≡ \$ 14.67
	<b>TOTAL EXPENSE PER ACRE</b>	≡ <b>\$ 71.89</b>
	<b>NET INCOME</b>	≡ <b>\$ 95.39</b>
	<b>CAP RATE</b>	≡ <b>9.35%</b>
	<b>VALUE PER ACRE</b>	≡ <b>\$1.020</b>

( )

**05. Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules.

( )

**615. PROPERTY EXEMPT FROM TAXATION - CERTAIN INTANGIBLE PERSONAL PROPERTY (RULE 615).**

Section 63-602L, Idaho Code.

( )

**01. Definitions.** The following definitions apply to the exemption for certain intangible personal property. (1-1-99)

**a.** Contracts and contract rights. Contracts and contract rights are enforceable agreements, which establish mutual rights and responsibilities, and rights created under such agreements. Contracts and contract rights do not include tax credits received by low-income housing properties under Section 42 of the Internal Revenue Code. (1-1-99)( )

**b.** Copyrights. Copyrights are rights granted to the author or originator of literary or artistic productions, by which he or she is invested with the sole and exclusive privilege of making, publishing or selling copies for a specified time. (1-1-99)

**c.** Custom computer programs. Custom computer programs means those programs defined in Section 63-3616, Idaho Code. (1-1-99)

**d.** Customer lists. Customer lists are proprietary lists containing information about a business enterprise's customers. (1-1-99)

**e.** Franchises. Franchises are special privileges. (1-1-99)

**f.** Goodwill. Goodwill is the expectation of continued public patronage of a business. Goodwill is the ability of a business to generate income in excess of a normal rate due to such things as superior managerial skills, superior market position, favorable community and customer reputation and high employee morale. (1-1-99)

**g.** Licenses. Licenses are permissions to do acts, which are not allowed without such permissions. (1-1-99)

**h.** Method A. Method A is the method by which the value of exempt intangible personal property is excluded from the value of operating property by subtracting the market value of exempt intangible personal property from the market value of the operating property at the system level. (1-1-99)

**i.** Method B. Method B is the method by which the value of exempt intangible personal property is excluded from the value of operating property by subtracting the market value of exempt intangible personal property from the market value of the operating property at the state level. (1-1-99)

**j.** Method C. Method C is the method by which the value of exempt intangible personal property is excluded from the value of operating property by using valuation models which value only the nonexempt assets. (1-1-99)

**k.** Patents. Patents are grants from the government conveying and securing the exclusive right to make, use and sell inventions. (1-1-99)

**l.** Rights-of-way which are possessory only and not accompanied by title. Rights-of-way, which are possessory only and not accompanied by title, are easements by which grantees acquire only the rights to pass over or to access for installation or maintenance, without acquiring exclusive use of the rights-of-way. (1-1-99)

**m.** Trademarks. Trademarks are marks of authenticity, through which products of particular manufacturers or vendible commodities of particular merchants may be distinguished from those of others. (1-1-99)

**n.** Trade secrets. Trade secrets are formulas, patterns, compilations, programs, devices, methods, techniques or processes, deriving independent economic values from not being generally known by other persons who can obtain economic values from disclosure or use. Trade secrets are the subjects of efforts that are reasonable to maintain secrecy. (1-1-99)

**02. Tangible Property Value Not Affected by Intangible Personal Property Value.** The values of the exempt intangible personal properties shall not affect the values of any tangible properties or the value of the attributes of any tangible properties, regardless of the role of the intangible personal properties in the use of the tangible properties. The exempt values shall not include any values attributable to availability of a skilled work force, condition of surrounding property, geographic features, location, rights-of-way, accompanied by title, view, zoning, and attributes or characteristics of real properties. (1-1-99)

**03. Operating Property Election, Reporting and Methods.** The following apply to operating property for the identification of valuation methods to be used by the State Tax Commission, election of Method A, Method B or Method C by the property owners, reporting by owners and valuation using Method C. (1-1-99)

**a.** Identification of valuation methods. When the State Tax Commission mails the blank Operators' Statements to the property owners, the State Tax Commission shall identify proposed changes in valuation methods compared to those relied on in the prior year. (1-1-99)

b. Election default. In the event of default of the taxpayer to make an election, the State Tax Commission shall use the method proposed in the notice accompanying the Operator's Statement. (1-1-99)

c. Election of exclusion method. When submitting the Operator's Statement, the owner has the right to elect the method for exclusion of the values of the exempt intangible personal properties from the operating property value. (1-1-99)

d. Amending Election. An owner may amend the elected method if written notice is received at least seven (7) business days prior to a hearing under Rule 407 of these rules. (1-1-99)

e. Reporting. The State Tax Commission shall consider the value and supporting data provided by the owners. If no supporting intangibles valuation information is provided by the owners, known exempt intangible personal property will be subtracted or will not be impounded in the value. (1-1-99)

f. Valuation using Method C. When the owner elects Method C, the State Tax Commission shall give primary consideration to the cost less depreciation model, without regulatory adjustment, in valuing tangible personal property and nonexempt intangible personal property. Only if this model fails to produce market value of the tangible personal property and nonexempt intangible personal property, shall the State Tax Commission consider other appropriate valuation models. (1-1-99)

**04. Personal Property Reporting for Locally Assessed Property.** The exemption for custom software, contracts and contract rights shall be claimed by scheduling such property on the owner's personal property declaration form. (1-1-99)

**05. Cross Reference.** For clarification of contracts and contracts rights, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~630.—634. (RESERVED).~~

~~635. PARTIAL EXEMPTION FOR PARCELS OF LAND IN A RURAL HOMESITE DEVELOPMENT PLAT (RULE 635).  
Section 63-602FF, Idaho Code. (5-3-03)~~

~~01. Definitions. For the purpose of implementing the partial exemption under Section 63-602FF, Idaho Code, beginning with assessments for 2002, the following terms are defined. (5-3-03)~~

~~a. "Speculative Homesite Exemption." "Speculative homesite exemption" means an exemption granted under Section 63-602FF, Idaho Code. (5-3-03)~~

~~b. "Previously Eligible." Parcels of land in a rural homesite development plat are "previously eligible" for the exemption provided in Section 63-602K, Idaho Code, provided the land was eligible for an exemption on the speculative portion of value of agricultural land at any time since the enactment of that exemption in 1981. (4-6-05)~~

~~c. "Improvements are Being Built." "Improvements are being built" or "construction of the improvements has begun" means construction of any structure has commenced or is observable on the land. Construction of improvements does not include construction of any fences or "associated site improvements", as defined in Rule 645 of these rules. (5-3-03)~~

~~02. Qualifying Criteria for the Speculative Homesite Exemption. To qualify for the speculative homesite exemption, any parcel of land must meet each of the following criteria. (5-3-03)~~

- ~~a. The county where the parcel of land is located is less than one hundred thousand (100,000) in population. (5-3-03)~~
- ~~b. The parcel of land is in a recorded subdivision plat. (5-3-03)~~
- ~~c. The parcel of land is rural; that is, not within the boundaries of an incorporated city. (5-3-03)~~
- ~~d. The parcel of land was "previously eligible" for the speculative agricultural value exemption under Section 63-602K, Idaho Code. (5-3-03)~~
- ~~e. The parcel of land is not eligible for the speculative agricultural value exemption under Section 63-602K, Idaho Code, for the current year's assessment. (5-3-03)~~
- ~~f. No improvements, as defined in Paragraph 635.01.c., of this rule are being or have been built upon the parcel of land. (4-6-05)~~
- ~~**03. Nonqualifying Parcels in Subdivisions. (5-3-03)**~~
- ~~a. Any parcel never eligible for the exemption provided in Section 63-602K, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)~~
- ~~b. Any rural subdivision parcel designated as timberland under Chapter 17, Title 63, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)~~
- ~~**04. Calculation of Taxable Value of Land Eligible for the Speculative Homesite Exemption.** The taxable value of land eligible for the speculative homesite exemption shall be calculated based on the prior use qualifying the parcel for the exemption provided in Section 63-602K, Idaho Code; that is, the taxable value per acre of this land shall be equal to the taxable value per acre of qualifying agricultural land in the same use as this land when it previously qualified for the speculative agricultural value exemption. Any additional value for the "associated site improvements," as defined in Rule 645 of these rules, is part of the value exempt under the speculative homesite exemption and is not included in the taxable value of the land as calculated pursuant to Section 63-602K, Idaho Code. (5-3-03)~~
- ~~**05. Use of Category.** The county assessor shall use the category identified in Rule 130 of these rules for all parcels of land qualifying for the speculative homesite exemption. (5-3-03)~~
- ~~**06. Report of Exempt Value.** As provided in Rule 509 of these rules, the county auditor shall report to the State Tax Commission the total exempt value of all parcels of land qualifying for the speculative homesite exemption. (5-3-03)~~
- ~~**07. Removal of the Speculative Homesite Exemption. (5-3-03)**~~
- ~~a. The year following the year in which the population of a county exceeds one hundred thousand (100,000), the speculative homesite exemption shall be removed from any parcels of land previously qualifying for the speculative homesite exemption in that county. Population shall be determined from the most current census or estimate available from the Bureau of the Census as of January 1 of each year. (5-3-03)~~
- ~~b. The year following the year in which any parcel is annexed into an incorporated city or is incorporated into a newly incorporating city, the speculative homesite exemption shall be removed from that parcel. (5-3-03)~~
- ~~c. The speculative homesite exemption shall be removed from any parcel of land when "improvements are being built". The speculative homesite exemption must not be removed until "improvements are being built" upon the parcel, even if, the ownership of a parcel of land has been transferred. (5-3-03)~~

6365. -- 644. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED (RULE 645).**

Section 63-604, Idaho Code.

(3-15-02)

**01. Definitions.** The following definitions apply for the implementation of the exemption for the speculative value portion of agricultural land. (7-1-99)

**a. Homesite.** The “homesite” is that portion of land, contiguous with but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes. (7-1-99)

**b. Associated Site Improvements.** The “associated site improvements” include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)

**c. Nursery Stock.** Nursery stock is defined in Section 22-2302, Idaho Code. (3-15-02)

**d. Land Used to Produce Nursery Stock.** “Land used to produce nursery stock” means land used by an agricultural enterprise to promote or support the promotion of nursery stock growth or propagation, not land devoted primarily to selling nursery stock or related products. This term also includes land under any container used to grow or propagate nursery stock. This term does not include land used for parking lots or for buildings sites used primarily to sell nursery stock or related items or any areas not primarily used for the nurturing, growth or propagation of nursery stock. (3-15-02)

**e. Speculative Value Exemption.** The “speculative value exemption” is the exemption allowed on land actively devoted to agriculture. (7-1-99)

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

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

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

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

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

**03. Valuing Land, Excluding the Homesite.** The assessor shall value land, excluding the homesite, on the following basis: (5-3-03)

**a. Land Used for Personal Use or Pleasure.** Any land, regardless of size, utilized for the grazing of animals kept primarily for personal use or pleasure and not a portion of a for profit enterprise, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule and shall not qualify for the speculative value exemption. (4-11-06)

**b.** Land in a Subdivision. Land in a subdivision with restrictions prohibiting agricultural use shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule and shall not qualify for the speculative value exemption but may qualify for the exemption under Section 63-602FF, Idaho Code. Land meeting the use qualifications identified in Section 63-604, Idaho Code, and in a subdivision without restrictions prohibiting agricultural use shall be valued as land actively devoted to agriculture using the same procedures as used for valuing land actively devoted to agriculture and not located in a subdivision. (4-11-06)

**c.** Land, Five (5) Contiguous Acres or Less. Land of five (5) contiguous acres or less shall be presumed nonagricultural, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule, and shall not qualify for the speculative value exemption. If the owner produces evidence that each contiguous holding of land under the same ownership has been devoted to agricultural use for the last three (3) growing seasons and it agriculturally produced for sale or home consumption fifteen percent (15%) or more of the owner's or lessee's annual gross income or it produced gross revenue in the immediate preceding year of one thousand dollars (\$1,000) or more, the land actively devoted to agriculture, shall qualify for the speculative value exemption. For holdings of five (5) contiguous acres or less income is measured by production of crops, nursery stock, grazing, or net income from sale of livestock. Income shall be estimated from crop prices at harvest or nursery stock prices at time of sale. The use of the land and the income received in the prior year must be certified with the assessor by March 15, each year. (4-11-06)

**d.** Land, More Than Five (5) Contiguous Acres. Land of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, or grazing, or in a cropland retirement or rotation program, as part of a for profit enterprise, shall qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule. (4-11-06)

**04. Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For agricultural land taxable value calculation examples, see Rule 614 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**717. PROCEDURE AFTER CLAIM APPROVAL (RULE 717).**

Sections 63-115 and 63-707, Idaho Code. ( )

**01. Formatting Requirements.** The property tax reduction roll shall be formatted as required by Section 63-707, Idaho Code. (3-30-01)

**02. Preliminary Property Tax Reduction Roll.** The roll, certified by the assessor to the county auditor and the State Tax Commission by the fourth Monday in June, shall be termed the preliminary property tax reduction roll. The preliminary property tax reduction roll shall list property tax reduction claimants in alphabetical order unless the State Tax Commission grants permission for claimants to be listed in an alternate order. Each original claim form shall be submitted to the State Tax Commission in the same order as shown on the preliminary property tax reduction roll. (3-30-01)

**03. Final Property Tax Reduction Roll.** The completed property tax reduction roll, certified by each county clerk to the State Tax Commission by the fourth (4th) Monday in October, shall be termed the final property tax reduction roll. The final property tax reduction roll shall list property tax reduction claimants in the same order as shown on the preliminary property tax reduction roll, except that all fully disapproved claimants shall be deleted and not shown on the final property tax reduction roll. Erroneous claims which are partially disapproved by the State Tax Commission shall be shown on the final property tax reduction roll after the county clerk has made all adjustments or corrections listed on the notice sent to the county auditor pursuant to Section 63-707(6), Idaho Code, termed county change letter. (3-30-01)

**04. Certification of Electronic Property Tax Reduction Roll by County Assessor.** After approval of the claims by the county board of equalization but no later than the fourth Monday in June, each county assessor will certify the property tax reduction roll to the county auditor and send a copy to the State Tax Commission. In addition, each county assessor will also send a copy of this certified roll to the State Tax Commission in a password protected electronic data file formatted as directed or approved by the State Tax Commission. Each county assessor will contact the State Tax Commission to receive a password. This password protected electronic roll will contain the following information: ( )

- a. Claimant's Social Security Number. List the claimant's social security number. ( )
- b. Claimant's Date of Birth. List the claimant's date of birth. ( )
- c. Claimant's Last Name. List the claimant's last name. ( )
- d. Claimant's First Name. List the claimant's first name. ( )
- e. Spouse's Social Security Number. List the social security number for the spouse of the claimant. ( )
- f. Spouse's Date of Birth. List the date of birth for the spouse of the claimant. ( )
- g. Spouse's Last Name. List the last name for the spouse of the claimant. ( )
- h. Spouse's First Name. List the first name for the spouse of the claimant. ( )
- i. Claimant's Telephone Number. List the claimant's telephone number. ( )
- j. Claimant's Address. List the claimant's address. ( )
- k. Claimant's City. List the city where the claimant lives. ( )
- l. Claimant's State. List the postal abbreviation for the state where the claimant lives. ( )
- m. Claimant's Zip Code. List the claimant's zip code. ( )
- n. Claimant's Parcel Number(s). List the parcel number for the property on which the claimant is receiving the homeowner's exemption. When more than one (1) parcel owned by the claimant is eligible, list all eligible parcel numbers. ( )
- o. Year. List the current year. ( )
- p. Claimant's County Number. List the number of the county where the claimant lives. ( )
- q. Term of Direct Address. List the appropriate term of direct address; that is, "Mr.," "Ms.," or "Mr. & Mrs." ( )
- r. Income Data. List income data. ( )
- s. Identify New Applicants. Identify claimants who are applying for this benefit for the first time. ( )
- t. Value. List the best estimate for each secondary category of current market value and prorated net taxable value. ( )
- u. Maximum Benefit. The program will automatically show the maximum benefit for which the claimant is eligible based on income. ( )



- v. Qualifying Criteria. Identify all of the following criteria that the claimant meets. ( )
- i. Sixty-five (65) or older. ( )
- ii. Blind. ( )
- iii. Disability granted by the Social Security Administration, Railroad Retirement Board, or federal civil service. ( )
- iv. Orphan, under eighteen (18) years of age. ( )
- v. Prisoner of war or hostage, certified by Veteran's Affairs. ( )
- vi. Nonservice connected disability or service connected disability at ten percent (10%) to thirty percent (30%), certified by Veteran's Affairs. ( )
- vii. Service connected disability at forty percent (40%) or more, certified by Veteran's Affairs. ( )
- viii. Widow or widower, include date of spouse's death. ( )

**05. Certification of Completed Electronic Property Tax Reduction Roll by County Auditor.** No later than the fourth Monday in October, each county auditor will certify the property tax reduction roll to the State Tax Commission. In addition, each county auditor will also send a copy of this certified roll to the State Tax Commission in a password protected electronic data file formatted as directed or approved by the State Tax Commission. Each county auditor will contact the State Tax Commission to receive a password. In addition to the data files listed in Paragraphs 717.01.a. through 717.01.v. of this rule, this password protected electronic roll will contain the following information formatted as directed or approved by the State Tax Commission. ( )

- a. Current Year's Levy. List the current year's levy for the tax code area where each claimant's property is located. ( )
- b. Current Year's Taxable Value. List the current year's taxable value for each claimant's qualifying property. ( )
- c. Claimed Property Tax Reduction Amount. List for each claimant the amount of property tax reduction claimed based on the current year's levy and the current year's eligible taxable value. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**801. LIMITATION ON BUDGET REQUESTS -- SPECIAL PLANT FACILITIES FUND LEVY PROVISIONS (RULE 801).**

Sections 63-802, ~~and~~ 33-804, and 33-909, Idaho Code. (3-15-02)( )

**01. Limits on Plant Facilities Funds.** For any school or library district with a plant facilities fund created pursuant to Section 33-804, Idaho Code, the amount of property tax to be budgeted for said fund in any year cannot exceed four tenths of one percent (0.4%) multiplied by the market value for assessment purposes of the taxing district as of December 31 of the year prior to the first year in which a plant facilities fund levy is made. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code. (3-15-02)( )

**02. No Additional Plant Facilities Fund Permitted.** Any school or library district with an existing plant facilities fund is not allowed to levy for an additional plant facilities fund in any tax year until the period of the existing plant facilities fund has expired. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code. (3-15-02)( )

**03. Plant Facilities Fund Extensions or Increases.** Any school or library district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-804, Idaho Code. For the purpose of such increase, the “total levy for school or library plant facilities and bonded indebtedness” shall be computed as follows. (3-15-02)

**a.** For the first year in which the increased or extended plant facilities fund levy is to be made, sum of the amount to be levied for the plant facilities fund and for any bond fund in existence prior to the new plant facilities fund. (3-15-02)

**b.** Divide the sum computed in Subsection 801.03.a. by the district’s actual market value for assessment purposes as of December 31 of the year immediately preceding the year in which the increased or extended plant facilities fund is to be levied. (3-15-02)

**04. Maximum Amount of Increased Plant Facilities Fund.** When any district increases its plant facilities fund amount to be levied, the maximum amount shall not in any year exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the year immediately preceding the first year the increased fund is to be levied. (3-15-02)

**05. Special Reporting Requirements for State-authorized Plant Facilities Levy.** When the state Department of Education certifies a state-authorized plant facilities levy to any county under Section 33-909, Idaho Code, the county clerk shall forward a copy of such certification to the State Tax Commission as an attachment to the L-2 Form described in Rule 803 of these rules and submitted for the affected school district. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).**

Sections 63-602G(5), 63-803, 63-3029B(4), and 63-3638(10), Idaho Code. (4-6-05)

**01. Definitions.** (4-5-00)

**a.** “Dollar Certification Form” (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)

**b.** “Prior Year’s Market Value for Assessment Purposes.” Prior year’s market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code, and for fire districts, pursuant to Section 31-1420(3), Idaho Code. (4-5-00)

**c.** “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), or 31-1420(3), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), and 31-1420(3), then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

<b>CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*</b>				
	<b>FY 1999</b>	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>
<b>Annual Budget</b>	\$10,000	\$10,000	\$10,700	\$11,621

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

\*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (4-6-05)

**d.** “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district’s budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

**e.** “Recovered/Recaptured Property Tax List.” Recovered/recaptured property tax list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax under Section 63-602G(5), Idaho Code, and/or as recapture of property tax under Section 63-3029B(4), Idaho Code, during the twelve (12) month period ending June 30 each year. (4-6-05)

**f.** “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. (4-6-05)

**g.** “New Taxing District.” For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991). ( )

**02. Budget Certification.** The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located by submitting the completed L-2 Form prescribed by the State Tax Commission. (4-6-05)

**03. Budget Requested Documents.** Each Board of County Commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The Board of County Commissioners shall not submit other documents unless requested to do so by the State Tax Commission. Documents not to be submitted to the State Tax Commission unless requested include newspaper advertisements, school district budget books, entire budget documents, other than the budget request, and similar documents. (4-6-05)

**04. L-2 Form Contents.** Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

**a.** “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

**b.** “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

**c.** “Cash Forward Balance.” List any money brought forward from a prior year to help fund the

approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

**d.** “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

**e.** “Property Tax Replacement.” Report the sum of only the following: (4-6-05)

i. The amount of money received annually under Section 63-3638(10), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code (For school districts, the amount of money to be included is only the appropriate amount of such money to be subtracted, as provided in Subsection 803.06 of this rule, not all such money.); (4-6-05)

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax list”; (4-6-05)

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax list”; and (4-6-05)

iv. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement. (4-6-05)

**f.** “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

**g.** Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)

**h.** Attached Information. Other information submitted to the county auditor with the L-2 Form. (4-6-05)

i. For all taxing districts, L-2 worksheet. (3-20-04)

ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)

iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)

iv. Voter approved fund tracker. (3-20-04)

v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)

vi. For any city with city funded library operations and services at the time of consolidation with any

library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)

vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi., of this rule. (4-6-05)

**05. Special Provisions for Fire Districts Levying Against Operating Property.** To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

**06. Special Provisions for Property Tax Replacement Pursuant to Section 63-3638, Idaho Code.** Property tax replacement monies received pursuant to Section 63-3638, Idaho Code, must be reported on the L-2 Form. For all taxing districts except school districts, these monies must be subtracted from the "balance to be levied". For school districts, only "appropriate property tax replacement monies" are to be subtracted. The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Sections 63-802 and 33-802, Idaho Code, shall be based on the sum of these property tax replacement monies and the amount actually levied, or, for school districts, the sum of "appropriate property tax replacement monies" and the amount actually levied. (4-6-05)

a. "Appropriate property tax replacement monies" is determined only for school districts and means all property tax replacement monies received pursuant to Section 63-3638, Idaho Code, except an amount equal to four thousands (0.004) multiplied by the year 2000 value of property exempted in Section 63-602EE, Idaho Code. If the amount so determined is greater than the total amount of property tax replacement monies, no property tax replacement monies received pursuant to Section 63-3638, Idaho Code, shall be subtracted from the school district maintenance and operation's (M&O) budget. (4-6-05)

b. After receipt from the counties of the year 2000 tax charges on property exempted in Section 63-602EE, Idaho Code, but no later than July 23, 2001, the State Tax Commission shall notify each county clerk of the amount of property tax replacement money to be paid to each taxing district in that county. Beginning in 2002 and thereafter, the State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money to be paid to a taxing district or the "appropriate amount of property tax replacement money" to be paid to any school district changes from the amount paid in the preceding year. In 2002, the State Tax Commission shall also notify each county clerk of the amount of the "appropriate property tax replacement monies" to be subtracted before computing the M&O levy for each school district. (5-3-03)

c. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received and shall further notify each school district of the appropriate amount to be subtracted before the M&O levy is computed. (5-3-03)

d. The subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code, and from school district maintenance and operation funds made pursuant to Section 33-802, Idaho Code. (4-6-05)

- e. Levy limits shall be tested against the amount actually levied. (3-15-02)

**07. Special Provisions for Library Districts Consolidating with Any City's Existing Library Operations or Services.** For any library district consolidating with any city's existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district's property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**08. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District.** For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city's total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**09. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds.** Whenever the "Calculated Levy Rate" column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the "Column Total" entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**808. -- ~~935~~01. (RESERVED).**

**902. PROPERTY TAX NOTICE AND RECEIPTS - DUTY OF TAX COLLECTOR (RULE 902).**  
Sections 63-704 and 63-902, Idaho Code. The tax notice required to be mailed to taxpayers under Section 63-902, Idaho Code, must include taxpayers whose property taxes are to be paid in full as a result of the property tax reduction approved under Section 63-704, Idaho Code. For these taxpayers, the tax notice shall show the amount to be paid on behalf of the taxpayer and zero taxes owed. ( )

**903. -- 935. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**937. -- ~~944~~38. (RESERVED).**

**939. COURT OR BOARD OF TAX APPEALS ORDERED REFUNDS OR CREDITS - LEVY RESTRICTIONS (RULE 939).**  
Section 63-1305, Idaho Code. Section 63-1305, Idaho Code, allows taxing districts to certify and levy a judgment levy for an amount equal to property tax refunds or credits ordered by a court or the board of tax appeals and to include such amount with amounts certified and levied under Sections 63-802 through 63-807, Idaho Code. For each affected taxing district, the decision to certify and levy such amounts is permissive. For any taxing district to use this provision, amounts to be levied must be certified within the two years immediately following the order becoming final. Any amount, not certified and levied within that two-year period, is lost. In the second year following the order, the amount remaining will be lost for any taxing district for which such amount is less than \$100. ( )

**940. -- 944. (RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

~~967.—979.~~ (RESERVED).

**968. CERTAIN CHRISTMAS TREES AND ANNUAL FOREST CROPS - EXEMPT FROM YIELD TAX (RULE 968).**

Sections 63-602K, 63-604, and 63-1708, Idaho Code. ( )

**01. Certain Forest Products Exempt From Yield Tax Under Twenty-Five Dollars.** Annual forest crops, including Christmas trees, nuts, berries, foliage, cones, and other forest products harvested for domestic use, are exempt from the forest product yield tax when this tax would be less than twenty-five dollars (\$25.00) and the forest crops are harvested on land designated under Section 63-1703 or 63-1704, Idaho Code. ( )

**02. Categorization of Christmas Tree Farms Land.** complying with the definition of “actively devoted to agriculture” as defined in Section 63-604, Idaho Code, and used to grow Christmas trees and other annual forest crops, shall be identified in the appropriate agricultural secondary category pursuant to the secondary category descriptions in Rule 510 of these rules. ( )

**03. Cross References.** For the descriptions of agricultural secondary categories, see secondary categories 1, 2, 3, 4, and 5 in Rule 510 of these rules. For additional information relating to complying with the “actively devoted to agriculture” criteria, see Rule 645 of these rules. For land valuation information, see Rules 613 and 614 of these rules. ( )

~~969. -- 979.~~ (RESERVED).

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.07 - RULES GOVERNING TITLING OF SALVAGE, SPECIALLY CONSTRUCTED, AND RECONSTRUCTED MOTOR VEHICLES

DOCKET NO. 39-0207-0601

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2006.

**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 rule-making procedures have been initiated. This action is authorized pursuant to Section(s) 49-2001, 49-507, and 49-525, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

Proposed changes bring this rule into conformity and compliance with code changes in 2006 HB 727, effective July 1, 2006. The bill mandates that all vehicles that have been declared a total loss enter the salvage program and be issued a salvage certificate of ownership, establishes criteria to require a branded certificate for repaired or reconstructed vehicles, and includes a requirement for dealers to disclose title brands to purchasers, protecting consumers by identifying that the vehicle was previously declared a salvage vehicle.

**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 code which will also confer a benefit on the public purchasing previously owned vehicles and protect the public safety.

**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 are no fees or charges being imposed 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: N/A

**NEGOTIATED RULE-MAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is required for compliance with Idaho Code and immediate implementation will protect Idaho citizens purchasing previously owned vehicles.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.



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. 39-0207-0601**

**001. TITLE AND SCOPE.**

*This rule governs the classification and titling of motor vehicles described as reconstructed or repaired, salvage, and specially constructed in Section 49-123 (2)(i), (j) and (k), Idaho Code.* (11-1-94)

**01. Title.** These rules shall be cited as IDAPA 39.02.07 “Rules Governing Titling of Salvage, Specially Constructed, and Reconstructed Motor Vehicles.” (7-1-06)T

**02. Scope.** These rules identify requirements for the classification and titling of motor vehicles defined as reconstructed or repaired, salvage, or specially constructed, pursuant to Section 49-123(2)(l)(m) and (n), Idaho Code. (7-1-06)T

**002. WRITTEN INTERPRETATIONS.**

This agency does not rely on written interpretations for these rules. (7-1-06)T

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of IDAPA 04.11.01. “Idaho Rules of Administrative Procedure of the Attorney General.” (7-1-06)T

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. (7-1-06)T

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office for motor vehicle investigations in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. (7-1-06)T

**02. Office Hours.** Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (7-1-06)T

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8663 or by fax at 208-334-8658. Requests will be directed to the appropriate inspector by location. (7-1-06)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. (7-1-06)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

**01. Major Component Parts.** The six (6) major component parts which are commonly used to

reconstruct a motor vehicle shall be defined solely for reconstruction purposes as follows. (For the purpose of determining major component part damage that requires repair or replacement on salvage vehicles, an inspector may disregard minor damage to cosmetic exterior trim and sheet metal body panels that do not affect the structural integrity of the vehicle.) ~~(11-1-94)~~(7-1-06)T

**a.** Front/Front End Assembly/Front Clip/Nose Section. An integrated section of body structural component parts located forward of the firewall, i.e. front fender apron, front side member, front suspension cross member, hood lock brace, front cross member, radiator side support (side baffle), radiator upper support, hood and other such parts that may be pertinent to this section and not including a frame section. (1-1-90)

**b.** Body/Center Passenger Area. The center structure, either of a unibody or frame-type passenger vehicle, consisting of a unit of sheet metal and structural components that extends from the firewall to the back of the rear seat or to the factory seam separating the rear section or the centerline of the rear wheels, i.e. cowl panel, dash panel, floor pans, center side body panels, side rails, rocker panels, and other such component parts that may be pertinent to this section. This major component shall not include the top/roof section of the passenger compartment. (11-1-94)

**c.** Top/Roof of Passenger Compartment. The top/roof section consisting of sheet metal severing the vehicle joining at the windshield, side and rear window posts, i.e. center pillar upper outer reinforcement, roof side inner rail, roof side outer rail, roof drip channel, roof side inner panel and other such component parts that may be pertinent to this section. (11-1-94)

**d.** Rear/Rear Clip. The complete rear sheet metal section and structural components formed by severing the vehicle across the floor behind the rear seat, or at the factory seam separating the center passenger section or through the centerline of the rear wheels, i.e. upper back panel, luggage compartment door hinge arm, quarter wheel house panel, quarter panel, lower back panel, rear valance panel, rear floor pan, rear seat cushion support brace, rear floor side panel, rear deck lid, rear floor no. 1 cross member, and other such component parts that may be pertinent to this section. (11-1-94)

**e.** Frame. The heavy metal structure that supports the auto body and other external component parts on body over-frame constructed vehicles only. For the purposes of this section, damage that is evident between the centerline of the front wheels and the centerline of the rear wheels will be considered major component damage to the frame. Damage to the ends of the frame, front and rear will be considered as minor damage, easily repaired and not considered as major component damage. The typical bolt-on stub frame used on a semi-unitized vehicle will not be considered a separate major component part. (1-1-90)

**f.** Cab. The passenger compartment of a common truck or pickup truck. It is a unit of sheet metal and structural components including the top/roof and the cowl which may or may not include glass, instrumentation, steering column and seat. (11-1-94)

**02. Market Value.** The market value is the value of the vehicle, prior to the vehicle receiving damage from the incident that caused the vehicle to be declared salvage. This value will be determined by reference to an official used car guide. For purpose of the rule, Known Market Value, Fair Market Value, Retail Market Value, Actual Cash Value, and Market Value are the same and will be referred to as "Market Value". ~~(7-1-96)~~(7-1-06)T

**03. Primary Damage.** Local damage that occurs at the point of impact on the vehicle. (7-1-90)

**04. Secondary Damage.** Damage that occurs due to misplaced energy that causes stresses in suspension and/or body dimensions at areas other than the primary impact zone. If the secondary damage area can be repaired or replaced within a six (6) hour period, as indicated in a recognized collision estimating guide, the damage will not be counted as a section or major component part while inspecting for branding considerations. (7-1-90)

**05. Significant Parts.** For the purpose of this rule, the significant parts are all replaced parts that will require a bill of sale or traceable invoice from the former owner identifying the part by vehicle identification number and identifying the seller by name and address. These parts are the front fenders, hood, doors, bumpers, quarter panels, decklid, tailgate or hatchback (whichever is present). (7-1-90)

(BREAK IN CONTINUITY OF SECTIONS)

200. RECONSTRUCTED VEHICLES OR REPAIRED VEHICLES.

**01. Reconstructed or Repaired Vehicle.** A reconstructed or repaired vehicle, as defined by Section 49-123 (2)(#), Idaho Code, is: ~~(7-1-96)~~(7-1-06)T

**a.** ~~All~~ Every "Salvage Vehicles" that ~~have~~ has been rebuilt, reconstructed, repaired, or restored in compliance with Chapter 9, Title 49, Idaho Code, as regulated by Sections 49-524 and 49-525, Idaho Code, ~~which had a known market value in excess of six thousand dollars (\$6,000) prior to damage;~~ or ~~(7-1-96)~~(7-1-06)T

**b.** All Every vehicles that ~~are five (5) years old or less~~ is coming into Idaho from another jurisdiction showing evidence of a total loss payoff such as a bill of sale from an insurance company, salvage bill of sale or other documentation indicating that the vehicle may have been severely damaged. These vehicles may not be operated on Idaho highways until rebuilt, reconstructed, repaired, or restored in compliance with Chapter 9, Title 49, Idaho Code, and shall be considered salvage. They shall be issued an Idaho Salvage Certificate and if they are five (5) years old or less, or had a known market value in excess of six-thousand dollars (\$6,000) prior to damage, they must be inspected prior to repair. If these any vehicles are described in Subsection 200.01 is received by a "salvage pool", a salvage certificate of title must be issued, prior to sale; or ~~(7-1-96)~~(7-1-06)T

**c.** All other vehicles which have been reconstructed by the use of a kit designed to be used to construct an exact replica of a vehicle which was previously constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles including vehicles meeting the definition of a "Street Rod" in 49-120(26), Idaho Code, will receive a "Reconstructed Vehicle" title brand but do not require a "Reconstructed Vehicle" decal. Large trucks rebuilt by the use of a glider kit are not considered to be "Reconstructed Vehicles" under this rule. (11-1-94)

**02. Reconstructed or Repaired Vehicle, Exemptions.** Motorcycles, motor homes, trailers, all-terrain vehicles and snowmachines are not considered to be reconstructed or repaired vehicles under this rule, regardless of damage, and do not require the issuance of a salvage certificate of title. (11-1-94)

**03. Title Application Instructions For Vehicles More Than Five Years Old and Having a Known Market Value of Six Thousand Dollars or Less.** ~~(7-1-90)~~(7-1-06)T

**a.** The applicant must provide a written affirmation which includes the vehicle information, vehicle identification numbers, salvage date, and the work done personally by the owner or supervised by the owner to restore the vehicle to the operating condition that existed prior to the event causing the vehicle to be salvaged. (7-1-06)T

**b.** In the event that the applicant did not personally repair the vehicle or supervise its repair, but another party performed the repairs, the applicant shall certify to the best of his knowledge the name of the party that did repair the vehicle or personally supervised its repair. This certification shall be made on a salvage vehicle affidavit. (7-1-06)T

**c.** In the event that repairs were not necessary to bring the vehicle to operating condition pursuant to Chapter 9, Title 49, Idaho Code, the applicant shall certify this on a salvage vehicle affidavit. (7-1-06)T

**d.** The applicant must sign an indemnifying affidavit agreeing to defend the title in all legal disputes arising out of his possession of the title to the vehicle, and attesting to the fact that all information contained in the affidavit or its attachments are true and correct. (7-1-06)T

**04. Title Application Instructions for Vehicles With an Age of Five Years or Less or Having a Known Market Value in Excess of Six Thousand Dollars.** (7-1-06)T

a. The applicant must provide proof of ownership for all significant parts used in the construction. Documentation requirements are as follows: The title or titles to the vehicles that were used in the construction; the frame requires the title properly released by the legal owner; and traceable bills of sale or invoices from new or used parts outlets or bills of sale from previous legal owners for all major component and significant parts, except the frame, are acceptable. ~~(1-1-90)~~(7-1-06)T

b. When the vehicle is in operating condition and in compliance with Chapter 9, Title 49, Idaho Code, the applicant must submit the vehicle for inspection. The inspector will inspect the VIN(s) and determine if the VIN(s) on the vehicle are properly represented by available titles and/or bills of sale. (11-1-94)

c. The model year and make of the vehicle will be determined in order of priority as follows: Previous primary ownership documents, i.e. certificate of title or salvage certificate to the body; visual identification; or use the frame identification number. (11-1-90)

d. The inspector shall: Assist in preparing an indemnifying affidavit in conjunction with the possessor of the vehicle; And advise the affiant that it is his obligation to insure that the vehicle is maintained in compliance with Chapter 9, Title 49, Idaho Code and that he is agreeing to defend the vehicle in all legal disputes arising out of his possession of the vehicle. (11-1-94)

e. The inspector or county assessor's deputy shall assist the applicant in preparing an application for title. (11-1-94)

~~045.~~ **Inspection Fee.** The inspector will charge a fee of twenty-five dollars (\$25) for the inspection and preparation of the documents. If a VIN assignment is made, the fee required by Section 49-202(2)(~~h~~), Idaho Code, will also be charged. ~~(11-1-94)~~(7-1-06)T

~~056.~~ **Idaho Title Branded.** The new Idaho title produced will be branded "RECONSTRUCTED VEHICLE" or "REPAIRED VEHICLE" depending on the severity of the damage. Such notation will remain on the title on all subsequent transfers of the title. (11-1-94)

~~067.~~ **Repaired Vehicle Branded.** If the vehicle is a "salvage vehicle", as defined by Section 49-123(2)(~~h~~), Idaho Code, and the inspector determines that one (1) major component part has damage and requires repair or replacement, a second or final inspection is required for the purpose of attaching a "REPAIRED VEHICLE" decal, verification of ownership of all major components and significant parts and collection of the fee required by Section 49-525(3)(b), Idaho Code. The "REPAIRED VEHICLE" decal shall be attached ~~to~~ in the vicinity of the driver's door jamb/"B" post, and must be attached prior to application for title. ~~(11-1-94)~~(7-1-06)T

~~078.~~ **Reconstructed Vehicle Branded.** If the vehicle is a "salvage vehicle", as defined by Section 49-123(2)(~~h~~), Idaho Code, and the inspector determines that two (2) or more major component parts are damaged and require repair or replacement, or the vehicle sustained "Flood Damage" as shown in the ownership documentation or insurance adjuster's report, a second or final inspection is required for the purpose of attaching a "RECONSTRUCTED VEHICLE" decal, verification of ownership of all major components and significant parts and collection of the fee required by Section 49-525 3(b), Idaho Code. The "RECONSTRUCTED VEHICLE" decal shall be attached ~~to~~ in the vicinity of the driver's door jamb/"B" post, and must be attached prior to application for title. ~~(11-1-94)~~(7-1-06)T

~~089.~~ **Salvage Vehicle Damaged Out-of-State.** If a vehicle that is titled in Idaho is damaged in another state or jurisdiction to the extent that the vehicle becomes a "salvage vehicle" as defined by Section 49-123(2)(~~h~~), Idaho Code, and the vehicle is not going to be returned to Idaho, the owner or insurer must upon determining the vehicle to be salvage, notify the purchaser and the department in writing of the salvage status and that if this vehicle returns to Idaho, the vehicle and the title will be branded "RECONSTRUCTED VEHICLE" or "REPAIRED VEHICLE," as appropriate. If the vehicle has been repaired prior to major component inspection by an authorized vehicle inspector, the vehicle and the certificate of title shall be marked "RECONSTRUCTED VEHICLE". ~~In this situation, no salvage certificate of title must be issued, but the department will mark its records appropriately.~~ ~~(11-1-94)~~(7-1-06)T

~~09.~~ **Minor Major Component Part Damage.** For the purpose of determining major component part

~~damage that requires repair or replacement on salvage vehicles, an inspector may disregard minor damage to cosmetic exterior trim and sheet metal body panels that do not affect the structural integrity of the vehicle. However, every vehicle damaged to the extent that a salvage certificate is required must receive a "reconstructed vehicle" or "repaired vehicle" decal and title brand. (11-1-94)~~

**10. Salvage Vehicle Age Determination.** The age of a salvage vehicle shall be determined by subtracting the model year of the vehicle from the year the damaged vehicle was declared salvage, as evidenced by the salvage certificate, salvage bill of sale, or other documentation showing evidence that the vehicle has been declared salvage. A vehicle may not age out of the salvage vehicle process, regardless of the date of inspection or application. (11-1-94)

~~**11. Applicable Salvage Law, Rules and Procedures Determination.** The salvage law, rules and procedures in effect at the time a vehicle was declared salvage, shall be applied to the salvage vehicle. (7-1-96)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. GLIDER KITS.**

**01. Title Application Instructions.** (1-1-90)

**a.** An ~~MCO~~ Manufacturer's Certificate of Origin for the glider kit must be submitted with the application for title. ~~(1-1-90)~~(7-1-06)T

**b.** If the applicant dismantles a vehicle presently titled to the applicant and uses the significant parts with the glider kit, a statement of fact will be prepared, identifying the significant parts by identifying numbers. If the significant parts were purchased separately, a bill of sale or invoice from the new or used parts outlet is required. If the major component parts were purchased from a private owner, a bill of sale is required. (1-1-90)

**c.** If the frame and cab that the parts were stripped from will never be used again, i.e., frame and cab destroyed, not salvageable, the title must be surrendered with the application. If the frame or cab can be used again, the inspector will mark the title "frame only" or "cab only" and note such in the statement of fact. (11-1-94)

**d.** The vehicle must be completely assembled and meet the requirements of Chapter 9, Title 49, Idaho Code, at the time of inspection. (11-1-94)

**02. Assignment of VIN.** The VIN will be the number assigned to the kit by the manufacturer. In the absence of such number, the inspector will assign a VIN. (11-1-94)

**03. Model Year.** The model year will be the year of the kit, determined by priority in the following order: (7-1-90)

**a.** Seventeen (17) digit VIN year designator; (11-1-94)

**b.** Designation of model year shown on an approved ~~MCO~~ Manufacturer Certificate of Origin; or ~~(11-1-94)~~(7-1-06)T

**c.** Written statement from the manufacturer. (11-1-94)

**04. Make of Vehicle.** The make of the vehicle will be the name of the manufacturer of the glider kit. (1-1-90)

**05. Title Branded.** The designation "GLIDER KIT VEHICLE" will be branded on the title. (7-1-90)

**06. Inspection Fee.** The inspector will charge a fee of twenty-five dollars (\$25) for the inspection and

preparation of documents. If a VIN assignment is made, the fee required by Section 49-202(2)(i), Idaho Code, will also be charged. (11-1-94)

**301. -- 399. (RESERVED).**

**400. BRANDING.**

**01. Brand Disclosure.** Upon sale by a dealer of any salvage vehicle or branded vehicle or branded certificate of title, disclosure of the vehicle's salvage or branded status, shall be conspicuously disclosed to the buyer and a record must be maintained by the dealer. Disclosure may be made on a form as provided by the department for a report of sale. The buyer must sign that they have received disclosure of the vehicle brand. Proof of disclosure must be submitted to the department. (7-1-06)T

**072. Branding Time Frame.** Each branded vehicle and branded certificate of title shall retain that brand throughout the existence of the vehicle regardless of its age or value. (1-1-90)

**023. Brands Removed.** If any salvage vehicle leaves the state of Idaho with or without an Idaho salvage certificate of title, or if the vehicle had a regular Idaho title showing any brand such as "RECONSTRUCTED VEHICLE," "REPAIRED VEHICLE," "SPECIALLY CONSTRUCTED," "GLIDER KIT VEHICLE," or "JUNK ONLY," and/or a physical "RECONSTRUCTED VEHICLE" or "REPAIRED VEHICLE" decal and such vehicle returns to Idaho without any of the aforementioned brands or decals, all inspections and fees will once again be required and the brands and decals will be replaced as required by Idaho Code and this rule. (7-1-96)

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.24 - RULES GOVERNING "GRAY MARKET" VEHICLE REGISTRATION AND TITLING

DOCKET NO. 39-0224-0601

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2006.

**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 rule-making procedures have been initiated. This action is authorized pursuant to Section(s) 49-507, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 non-technical explanation of the substance and purpose of the proposed rule-making: The proposed changes clarify the department's requirements regarding proof of legal ownership, enabling the department to require sufficient ownership documentation prior to titling, thereby limiting the department's and the state's liability by reducing the risk associated with titling vehicles imported from another country without the legal ownership documents. This may reduce the risk to owners in other countries as well as U.S. consumers, by preventing the titling potentially stolen vehicles.

**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: Attorney General legal counsel assigned to the Idaho Transportation Department has advised immediate action to close a loophole in the existing administrative code, an action which will reduce department liability and protect the public welfare.

**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: 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: N/A

**NEGOTIATED RULE-MAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is necessary to limit department and state liability and will protect Idaho citizens purchasing previously owned vehicles.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

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. 39-0224-0601**

**001. TITLE AND SCOPE.**

*This rule governs the processing and issuance of registration and titling of imported motor vehicles manufactured for sale in a country other than the United States, commonly referred to as "gray market" vehicles. This rule identifies the safety and environmental protection requirements which must be met before Idaho registration and titling.*  
(12-26-90)

**01. Title.** These rules shall be cited as IDAPA 39.02.24 "Rules Governing 'Gray Market' Vehicle Registration And Titling."  
(8-1-06)T

**02. Scope.** This rule governs the processing and issuance of registration and titling of imported motor vehicles manufactured for sale in a country other than the United States, commonly referred to as "gray market" vehicles. This rule identifies the ownership, safety, and environmental protection requirements which must be met before Idaho registration and titling.  
(8-01-06)T

**002. WRITTEN INTERPRETATIONS.**

This agency does not rely on written interpretations for these rules.  
(8-1-06)T

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of IDAPA 04.11.01. "Idaho Rules of Administrative Procedure of the Attorney General."  
(8-1-06)T

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter.  
(8-1-06)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.  
(8-1-06)T

**02. Office Hours.** Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays.  
(8-1-06)T

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8663 or by fax at 208-334-8658.  
(8-1-06)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.  
(8-1-06)T

**0027. -- 099. (RESERVED).**

**100. TITLING AND REGISTRATION REQUIREMENTS.**

**01. Required Documents.** When the owner of a gray market vehicle applies for title and registration, the following documents must be presented.  
(12-26-90)

a. Statement indemnifying the Department.  
(12-26-90)

b. Statement of Facts from a motor vehicle investigator, unless waived by the department based on facts presented by the owner.  
(12-26-90)(8-1-06)T

c. All documents relating to ownership *such as* including but not limited to; manufacturer's certificate



of origin, manufacturer's statement of origin, foreign title, and/or registration (if the vehicle is not from a titling country), as applicable and bills of sale. A complete chain of ownership must be presented from the manufacturer (for new vehicles) or from the last titled owner, or registered owner (if the vehicle is not from a titling country) to all subsequent owners of the vehicle both in the foreign market and the United States. ~~(12-26-90)~~(8-1-06)T

d. U.S. Department of Transportation release letter. (12-26-90)

e. Environmental Protection Agency (EPA) release letter or Independent Commercial Importer (ICI) release letter or Designated Canadian Importer (DCI) release letter or EPA letter of waiver. (12-26-90)

**02. Substituted Documents.** The U.S. Customs Bond Release Letter may be substituted for all requirements in Subsections 100.01.ed. through 100.01.e. ~~(12-26-90)~~(8-1-06)T

**03. Designation of Year Model.** The year model for titling and registering gray market vehicles will be determined in an order of priority, based on the following criteria: (12-26-90)

a. The year model used by a specific manufacturer to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced; (12-26-90)

b. An ownership document issued by that vehicle's country of origin; (12-26-90)

c. Any vehicle manufactured during a twelve (12) month period beginning September 1, and ending August 31, shall bear the production year of the calendar year in which August 31 occurs; or (12-26-90)

d. The year model by certification of the importer of record. The certification can be verified against vehicle production dates, based upon substantially similar models of the same make of vehicle. (12-26-90)

**04. Foreign Documents.** When foreign manufacturer's certificate of origin, manufacturer's statement of origin, or registration and/or titling documents are presented, a translation of the foreign documents may be required to clarify the information contained in the documents. If required, such translation will be at the owner's expense and certified by the translator as true and correct. ~~(12-26-90)~~(8-1-06)T

**05. Registration Only.** Until gray market vehicles meet Idaho registration and titling requirements, the county assessor shall issue a registration under the "Registration Only" program to allow time for the federal government to act upon the required releases or for the owner to obtain legal ownership documentation. ~~(12-26-90)~~(8-1-06)T

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.21 - RULES GOVERNING SPECIAL PERMIT FEES

#### DOCKET NO. 39-0321-0601 (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 rule-making procedures. The action is authorized pursuant to Section(s) 40-312, 49-201, and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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

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

Fees collected by the overlegal permit program are intended to cover the administrative costs associated with permit processing, issuance and enforcement. As stated in this rule (100), and as approved by the Legislature, those costs are to be borne by the permittees and not by the general traveling public. (Tax supported agencies must obtain permits but are exempt from fees.) A 2005 cost study determined that administrative costs exceed permit receipts by more than \$800,000. An increase of \$15 per permit issued in this program will increase receipts by approximately \$1,000,000.

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

Each of the Overlegal permits specified in this rule which allow movement of vehicles or loads which are in excess of the sizes or weights allowed in sections 49-1001, 49-1002, or 49-1010, Idaho Code, will be increased by \$15 to cover the administrative costs associated with permit processing, issuance and enforcement. The majority of annual permits, currently issued at \$28 would increase to \$43. The Transportation Board is authorized to issue permits and set establish fees in Sections 49-201 and 49-1004, 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 rule-making was not conducted because proposed changes are consistent with legislative intent, previously approved in administrative code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Frew, Motor Vehicle Administrator, 334-8809.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

Linda L. Emry, Management Assistant  
Budget, Policy, 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. 39-0321-0601**

**39.03.21 - RULES GOVERNING ~~SPECIAL~~ OVERLEGAL PERMIT FEES**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of vehicles or loads which are in excess of the sizes or weights allowed by 49-1001, 49-1002 or 49-1010, is adopted under the authority of Sections 40-312, 49-201, and 49-1004, Idaho Code. (10-2-89)( )

**001. TITLE AND SCOPE.**

*This rule states the amounts of special permit fees.* (8-25-94)

**01. Title.** This rule shall be cited as IDAPA 39.03.21, "Rules Governing Overlegal Permit Fees," IDAPA 39, Title 03, Chapter 21. ( )

**02. Scope.** This rule states the fees for overlegal permits. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**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". ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

**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 PO Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ( )

**03. Telephone and Fax Numbers.** The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 208-334-8419. ( )

**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. ( )

**0027. -- 009. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. COSTS TO BE BORNE BY PERMITTEE.**

The movement of oversize or overweight vehicles or vehicles with over legal loads is a privilege not accorded every user of the highway. Administrative cost incurred in the processing, issuance and enforcement of ~~special~~ overlegal permits shall be borne by such permittees and not by the general traveling public through expenditure of highway user funds. Overlegal permits issued for non-reducible, overweight vehicles and/or loads will be charged a road use fee as set forth in Section 49-1002(2), Idaho Code. Tax supported agencies are required to obtain ~~special~~ overlegal

permits if their loads exceed the sizes or weights stated in Idaho Code, but they are exempt from paying fees for the permits. (1-3-92)(\_\_\_\_)

101. -- 199. (RESERVED).

**200. PAYMENT OF ~~SPECIAL~~ OVERLEGAL PERMIT FEES.**

**01. Payment of Fees.** The Idaho Constitution prohibits the state from extending credit to any individual, corporation, municipality or association. Permit fees are collectible at the time of issuance except that the permittee may guarantee payment of permit fees in advance by posting a bond in a minimum amount as specified in Section 300, Permit Fee Account Procedures of this rule. (8-25-94)

**02. Refund.** Permit fees are not refundable once they have been processed into the Department's accounting system, unless the permittee contacts the Special Overlegal Permit Office no more than two (2) working days (during office hours) following the start date of the special overlegal permit or the Department issued the special overlegal permit in error. (8-25-94)(\_\_\_\_)

**03. Permit Costs.** Special Overlegal (oversize and/or overweight) permit fees listed below are intended to cover cost of administration and are subject to periodic change depending on costs incurred in processing, issuance and enforcement of special overlegal permit rules. *Use fees will be added to the cost of single trip oversize/overweight permits in accordance with Section 49-434(7), Idaho Code.* (8-25-94)(\_\_\_\_)

**04. Current Schedule of Fees.** Periodic changes to the fee schedule will be subject to ~~the noted and~~ legislative review and approval procedures in accordance with Chapter 52, Title 67, Idaho Code, Administrative Procedure Act. (8-25-94)(\_\_\_\_)

- a. Oversize only, single trip, ~~thirteen~~ twenty-eight dollars (~~\$1328~~). (8-25-94)(\_\_\_\_)
- b. Oversize only, two (2) trips, ~~eighteen~~ thirty-three dollars (~~\$1823~~). (8-25-94)(\_\_\_\_)
- c. Oversize single trip exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~thirty-eight~~ fifty-three dollars (~~\$3853~~). (8-25-94)(\_\_\_\_)
- d. Oversize only, two (2) trips within seven (7) days, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~fifty-six~~ seventy-one dollars (~~\$5671~~). (8-25-94)(\_\_\_\_)
- e. Oversize only, annual, twelve (12) consecutive months: Extra length combinations exceeding the limits imposed in Section 49-1010, Idaho Code, on designated routes; Overlength only; Manufactured homes, modular building and office trailers; Recreation vehicles up to twelve (12) feet wide, legal length/height; Farm tractors exceeding nine (9) feet width on Interstate and implements of husbandry; Cylindrical hay bales, two (2) wide; Emergency removal of disabled vehicles; Multiple width loads of crane booms; Multiple width loads of conveyer units; Reducible loads, up to and including fourteen (14) feet nine (9) inches high; and exceeding sixty-five (65) feet overall combination length on magenta coded routes; ~~twenty-eight~~ forty-three dollars (~~\$2843~~). (8-25-94)(\_\_\_\_)
- f. Excess weight annual, twelve (12) consecutive months, authority to exceed eighty thousand (80,000) lbs. on reducible loads up to one hundred five thousand five hundred (105,500) pounds, ~~twenty-eight~~ forty-three dollars (~~\$2843~~). (8-25-94)(\_\_\_\_)
- g. Extra Length/Excess Weight (reducible) combination, annual, twelve (12) consecutive months, ~~thirty-eight~~ fifty-three dollars (~~\$3853~~). (8-25-94)(\_\_\_\_)
- h. Overweight/Oversize or Overweight only (non-reducible) single trip, ~~eighteen~~ thirty-three dollars (~~\$1833~~). (8-25-94)(\_\_\_\_)
- i. Overweight/Oversize or Overweight only (non-reducible), two (2) trips, ~~twenty-eight~~ forty-three dollars (~~\$2843~~). (8-25-94)(\_\_\_\_)

j. Overweight/Oversize (non-reducible) single trip, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~thirty-eight~~ fifty-three dollars (\$~~3853~~). ~~(8-25-94)~~(\_\_\_\_)

k. Overweight/Oversize (non-reducible) two (2) trips within seven (7) days, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~fifty-six~~ seventy-one dollars (\$~~5671~~). ~~(8-25-94)~~(\_\_\_\_)

l. Overweight/Oversize (non-reducible) annual permit fee for twelve (12) consecutive months, ~~forty-three~~ fifty-eight dollars (\$~~4358~~). ~~(8-25-94)~~(\_\_\_\_)

m. Special Overlegal permit manual (plus current sales tax for Idaho residents), five dollars (\$5). ~~(8-25-94)~~(\_\_\_\_)

n. Fee for reissuance or transfers, ~~ten~~ fifteen dollars (\$105). ~~(1-3-92)~~(\_\_\_\_)

**201. -- 299. (RESERVED).**

**300. PERMIT FEE ACCOUNT PROCEDURES.**

**01. Permit Fee Account.** To establish a basis for the issuance of special overlegal permits on other than a cash basis, the permittee may guarantee permit fees by posting a surety bond. The bond shall have a minimum value of one thousand dollars (\$1,000) or be equal to the value of permits required by the permittee during any three (3) consecutive months, whichever is greater. ~~(1-1-90)~~(\_\_\_\_)

**02. Bond Requirements.** Surety bonds for this purpose shall be furnished by a bonding or insurance company licensed to do business in Idaho. Applications to establish permit fee accounts shall be obtained from and filed with the ~~Maintenance Section~~ department along with the required bond. ~~(10-2-89)~~(\_\_\_\_)

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.43 - RULES GOVERNING UTILITIES ON STATE HIGHWAY RIGHT-OF-WAY

DOCKET NO. 39-0343-0601

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2006.

**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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 40-312(3) and 67-5229, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

This rulemaking is to update the website and district office addresses and zip codes, referenced in the rule.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This change will confer a benefit by providing more expedient access to the website for all interested parties.

**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: 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: N/A

**NEGOTIATED RULE-MAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this change does not include any information that would require discussion.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Damon Allen, Roadway Design Engineer, 334-8488.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

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. 39-0343-0601**

**004. INCORPORATION BY REFERENCE.**

The Idaho Transportation Department incorporates by reference the July 2003 Edition of "Utility Accommodation Policy". This publication is available for public inspection and copying at the Office of the Utilities/Railroad Engineer at the Idaho Transportation Department central office, or the District offices, or the Idaho Transportation Department WEB site ~~http://www2.state.id.us/itd/index.htm~~ [http://itd.idaho.gov/design/util\\_rail/policies.htm](http://itd.idaho.gov/design/util_rail/policies.htm).

~~(3-20-04)(7-1-06)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. (3-20-04)

**02. Office Hours.** Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (3-20-04)

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-332-7894 or by fax at 208-334-8025. (3-20-04)

**04. Idaho Transportation Department District Offices** are at the following locations: (3-20-04)

**a.** Idaho Transportation Department District 1  
600 W. Prairie, Coeur d'Alene  
Mailing address -- ~~P.O. Box D~~ 600 W. Prairie  
Coeur d'Alene, Idaho 838145-8764  
Office Hours -- 7:00 a.m. to 4:00 p.m., Pacific Time Zone  
Phone -- (208) 772-1200

~~(3-20-04)(7-1-06)T~~

**b.** Idaho Transportation Department District 2  
2600 North and South Highway, Lewiston  
Mailing address -- P.O. Box 837  
Lewiston, Idaho 83501-0837  
Office Hours -- 7:00 a.m. to 4:00 p.m., Pacific Time Zone  
Phone -- (208) 799-5090

~~(3-20-04)(7-1-06)T~~

**c.** Idaho Transportation Department District 3  
8150 Chinden Blvd., Boise  
Mailing address -- P.O. Box 8028  
Boise, Idaho 83707-2028  
Office Hours -- 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone -- (208) 334-8300

~~(3-20-04)(7-1-06)T~~

**d.** Idaho Transportation Department District 4  
216 Date Street, Shoshone  
Mailing address -- P.O. Box 2-A  
Shoshone, Idaho 83352-0820  
Office Hours -- 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone -- (208) 886-7800

~~(3-20-04)(7-1-06)T~~

**e.** Idaho Transportation Department District 5  
5151 South 5th, Pocatello  
Mailing address -- P.O. Box 4700  
Pocatello, Idaho 83205-4700

Office Hours -- 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone -- (208) 239-3300

~~(3-20-04)~~(7-1-06)T

- f.** Idaho Transportation Department District 6  
206 North Yellowstone, Rigby  
Mailing address -- P.O. Box 97  
Rigby, Idaho 83442-0097  
Office Hours -- 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone -- (208) 745-7781

~~(3-20-04)~~(7-1-06)T



## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**DOCKET NO. 58-0000-0605**

### **NOTICE OF FINAL DECISION ON THE WEISER RIVER 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 Weiser River Subbasin Total Maximum Daily Load (TMDL).

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Weiser 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), 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 Weiser River Subbasin TMDL (Hydrologic Unit Code 17050124) addresses eleven (11) assessment units on Idaho's 2002 Section 303(d) list. The eleven (11) assessment units contain 19 TMDLs. Seven stream reaches containing ten (10) assessment units are recommended for de-listing. DEQ has submitted this HUC 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 [http://www.deq.idaho.gov/water/data\\_reports/surface\\_water/tmdls/weiser\\_river/weiser\\_river.cfm](http://www.deq.idaho.gov/water/data_reports/surface_water/tmdls/weiser_river/weiser_river.cfm) or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, [Marti.Bridges@deq.idaho.gov](mailto:Marti.Bridges@deq.idaho.gov).

Dated this 21st day of August, 2006.

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](mailto: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. 58-0101-0303

### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**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:

**October 10, 2006, 3:00 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:** In accordance with IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, the Department of Environmental Quality (DEQ) is required to review the Title V air quality operating permit registration fees set out in Subsection 389.06 every two years to assure the funds meet the presumptive minimum amount as defined by the U.S. Environmental Protection Agency. Payment of the Title V permit program costs by a fee is mandated by the Clean Air Act. By federal law, the state of Idaho cannot maintain primacy for the Title V program unless it collects fees sufficient to cover all reasonable direct and indirect costs required to administer the program. This rule will increase fees for the sources subject to the Title V program by approximately \$400,000. During the first few years that DEQ began administering the program, the fees were assessed on permit allowable, not actual, emissions, and thus a surplus of fees was collected. In previous years, DEQ was able to use that surplus to cover costs incurred above those collected in fees. The Title V fund is now diminished to a point that DEQ must raise fees to ensure all direct and indirect costs of the Title V program are covered.

The text of this rule was developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule, including industry representatives and special interest groups. All regulated sources of air emissions that fall within the scope, or may fall within the scope, of Title V of the Clean Air Act are affected by this rulemaking. In addition, special interest groups, public officials, or members of the public who have an interest in the air quality in Idaho may wish to comment 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 2006 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2007 legislative session if adopted by the Board and 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.

**FEE SUMMARY:** This rulemaking revises the annual assessment and payment of Title V fees. Collection of the fees is authorized by Sections 39-115(3), 39-118D and 39-119, 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: DEQ will request an additional \$100,000 to be appropriated in the general fund to cover other agency air quality actions, previously paid for with Title V fees, though not specifically required by federal law.

**NEGOTIATED RULEMAKING:** The text of the 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, November 5, 2003, Vol. 03-11, page 88.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://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](mailto: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 10, 2006.

DATED this 4th day of August, 2006.

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](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0303**

**389. REGISTRATION INFORMATION.**

Any person owning or operating a facility or source during the previous calendar year or any portion of the previous calendar year for which Sections 387 through 397 apply shall, by April 1, ~~2003 or within fifteen (15) days following the adjournment of the 2003 regular session of the legislature, whichever is later, and each April 1 thereafter~~ of each year, register with the Department and submit the following information ~~as specified in Subsections 389.01 through 389.05~~ (submittal forms are located at [www.deq.idaho.gov](http://www.deq.idaho.gov)): ~~(4-11-06)(\_\_\_\_\_)~~

- 01. Facility Information.** The name, address, telephone number and location of the facility; (5-1-94)
- 02. Owner/Operator Information.** The name, address and telephone numbers of the owners and operators; (5-1-94)
- 03. Facility Emission Units.** The number and type of emission units present at the facility or the Tier I permit number for the facility; and (4-2-03)
- 04. Pollutant Registration.** The actual emissions from the previous calendar year for oxides of sulfur (SOx), oxides of nitrogen (NOx), particulate matter (PM<sub>10</sub>), and volatile organic compounds (VOC) calculated using methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied to throughput, actual operating hours, production rates, in-place control equipment, or the types of materials processed, stored, or combusted. ~~(4-11-06)(\_\_\_\_\_)~~
- 05. Radionuclide Registration.** The amount of radionuclides from facilities regulated under 40 CFR Part 61, Subpart H, for which the registrant wishes to be registered to emit from each source in curies per year except that no amount in excess of or less than an existing permit, consent order, or judicial order will be allowed. (5-1-94)

**390. REGISTRATION FEE.**

~~06.~~ **Regulated Air Pollutant Registration Fee.** ~~The~~ This registration fee ~~set out in Subsection 389.06~~ structure shall be reviewed at least every two (2) years to assure the funds meet the presumptive minimum as defined by EPA. The annual registration fee ~~set forth in Section 389~~ as determined in Section 390 shall be paid as provided in Section 393. (4-2-03)(\_\_\_\_)

~~01.~~ **Tier I Annual Fee.** The Tier I annual fee schedule shall be as follows: (3-30-01)(\_\_\_\_)

~~ia.~~ A fixed annual fee for Tier I major sources emitting regulated air pollutants listed in Subsection 389.04 as follows: (4-2-03)

~~(1)i.~~ Seven thousand (7,000) tons per year and above shall pay ~~fifty-five thousand dollars (\$55,000)~~ seventy-one thousand five hundred dollars (\$71,500); (4-2-03)(\_\_\_\_)

~~(2)ii.~~ Four thousand five hundred (4,500) tons per year and above shall pay ~~thirty-three thousand dollars (\$33,000)~~ forty-two thousand nine hundred dollars (\$42,900); (4-2-03)(\_\_\_\_)

~~(3)iii.~~ Three thousand (3,000) tons per year and above shall pay ~~twenty-two thousand dollars (\$22,000)~~ twenty-eight thousand six hundred dollars (\$28,600); (4-2-03)(\_\_\_\_)

~~(4)iv.~~ One thousand (1,000) tons per year and above shall pay ~~seventeen thousand five hundred dollars (\$17,500)~~ twenty-two thousand seven hundred fifty dollars (\$22,750); (4-2-03)(\_\_\_\_)

~~(5)v.~~ Five hundred (500) tons per year and above shall pay ~~eight thousand five hundred dollars (\$8,500)~~ eleven thousand fifty dollars (\$11,050); (4-2-03)(\_\_\_\_)

~~(6)vi.~~ Two hundred (200) tons per year and above shall pay ~~five thousand five hundred dollars (\$5,500)~~ seven thousand one hundred fifty dollars (\$7,150); and (4-2-03)(\_\_\_\_)

~~(7)vii.~~ Less than two hundred (200) tons per year shall pay ~~two thousand seven hundred fifty dollars (\$2,750)~~ three thousand five hundred seventy-five dollars (\$3,575); plus (4-2-03)(\_\_\_\_)

~~ib.~~ A per ton annual fee of ~~thirty-three dollars (\$33)~~ thirty-nine dollars and forty-eight cents (\$39.48) per ton for all regulated air pollutant emissions listed in Subsection 389.04 as follows: (4-2-03)(\_\_\_\_)

~~(1)i.~~ Greater than or equal to four thousand five hundred (4,500) tons per year not to exceed ~~one hundred ten thousand dollars (\$110,000)~~ one hundred forty-three thousand dollars (\$143,000); (4-2-03)(\_\_\_\_)

~~(2)ii.~~ Greater than or equal to three thousand (3,000) but less than four thousand five hundred (4,500) tons per year not to exceed ~~fifty-five thousand dollars (\$55,000)~~ seventy-one thousand five hundred dollars (\$71,500); (4-2-03)(\_\_\_\_)

~~(3)iii.~~ Greater than or equal to one thousand (1,000) but less than three thousand (3,000) tons per year not to exceed ~~twenty-seven thousand dollars (\$27,000)~~ thirty-five thousand one hundred dollars (\$35,100); (4-2-03)(\_\_\_\_)

~~(4)iv.~~ Greater than or equal to five hundred (500) but less than one thousand (1,000) tons per year not to exceed ~~nineteen thousand two hundred fifty dollars (\$19,250)~~ twenty-five thousand twenty-five dollars (\$25,025); (4-2-03)(\_\_\_\_)

~~(5)v.~~ Greater than or equal to two hundred (200) but less than five hundred (500) tons per year not to exceed ~~eight thousand two hundred fifty dollars (\$8,250)~~ ten thousand seven hundred twenty-five dollars (\$10,725); and (4-2-03)(\_\_\_\_)

~~(6)vi.~~ Less than two hundred (200) tons per year not to exceed ~~two thousand seven hundred fifty dollars (\$2,750)~~ three thousand five hundred seventy-five dollars (\$3,575). (4-2-03)(\_\_\_\_)

~~02.~~ **Fee-for-Service.** The fee-for-service shall be as follows: Sources requesting Section 300 permit modifications or renewals, or receiving program maintenance services, including but not limited to site visits, response to public inquiries, modeling, responses to site questions and opacity readings by the Department shall be assessed a fee for actual time expended and expenses incurred by the Department in the previous calendar year in an amount not to exceed ~~seven thousand five hundred dollars (\$7,500)~~ twenty thousand dollars (\$20,000) per facility per year as a fee-for-service. Service shall be conducted by qualified Department staff or contractors. ~~(4-2-03)( )~~

~~07.~~ **Shortfall.** ~~In the event that, on June 30, 2003 or June 30, 2004 the amount of fees assessed by the Department under Subsection 389.06.a. is less than one million one hundred thousand dollars (\$1,100,000), the difference shall be paid by the registrants to which Section 388 applies.~~ ~~(4-2-03)~~

~~a.~~ ~~The shortfall will be calculated as follows:~~ ~~(4-2-03)~~

~~i.~~ ~~Dividing the amount of the shortfall by the total tons of pollutants registered for the previous calendar year by all registrants; and~~ ~~(4-2-03)~~

~~ii.~~ ~~Calculating a per ton fee which, when multiplied by the total tons registered generates a number in the amount of the shortfall.~~ ~~(4-2-03)~~

~~b.~~ ~~Each registrant shall then be assessed by September 1 of the year and shall pay by October 1 of the year a supplemental fee to make up any shortfall of the one million one hundred thousand dollars (\$1,100,000) in the amount of the tons of emissions registered for that facility in the previous calendar year multiplied by the per ton fee calculated in Subsection 389.07.a.~~ ~~(4-2-03)~~

~~c.~~ ~~Subsection 389.07 of this rule shall apply only in state fiscal years 2004 and 2005.~~ ~~(4-2-03)~~

~~083.~~ **Radionuclide Registration Fee.** ~~(4-2-03)~~

~~a.~~ A registration fee of five dollars per curie per year (\$5/curie/year) shall be paid by facilities regulated under 40 CFR Part 61, Subpart H. ~~(4-2-03)~~

~~b.~~ The registration fee may be paid as provided in Section 397. ~~(4-2-03)~~

~~3901.~~ **REQUEST FOR INFORMATION.**

Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 387 through 397 shall be furnished on request. ~~(4-2-03)~~

~~3942.~~ **REGISTRATION FEE ASSESSMENT.**

All facilities to which Sections 387 through 397 apply shall pay to the Department an annual registration fee as required by Section 3890. The Department shall determine the fee based on the information supplied by the registrant and the Department's analysis of information available. In the event of a failure of a facility to submit pertinent registration information, the Department may calculate the fee and shall assess the facility the fee and the costs of calculating the fee. ~~(4-2-03)~~

~~392.~~ **REGISTRATION FEE ASSESSMENT.**

No later than ~~May 215, 2003, and of each May 15 thereafter~~ year, or within fifteen (15) days following the adjournment of the regular session of the Idaho State Legislature, whichever is later, the Department shall send to each registrant, to which Sections 387 through 397 apply, by certified mail, an assessment of the annual fee payable by the registrant. ~~(4-2-03)( )~~

~~393.~~ **PAYMENT OF TIER I REGISTRATION FEE.**

~~01.~~ **Fee Payment Date.** The registration fee shall be paid to and received by the Department no later than July 1 of each year, or within forty-five (45) days following the receipt of the registration fee assessment in Section 392, whichever is later. Checks should be made payable to "Department of Environmental Quality." ~~(4-2-03)( )~~

**02. Fee ~~Materials~~ Payments Mailing Address.** All ~~registration and~~ fee ~~materials~~ payments should be sent to:

Air Quality Tier I Registration Fees  
Idaho Department of Environmental Quality  
1410 N. Hilton, Boise, Idaho 83706-1255

~~(4-2-03)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**395. APPEALS.**

Persons may file an appeal within thirty-five (35) days of the date the person received an assessment issued under ~~Subsection 389.07 or~~ Section 392. The appeal shall be filed in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."

~~(4-2-03)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**397. LUMP SUM PAYMENTS OF REGISTRATION FEES.**

**01. Agreement.** The Department may, in its discretion, enter an agreement with any person for the lump sum payment of all, or any addition to, the registration fees required by Section 3890.

~~(4-2-03)~~(\_\_\_\_)

**02. Minimum Amount.** The minimum amount for any lump sum agreement shall be three hundred thousand dollars (\$300,000).

(5-1-94)

**03. Payment Waiver.** Upon the execution and full performance of the agreement by the person, the Department shall waive the payment requirements of Section 3890. All other provisions of Sections 387 through 397 shall remain applicable to the person.

~~(4-2-03)~~(\_\_\_\_)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0602

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**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. 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 Sections 111 and 112(l) of the Clean Air Act.

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

**October 10, 2006, 3:00 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:** This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho remain consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2006 and deletes unnecessary, outdated references.

This rulemaking also specifically exempts certain federal regulations from incorporation by reference into IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho:

1) In accordance with *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005), this proposed rule expressly omits the clean unit and pollution control project provisions currently incorporated by reference in IDAPA 58.01.01, Sections 107, 204 and 205. The Federal Court vacated these provisions.

2) For clarity and consistency with Proposed Rule Docket No. 58-0101-0601, which addresses Regional Haze in Class I Wilderness Areas within Idaho (published in the August 2006 Idaho Administrative Bulletin), this proposed rule expressly omits certain sections of 40 CFR Part 51, Subpart P, Protection of Visibility, and Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. See IDAPA 58.01.01, Subsection 107.03.a.

3) Federal Register publications regarding coal fired utilities are specifically exempted in IDAPA 58.01.01, Subsection 107.03.p.

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 2006 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2007 session of the Idaho Legislature if adopted by the Board and approved by the Legislature.

**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

**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.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://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 October 10, 2006.

DATED this 4th day of August, 2006.

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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0602**

**008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.**

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)



- e. Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f. Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)
- g. Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)
- h. Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)
- i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)
- j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

**04. Designated Representative.** A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

**05. Draft Permit.** The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

**06. Emergency.** For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

**07. Final Permit.** The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

**08. General Permit.** A Tier I permit issued pursuant to Section 335. (3-23-98)

**09. Insignificant Activity.** Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

**10. Major Facility.** A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

**a.** For hazardous air pollutants: (3-23-98)

**i.** The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

**ii.** The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and

emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

**b.** For non-attainment areas: (3-23-98)

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate”, one hundred (100) tpy or more, if the area is “serious”, fifty (50) tpy or more, if the area is “severe”, twenty-five (25) tpy or more, and if the area is “extreme”, ten (10) tpy or more. (3-23-98)

**c.** The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

**11. Part 70.** Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2005, are hereby incorporated by reference. (~~4-11-06~~)

**12. Permit Revision.** Any permit modification, administrative amendment or reopening. (3-19-99)

**13. Phase II Source.** A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)

**14. Phase II Unit.** A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)

**15. Proposed Permit.** The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)

**16. Section 502(b)(10) Changes.** Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (3-19-99)

**17. Tier I Operating Permit.** Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

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

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

and **a.** All federal publications: U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; (3-20-04)

**b.** All documents herein incorporated by reference: (7-1-97)

0502. **i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373- (7-1-97)

**ii.** State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

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

**a.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans; and Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Parts ~~51 and 52~~ revised as of July 1, 2005~~6~~. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (4-11-06)( )

**i.** The clean unit and pollution control project provisions in 40 CFR 51.165; ( )

**ii.** All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and ( )

**iii.** Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. ( )

~~**b.** *Implementation Plan for the Control of Air Pollution in the State of Idaho (SIP), Department of Environmental Quality, November 1996.*~~ (3-19-99)

~~**eb.** National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2005~~6~~.~~ (4-11-06)( )

~~**ec.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, Identification of Integral Vistas, Subsection a, 40 CFR Part 51.304(a), revised as of July 1, 2005~~6~~.~~ (4-11-06)( )

~~**ed.** Approval and Promulgation of Implementation Plans, 40 CFR Part 52, excluding the clean unit and pollution control project provisions in 40 CFR 52.21, revised as of July 1, 2005~~6~~.~~ (4-11-06)( )

~~**fe.** Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2005~~6~~.~~ (4-11-06)( )

- gf.** Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- hg.** Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- ih.** National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- ji.** National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- kj.** Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- kl.** Permits, 40 CFR Part 72, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- ml.** Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- nm.** Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2005~~6~~. (~~4-11-06~~)(    )
- on.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- po.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2005~~6~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. (~~4-11-06~~)(    )
- pd.** The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,267, ~~is~~; Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units; Final Rule, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units; Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (~~4-11-06~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.**

The purposes of Sections 200 through 228 is to establish uniform procedures and requirements for the issuance of "Permits to Construct". As used throughout Sections 200 through 228 and 578 through 581, major facility shall be defined as major stationary source in 40 CFR 52.21(b), revised as of July 1, 2005, and major modification shall be defined as in 40 CFR 52.21(b), revised as of July 1, 2005~~6~~. These CFR sections have been codified in the electronic CFR which is available at [www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr). (~~4-11-06~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS.**

New major facilities or major modifications proposed for location in a nonattainment area and which would be major

for the nonattainment regulated air pollutant are considered nonattainment new source review (NSR) actions and are subject to the requirements in Section 204. Section 202 contains application requirements and Section 209 contains processing requirements for nonattainment NSR permitting actions. The intent of Section 204 is to incorporate the federal nonattainment NSR rule requirements. (4-6-05)

**01. Incorporated Federal Program Requirements.** Requirements contained in the following subparts of 40 CFR 51.165, excluding the clean unit and pollution control project provisions, revised as of July 1, 2005, are hereby incorporated by reference. Requirements contained in the following subparts of 40 CFR 52.21, revised as of July 1, 2005~~6~~, are hereby incorporated by reference. These CFR sections have been codified in the electronic CFR which is available at [www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr)

<b>40 CFR Reference</b>	<b>40 CFR Reference Title</b>
40 CFR 51.165(a)(1)	Definitions
40 CFR 51.165(a)(2)(ii)(A) - (J)	Applicability Provisions
40 CFR 51.165(a)(6)(i) - (v)	Applicability Provisions
<del>40 CFR 51.165(e)</del>	<del>Clean Unit Test for Emission Units that are Subject to LAER</del>
<del>40 CFR 51.165(d)</del>	<del>Clean Unit Provisions for Emission Units that Achieve an Emission Limitation Comparable to LAER</del>
<del>40 CFR 52.21(z)(1) - (3) and (6)</del>	<del>PCP Exclusion Procedural Requirements</del>
40 CFR 52.21(aa)	Actual PALs

(4-11-06)( )

**02. Additional Requirements.** The applicant must demonstrate to the satisfaction of the Department the following: (4-6-05)

**a.** LAER. Except as otherwise provided in Section 204, the new major facility or major modification would be operated at the lowest achievable emission rate (LAER) for the nonattainment regulated air pollutant, specifically: (4-6-05)

i. A new major facility would meet the lowest achievable emission rate at each new emissions unit which emits the nonattainment regulated air pollutant; and (4-5-00)

ii. A major modification would meet the lowest achievable emission rate at each new or modified emissions unit which has a net emissions increase of the nonattainment regulated air pollutant. (4-5-00)

**b.** Required offsets. Allowable emissions from the new major facility or major modification are offset by reductions in actual emissions from stationary sources, facilities, and/or mobile sources in the nonattainment area so as to represent reasonable further progress. All offsetting emission reductions must satisfy the requirements for emission reduction credits (Section 460) and provide for a net air quality benefit which satisfies the requirements of Section 208. If the offsets are provided by other stationary sources or facilities, a permit to construct shall not be issued for the new major facility or major modification until the offsetting reductions are made enforceable through the issuance of operating permits. The new major facility or major modification may not commence operation, and an operating permit for the new major facility or major modification shall not be effective before the date the offsetting reductions are achieved. (4-5-00)

**c.** Compliance status. All other sources in the State owned or operated by the applicant, or by any entity controlling, controlled by or under common control with such person, are in compliance with all applicable emission limitations and standards or subject to an enforceable compliance schedule. (5-1-94)

**d.** Effect on visibility. The effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory federal Class I area, by the new major facility or major modification

is consistent with making reasonable progress toward remedying existing and preventing future visibility impairment. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR Part 51.304(a), may be exempted from Section 204 by the Department. (4-6-05)

**03. Nonmajor Requirements.** If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 51.165 or 40 CFR 52.21 incorporated in Section 204, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

**205. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS.**

The prevention of significant deterioration (PSD) program is a construction permitting program for new major facilities and major modifications to existing major facilities located in areas in attainment or in areas that are unclassifiable for any criteria air pollutant. Section 202 contains application requirements and Section 209 contains processing requirements for PSD permit actions. The intent of Section 205 is to incorporate the federal PSD rule requirements. (4-6-05)

**01. Incorporated Federal Program Requirements.** Requirements contained in the following subparts of 40 CFR 52.21, excluding the clean unit and pollution control project provisions, revised as of July 1, 2005, are hereby incorporated by reference. These CFR sections have been codified in the electronic CFR which is available at [www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr).

40 CFR Reference	40 CFR Reference Title
40 CFR 52.21(a)(2)	Applicability Procedures
40 CFR 52.21(b)	Definitions
40 CFR 52.21(i)	Review of Major Stationary Sources and Major Modifications - Source Applicability and Exempting
40 CFR 52.21(j)	Control Technology Review
40 CFR 52.21(k)	Source Impact Analysis
40 CFR 52.21(r)	Source Obligation
40 CFR 52.21(v)	Innovative Control Technology
40 CFR 52.21(w)	Permit Rescission
<del>40 CFR 52.21(x)</del>	<del>Clean Unit Test</del>
<del>40 CFR 52.21(y)</del>	<del>Clean Unit Provisions for Emissions Units that Achieve an Emission Limit Comparable to BACT</del>
<del>40 CFR 52.21(z)(1) - (3) and (6)</del>	<del>PCP Exclusion Procedural Requirements</del>
40 CFR 52.21(aa)	Actual PALS

~~(4-11-06)~~( )

**02. Exception to Incorporation by Reference of 40 CFR 52.21.** Every use of the word Administrator in 40 CFR 52.21 means the Department except for the following: (4-6-05)

- a.** In 40 CFR 52.21(b)(17), the definition of federally enforceable, Administrator means the EPA Administrator. (4-6-05)
- b.** In 40 CFR 52.21(l)(2), air quality models, Administrator means the EPA Administrator. (4-6-05)

**c.** In 40 CFR 52.21(b)(43), permit program approved by the Administrator, Administrator means the EPA Administrator. (4-6-05)

**d.** In 40 CFR 52.21(b)(48)(ii)(c), MACT standard that is proposed or promulgated by the Administrator, Administrator means the EPA Administrator. (4-6-05)

**e.** In 40 CFR 52.21(b)(50)(i), regulated NSR pollutant as defined by Administrator, Administrator means the EPA Administrator. (4-6-05)

~~**f.** In 40 CFR 52.21(y)(4)(i), Administrator for BACT, LAER and RACT clearinghouse, Administrator means the EPA Administrator. (4-6-05)~~

**03. Nonmajor Requirements.** If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 52.21 incorporated in Section 205, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-0601

#### 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. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 22, 2006. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) has initiated this rulemaking to modify the current rules dealing with application of standards based on flow conditions (low flow or high flow). Both low and high flows can result in unusual water quality, and the permanence of flow (intermittent and ephemeral flow regimes) has great bearing on the beneficial use potential of water bodies. In this rulemaking, DEQ is proposing to add a new beneficial use and associated criteria (IDAPA 58.01.02.100 and 58.01.02.250) for streams that are unable to support viable fish populations. DEQ is also proposing to change IDAPA 58.01.02.070.06 to expand the applicability of low flow exclusions to all waters of the state and allow for more flexibility in determining what constitutes an extreme low flow condition. DEQ believes the Idaho water quality standards (WQS) could be improved by consolidating the various sections dealing with the effect of flow on application of water quality standards (IDAPA 58.01.02.070.06, low flow, and IDAPA 58.01.02.300, high flow and gas supersaturation) in one place in the rules. Lastly, DEQ is proposing to allow the Director to determine the applicability of the turbidity standard during high flow conditions.

DEQ has drafted a support document that contains information used in the development of this proposed rule. A copy of the document is available at [www.deq.idaho.gov/rules/water/58\\_0102\\_0601\\_proposed.cfm](http://www.deq.idaho.gov/rules/water/58_0102_0601_proposed.cfm) or by contacting Don Essig at (208)373-0119.

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. Everyone with an interest in the quality of surface water in Idaho may have an interest in this rulemaking, especially since many waters in Idaho are intermittent. This rulemaking could be of particular interest to those facilities discharging to receiving waters characterized by low flows.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2006 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2007 legislative session if adopted by the Board and approved by the Legislature.

**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

**IDAHO CODE SECTION 39-107D STATEMENT:** The revisions included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**NEGOTIATED RULEMAKING:** On May 3, 2006, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 06-5, page 66, and a preliminary draft rule was made available for public comment. A meeting was held on May 25, 2006. No members of the public attended the meeting and no comments on the preliminary draft were received. During the negotiated rulemaking period, DEQ gathered additional information which was used to further refine the preliminary draft rule into this proposed rule.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For



assistance on questions concerning this rulemaking, contact Don Essig at (208) 373-0119, Don.Essig@deq.idaho.gov.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before October 6, 2006.

Dated this 4th day of August 2006.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0601

**070. APPLICATION OF STANDARDS.**

**01. Multiple Criteria.** In the application of the use designation, the most stringent criterion of a multiple criteria applies. (4-5-00)

**02. Application of Standards to Nonpoint Source Activities.** The application of water quality standards to nonpoint source activities shall be in accordance with Section 350. (7-1-93)

**03. Application of Standards to Point Source Discharges.** The application of water quality standards to point source discharges shall be in accordance with Sections 400 and 401. (4-11-06)

~~**04. Applicability of Gas Supersaturation Standard.** The application of gas supersaturation standard shall be in accordance with Section 300. (4-5-00)~~

~~**054. Mixing Zones.** The application of water quality standards to mixing zones shall be in accordance with Section 060. (7-1-93)~~

~~**065. Application of Standards to Intermittent Waters Based on Flow.** The following provisions describe how the Department will apply water quality standards to water bodies during periods of flow extremes. ( )~~

~~**a. Extreme Low Flow Conditions.** ( )~~

~~**i. Narrative water quality standards apply to all water bodies when water is present regardless of flow.** ( )~~

~~**ii. Numeric water quality standards for pH, temperature, and dissolved oxygen only apply to intermittent waters bodies during optimum flow periods sufficient to support the uses for which the water body is designated. For recreation, optimum flow is equal to or greater than five (5) cubic feet per second (cfs). For aquatic life uses, optimum flow is equal to or greater than one (1) cfs. The Department may determine that periods of natural low flows are not sufficient to support designated uses. Periods of natural low flows shall be determined by one of the**~~

following methods: the 7Q10 hydrologically-based flow, the 4B3 biologically-based flow, or other scientifically defensible measure. See Subsections 210.03.b.iii. and 210.03.b.iv. for a description of these flows. Low flow determinations may be based on annual, seasonal, monthly, or other time period as appropriate. (3-30-01)( )

**b.** Extreme High Flow Conditions. Numeric and narrative water quality criteria apply during periods of high flow. The Department may specify the applicability of standards during periods of high flows for the following parameters: ( )

**i.** Gas Supersaturation. ( )

**(1)** The Director has the following authority: ( )

**(a)** To specify the applicability of the gas supersaturation standard (Subsection 250.01.b) with respect to excess stream flow conditions; and ( )

**(b)** To direct that all known and reasonable measures be taken to assure protection of the fishery resource; and ( )

**(c)** To require that operational procedures or project modifications proposed for compliance for dissolved gas criterion do not contribute to increased mortalities to juvenile migrants or impose serious delays to adult migrant fishes. ( )

**(2)** Interstate Agreements. In making determinations as to the applicability of gas supersaturation standards, the Director may seek and enter into agreements with adjoining state environmental regulatory agencies. ( )

**(3)** Gas Supersaturation Control Program. Owners or operators of proposed water impoundment facilities subject to excessive spilling, which can result in supersaturated water conditions, must submit to the Department for approval of a program for the detection and control of gas supersaturation. The program must include, but is not limited to: ( )

**(a)** Time schedules for construction or installation of supersaturation control features and devices; and ( )

**(b)** When required by the Department, a monitoring and reporting system ensuring that supersaturated conditions are detected and reported to the Department. ( )

**ii.** Turbidity. The Director has the authority to specify the applicability of the turbidity standard (Subsection 250.02.e.) during periods of excess turbidity resulting from natural high flows (e.g., annual peak runoff or flood flows). ( )

**076.** **Temperature Criteria.** In the application of temperature criteria, the Director may, at his discretion, waive or raise the temperature criteria as they pertain to a specific water body. Any such determination shall be made consistent with 40 CFR 131.11 and shall be based on a finding that the designated aquatic life use is not an existing use in such water body or would be fully supported at a higher temperature criteria. For any determination, the Director shall, prior to making a determination, provide for public notice and comment on the proposed determination. For any such proposed determination, the Director shall prepare and make available to the public a technical support document addressing the proposed modification. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. SURFACE WATER USE DESIGNATIONS.**

Waterbodies are designated in Idaho to protect water quality for existing or designated uses. The designated use of a waterbody does not imply any rights to access or ability to conduct any activity related to the use designation, nor does it imply that an activity is safe. For example, a designation of primary or secondary contact recreation may occur in

areas where it is unsafe to enter the water due to water flows, depth or other hazardous conditions. Another example is that aquatic life uses may be designated in areas that are closed to fishing or access is not allowed by property owners. Wherever attainable, the designated beneficial uses for which the surface waters of the state are to be protected include: (3-15-02)

**01. Aquatic Life.** (7-1-93)

**a.** Cold water (COLD): water quality appropriate for the protection and maintenance of a viable aquatic life community for cold water species. (4-5-00)

**b.** Salmonid spawning: waters which provide or could provide a habitat for active self-propagating populations of salmonid fishes. (7-1-93)

**c.** Seasonal cold water (SC): water quality appropriate for the protection and maintenance of a viable aquatic life community of cool and cold water species, where cold water aquatic life may be absent during, or tolerant of, seasonally warm temperatures. (4-5-00)

**d.** Warm water (WARM): water quality appropriate for the protection and maintenance of a viable aquatic life community for warm water species. (4-5-00)

**e.** Modified (MOD): water quality appropriate for an aquatic life community that is limited due to one (1) or more conditions set forth in 40 CFR 131.10(g) which preclude attainment of reference streams or conditions. (4-5-00)

**f.** Non Fish-bearing (NFB): water quality appropriate for the protection and maintenance of aquatic life other than fish. These are waters which, because of their natural habitat conditions, such as small size, poor substrate, or limited flow characteristics, do not provide habitat for fish. Generally, aquatic life which may be present is opportunistic and adapted to periodic loss of flow and deterioration in water quality that occurs as flow seasonally diminishes. ( )

**02. Recreation.** (7-1-93)

**a.** Primary contact recreation (PCR): water quality appropriate for prolonged and intimate contact by humans or for recreational activities when the ingestion of small quantities of water is likely to occur. Such activities include, but are not restricted to, those used for swimming, water skiing, or skin diving. (4-5-00)

**b.** Secondary contact recreation (SCR): water quality appropriate for recreational uses on or about the water and which are not included in the primary contact category. These activities may include fishing, boating, wading, infrequent swimming, and other activities where ingestion of raw water is not likely to occur. (4-5-00)

**03. Water Supply.** (7-1-93)

**a.** Domestic: water quality appropriate for drinking water supplies. (4-5-00)

**b.** Agricultural: water quality appropriate for the irrigation of crops or as drinking water for livestock. This use applies to all surface waters of the state. (4-5-00)

**c.** Industrial: water quality appropriate for industrial water supplies. This use applies to all surface waters of the state. (4-5-00)

**04. Wildlife Habitats.** Water quality appropriate for wildlife habitats. This use applies to all surface waters of the state. (4-5-00)

**05. Aesthetics.** This use applies to all surface waters of the state. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

109. HUC INDEX AND ABBREVIATIONS FOR SECTIONS 110, 120, 130, 140, 150, AND 160.

01. Map. The following map depicts the hydrologic units and basins described here in. (4-5-00)

*(Please see the Idaho Administrative Code (IDAPA 58.01.02) for the HUC Map that is part of this Subsection. The map is not being published in this docket.)*

02. Table. The following table describes the hydrologic unit code (HUC), associated subbasin name, and the rule section describing the water bodies within the subbasin.

HUC	SUBBASIN	RULE SECTION	HUC	SUBBASIN	RULE SECTION
16010102	Central Bear	160.01	16010201	Bear Lake	160.02
16010202	Middle Bear	160.03	16010203	Little Bear-Logan	160.04
16010204	Lower Bear-Malad	160.05	16020309	Curlew Valley	160.06
17010101	Upper Kootenai	110.01	17010104	Lower Kootenai	110.02
17010105	Moyie	110.03	17010213	Lower Clark Fork	110.04
17010214	Pend Oreille Lake	110.05	17010215	Priest	110.06
17010216	Pend Oreille	110.07	17010301	Upper Coeur d'Alene	110.08
17010302	South Fork Coeur d'Alene	110.09	17010303	Coeur d'Alene Lake	110.10
17010304	St. Joe	110.11	17010305	Upper Spokane	110.12
17010306	Hangman	110.13	17010308	Little Spokane	110.14
17040104	Palisades	150.01	17040105	Salt	150.02
17040201	Idaho Falls	150.03	17040202	Upper Henrys	150.04
17040203	Lower Henrys	150.05	17040204	Teton	150.06
17040205	Willow	150.07	17040206	American Falls	150.08
17040207	Blackfoot	150.09	17040208	Portneuf	150.10
17040209	Lake Walcott	150.11	17040210	Raft	150.12
17040211	Goose	150.13	17040212	Upper Snake-Rock	150.14
17040213	Salmon Falls	150.15	17040214	Beaver-Camas	150.16
17040215	Medicine Lodge	150.17	17040216	Birch	150.18
17040217	Little Lost	150.19	17040218	Big Lost	150.20
17040219	Big Wood	150.21	17040220	Camas	150.22
17040221	Little Wood	150.23	17050101	C.J. Strike Reservoir	140.01
17050102	Bruneau	140.02	17050103	Middle Snake-Succor	140.03
17050104	Upper Owyhee	140.04	17050105	South Fork Owyhee	140.05

HUC	SUBBASIN	RULE SECTION	HUC	SUBBASIN	RULE SECTION
17050106	East Little Owyhee	140.06	17050107	Middle Owyhee	140.07
17050108	Jordan	140.08	17050111	North/Middle Fork Boise	140.09
17050112	Boise-Mores	140.10	17050113	South Fork Boise	140.11
17050114	Lower Boise	140.12	17050115	Middle Snake-Payette	140.13
17050120	South Fork Payette	140.14	17050121	Middle Fork Payette	140.15
17050122	Payette	140.16	17050123	North Fork Payette	140.17
17050124	Weiser	140.18	17050201	Brownlee Reservoir	140.19
17060101	Hells Canyon	130.01	17060103	Lower Snake-Asotin	130.02
17060108	Palouse	120.01	17060109	Rock	120.02
17060201	Upper Salmon	130.03	17060202	Pahsimeroi	130.04
17060203	Middle Salmon-Panther	130.05	17060204	Lemhi	130.06
17060205	U. Middle Fork Salmon	130.07	17060206	L. Middle Fork Salmon	130.08
17060207	Mid. Salmon-Chamberlain	130.09	17060208	South Fork Salmon	130.10
17060209	Lower Salmon	130.11	17060210	Little Salmon	130.12
17060301	Upper Selway	120.03	17060302	Lower Selway	120.04
17060303	Lochsa	120.05	17060304	Middle Fork Clearwater	120.06
17060305	South Fork Clearwater	120.07	17060306	Clearwater	120.08
17060307	U. North Fork Clearwater	120.09	17060308	L. North Fork Clearwater	120.10

(4-5-00)

- 03. Abbreviations.** (4-5-00)
- a.** COLD -- Cold Water Communities. (4-5-00)
  - b.** SS -- Salmonid Spawning. (4-5-00)
  - c.** SC -- Seasonal Cold Water Communities. (4-5-00)
  - d.** WARM -- Warm Water Communities. (4-5-00)
  - e.** MOD -- Modified Communities. (4-5-00)
  - f.** PCR -- Primary Contact Recreation. (4-5-00)
  - g.** SCR -- Secondary Contact Recreation. (4-5-00)
  - h.** DWS -- Domestic Water Supply. (4-5-00)
  - i.** SRW -- Special Resource Water. (4-5-00)
  - j.** NONE -- Use Unattainable. (4-5-00)
  - k.** NFB -- Non Fish-bearing. ( )

4. No entry in the Aquatic Life or Recreation columns -- nondesignated waters for those uses. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. SURFACE WATER QUALITY CRITERIA FOR AQUATIC LIFE USE DESIGNATIONS.**

**01. General Criteria.** The following criteria apply to all aquatic life use designations. Surface waters are not to vary from the following characteristics due to human activities: (3-15-02)

a. Hydrogen Ion Concentration (pH) values within the range of six point five (6.5) to nine point zero (9.0); (3-30-01)

b. The total concentration of dissolved gas not exceeding one hundred and ten percent (110%) of saturation at atmospheric pressure at the point of sample collection; (7-1-93)

**02. Cold Water.** Waters designated for cold water aquatic life are not to vary from the following characteristics due to human activities: (3-15-02)

a. Dissolved Oxygen Concentrations exceeding six (6) mg/l at all times. In lakes and reservoirs this standard does not apply to: (7-1-93)

i. The bottom twenty percent (20%) of water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (7-1-93)

ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (7-1-93)

iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (7-1-93)

b. Water temperatures of twenty-two (22) degrees C or less with a maximum daily average of no greater than nineteen (19) degrees C. (8-24-94)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. (3-15-02)

d. Ammonia. The following criteria are not to be exceeded dependent upon the temperature, T (degrees C), and pH of the water body: (3-15-02)

i. Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1) hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CMC = \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}$$

(3-15-02)

ii. Chronic Criterion (Criterion Continuous Concentration (CCC)). (3-15-02)

(1) The thirty (30) day average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equations: (3-15-02)

- (a) When fish early life stages are likely present:

$$CCC = \left( \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \bullet MIN(2.85, 1.45 \cdot 10^{0.028(25 - T)})$$

(3-15-02)

- (b) When fish early life stages are likely absent:

$$CCC = \left( \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \bullet 1.45 \cdot 10^{0.028(25 - T)}$$

(3-15-02)

- (2) The highest four-day (4) average within the thirty-day (30) period should not exceed two point five (2.5) times the CCC. (3-15-02)

(3) Because the Department presumes that many waters in the state may have both spring-spawning and fall-spawning species of fish present, early life stages of fish may be present throughout much of the year. Accordingly, the Department will apply the CCC for when fish early life stages are present at all times of the year unless: (3-15-02)

- (a) Time frames during the year are identified when early life stages are unlikely to be present, and (3-15-02)

(b) The Department is provided all readily available information supporting this finding such as the fish species distributions, spawning periods, nursery periods, and the duration of early life stages found in the water body; and (3-15-02)

- (c) The Department determines early life stages are likely absent. (3-15-02)

e. Turbidity, below any applicable mixing zone set by the Department, shall not exceed background turbidity by more than fifty (50) NTU instantaneously or more than twenty-five (25) NTU for more than ten (10) consecutive days. (8-24-94)

f. Salmonid spawning: waters designated for salmonid spawning are to exhibit the following characteristics during the spawning period and incubation for the particular species inhabiting those waters: (7-1-93)

- i. Dissolved Oxygen. (8-24-94)

- (1) Intergravel Dissolved Oxygen. (8-24-94)

- (a) One (1) day minimum of not less than five point zero (5.0) mg/l. (8-24-94)

- (b) Seven (7) day average mean of not less than six point zero (6.0) mg/l. (8-24-94)

- (2) Water-Column Dissolved Oxygen. (8-24-94)

(a) One (1) day minimum of not less than six point zero (6.0) mg/l or ninety percent (90%) of saturation, whichever is greater. (8-24-94)

ii. Water temperatures of thirteen (13) degrees C or less with a maximum daily average no greater than nine (9) degrees C. (8-24-94)

g. Bull Trout Temperature Criteria. Water temperatures for the waters identified under Subsection 250.02.g.i. shall not exceed thirteen degrees Celsius (13C) maximum weekly maximum temperature (MWMT)

during June, July and August for juvenile bull trout rearing, and nine degrees Celsius (9C) daily average during September and October for bull trout spawning. For the purposes of measuring these criteria, the values shall be generated from a recording device with a minimum of six (6) evenly spaced measurements in a twenty-four (24) hour period. The MWMT is the mean of daily maximum water temperatures measured over the annual warmest consecutive seven (7) day period occurring during a given year. (3-30-01)

i. The bull trout temperature criteria shall apply to all tributary waters, not including fifth order main stem rivers, located within areas above fourteen hundred (1400) meters elevation south of the Salmon River basin-Clearwater River basin divide, and above six hundred (600) meters elevation north of the Salmon River basin-Clearwater River basin divide, in the fifty-nine (59) Key Watersheds listed in Table 6, Appendix F of Governor Batt's State of Idaho Bull Trout Conservation Plan, 1996, or as designated under Sections 110 through 160 of this rule. (3-23-98)

ii. No thermal discharges will be permitted to the waters described under Subsection 250.02.g.i. unless socially and economically justified as determined by the Department, and then only if the resultant increase in stream temperature is less than five-tenths degrees Celsius (0.5C). (4-5-00)

h. Kootenai River sturgeon temperature criteria. Water temperatures within the Kootenai River from Bonners Ferry to Shorty's Island, shall not exceed a seven (7) day moving average of fourteen degrees Celsius (14C) based on daily average water temperatures, during May 1 through July 1. (3-23-98)

**03. Seasonal Cold Water.** Between the summer solstice and autumn equinox, waters designated for seasonal cold water aquatic life are not to vary from the following characteristics due to human activities. For the period from autumn equinox to summer solstice the cold water criteria will apply: (3-15-02)

a. Dissolved Oxygen Concentrations exceeding six (6) mg/l at all times. In lakes and reservoirs this standard does not apply to: (4-5-00)

i. The bottom twenty percent (20%) of water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (4-5-00)

ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (4-5-00)

iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (4-5-00)

b. Water temperatures of twenty-six (26) degrees C or less as a daily maximum with a daily average of no greater than twenty-three (23) degrees C. (3-30-01)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. (3-15-02)

d. Ammonia. Concentration of ammonia are not to exceed the criteria defined at Subsection 250.02.d. (3-15-02)

**04. Warm Water.** Waters designated for warm water aquatic life are to exhibit the following characteristics: (4-5-00)

a. Dissolved oxygen concentrations exceeding five (5) mg/l at all times. In lakes and reservoirs this standard does not apply to: (7-1-93)

i. The bottom twenty percent (20%) of the water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (7-1-93)

ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (7-1-93)



- iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (7-1-93)
- b. Water temperatures of thirty-three (33) degrees C or less with a maximum daily average not greater than twenty-nine (29) degrees C. (8-24-94)
- c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. (3-15-02)
- d. Ammonia. The following criteria are to be met dependent upon the temperature, T (degrees C), and pH of the water body: (3-15-02)
- i. Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1) hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CMC = \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}$$

(3-15-02)

- ii. Chronic Criterion (Criterion Continuous Concentration (CCC)). Concentrations of ammonia are not to exceed the criteria defined at Subsection 250.02.d.ii. (3-15-02)

**05. Modified.** Water quality criteria for modified aquatic life will be determined on a case-by-case basis reflecting the chemical, physical, and biological levels necessary to attain the existing aquatic life community. These criteria, when determined, will be adopted into these rules. (3-15-02)

**06. Non Fish-Bearing.** Narrative criteria in Section 200 and numeric toxics criteria apply while water is present and flows are sufficient to support the beneficial use. In addition, human activities are not to modify these waters such that uses in downstream waters designated for aquatic life or recreation are impaired by such modification. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~300. GAS SUPERSATURATION.~~**

- ~~01. Applicability of Gas Supersaturation Standard.~~** *The Director has the following authority:* (7-1-93)
- ~~a.~~** *To specify the applicability of the gas supersaturation standard with respect to excess stream flow conditions; and* (7-1-93)
- ~~b.~~** *To direct that all known and reasonable measures be taken to assure protection of the fishery resource; and* (7-1-93)
- ~~c.~~** *To require that operational procedures or project modifications proposed for compliance for dissolved gas criterion do not contribute to increased mortalities to juvenile migrants or impose serious delays to adult migrant fishes.* (7-1-93)
- ~~02. Interstate Agreements.~~** *In making determinations as to the applicability of gas supersaturation standards, the Director can seek and enter into agreements with adjoining state environmental regulatory agencies.* (7-1-93)

~~03. **Gas Supersaturation Control Program.** Owners or operators of proposed water impoundment facilities subject to excessive spilling which can result in supersaturated water conditions must submit to the Department for approval a program for the detection and control of gas supersaturation. The program must include, but is not limited to:~~ (7-1-93)

~~a. Time schedules for construction or installation of supersaturation control features and devices; and~~ (7-1-93)

~~b. When required by the Department, a monitoring and reporting system insuring that supersaturated conditions are detected and reported to the Department.~~ (7-1-93)

~~3040. -- 349. (RESERVED).~~

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### 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.

**The written comment deadline is September 27, 2006, unless otherwise listed.**

**Temp & Prop indicates the rule is both temporary and proposed.**

**\*\* Indicates that a public hearing has been scheduled.**

#### IDAPA 02 -- DEPARTMENT OF AGRICULTURE

P.O. Box 790, Boise, ID 83701

**02-0209-0501, Rules Requiring the Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets.** Updates and clarifies current requirements and lists specific exotic pests of concern to the Idaho Potato Industry for which a zero tolerance will be specified.

**\*\*02-0427-0601, Rules Governing Deleterious Exotic Animals.** (Temp & Prop) Authorizes the disposition of deleterious exotic animals that are being held without the required permits.

#### IDAPA 09 -- DEPARTMENT OF COMMERCE AND LABOR

317 W. Main Street, Boise, ID 83735

**09-0103-0601, Unemployment Insurance Benefits Administration Rules.** Claimant will be ineligible for benefits effective the week his accumulated missed wages exceed ½ of the weekly benefit amount if ill more than 1 week; separation information will be provided by employer rather than mailed when contacted by a Dept representative; professional athletes who are between seasons can't use their base period wages for services as athletes to establish a claim for benefits if contracted for the next season or intending to participate in the sport the next season even without a formal offer of employment.

**09-0135-0601, Unemployment Insurance Tax Administration Rules.** Requires employers to file a quarterly report even when zero wages paid; clarifies that each covered employer's UI tax report shall be reported under the covered employer's account number; defines "willfully"; replaces mandatory language to allow the Dept to consider any or all of the enumerated factors in determining a worker's status; eliminates duplication within the PEO rule; further clarifies quarterly reporting requirements.

**09-0201-0601, Idaho Community Development Block Grant Program.** (Temp & Prop) Clarifies or changes terminology and grant application requirements and deletes references that do not comply with federal HUD program regulations.

**09-0203-0601, Rules of the Idaho Regional Travel and Convention Grant Program.** Standardizes and clarifies documentation of grant costs for Familiarization Tours; eliminates fulfillment documentation requirements by allowing 10% of the total grant award to be used for fulfillment costs; raises amount of total project costs to \$20,000 before grantees must utilize a formal bid process for purchases or services or to secure a vendor; and eliminates the requirement of an in-kind match as a part of the grant process.

**IDAPA 10 -- BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS****5535 W. Overland Rd, Boise, ID 83705-2728**

**10-0101-0601, Rules of Procedure.** Specifies the core technical curriculum an applicant who has a degree in a related science but not in surveying needs for assignment to the examination for certification as a professional surveyor.

**IDAPA 11 -- IDAHO STATE POLICE****P.O. Box 700, Meridian, ID 83680-0700**

**11.04.01 - Rules Governing Horse Racing (Idaho State Racing Commission).**

**11-0401-0603,** (Temp & Prop) Allows for bicarbonate testing in racing horses to be uniform with surrounding jurisdictions.

**11-0401-0604,** (Temp & Prop) Provides that horses may carry more than 7 pounds overweight with the permission of the stewards at fair circuit racetracks.

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

**16-0215-0601, Immunization Requirements for Idaho School Children.** Changes made to develop requirements for an immunization program that meet physician, school and public health priorities of protecting children.

**16-0414-0601, Rules Governing Low Income Home Energy Assistance Program.** (Temp & Prop). Removes requirement for energy conservation education and audit as a condition of participation; incorporates by reference the LIHEAP Intake Manual; targets for services households with children under 6 and individuals over 60 years of age, and individuals with disabilities.

**16-0604-0601, Rules for Statewide and Regional Interdepartmental Substance Abuse Coordinating Committees.** Chapter repeal.

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

**18-0174-0601, Coordination of Benefits.** Makes rules consistent with model regulations of the National Association of Insurance Commissioners (NAIC) by clarifying which types of plans are allowed to coordinate benefit payments and how coordination is to be applied among plans.

**IDAPA 21 -- DIVISION OF VETERANS SERVICES****320 Collins Rd., Boise, ID 83702**

**21-0105-0601, Rules Governing Medical Transportation Payment for Wheelchair Confined Veterans.** Allows for direct reimbursement to wheelchair confined veterans who use private providers for transportation to medical appointments.

**IDAPA 23 -- IDAHO BOARD OF NURSING****PO Box 83720, Boise, ID 83720-0061**

**23-0101-0601, Rules of the Idaho Board of Nursing.** Clarifies definitions and various licensing procedures; adds failure to cooperate with authorities and engaging in a pattern of poor practice as grounds for discipline; revises the limited license provision categories and requirements; explains summary suspension provisions; describes peer review process required of the advanced practice nurses; establishes titles for graduate APPNs; and relocates an existing records verification fee.

**IDAPA 25 -- OUTFITTERS AND GUIDES LICENSING BOARD****1365 North Orchard, Suite 172, Boise, ID 83706**

**25-0101-0602, Rules of the Outfitters and Guides Licensing Board.** Removes language that restricts the Board from scheduling meetings at times other than those specified in rule.

**IDAPA 27 -- BOARD OF PHARMACY****PO Box 83720, Boise, ID 83720-0067**

**27-0101-0603, Rules of the Idaho State Board of Pharmacy.** (Temp & Prop) Specifies the positive identification information that pharmacies must keep when dispensing controlled substance prescription drugs directly to individuals at the pharmacy and sets out the standards to be met by the pharmacies for retrieval of the positive identification information.

**IDAPA 33 -- IDAHO REAL ESTATE COMMISSION  
PO Box 83720, Boise, ID 83720**

**33-0101-0601, Rules of the Idaho Real Estate Commission.** Reduces individual licensing fee by \$20 per bi-annual licensing period.

**IDAPA 35 -- IDAHO STATE TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35.01.03, Property Tax Administrative Rules.**

**35-0103-0606** -- Implements HB 421 and the procedures to index the homeowner's exemption each year.

**35-0103-0607** -- Numerous changes implement recent statutory changes effecting the homeowner's exemption, fire district reporting, occupancy taxes and exemptions, payment date for recapture of qualified investment exemption, and specifies various information that assessors must provide to the commission; identifies 5 primary categories simplifying the equalization of values by county; describes secondary categories that assessors will use to notify property owners of the values being assessed on land, improvements, and other property; provides formula for calculation of the 5-year average farm credit system interest rate; provides for county assessors and county auditors to submit the property tax reduction data electronically as well as hard copy; provides for county treasurers to mail property tax bills with zero balance due to property tax reduction applicants; and clarifies exemptions from yield tax and categories for land used to grow Christmas trees and other annual forest crops.

**IDAPA 39 -- IDAHO TRANSPORTATION DEPARTMENT  
PO Box 7129, Boise ID 83707-1129**

**39-0207-0601, Rules Governing Titling of Salvage, Specially Constructed, and Reconstructed Motor Vehicles.** (Temp & Prop) Changes implement HB 727 that mandates that all vehicles declared a total loss enter the salvage program and be issued a salvage certificate of ownership; establishes criteria to require a branded certificate for repaired or reconstructed vehicles, and includes a requirement for dealers to disclose title brands to purchasers.

**39-0224-0601, Rules Governing "Gray Market" Vehicle Registration and Titling.** (Temp & Prop) Enables department to require sufficient ownership documentation prior to titling to prevent titling of potentially stolen vehicles.

**39-0321-0601, Rules Governing Special Permit Fees.** Increases issued permit fees by \$15 to cover administrative costs associated with permit processing, issuance and enforcement.

**39-0343-0601, Rules Governing Utilities on State Highway Right-of-Way.** (Temp & Prop) Updates website and district office addresses referenced in the rule.

**IDAPA 58 -- DEPARTMENT OF ENVIRONMENTAL QUALITY  
1410 N. Hilton, Boise, ID 83706-1255**

**\*\*58-0101-0303, Rules for the Control of Air Pollution in Idaho.** In order for the state to maintain primacy for the Title V program, permit fees are being increased for the sources subject to Title V to cover the costs of administering the program. Comment by: 10/10/06.

**\*\*58-0101-0602, Rules for the Control of Air Pollution in Idaho.** Updates the incorporation by reference section of the rule to ensure consistency with the federal regulations and specifically exempts certain federal regulations from incorporation by reference. Comment by: 10/10/06.

**58-0102-0601, Water Quality Standards.** Adds new beneficial use and associated criteria for streams that are unable to support viable fish populations; expands the applicability of low flow exclusions to all waters of the state and allow for more flexibility in determining what constitutes an extreme low flow condition. Comment by: 10/6/06.

Please refer to the Idaho Administrative Bulletin, **September 6, 2006, Volume 06-9** for notices and text of all rulemakings, public hearing 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.**

Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering see our website or call (208) 332-1820 or write the Office of Administrative Rules, Department of Administration, 650 W. State St., Room 100, Boise, ID 83720-0306. Visa and MasterCard accepted for most purchases.

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

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK YOU HAVE  
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**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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