

# 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 rulemaking 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 Notice of Rulemaking 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 07-1 refers to the first Bulletin issued in calendar year 2007; Bulletin 08-1 refers to the first Bulletin issued in calendar year 2008. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 08-1 refers to January 2008; Volume No. 08-2 refers to February 2008; and so forth. Example: The Bulletin published in January 2008 is cited as Volume 08-1. The December 2007 Bulletin is cited as Volume 07-12.*

## **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 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 only published in the Bulletin and **not** printed in the Administrative Code.*

*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, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate a proposed rulemaking if it decides not to proceed beyond the proposed rulemaking step, and stops the formal rulemaking 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 requires 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 rule 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 becomes a final, enforceable rule.*

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending 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 reviewed by the legislature and not rejected, amended or modified becomes 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 83720-0306, 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 a table 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 38.05.01.200.02.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.

“**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 "-", (38-0501-0801). 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 number:

### "DOCKET NO. 38-0501-0801"

"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).

"0801" denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rule-making action published in calendar year 2008. A subsequent rulemaking on this same rule chapter in calendar year 2008 would be designated as "0802". The docket number in this scenario would be 38-0501-0802.

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 2008**

<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>
08-1	January 2008	<b>*November 14, 2007</b>	January 2, 2008	January 23, 2008
08-2	February 2008	January 4, 2008	February 6, 2008	February 27, 2008
08-3	March 2008	February 8, 2008	March 5, 2008	March 26, 2008
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08-7	July 2008	May 30, 2008	July 2, 2008	July 23, 2008
08-8	August 2008	July 3, 2008	August 6, 2008	August 27, 2008
08-9	September 2008	August 1, 2008	September 3, 2008	September 24, 2008
08-10	October 2008	<b>**August 20, 2008</b>	October 1, 2008	October 22, 2008
08-11	November 2008	October 3, 2008	November 5, 2008	November 26, 2008
08-12	December 2008	October 31, 2008	December 3, 2008	December 24, 2008

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2009**

<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>
09-1	January 2009	<b>*November 14, 2008</b>	January 7, 2009	January 28, 2009
09-2	February 2009	January 9, 2009	February 4, 2009	February 25, 2009
09-3	March 2009	February 6, 2009	March 4, 2009	March 25, 2009
09-4	April 2009	March 6, 2009	April 1, 2009	April 22, 2009
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09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	<b>**August 28, 2009</b>	October 7, 2009	October 28, 2009
09-11	November 2009	October 2, 2009	November 4, 2009	November 25, 2009
09-12	December 2009	November 6, 2009	December 2, 2009	December 23, 2009

***\*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>IDAPA 10</b>	<b>Engineers and Land Surveyors</b> , Board of Professional
<b>IDAPA 58</b>	<b>Environmental Quality</b> , Department of
<b>IDAPA 12</b>	<b>Finance</b> , Department of
<b>IDAPA 13</b>	<b>Fish and Game</b> , Department of
<b>IDAPA 14</b>	<b>Geologists</b> , Board of Registration of Professional
<b>IDAPA 15</b>	<b>Governor</b> , Office of the Idaho Commission on Aging (15.01) Idaho Commission for the Blind and Visually Impaired (15.02) Idaho Forest Products Commission (15.03) Division of Human Resources and Personnel Commission (15.04) Idaho Liquor Dispensary (15.10) Idaho Emergency Communications Commission (15.06) Emergency Response Commission (15.13)

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 48</b>	<b>Grape Growers and Wine Producers Commission, Idaho</b>
<b>IDAPA 16</b>	<b>Health and Welfare, Department of</b>
<b>IDAPA 41</b>	<b>Health Districts, Public</b>
<b>IDAPA 45</b>	<b>Human Rights Commission</b>
<b>IDAPA 17</b>	<b>Industrial Commission</b>
<b>IDAPA 18</b>	<b>Insurance, Department of</b>
<b>IDAPA 05</b>	<b>Juvenile Corrections, Department of</b>
<b>IDAPA 09</b>	<b>Labor, Idaho Department of</b>
<b>IDAPA 20</b>	<b>Lands, Department of</b>
<b>IDAPA 30</b>	<b>Libraries, Commission for</b>
<b>IDAPA 52</b>	<b>Lottery Commission, Idaho State</b>
<b>IDAPA 22</b>	<b>Medicine, Board of</b>
<b>IDAPA 23</b>	<b>Nursing, Board of</b>
<b>IDAPA 24</b>	<b>Occupational Licenses, Board of (24.20)</b> Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians (24.03) Contractors Board, Idaho State (24.21) Cosmetology, Board of (24.04) Dentistry, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board, Idaho (24.22) Morticians, Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Optometry, Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, Board of (24.11) Professional Counselors and Marriage & Family Therapists, Board of (24.15) Psychologist Examiners, Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of (24.19) Social Work Examiners, Board of (24.14) Speech and Hearing Services Licensure Board(24.23)
<b>IDAPA 25</b>	<b>Outfitters and Guides Licensing Board</b>
<b>IDAPA 50</b>	<b>Pardons and Parole, Commission for</b>
<b>IDAPA 26</b>	<b>Parks and Recreation, Department of</b>
<b>IDAPA 27</b>	<b>Pharmacy, Board of</b>
<b>IDAPA 11</b>	<b>Police, Idaho State</b>

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 29</b>	<b>Potato Commission, Idaho</b>
<b>IDAPA 55</b>	<b>Professional-Technical Education, Division of</b>
<b>IDAPA 59</b>	<b>Public Employee Retirement System of Idaho (PERSI)</b>
<b>IDAPA 31</b>	<b>Public Utilities Commission</b>
<b>IDAPA 56</b>	<b>Rangeland Resources Commission, Idaho</b>
<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>
<b>IDAPA 34</b>	<b>Secretary of State, Office of the</b>
<b>IDAPA 57</b>	<b>Sexual Offender Classification Board</b>
<b>IDAPA 49</b>	<b>Shorthand Reporters, Board of Certified</b>
<b>IDAPA 36</b>	<b>Tax Appeals, Board of</b>
<b>IDAPA 35</b>	<b>Tax Commission, State</b>
<b>IDAPA 39</b>	<b>Transportation Department, Idaho</b>
<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>
<b>IDAPA 21</b>	<b>Veterans Services, Division of</b>
<b>IDAPA 46</b>	<b>Veterinary Medical Examiners, Board of</b>
<b>IDAPA 47</b>	<b>Vocational Rehabilitation, Division of</b>
<b>IDAPA 37</b>	<b>Water Resources, Department of</b>
<b>IDAPA 42</b>	<b>Wheat Commission</b>

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

#### DOCKET NO. 16-0601-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections: 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code; also Social Security Act, Title IV-E, Sections 471(a)(14) and 473(c)(3)(B).

**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 Wednesday, October 15, 2008.

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

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

The following changes are being made to this chapter of rules:

1. The 2008 Legislature passed rule changes related to the revamped Child Protection Central Registry, but expressed some concerns. This docket makes changes that address those concerns, including: clarification of due process language, replacement of references to what "a reasonable person would conclude" with more objective "evidence-based" language, and other changes to clarify the intent of the rule.
2. The rules for children's mental health services are being deleted from this chapter and are being moved into new chapter IDAPA 16.07.37, "Children's Mental Health Services," publishing in this bulletin under Docket No. 16-0737-0801.
3. The rules regarding federally-funded adoption and foster care assistance (Title IV-E) are being updated to align with recent changes to the federal statutes that govern this program.
4. The rules regarding adoption are being updated to reflect recent streamlining and decentralization of the Department's adoption process.
5. Finally, the title of the chapter is being amended to: "Child and Family Services." Other minor corrections and revisions are being made to the rule to assure consistent use of terminology and to comply with the Department's plain language standards.

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

**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 only rule changes in this docket that will have a fiscal impact are those related to the Child Protection Central Registry:

1. Estimated *annual* costs for sending substantiated letters by certified mail, return receipt requested: \$5,900.
2. Estimated *one-time* cost for changes related to the Department's automated system (FOCUS) used to manage the data for the Child Protection Central Registry: \$2000.

Total estimated cost for implementation of rule changes related to the Child Protection Central Registry: \$7,900.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted. The



amendments to the Child Protection Central Registry contain changes agreed upon by the Department and the 2008 Legislature. The children's mental health services rules being moved into new chapter IDAPA 16.07.37 are being negotiated under that docket. The Title IV-E changes were made to align the rule with changes in federal law and therefore are not subject to negotiation. The remaining changes were either clerical corrections or edits made to align the rules with the Department's current business process and plain language standards.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

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 Wednesday, October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-0801**

**16.06.01 - ~~RULES GOVERNING FAMILY AND CHILDREN'S~~ AND FAMILY SERVICES**

**000. LEGAL AUTHORITY.**

The Idaho Legislature has delegated to the Department, or the Board of Health and Welfare, or both jointly, the responsibility to establish and enforce such rules and methods of administration as may be necessary or proper to administer social services to people who are in need, under the following Sections: 16-1629, 16-2102, ~~16-2406, 16-2423, 16-2433,~~ 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), ~~56-203B,~~ 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code. (4-2-08)(\_\_\_\_)

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

**01. Title.** These title of these rules ~~are to be cited in full as Idaho Department of Health and Welfare Rules,~~ is IDAPA 16.06.01, "~~Rules Governing Family and Children's~~ and Family Services." (3-18-99)(\_\_\_\_)

**02. Scope.** These rules are established to govern the statewide provision of: (3-18-99)

**a.** ~~Family s~~Services associated with child protection, ~~behavioral and emotional disorders, substance abuse,~~ alternate care, and adoptions; and (3-18-99)(\_\_\_\_)

**b.** As resources are available, services aimed at preventing child ~~protective, and severe behavioral and emotional problems from impinging upon families and communities; and~~ abuse, neglect, and abandonment. (3-18-99)(\_\_\_\_)

**e.** ~~Family services to support the education, training and employment programs being provided for public assistance and Food Stamp recipients.~~ (3-18-99)

**03.** Goal. The goal of all Child and Family Services programs is the safety, permanency, and well-being of children, as well as promoting the stability and security of Indian tribes and families. (\_\_\_\_)

(BREAK IN CONTINUITY OF SECTIONS)

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**

For the purposes of these rules, the following terms are used ~~as defined in Section 010:~~ (3-30-07)(\_\_\_\_)

~~**01.** IV-E Foster Care. Child care provided in lieu of parental care in a foster home, children's agency or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (3-18-99)~~

**021.** Adoption Assistance. Funds provided to adoptive parent(s) of a child~~ren~~ who ~~have~~ has special needs or who could not be adopted without financial or medical assistance. (3-30-07)(\_\_\_\_)

**032.** Adoption Services. Protective services through which a child~~ren are~~ is provided with a permanent home~~s~~, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (3-30-07)(\_\_\_\_)

**043.** Alternate Care. Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment and institutional resources, ~~in accordance with~~ under the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act, 25 USC Sections 1901-1963. ~~(3-30-07)~~(\_\_\_\_)

**054.** Alternate Care Plan. A federally-required component of the Family Plan for a child~~ren~~ in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, the child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical and other information important to the day-to-day care of the child. (5-3-03)(\_\_\_\_)

**065.** Area of Concern. Circumstances that brought a child and family to the attention of the Department. These circumstances typically involve safety issues that put the child at risk of harm. (3-30-07)

**076.** Assessment. The first step in the planning process, the outcome of which is the systematic documentation of the family's areas of concern, their strengths, and desired outcomes. (3-30-07)

**087.** Board. The Idaho State Board of Health and Welfare. (3-18-99)

**098.** Case Management. A change-oriented service to families that assures and coordinates the provision of family risk assessment, family ~~case~~ service planning, treatment ~~and other services~~, planning for permanency, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (3-30-07)(\_\_\_\_)

**109.** Certified Adoption Professional (formerly "qualified individual"). An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

~~**11.** Child Mental Health. All of the following children under eighteen (18) years of age must be served without regard to income or type of health insurance: (3-30-07)~~

~~**a.** Those who have a serious emotional disturbance or a grave disability due to a serious mental illness; and (3-30-01)~~

- ~~b.~~ ~~Present a significant risk of harm to themselves or to others, due to their mental illness; and~~ (3-30-01)
- ~~c.~~ ~~Because of their mental illness are at risk for out of home placements or are currently in out of home placement and lack adequate resources to participate in their community's non public system of care; or~~ (3-30-01)
- ~~d.~~ ~~Are involuntarily committed to the Department for out of home placement.~~ (3-30-01)
- ~~12.~~ ~~**Child Mental Health Services.** Services provided in response to the needs of children with a serious emotional disturbance and their families. These services are provided in accordance with the provisions of Section 16-2402 et seq., Idaho Code, the "Children's Mental Health Services Act."~~ (3-30-01)
- 130.** **Child Protection.** All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter must be served without regard to income. (3-30-07)
- 141.** **Child Protective Services.** Services provided in response to potential, alleged, or actual abuse, ~~abandonment or neglect, or abandonment~~ of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the "Child Protective Act." (3-18-99)(\_\_\_\_)
- 152.** **Compact Administrator.** The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-2101 et seq., Idaho Code; "Interstate Compact on the Placement of Children," Section 16-1901 et seq., Idaho Code; ~~or the "Interstate Compact on Mental Health," Section 66-1201 et seq., Idaho Code;~~ or the "Interstate Compact on Adoption and Medical Assistance," Section 39-7501 et seq., Idaho Code. (3-20-04)(\_\_\_\_)
- 163.** **Day Care for Children.** Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child's or children's own home or homes. (3-18-99)
- ~~17.~~ ~~**Day Treatment Services.** Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational and family interventions provided on a regularly scheduled, typically daily, basis.~~ (3-18-99)
- 184.** **Department.** The Idaho Department of Health and Welfare. (3-18-99)
- 195.** **Deprivation.** One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the principal wage earner parent. (3-30-07)
- 2016.** **Desired Result.** Behaviorally-specific description of how the family circumstances will look when the risk factors that brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (3-30-07)
- 217.** **Director.** The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)
- 2218.** **Extended Family Member of an Indian Child.** As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)
- 011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**  
For the purposes of these rules, the following terms are used ~~as defined in Section 011:~~ (3-30-07)(\_\_\_\_)

- 01. Family.** Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)
- 02. ~~Family and Children's and Family Services.~~** Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (~~3-30-07~~)(\_\_\_\_)
- 03. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)
- 04. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including, ~~but not limited to,~~ legal documents, identifying information, and evaluations. (~~3-30-01~~)(\_\_\_\_)
- 05. Family (Case) Plan.** Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)
- 06. Family Services Worker.** Any of the direct service personnel, including social workers, ~~psychologists, counselors and family therapists,~~ working in regional ~~Family and Children's and Family Services~~ Programs. (~~3-20-04~~)(\_\_\_\_)
- 07. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)
- ~~08. FOCUS (Family Oriented Community User System).~~** ~~This is the Department's computer information system used by Family and Children's Services personnel to maintain federally required child welfare information. FOCUS provides a case management system for Child Protection, Adoptions, Children's Mental Health, Interstate Compact, and Independent Living for the Department.~~ (~~3-30-07~~)
- 098. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)
- 109. Guardianship Assistance.** State benefits provided to legal guardian(s) for the support of a child for whom efforts to place for adoption have been unsuccessful and who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (3-30-07)
- 110. Immediate Safety Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety threats, risks, or immediate service needs exist that require further ~~Family and Children's and Family Services~~ response. (~~3-30-07~~)(\_\_\_\_)
- 121. Independent Living.** Services provided to eligible foster or former foster youth, ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)
- 132. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)
- 143. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)
- a. A member of an Indian tribe, or (3-18-99)
  - b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)
- 154. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

- (3-18-99)
- 165. Indian Child's Tribe.** (3-18-99)
- a.** The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)
- b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)
- 176. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)
- 187. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)
- 198. Interethnic Adoption Provisions of 1996 (IEPA).** IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (5-3-03)
- 2019. Interstate Compact on the Placement of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)
- 240. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)
- 012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.**
- For the purposes of these rules, the following terms are used ~~as defined in Section 012:~~ (3-30-07)( )
- 01. Legal Guardianship.** A judicially-created relationship, including one made by a tribal court, between a child and a relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights. (5-3-03)
- 02. Licensed.** Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-30-07)
- 03. Licensing.** See IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 100. (3-30-07)
- 04. Medicaid.** See "Title XIX." (3-30-01)
- 05. Multiethnic Placement Act of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (3-18-99)
- 06. Parent(s).** ~~The~~ A person(s) who, by birth or through adoption, is considered legally responsible for a child. ~~For purposes of these rules, when it is necessary to be more specific, identifiers will be added to parent(s):~~

~~birth parent(s), foster parent(s), adoptive parent(s), step parent(s), and pre-adoptive parent(s).~~ The term "legal guardian(s)" is not included in the definition of parent(s). (3-20-04)(\_\_\_\_)

**07. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

**08. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

**09. P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (3-30-01)

**10. P.L. 105-89.** Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

**11. Planning.** An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

~~**12. Purchase of Services.** Provision of services to children and families by local agencies or individuals who contract with DHW. (3-30-01)~~

**132. Qualified Expert Witness--ICWA.** A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

**a.** A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-18-99)

**b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; (3-18-99)

**c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (3-18-99)

**d.** An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

**143. Relative.** Person related to a child by blood, marriage, or adoption. (3-30-01)

**154. Reservation.** Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

**165. Respite Care.** Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement care of a child ~~from the home of their usual care giver to that of another licensed or agency approved family~~ by a licensed or agency-approved caregiver different from his usual caregiver. ~~In general, the duration of an episode of respite placement is care ranges~~ from one (1) partial day up to fourteen (14) consecutive days. (3-30-01)(\_\_\_\_)

**16. Responsible Party.** An individual such as a Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. (\_\_\_\_)

**013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.**

For the purposes of these rules, the following terms are used ~~as defined in Section 013:~~ (3-30-07)(\_\_\_\_)

**01. SSI (Supplemental Security Income).** Income maintenance grants for eligible persons who are aged, blind, or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

**02. Safety Plan.** Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

~~**03. Serious Emotional Disturbance (SED).** An emotional or behavioral disorder or a neuropsychiatric condition which results in a serious disability, which requires sustained treatment interventions and causes the child's functioning to be impaired in at least one (1) of the following areas: thought, perception, affect and behavior. A disorder is considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment is assessed using the Child and Adolescent Functional Assessment Scale (CAFAS). Substantial impairment requires a full eight (8) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: Self harmful behavior; Moods/emotions; or thinking. A substance abuse disorder, conduct disorder, or developmental disorder, alone does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-30-07)~~

~~**04. Social Service Block Grant.** The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self reliance, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (3-18-99)~~

**053. TAFI.** Temporary Assistance to Families in Idaho. (3-18-99)

~~**06. Target Population.** Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (3-18-99)~~

**074. Title IV-E.** Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

**05. Title IV-E Foster Care.** Child care provided in lieu of parental care in a foster home, children's agency or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (\_\_\_\_)

**086. Title XIX (Medicaid).** Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs." (3-18-99)

**097. Title XXI.** (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

**108. Tribal Court.** A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

~~**109. Unmarried Parents' Services.** ~~Unmarried parent(s) s~~Services are aimed at achieving or maintaining self-reliance or self-support for unmarried parent(s). These services include counseling for ~~at~~ any unmarried parent(s) who need such service in relation to their plans for their children and arranging for and paying for prenatal and confinement care for the well-being of the parent and infant. Services for unmarried parents are provided in accordance with Section 56-204A, Idaho Code. (3-30-07)(\_\_\_\_)~~

**120. Voluntary Services Agreement.** A written and executed agreement between the Department and

parent(s) or legal guardian(s) regarding the goal, areas of concern, desired results, and task responsibility, including payment. *A children's mental health family services plan is the Voluntary Service Agreement.* (3-30-07)(\_\_\_\_)

**014. -- 019. (RESERVED).**

**GENERAL REQUIREMENTS AND SERVICES**  
**(Sections 020 -- 239)**

**020. GENERAL REQUIREMENTS APPLICABLE TO ALL ~~FAMILY AND CHILDREN'S~~ FAMILY SERVICES PROGRAMS.**

**01. Information, Referral and Screening.** All residents of the state of Idaho, regardless of the duration of their residency or their income are entitled to receive, upon referral or request: (3-30-07)

**a.** Accurate and current information about services to children and families provided through the Department. (3-18-99)

**b.** Referral to other appropriate public or private services available in the community; and (3-18-99)

**c.** A screening to determine service needs and safety threats that can be addressed through ~~Family and Children's~~ Family Services. (3-30-07)(\_\_\_\_)

**02. Initiating ~~Family and Children's~~ and Family Services.** ~~Family and Children's~~ and Family Services are initiated upon referral for services that the program is legally mandated to provide or after completion of a written voluntary request for services. Efforts will be made to identify any Indian children in the family and all possible tribes in which a child may be a member or eligible for membership. (3-30-07)(\_\_\_\_)

**03. Individual Authorized to Request Voluntary Services.** Requests for voluntary services must be made by a family member or by an authorized representative, or by someone acting on behalf of an incompetent or incapacitated person. (3-30-07)

**04. Record of Request for Services.** The date of referral or request for services will be documented in the records of the field office. (3-30-07)

**05. Information to Be Provided to Family.** Upon referral or application for services, the family services worker must inform the family that: (3-30-07)

**a.** They have the right to accept or reject services offered by the Department, except those services imposed by law or by a court order; (3-18-99)

**b.** Fees may be charged for certain services, and that the parent(s) ~~or legal guardian(s)~~ has financial responsibility for the child in care; (5-3-03)(\_\_\_\_)

**c.** They have the right to pursue an administrative appeal of any decision of ~~Family and Children's~~ and Family Services relating to them, including ~~but not limited to~~ any decision not to provide services or to discontinue planned services; the Department's failure to act upon a referral or request for services within thirty (30) days; or an decision to remove a child from an alternate care placement unless court-ordered or court-authorized. (3-18-99)(\_\_\_\_)

**021. -- 029. (RESERVED).**

**030. CORE ~~FAMILY AND CHILDREN'S~~ FAMILY SERVICES.**

The following core services are the state and federally mandated services provided by or through regional ~~Family and Children's~~ and Family Services offices: (3-30-01)(\_\_\_\_)



**01. Crisis Services.** Crisis Services are an immediate response to assure safety when a child is believed to be in imminent danger as a result of child abuse, ~~or~~ neglect, or ~~to be in imminent danger of causing life threatening harm to self or someone else due to a serious emotional disturbance~~ abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess risk and place in alternate care, if necessary, to assure safety for the child. (3-30-01)(\_\_\_\_)

~~**02. Service Management.** Also referred to as case management. The goals of service management are to assure and coordinate family assessment, service planning, treatment and other services, protection of children, planning for permanency, advocacy, review and reassessment, documentation and timely closure of cases. (3-30-01)~~

~~**03. Screening Services.** Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services as a member of the target population for Child Protection, Adoptions, and/or Children's Mental Health Services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (3-30-01)(\_\_\_\_)~~

~~**04. Assessment and Safety/Service Planning Services.** Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed together by the worker, the family and other interested parties. Each plan will identify must have a long-term goal; that identifies behaviorally-specific and measurable desired results; and has specific tasks which that identify who, how, and when the tasks will be completed. (3-30-07)(\_\_\_\_)~~

~~**05. Preventative Services.** Community-based services which support children and families and are designed to reduce the risk of child abuse, and neglect, as well as serious emotional disturbance or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (3-30-01)(\_\_\_\_)~~

~~**06. Court-Ordered Services.** These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, or neglect, or a harm to themselves or others due to the presence of a severe emotional disturbance abandonment. (3-30-01)(\_\_\_\_)~~

~~**07. Alternate Care (Placement) Services.** Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, or neglect, or children and youth with a severe emotional disturbance abandonment. These out of home placements are arranged for and financed in full or in part by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed, approved or specified by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (3-30-07)(\_\_\_\_)~~

~~**08. Community Treatment Support Services.** Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include, but are not limited to: respite care; and family preservation; psychosocial rehabilitative services, companion services and day treatment. (3-30-01)(\_\_\_\_)~~

~~**09. Interstate Compact on Out-of-State Placements.** Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101 et seq., Idaho Code, the "Interstate Compact on the Placement of Children" and Section 66-1201 et seq., Idaho Code, the "Interstate Compact on Mental Health." Placements must be in compliance with all state and federal laws. (3-30-07)(\_\_\_\_)~~

~~**10. Independent Living.** The assessment, planning, and provision of services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. Eligibility requirements for Independent Living services include: youth must be between fifteen (15) and twenty one (21) years of age; youth's care must be the responsibility of the Department or tribal agency as established by a court order or~~

~~voluntary agreement with the youth's family; and placed in foster care or similar setting for ninety (90) consecutive days. Once established, a youth's eligibility is maintained up to their twenty first birthday, regardless of whether they continue to be the responsibility of the Department, tribe, or are in foster care.~~ (3-30-01)(\_\_\_\_)

**a.** Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (\_\_\_\_)

**i.** Be fifteen (15) to nineteen (19) years of age; (\_\_\_\_)

**ii.** Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (\_\_\_\_)

**iii.** Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (\_\_\_\_)

**b.** Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (\_\_\_\_)

**i.** Be a former foster youth who is currently under twenty-one (21) years of age; and (\_\_\_\_)

**ii.** Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (\_\_\_\_)

**iii.** Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fifteen (15) years of age; or (\_\_\_\_)

**iv.** Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (\_\_\_\_)

**c.** Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (\_\_\_\_)

**140.** **Adoption Services.** Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

**121.** **Administrative Services.** Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include ~~but~~ *are not limited to:* (3-30-01)(\_\_\_\_)

**a.** Child care licensing; (3-30-01)

**b.** Day care licensing; (3-30-01)

**c.** Community development; and (3-30-01)(\_\_\_\_)

**d.** Contract development and monitoring; and (3-30-01)(\_\_\_\_)

~~**e.** Pre-authorization of care.~~ (3-30-01)

~~031. — 039.~~ **(RESERVED).**

**040. FAMILY SERVICES PRACTICE.**

*The goal of all Family and Children's Services Programs is the safety, permanency and well-being of children, as well*

~~as promoting the stability and security of Indian tribes and families. These goals are achieved through documented compliance with the Idaho's Child Protective Act, Children's Mental Health Services Act, Adoption of Children Act, and Termination of Parent and Child Relationship Act, and the following federal public laws: Adoption Assistance and Child Welfare Act; the Adoption and Safe Families Act; the Multiethnic Placement Act and its Interethnic Adoption Provisions; and the Indian Child Welfare Act.~~ (3-30-01)

~~0431.~~ -- 049. (RESERVED).

**050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.**

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to assure timely permanency for children and to protect the rights of children, their families and their tribes. (3-30-01)

**01. Reasonable Efforts.** Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with their family, and to finalize a permanent plan, ~~or prevent a seriously emotionally disturbed child from having to move to a more restrictive setting.~~ The following Efforts must be made ~~as follows~~ and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (5-3-03)(\_\_\_\_)

a. Efforts to prevent or eliminate the need for a child to be removed from his home; ~~and~~ (5-3-03)(\_\_\_\_)

b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)

c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

**02. Active Efforts.** For an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. (5-3-03)

**03. ICWA Preferences.** If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences. (3-18-99)

**04. Least Restrictive Setting.** Efforts will be made to assure that any child in the Department's care, ~~especially those children in care due to an emotional or behavioral disturbance,~~ resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child. (3-30-07)(\_\_\_\_)

**05. Legal Requirements for Indian Children.** In the case of an Indian child, notice of the pending proceeding must be sent by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement. (3-30-07)

**06. Visitation for Child's Parent(s) or Legal Guardian(s).** Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (3-30-07)

**07. Notification of Change in Placement.** Written notification to the child's parent(s) or legal guardian(s) within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe,

which includes the information described in Section 051 of these rules entitled Notice Required for ICWA. (5-3-03)

**08. Notification of Change in Visitation.** Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

**09. Notification of Right to Participate and Appeal.** Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-30-07)

**10. ICWA Placement Preferences.** Compliance with the foster care placement preferences of the Indian Child Welfare Act. (3-18-99)

**11. Compliance with Requirements of the Multiethnic Placement Act and Interethnic Adoption Provisions.** (3-30-01)

**12. Family Decision Making and Plan Development.** (3-30-01)

**a.** A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)

**b.** Families will be given ample opportunity to participate in the identification of areas of concern, their strengths and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)

**c.** Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

**13. Compelling Reasons.** Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

**14. ASFA Placement Preferences.** The following placement preferences will be ~~used~~ considered in the order listed below when recommending and making permanency decisions: ~~(3-30-01)( )~~

**a.** Return home if safe to do so; (3-30-01)

**b.** Adoption or legal guardianship by a relative or kin; ~~(3-30-01)( )~~

~~**c.** Adoption or legal guardianship by kin;~~ ~~(3-30-01)~~

~~**d.** Adoption or legal guardianship by non-relative;~~ (3-30-01)

~~**e.** Other Another planned permanent ~~placement~~ living arrangement such as long-term foster care.~~ ~~(3-30-01)( )~~

**051. NOTICE REQUIRED FOR ICWA.**

Wherever these rules require notice to the parent(s) or custodian(s) and tribe of an Indian child, notice ~~shall~~ must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, ~~pursuant to~~ under 25 CFR Section 23.11, copies of such notices ~~shall~~ must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE

11th Avenue, Portland, OR 97232. If the identity or location of the parent(s) or Indian custodian(s) and the tribe cannot be determined, notice of the proceeding *shall must* be given to the Secretary, who *shall must* provide notice to the parent(s) or Indian custodian(s) and tribe. (5-3-03)(\_\_\_\_)

052. -- 059. (RESERVED).

060. FAMILY CASE RECORDS.

01. **Electronic and Physical Files.** The Department *shall will* maintain an electronic file and a physical file containing information on each family receiving services. The physical file *shall will* contain non-electronic documentation such as originals and/or original copies of all court orders, birth certificates, social security cards and assessment information which is original outside the Department. (3-30-01)(\_\_\_\_)

02. **Storage of Records.** All physical family case records *shall must* be stored in a secure file storage area, away from public access and retained not less than five (5) years after the case is closed, after which they may be destroyed, ~~except complete family case records involving adoptive placements shall be forwarded to the Department's central adoption unit for permanent storage. Case records involving Indian children shall be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. The confidentiality of family case records is to be maintained in accordance with the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~ (3-30-01)(\_\_\_\_)

**a.** Exception for Adoption Records. Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. (\_\_\_\_)

**b.** Exception for Case Records Involving an Indian Child. A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. (\_\_\_\_)

~~061. -- 069. (RESERVED).~~

~~070. STANDARDS FOR SAFEGUARDING INFORMATION CONCERNING APPLICANTS AND RECIPIENTS OF SERVICES.~~

~~Protection and disclosure of Department records is governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~ (3-18-99)

~~071. -- 239. (RESERVED).~~

REVIEWS AND HEARINGS  
(Sections 240 -- 399)

240. SIX-MONTH REVIEWS CONDUCTED BY THE DEPARTMENT FOR CHILDREN IN ALTERNATE CARE PLACEMENT.

~~Unless~~ When a judicial review does not occur, at the end of a six (6) month period ~~in a Child Protective Act placement or other out of home placement including placements under the Children's Mental Health Services Act, placements of children where the Department is the child's guardian~~ for any child in alternate care placement, the Department will conduct an ~~individual family~~ case review to assure compliance with all applicable state and federal laws, and to ensure the plan focuses on the goals of safety, permanency and well-being of the child. (3-30-07)(\_\_\_\_)

01. **Notice of Six Month Review.** The parent(s) or legal guardian(s), foster parent(s) of a child, and any preadoptive parent(s) or relative(s) providing care for the child ~~and an Indian child's tribe, if appropriate,~~ are to be provided with notice of ~~and an opportunity~~ their right to be heard in the six-(6)-month review. In the case of an Indian child, the child's tribe and any Indian custodian must also be provided with notice. This must not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party ~~solely~~ to the review solely on the basis of the receipt of such notice and opportunity to be heard. Participants have the right to be represented by the individual of their choice. (3-30-07)(\_\_\_\_)

**02. Procedure in the Six Month Review.** The parties who received notice will be given the opportunity ~~for face-to-face discussion including attending, asking questions and making statements~~ to participate in the case review. (3-30-07)(\_\_\_\_)

**03. Members of Six-Month Review Panel.** The six-month review ~~team~~ panel must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent(s) or legal guardian(s) being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes, and citizens qualified by experience, professional background, or training. Members of the panel will be chosen by ~~the regional director~~ and receive instructions from the ~~Family and Department's Children's and Family Services Program Manager~~ or his designee, to enable them to understand the review process and their roles as participants. (3-30-07)(\_\_\_\_)

**04. Considerations in Six-Month Review.** Whether conducted by the court in a review hearing or a Department review panel, under State law, Federal law and regulation, ~~at least~~ each of the following must be addressed in a six-month review: (3-30-07)(\_\_\_\_)

- a. Determine the extent of compliance with the family services plan; (5-3-03)
- b. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; (5-3-03)
- c. Review compliance with the Indian Child Welfare Act, when applicable; (5-3-03)
- d. Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and (5-3-03)
- e. Project a ~~likely~~ date by which the child may be returned and safely maintained at home or placed for adoption, legal guardianship, or other permanent placement. (5-3-03)(\_\_\_\_)

**05. Recommendations and Conclusions of Six-Month Review Panel.** Following the six-month review, written conclusions and recommendations will be provided to all participants, subject to Department safeguards for confidentiality. The ~~decision~~ document containing the written conclusions and recommendations must also ~~provide~~ include appeal rights. (3-30-07)(\_\_\_\_)

241. -- 249. (RESERVED).

**250. PERMANENCY HEARINGS.**

By the provision of Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must ~~also~~ have a permanency hearing conducted by the court or a court designee. Permanency hearings ~~shall~~ must be held no later than every twelve (12) months after the date of the child's ~~removal~~ placement in alternate care and no later than every twelve (12) months thereafter as long as the child remains ~~under the care and custody of the Department~~ in alternate care. A twelve (12) month permanency hearing ~~shall~~ will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department. (3-30-01)(\_\_\_\_)

**01. Attendance at Permanency Hearings.** The permanency hearing ~~shall~~ includes, at a minimum, the child's parent(s) or legal guardian(s), foster parent(s) of a child, and any preadoptive parent(s) or relative(s) providing care for the child, ~~and/or the child's Indian tribe, if appropriate. In the case of an Indian child, the child's tribe and Indian custodian (if there is one), must also be included in the permanency hearing.~~ Parties ~~shall~~ will be provided, by the court, with written notice of the hearing and opportunity of their right to be heard. This ~~shall~~ is not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis the receipt of such notice ~~and opportunity to be heard~~. (5-3-03)(\_\_\_\_)

**02. Judicial Determinations.** (3-30-01)

a. The court, or ~~designee~~ an officer ~~shall~~ designated by the court, will determine if the Department has made reasonable efforts to finalize a permanent plan for the child and issue an order specifying the permanent plan. (3-30-01)(\_\_\_\_)

b. In cases where the Department has documented, in the alternate care plan component of the family's service plan, compelling reasons for not terminating the parent and child relationship ~~and for placing the child in long-term alternate care~~, the court ~~shall~~ reviews and determines if the compelling reasons exist. (5-3-03)(\_\_\_\_)

**251. CITIZEN REVIEW PANELS.**

To meet the federal requirement for Citizen Review Panels, the Department shall have ~~has~~ established a Citizen Review Panel~~s~~ in each region to review child protection cases and make recommendations for improving the child welfare system. (3-18-99)(\_\_\_\_)

252. -- 399. (RESERVED).

**ALTERNATE (OUT-OF-HOME) CARE**  
**(Sections 400 -- 424)**

**400. AUTHORITY FOR ALTERNATE CARE SERVICES.**

Upon approval of the regional ~~Family and Children's~~ and Family Services Program Manager or his designee, the Department may provide or purchase alternative care under the following conditions: (3-30-07)(\_\_\_\_)

**01. Department Custody.** When the child is in the legal custody or guardianship of the Department; or (3-18-99)

**02. Voluntary Placement.** Upon agreement with the parent(s) or legal guardian(s) when circumstances interfere with their provision of proper care or they are no longer able to maintain a child ~~with serious emotional disturbance~~ in their home and they can benefit from social work and treatment services. A service plan and an out-of-home placement agreement must be developed between the Department and the family. The service plan will identify areas of concern, goals, desired results, time frames, tasks and task responsibilities. The out-of-home placement agreement will include the terms for reimbursement of costs with any necessary justification for deviation from Child Support guidelines. A voluntary agreement for out-of-home placement entered into between the Department and the parent(s) or legal guardian(s) of a minor child may be revoked at any time by the child's parent(s) or legal guardian(s). A contract between the Department and the service provider, if applicable, must also be in effect. Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. (3-30-07)(\_\_\_\_)

**401. CONSIDERATIONS FOR PLACEMENT IN ALTERNATE CARE.**

The Department ~~shall~~ will make meaningful reasonable attempts, both verbally and in writing, to inform in priority order, individuals identified below of the potential imminent placement and the requirements for consideration as a placement resource. The Department ~~shall~~ will place children in a safe and trusted environment consistent with the best interest and special needs of the children as required by P.L.96-272, Section 475(5). Ideally, placement priority ~~shall~~ will be given in the following order: (a) Immediate family; (b) Extended family members; (c) Non-family members with a significant established relationship with the child; (d) other licensed foster parent(s). Upon immediate contact with persons in categories a) through d) above, and after preliminary screening, within seventy-two (72) hours of decision to place, Departmental staff ~~shall~~ will make reasonable attempts to inform immediate family members of the way to become a placement resource. Alternate care placement ~~shall~~ will in all cases include consideration of: (5-3-03)(\_\_\_\_)

**01. Family Assessment.** The family assessment conducted in accordance with the provisions of the FACS Practice Manual. (3-30-01)

**02. Ability of Providers.** The ability of potential alternate care providers to address and be sensitive to the unique and individual needs of the child and ability to comply and support the plan for the child and their family.

(3-18-99)

**03. Family Involvement.** The involvement of the family in planning and selecting the placement. The Department ~~shall~~ will use a family unity meeting concept making reasonable efforts to gather immediate and extended family members and other significant supporters to identify family strengths relevant to creating a safe environment for the child. This process will be fully reported to the court along with resulting plans and commitments. ~~(3-18-99)~~(\_\_\_\_)

**402. INVOLUNTARY PLACEMENT OF INDIAN CHILDREN.**

Involuntary placement of an Indian child in foster care must be based upon clear and convincing evidence, including information from qualified expert witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. Foster care placement ~~shall~~ must be in the least restrictive setting that most approximates a family and in which any special needs may be met. In the absence of good cause to the contrary, a preference ~~shall~~ must be given to placement with: ~~(5-3-03)~~(\_\_\_\_)

- 01. Extended Family.** A member of the Indian child's extended family; (3-18-99)
- 02. Foster Home Approved by Tribe.** A foster home licensed, approved, or specified by the Indian child's tribe; (3-18-99)
- 03. Licensed Indian Foster Home.** An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (3-18-99)
- 04. Indian Institution.** An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs. (3-18-99)

**403. DATE A CHILD ENTERED FOSTER CARE.**

A child is considered to have entered foster care on the date the child is actually removed from their home. All foster care benefits and eligibility determinations ~~shall~~ must be based on this date. All periodic reviews, permanency hearings, and time frames for termination of parental rights ~~shall~~ must be based on the date the child entered foster care. ~~(5-3-03)~~(\_\_\_\_)

**404. ~~(RESERVED)~~ FOSTER CARE GOAL.**

It is the goal of the Department that not more than twenty-five percent (25%) of foster youth will be in foster care longer than twenty-four (24) months. The Department will monitor this goal annually. (\_\_\_\_)

**405. ALTERNATE CARE CASE MANAGEMENT.**

Case management must continue while the child is in alternate care and must ensure the following: (3-30-07)

- 01. Preparation for Placement.** Preparing a child for placement in alternate care is the joint responsibility of the child's family, the child (when appropriate), the family services worker and the alternate care provider. (3-30-07)
- 02. Information for Alternate Care Provider.** The Department and the family must inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including: (3-30-07)
  - a.** Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems and any other pertinent health information concerning the child; (3-18-99)
  - b.** The name of the child's doctor; (3-18-99)
  - c.** The child's current functioning and behaviors; (3-18-99)
  - d.** The child's history and past experiences and reasons for placement into alternate care; (3-30-01)
  - e.** The child's cultural and racial identity; (3-18-99)



- f. Any educational, developmental, or special needs of the child; (3-18-99)
- g. The child's interest and talents; (3-18-99)
- h. The child's attachment to current caretakers; (3-18-99)
- i. The individualized and unique needs of the child; (3-18-99)
- j. Procedures to follow in case of emergency; and (3-18-99)
- k. Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

**03. Consent for Medical Care.** Parent(s) or legal guardian(s) must sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the family case record. (3-30-07)

**04. Financial Arrangements.** The family services worker must assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (3-30-07)

**05. Contact with Child.** The family, the family services worker, and the alternate care provider ~~and the child, if of appropriate developmental age,~~ must establish a schedule for frequent and regular visits ~~to~~ with the child by the family and by the family services worker or designee. (3-30-07)(    )

a. Face-to-face contact ~~in the alternate care setting with the~~ a child by the ~~family services worker~~ responsible party must occur at least monthly or more frequently depending on the needs of the child or the provider, or both, and the stability of the placement. Face-to-face contact may be made in settings other than where the child resides as long as contact between the responsible party and the child occurs where the child resides a minimum of once every sixty (60) days. (3-30-07)(    )

b. The Department will have strategies in place to detect abuse, ~~or~~ neglect, or abandonment of children in alternate care. (3-30-07)(    )

c. ~~Regular~~ Face-to-face contact ~~with children placed in intensive treatment facilities~~ between the responsible party and a child placed in an in-state group or residential care facility, in or out of state, must occur at located a significant distance from the responsible party's office is required a minimum of once every ninety (90) days. Communication by phone between the responsible party and the child must occur at least monthly. (3-30-07)(    )

d. Frequent and regular contact between the child and parents and other family members will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. (3-30-07)

e. ~~When a child is placed in foster care in another state, a Department family services worker must maintain at least monthly contact with the child and family with whom he has been placed as long as the state of Idaho has custody of the child. The supervising agency in the state where the child is living is required to maintain monthly, face to face contact with the child and the family and make quarterly reports to the Department in accordance with arrangements made through the Interstate Compact on the Placement of Children. Children who are in out-of-state placements through the Interstate Compact on the Placement of Children (ICPC) must be contacted face-to-face no less frequently than every six (6) months, by either the responsible party in Idaho, by a representative of the state in which the child is placed, or by a private agency contracted by either.~~ (3-30-07)(    )

**06. Discharge Planning.** Planning for discharge from alternate care ~~into family services that follow alternate care~~ will be developed with all concerned parties. Discharge planning will be initiated at the time of

placement and completed prior to the child's return home or to the community. (3-30-07)(\_\_\_\_)

**07. Transition Planning.** Planning for discharge from alternate care into a permanent placement will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-30-07)

**08. Financial and Support Services.** As part of the discharge planning, Departmental resources will be coordinated to expedite access to Department financial and medical assistance and community support services. (3-30-07)

**406. -- 421. (RESERVED).**

**422. ALTERNATE CARE PLANNING.**

Alternate care planning is mandated by the provisions of Sections 471(a)(15) and 475, P.L.96-272. (3-18-99)

**01. Alternate Care Plan Required.** Each child receiving alternate care under the supervision of the state ~~shall~~ must have a standardized written alternate care plan. (3-30-01)(\_\_\_\_)

**a.** The purpose of the alternate care plan ~~shall be~~ is to facilitate the safe return of the child to his or her own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible. (3-18-99)(\_\_\_\_)

**b.** The alternate care plan ~~shall~~ must be included as part of the family service plan. (3-30-01)(\_\_\_\_)

**02. ~~Development of the~~ Written Alternate Care Plan.** The Department must have completed a written alternate care plan ~~shall be developed~~ within thirty (30) days after ~~a decision has been made to place~~ a child has been placed in alternate care. (3-18-99)(\_\_\_\_)

**a.** ~~The~~ A parent(s) or legal guardian(s) and the child, to the extent possible, ~~shall~~ are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. (5-3-03)(\_\_\_\_)

**b.** The alternate care plan ~~shall~~ must include documentation that ~~the~~ a parent(s) or legal guardian(s) have been provided written notification of: (5-3-03)(\_\_\_\_)

**i.** Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (3-18-99)

**ii.** Any change of placement ~~immediately, and at the latest within seven (7) days,~~ when the child is relocated to another alternate care or institutional setting immediately, and no later than seven (7) days after placement; and (3-18-99)(\_\_\_\_)

**iii.** Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements. (3-30-01)

**c.** All parties involved in developing the alternate care plan, including the alternate care provider, parent(s) or legal guardian(s), and the child, if of appropriate developmental age: (5-3-03)(\_\_\_\_)

**i.** Will be ~~required~~ asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and (3-18-99)(\_\_\_\_)

**ii.** Will receive a copy of the alternate care plan from the Department. (3-18-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**426. AFDC-FC ELIGIBILITY REQUIREMENTS.**

A child is eligible for AFDC-FC if he meets each of the eligibility requirements listed in Table 426.

<b>AFDC-FC ELIGIBILITY REQUIREMENTS -- TABLE 426</b>	
<b>CONDITION</b>	<b>DESCRIPTION</b>
<b>01. Financial Need.</b>	<p>A child is in financial need if, in the month court action to remove him from his home was initiated, or the month the voluntary out-of-home placement agreement is signed:                      He was receiving AFDC;                      He would have been eligible to receive AFDC if an application had been filed on his behalf; or                      He lived with his parent(s) or other caretaker relative(s) at some time within six (6) prior months and would have qualified for AFDC in the month of court action or voluntary placement if an application had been filed and he lived with a parent(s) or other specified relative(s) in that month.</p>
<b>02. Voluntary Placement in Foster Home or Voluntary Relinquishment.</b>	<p>A foster care placement is voluntary if the parent(s) has a written <u>voluntary services</u> agreement with the Department to place the child in foster care. The parent retains parental rights and may terminate the agreement at any time.</p> <p>A voluntary relinquishment is not a voluntary placement. A voluntary relinquishment occurs when parent(s) permanently gives up rights to a child. A court order is required for a voluntarily relinquished child to qualify for AFDC-FC.</p>
<b>03. Age, Residence, Citizenship, and Deprivation.</b>	<p>The other AFDC requirements the child must meet are:                      Age;                      Residence;                      Citizenship;                      Deprivation; and                      The AFDC resource limit.</p>
<b>04. Court Ordered Removal.</b>	<p>A child not voluntarily placed must have been removed from the parent(s) or other caretaker relative(s) by court order.                      The initial court order must state remaining in the home would be "contrary to the welfare" of the child.</p> <p>For children removed on or after October 1, 1983, the court order must include a determination that reasonable efforts were made to prevent or eliminate the need for removal of the child. This judicial determination must be made within sixty (60) days of removal of the child from his home.</p> <p>The court order must state what reasonable efforts were made considering the family's circumstances and the safety of the child when the child is removed from the home in an emergency.                      When there is a judicial determination of Aggravated Circumstances, the court order must state that no reasonable efforts to reunify the family are required.</p>
<b>05. Custody and Placement.</b>	<p>The child's placement and care are the Department's responsibility. The child must live in a licensed foster home, licensed institution, licensed group home, or in a licensed relative's home.</p>

(4-6-05)( )

**427. DETERMINATION OF ELIGIBILITY FOR ADC-FC.**

The family services workers ~~shall~~ **must** initiate an application to ensure that eligibility for ADC-FC is made, or that the child is clearly ineligible because of family resources. The worker ~~shall~~ **must** maintain documentation of the eligibility determination or ineligibility in the case record of the child, and arrangements for parental support. If the child is ineligible for AFDC-FC, the family services worker must determine whether the child qualifies for Medicaid as a Title XIX foster child. (3-30-01)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**432. TITLE XIX FOSTER CHILD.**

A foster child residing in a foster home, children's agency or children's institution approved by the Department is eligible for Title XIX Medicaid if he satisfies all of the following conditions: (3-30-01)(\_\_\_\_)

- 01. Eligibility Conditions.** A foster child is eligible if: (3-30-01)
  - a.** He is under age twenty-one (21); (3-30-01)
  - b.** He is not a recipient of AFDC-FC or SSI; (3-30-01)
  - c.** A Departmental program other than the Medical Assistance or Welfare Programs has assumed full or partial financial responsibility for him; (3-30-01)
  - d.** His countable resources do not exceed the AFDC resource limit. In addition to the AFDC resource exclusions, the child may have an additional amount up to five thousand dollars (\$5,000) excluded if held in trust for him; (3-30-01)
  - e.** After applying the applicable AFDC income exclusions and earned income disregards, an additional income disregard of seventy dollars (\$70) is deducted; and (3-30-01)
  - f.** Total income must not exceed two hundred thirteen dollars (\$213) monthly. (3-30-01)
- 02. Ongoing Eligibility.** If a foster child is determined eligible to receive Title XIX Medicaid, the following provisions apply: (3-30-01)
  - a.** His eligibility must be redetermined at least once every six (6) months. (3-30-01)
  - b.** His eligibility must cease and other funding sources for medical care must be utilized if the foster home's license is revoked or expires and an application for license renewal is not on file, or if the child returns to his own home even if the Department retains legal custody of such child. (3-30-01)
- 03. Hospitalized Foster Child.** Where a child who is otherwise eligible for Title XIX Medicaid as a foster child is placed in a hospital prior to being physically placed in foster care, the child is considered to be living in a licensed foster care situation if the regional team appointed to review hospitalization of foster children certified in writing that the plan for the child is to place him in foster care immediately upon discharge from the hospital. The certification must include the estimated date on which the child will enter foster care. (3-30-01)

**433. INCOME, BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.**

On behalf of the child and with the assistance of RDU staff, family services workers ~~shall~~ **is required to** identify and apply for income or benefits from (one (1) or) every available source including Social Security, veterans' benefits, tribal benefits, or estates of deceased parents. The address of the payee ~~shall~~ **must** be DHW-FACS-RDU, 450 West State Street, P. O. Box 83720 Boise, ID 83720-0036. (3-30-01)(\_\_\_\_)

**434. FORWARDING OF BENEFITS.**

If the Department is receiving benefits and the child is returned to the home of the parent(s) or legal guardian(s) or relatives for a trial visit, Child Support Services ~~shall~~ must be notified by memo from a family services worker giving the name and address of the person to whom these benefits ~~shall~~ are to be forwarded. (5-3-03)(\_\_\_\_)

**01. Return to Alternate Care.** If the child returns to alternate care, the Department ~~shall~~ must be notified immediately of the correct payee. (3-18-99)(\_\_\_\_)

**02. Review After Six Months.** If an alternative care placement continues for a period of six (6) months, a careful review must be initiated to determine if a change of payee must be accomplished. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**436. PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.**

In accordance with Section 56-203B, Idaho Code, parents are responsible for costs associated with the care of their child ~~or children. Upon consideration of any~~ in alternate care ~~for a child.~~ (3-18-99)(\_\_\_\_)

**01. Notice of Parental Responsibility.** The Department ~~shall~~ will provide the parents(s) ~~or legal guardian(s)~~ with written notification of their responsibility to contribute toward the cost of their child's support, treatment, and care, including ~~but not limited to~~ clothing, medical, incidental, and educational costs. (5-3-03)(\_\_\_\_)

**02. Financial Arrangements with ~~the~~ Parent(s) ~~or Legal Guardian(s).~~** Parent(s) are responsible to reimburse the Department for the costs of alternate care ~~when their children are~~ is placed in alternate care ~~pursuant to in accordance with a court order or voluntary placement agreement, the parent(s) or legal Guardian(s) shall be expected to reimburse the Department for the costs of care.~~ (5-3-03)(\_\_\_\_)

**a.** The amount of support ~~shall be~~ is based on the parent(s)' ~~or legal guardian(s)~~ income, the costs of care for the child, and any unique circumstances affecting the parent(s)' ~~or legal guardian(s)~~ ability to pay. (5-3-03)(\_\_\_\_)

**b.** Every ~~family shall be~~ parent is expected to contribute to the cost of their child's care, but no ~~family shall~~ parent will be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. The cost of room and board ~~shall~~ must be paid by the parent(s) ~~or legal guardian(s)~~ to the Department, and the Department ~~shall~~ will in turn ~~pay~~ reimburse the ~~foster parents~~ alternate care providers. (5-3-03)(\_\_\_\_)

**437. ACCOUNTING AND REPORTING.**

~~DHW~~ The Department's Division of Family and Community Services, Resource Development Unit ~~shall~~ must account for the receipt of funds and develop reports showing how much money has been received and how it has been utilized. (3-30-01)(\_\_\_\_)

**438. SUPPORT AGREEMENT FOR VOLUNTARY PLACEMENTS.**

If the placement is voluntary, the parent(s) ~~or legal guardian(s)~~ ~~shall~~ must sign an agreement that specifies the amount of support to be paid, when it is to be paid to the payee, and the address to which it is to be paid. (5-3-03)(\_\_\_\_)

**439. SUPPORT IN COURT-ORDERED PLACEMENT.**

In the case of a court-ordered placement, if no support agreement has been reached with the parent(s) ~~or legal guardian(s)~~ prior to the custody or commitment hearing, the Department's report to the Court ~~shall~~ will indicate the necessity to hold a support hearing. (5-3-03)(\_\_\_\_)

**440. INSURANCE COVERAGE.**

The parent(s) or legal guardian(s) ~~shall~~ must inform the Department of all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health and/or dental insurance coverage is available for the child, the parent(s) ~~or legal guardian(s)~~ ~~shall~~ must acquire and maintain such insurance.

(5-3-03)( )

**441. REFERRAL TO CHILD SUPPORT SERVICES.**

The ~~family shall be referred to the State Child Support Agency~~ Department will refer the parent(s) to the Bureau of Child Support Services for support payment arrangements. (3-18-99)( )

**01. Assignment of Child Support.** The Department through the Bureau of Child Support Services ~~shall~~ will secure assignment of any support due to the child while in alternate care. Social Security and Supplemental Security Income benefits are specifically aimed at meeting the child's needs and therefore will follow the child in placement and the Department ~~shall~~ must request to be named payee for all funds for placements extending over thirty (30) days. (3-18-99)( )

**02. Collection of Child Support.** The Department ~~shall~~ must take action to collect any child support ordered in a divorce decree. (3-18-99)( )

**MEDICAL AND DENTAL FOR CHILDREN IN OUT-OF-HOME CARE  
(Sections 442 -- 479)**

**442. MEDICAID FOR CHILDREN IN ALTERNATE CARE.**

Every child placed in alternate care ~~shall~~ will receive a medical card each month. ( )

**443. EPSDT SCREENING.**

Children in alternate care ~~shall~~ will receive the Early Periodic Screening, Diagnosis and Treatment (EPSDT) services allowable under Medicaid. Those children already receiving Medicaid at the time of placement ~~shall~~ will be screened within thirty (30) days after placement. Children not receiving Medicaid at the time of placement ~~shall~~ will receive a screening within thirty (30) days from the date Medicaid eligibility is established. (3-18-99)( )

**444. MEDICAL EMERGENCIES.**

In case of serious illness, the alternate care provider ~~shall~~ must notify the child's doctor and the Department immediately. The parent(s) or legal guardian(s) or the court in an emergency, or the Department if it is the guardian of the child, have the authority to consent to major medical care or hospitalization. (5-3-03)( )

**445. DENTAL CARE.**

Each child age three (3) who is placed in alternate care must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter according to a schedule prescribed by the dentist. (3-30-07)

**01. Costs Paid by Medicaid.** If dental care not included in the state medical assistance program is recommended, a request for payment ~~shall~~ must be submitted to the state Medicaid dental consultant. (3-18-99)( )

**02. Emergencies.** For children in shelter care, emergency dental services ~~shall~~ will be provided for and paid for by the Department, if there are no other financial resources available. (3-18-99)( )

**446. COSTS OF PRESCRIPTION DRUGS.**

The Department ~~shall~~ will purchase prescribed drugs, at the Medicaid rate, for a child in alternate care through participating pharmacists, in excess of the Medicaid monthly maximum. (3-18-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**451. DRIVERS' TRAINING AND LICENSES FOR CHILDREN IN ALTERNATE CARE.**

No Department employee or foster parent is allowed to sign for any foster child's driver's license or permit without

written authorization from the ~~Family and Children's~~ Family Services Program Manager. Any Department employee or foster parent signing for a foster child's driver's license or permit without the approval of the ~~Family and Children's and Family~~ Services Program Manager assumes full personal responsibility and liability for any driving related damages that may be assessed against the child. Those damages will not be covered by the Department's insurance. (3-30-07)(\_\_\_\_)

**01. Payment by Department.** The Department may make payments for driver's training, licenses and permits for children in the Department's guardianship when obtaining a driver's license is part of an older teen's Independent Living Plan. (3-30-01)

**02. Payment by Parent(s) or Legal Guardian(s).** The parent(s) or legal guardian(s) of children in foster care may authorize drivers' training, provide payment and sign for drivers' licenses and permits. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**481. FACILITIES OPERATED BY THE STATE.**

Facilities operated by the State and providing care for children ~~pursuant to~~ under these rules ~~shall~~ must meet the standards for child care licensure. (3-18-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**483. PAYMENT TO FAMILY ~~FOSTER CARE~~ ALTERNATE CARE PROVIDERS.**

Monthly payments for care provided by ~~foster care families~~ family alternate care providers are:

Family <del>Foster</del> <u>Alternate</u> Care Payments - Table 483			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$274	\$300	\$431

(4-6-05)(\_\_\_\_)

**01. Gifts.** An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts ~~shall~~ will be paid in the appropriate months. (3-18-99)(\_\_\_\_)

**02. Clothing.** Costs for clothing ~~shall~~ will be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. (3-18-99)(\_\_\_\_)

**03. School Fees.** School fees due upon enrollment ~~shall~~ will be paid directly to the school or to the alternate care providers, based upon the Department's determination of the child's needs. (3-18-99)(\_\_\_\_)

**484. ~~SPECIALIZED FOSTER CARE~~ ADDITIONAL PAYMENTS TO FAMILY ALTERNATE CARE PROVIDERS.**

For those children who require additional care above room, board, shelter, daily supervision, school supplies, personal incidentals, the Department may pay the ~~foster care~~ family alternate care provider an additional amount ~~for specialized foster care above the basic foster care rate~~ to the amount paid under Section 483 of these rules. ~~The specialized foster care~~ This family alternate care rate is based upon a ~~continuous~~ ongoing assessment of the child's circumstances which necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. ~~Additional~~ payment will be made as follows: (3-30-01)(\_\_\_\_)

**01. Lowest Level of Need ~~for Specialized Care~~.** Ninety dollars (\$90) per month for a ~~children~~ requiring a mild degree of ~~specialized~~ care for documented conditions including ~~but not limited to:~~ (3-18-99)(\_\_\_\_)

- a. Chronic medical problems; (3-18-99)
  - b. Frequent, time-consuming transportation needs; (3-18-99)
  - c. Behaviors requiring extra supervision and control; and (3-30-01)
  - d. Need for preparation for independent living. (3-18-99)
- 02. Moderate Level of Need ~~for Specialized Care~~.** One hundred fifty dollars (\$150) per month for a ~~child~~ ~~ren~~ requiring a moderate degree of ~~specialized~~ care for documented conditions including ~~but not limited to:~~  
(3-18-99)(\_\_\_\_)
- a. Ongoing major medical problems; (3-18-99)
  - b. Behaviors that require immediate action or control; and (3-30-01)
  - c. Alcohol or ~~drug abuse~~ other substance use disorder. (3-18-99)(\_\_\_\_)
- 03. Highest Level of Need ~~for Specialized Care~~.** Two hundred forty dollars (\$240) per month for a ~~child~~ ~~ren~~ requiring an extraordinary degree of ~~specialized~~ care for documented conditions including ~~but not limited to:~~  
(3-18-99)(\_\_\_\_)
- a. ~~Serious~~ Severe emotional or behavioral disturbance; (3-18-99)(\_\_\_\_)
  - b. Severe developmental disability; and (3-30-01)
  - c. Severe physical disability such as quadriplegia. (3-18-99)
- 04. Reportable Income.** ~~Specialized care~~ Additional payments for more than ten (10) qualified ~~foster~~ children received during any calendar year must be reported as income to the Internal Revenue Service.  
(3-18-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**486. GROUP FOSTER CARE.**

Group foster care is for children who generally require more structured activities and discipline than found in a family setting. Examples are intermediate residential treatment, short-term group care, and emancipation homes. (3-18-99)

**01. Referral -- Group Foster Care.** Any referral of a child to a group foster care facility where the Department would be making full or partial payment ~~shall~~ must be prior authorized by the ~~Family and Children's and~~ Family Services Program Manager or designee. (3-30-01)(\_\_\_\_)

**02. Placement.** Placement ~~shall be~~ is based on the documented service needs of each child and the ability of the group care provider to meet those needs. (3-18-99)(\_\_\_\_)

**03. Payment -- Group Foster Care.** Payment ~~shall~~ will be ~~pursuant to~~ in accordance with the contract authorized by the regional director or division administrator, based on the needs of the children being placed and the services to be provided. (3-18-99)(\_\_\_\_)

**487. ~~INTENSIVE TREATMENT RESIDENTIAL CARE FACILITIES.~~**

~~Children with serious emotional and/or behavior disturbance may be placed in individualized day treatment or residential care.~~ Placement into a residential care facility for children with a severe emotional or behavioral problems is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs.  
(3-18-99)(\_\_\_\_)



01. **Referral—~~Intensive Treatment~~.** Any referral of a child to ~~an intensive treatment~~ residential care facility where the Department would be making full or partial payment ~~shall~~ must be prior authorized by the ~~Family and Children's Services and Family~~ Program Manager or designee. (~~3-30-01~~)(\_\_\_\_)

02. **Payment—~~Intensive Care~~.** When care is purchased from private providers, payment ~~shall~~ must be made ~~pursuant to in accordance with~~ a contract authorized by the ~~Family and Children's Services and Family~~ Program Manager, based on the needs of each child being placed and the services to be provided. When care is provided in facilities operated by the Department, payment ~~shall~~ will be arranged in cooperation with Department fiscal officers. (~~3-30-01~~)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. CHILD PROTECTION SERVICES.**

Sections 56-204A, 56-204B, 16-1601, 16-1629 and 16-2001, Idaho Code, make the Department an official child protection agency of state government dealing with situations of reported child abuse, ~~abandonment, or neglect, or abandonment~~. A respectful, non-judgmental approach should be the policy for assessments, especially during the initial contact with the family. Training in communication would include multicultural and diversity issues and interest-based conflict resolution. (~~4-2-08~~)(\_\_\_\_)

**551. REPORTING ABUSE, ~~ABANDONMENT OR~~ NEGLECT, OR ABANDONMENT.**

Professionals and other persons identified in Section 16-161905, Idaho Code, have a responsibility to report abuse, ~~abandonment or~~ neglect, or abandonment and are provided protection for reporters. (~~3-18-99~~)(\_\_\_\_)

01. **Ministers.** Duly ordained ministers of religion are exempt from reporting ~~of~~ child abuse, ~~and~~ neglect, or abandonment if: (~~3-18-99~~)(\_\_\_\_)

a. The church qualifies as tax-exempt under 26. U.S.C. 501(c)(3); (3-18-99)

b. The confession or confidential communication was made directly to the duly ordained minister of religion; and (3-18-99)

c. The confession was made in the manner and context which places the duly ordained minister of religion specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine. (3-18-99)

02. **Health and Welfare Employees.** All Department of Health and Welfare personnel are responsible for recognizing and immediately reporting to ~~Family and Children's and Family~~ Services or to law enforcement any concern regarding abuse, ~~abandonment or~~ neglect, or abandonment of a child or children. Failure to report as required by Section 16-1619(b)05, Idaho Code, is a misdemeanor. (~~3-18-99~~)(\_\_\_\_)

**552. REPORTING SYSTEM.**

Each region of the Department ~~shall~~ maintains a system for receiving and responding to reports or complaints on a twenty four (24) hour per day, seven (7) day per week basis throughout the entire region. The region ~~shall~~ will advertise the system to the public throughout the region and ensure the accurate recording of as many facts as possible at the time of the report. (~~3-18-99~~)(\_\_\_\_)

**553. ASSIGNING REPORTS FOR RISK ASSESSMENT.**

The Department ~~shall~~ must assign all reports of possible abuse, ~~abandonment and~~ neglect, or abandonment of children for risk assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt. (~~3-30-01~~)(\_\_\_\_)

**554. RESPONSE PRIORITIES.**

The Department must use the following statewide standards for responding to allegations of abuse, neglect, or

abandonment, using the determination of risk to the child as the primary criterion. Any variance from these response standards must be documented in the family's case file with a description of action taken, and must be reviewed and signed by the ~~Family and Children's~~ Family Services Supervisor. (3-30-07)(\_\_\_\_)

**01. Priority I.** The Department must respond immediately if a child is in immediate danger involving a life-threatening or emergency situation. Emergency situations include sexual abuse when a child may have contact with the alleged perpetrator and circumstances indicate a need for immediate response. Law enforcement must be notified and requested to respond or to accompany a family services worker. Every attempt should be made to coordinate the Department's assessment with law enforcement's investigation. The child must be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child through the age of six (6) or with profound developmental disabilities should be considered under Priority I unless there is reason to believe that the child is not in immediate danger. (3-30-07)

**02. Priority II.** A child is not in immediate danger but allegations of abuse, including physical or sexual abuse, or serious physical or medical neglect are clearly defined in the referral. Law enforcement must be notified within twenty-four (24) hours. The child must be seen by the family services worker within forty-eight hours (48) of the Department's receipt of the referral. Law enforcement must be notified within twenty-four (24) hours of receipt of all Priority II referrals which involve concerns of abuse, ~~or~~ neglect, or abandonment. (3-30-07)(\_\_\_\_)

**03. Priority III.** A child may be in a vulnerable situation because of services needs which, if left unmet, may result in harm, or a child is without parental care for safety, health and well being. The child and parent(s) or legal guardian(s) will be interviewed for substantiation of the facts, and to assure that there is no abuse, ~~or~~ neglect, or abandonment by parent(s) or legal guardian(s). A family services worker must respond within three (3) calendar days and the child must be seen by the worker within five (5) calendar days of the Department's receipt of the referral. (3-30-07)(\_\_\_\_)

**04. Notification of the Person Who Made the Referral.** The Department must notify the person who made the child protection referral of the receipt of the referral within five (5) days. (3-30-07)

**555. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.**

In all Priority I and II cases where the alleged victim of ~~neglect~~, abuse, neglect, or abandonment is through the age of six (6), review by supervisory or team of all case documentation and other facts ~~shall~~ will be conducted within forty-eight (48) hours of initiation of the risk assessment. Such review ~~shall~~ will be documented in the file with the signature of the supervisor or team leader, time and date, whether additional risk related issues will be pursued and by whom, and any planning for initiation of services. (3-18-99)(\_\_\_\_)

**556. REPORTS INVOLVING INDIAN CHILDREN.**

Possible abuse, ~~abandonment, or~~ neglect, or abandonment of a child who is known or suspected to be Indian ~~shall~~ will be reported to appropriate tribal authorities immediately. If the reported incident occurs off a reservation, the Department ~~shall~~ will perform the investigation. The Department ~~shall~~ will also investigate incidents reported on a reservation if requested to do so by appropriate authorities of the tribe. A record of any response ~~shall~~ will be maintained in the case record and written documentation ~~shall~~ will be provided to the appropriate tribal authorities. (3-18-99)(\_\_\_\_)

**557. REPORTS INVOLVING MILITARY FAMILIES.**

Reports of possible child abuse, ~~abandonment or~~ neglect, or abandonment involving a military family ~~shall~~ must be reported in accordance with the provisions of any agreement with the appropriate military family advocacy representative, in accordance with the provisions of Section 811 of Public Law 99-145. Child abuse, ~~abandonment or~~ neglect, or abandonment of a child on a military reservation falls under federal jurisdiction. (3-18-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**560. DISPOSITION OF CHILD PROTECTION REPORTS.**

Within five (5) days following completion of risk assessments, the Department will determine whether the reports are substantiated or unsubstantiated. All persons who are the subject of a child protection risk assessment will be notified of the disposition of the assessment. (4-2-08)

**01. Substantiated.** Child abuse, ~~abandonment, or~~ neglect, or abandonment reports are substantiated by one (1) or more of the following: (4-2-08)(\_\_\_\_)

a. Witnessed by a family services worker, as defined in Section 011 of these rules; (4-2-08)

b. A court determines, in an adjudicatory hearing, that a child comes within the jurisdiction of the Child Protective Act, Title 16, Chapter 16, Idaho Code; (4-2-08)(\_\_\_\_)

c. A confession; (4-2-08)

d. Corroborated by physical or medical evidence; or (4-2-08)

e. Established by evidence ~~that would lead a reasonable person to conclude~~, that it is more likely than not that abuse, ~~abandonment, or~~ neglect, or abandonment occurred. (4-2-08)(\_\_\_\_)

**02. Unsubstantiated.** Child abuse, ~~abandonment, or~~ neglect, or abandonment reports are unsubstantiated when they are not found to be substantiated under Subsection 560.01 of this rule. For intradepartmental statistical purposes, the Department will indicate whether the unsubstantiated disposition of the risk assessment was due to: (4-2-08)(\_\_\_\_)

a. Insufficient evidence; or (5-3-03)

b. An erroneous report. (4-2-08)

**561. CHILD PROTECTION CENTRAL REGISTRY.**

The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, July 27, 2006, 120 Stat. 587, has directed the states to establish a central registry for the purpose of sharing information about persons who have substantiated reports of abuse, ~~abandonment, or~~ neglect, or abandonment against children. The Child Protection Central Registry was established under the authority of Section 16-1629(3), Idaho Code. The primary purpose of the Child Protection Central Registry is to aid the Department in protecting children and vulnerable adults from individuals who have previously abused, neglected, or abandoned children. The Child Protection Central Registry maintained by the Department is separate and apart from the central registry for convicted sexual offenders maintained by the Idaho State Police under Title 18, Chapter 83, Idaho Code. The Child Protection Central Registry provisions in this chapter of rules apply to risk assessments conducted by the Department after October 1, 2007. (4-2-08)(\_\_\_\_)

**562. CONFIDENTIALITY OF THE CHILD PROTECTION CENTRAL REGISTRY.**

The names on the Child Protection Central Registry are confidential and may only be released with the written consent of the individual ~~requesting a~~ on whom a Department criminal history and background check is being conducted, in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," unless otherwise required by federal or state law. No information is released regarding the severity or type of child abuse, ~~abandonment, or~~ neglect, or abandonment. (4-2-08)(\_\_\_\_)

**563. ~~SUBSTANTIATED REPORTS~~ LEVELS OF RISK ON THE CHILD PROTECTION CENTRAL REGISTRY.**

~~The name of an individual for whom~~ When an incident of abuse, ~~abandonment, or~~ neglect, or abandonment has been substantiated, ~~will be entered into the Child Protection Central Registry based on the designated~~ a level of risk is assigned to the incident. The level of risk ~~will be~~ is determined by the severity and type of the abuse, ~~abandonment, or~~ neglect, or abandonment and the potential risk of future harm to a child. The highest level of risk is designated as Level One and the lowest level of risk is Level ~~Four~~ Three. ~~After an individual has been placed on the Child Protection Central Registry, the Department will notify him in writing that he has been placed on the registry, the risk level assigned and the basis for the Department's decision, the procedures for filing an appeal under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," and the procedures for filing a petition for removal from the Child Protection Central Registry in accordance with Section 564 of these rules.~~ (4-2-08)(\_\_\_\_)

**01. Child Protection Level One.** An individual with a Level One designation has been determined to pose a high to severe risk to children. Names of individuals for whom an incident of abuse, ~~abandonment, or~~ neglect, or abandonment has been substantiated for any of the following will remain permanently on the Child Protection Central Registry at Level One. (4-2-08)(\_\_\_\_)

- a. Sexual Abuse as defined in Section 16-1602(1)(b), Idaho Code; (4-2-08)
- b. Sexual Exploitation as defined in Sections 18-1506 and 18-1507, Idaho Code; (4-2-08)
- c. Physical abuse as described in Section 16-1602(1)(a), Idaho Code, that causes life-threatening, disabling, or disfiguring injury or damage; (4-2-08)
- d. Neglect as described in Section 16-1602(25), Idaho Code, that results in life-threatening, disabling, or disfiguring injury or damage; (4-2-08)
- e. Abandonment as described in Section 16-1602(2), Idaho Code, that results in life-threatening, disabling, or disfiguring injury or damage; (4-2-08)
- f. Death of a child; (4-2-08)
- g. Torture of a child as described in Section 18-4001, Idaho Code; (4-2-08)
- h. Aggravated Circumstances as described in Section 16-1619(6)(d), Idaho Code; or (4-2-08)
- i. Occurrence of two (2) or more separate, substantiated incidents of abuse, ~~abandonment, or~~ neglect, or abandonment, each of which falls under the circumstances listed under Subsection 563.02 of this rule. (4-2-08)(\_\_\_\_)

**02. Child Protection Level Two.** An individual with a Level Two designation has been determined to pose a medium to high risk to children and will remain on the Child Protection Central Registry for a minimum of ten (10) years. After the end of the ten-year (10) period, an individual may petition the Department to request his name be removed from the Child Protection Central Registry in accordance with Section 5646 of these rules. Names of individuals for whom an incident of abuse, ~~abandonment, or~~ neglect, or abandonment has been substantiated for any of the following will be given the designation of Level Two. (4-2-08)(\_\_\_\_)

- a. Prenatal use of any controlled substance as defined under Section 37-2701(e), Idaho Code, except as prescribed by a medical professional; (4-2-08)
- b. Administering or knowingly allowing a child to absorb or ingest one (1) or more controlled substances as defined under Section 37-2701(e), Idaho Code, except in the amount prescribed for the child by a medical professional; (4-2-08)
- c. Child exposed to ~~potentially dangerous~~: (4-2-08)(\_\_\_\_)
  - i. Drug paraphernalia, as defined in Section 37-2701(n), Idaho Code; (4-2-08)
  - ii. Manufacture of controlled substances, as defined under Section 37-2701(e), Idaho Code, and Section 37-2701(r), Idaho Code; or (4-2-08)
  - iii. Chemical components used in the manufacture of controlled substances, as defined under Section 37-2701(e), Idaho Code. (4-2-08)
- d. Failure to thrive caused by abuse, ~~abandonment, or~~ neglect, or abandonment, as established by medical evidence; (4-2-08)(\_\_\_\_)
- e. Physical abuse as described in Section 16-1602(1)(a), Idaho Code, ~~abandonment as described in~~

~~Section 16-1602(2), Idaho Code, or~~ neglect as described in Section 16-1602(25), Idaho Code, or abandonment as described in Section 16-1602(2), Idaho Code, that results in neither disabling nor disfiguring injury or damage, but may require medical or other treatment; (4-2-08)(\_\_\_\_)

e. Physical abuse as described in Section 16-1602(1)(a), Idaho Code, abandonment as described in Section 16-1602(2), Idaho Code, or neglect as described in Section 16-1602(25), Idaho Code, that results in neither disabling nor disfiguring injury or damage, but may require medical or other treatment; (4-2-08)

f. The restraint or confinement of a child that ~~is potentially dangerous or~~ poses a substantial risk of causing life-threatening, disabling, or disfiguring injury or damage; (4-2-08)(\_\_\_\_)

g. Medical neglect as described in Section 16-1602(25), Idaho Code, that ~~is potentially dangerous or~~ poses a substantial risk of resulting in life-threatening, disabling, or disfiguring injury or damage; (4-2-08)(\_\_\_\_)

h. Malnutrition as established by medical evidence; or (4-2-08)

i. Occurrence of two (2) or more separate, substantiated incidents of abuse, ~~abandonment, or~~ neglect, or abandonment, each of which falls under the circumstances listed under Subsection 563.03 of this rule. (4-2-08)(\_\_\_\_)

**03. Child Protection Level Three.** An individual with a Level Three designation has been determined to pose a mild to medium risk ~~to children and of harm to the health, safety, or well-being of a child.~~ The name of that individual will remain on the Child Protection Central Registry for a minimum of five (5) years. After the end of the five-year (5) period, an individual may petition the Department to request his name be removed from the Child Protection Central Registry in accordance with Section 5646 of these rules. Names of individuals for whom an incident of abuse, ~~abandonment, or~~ neglect, or abandonment has been substantiated for any of the following are given the designation of Level Three. (4-2-08)(\_\_\_\_)

a. Lack of supervision ~~that is potentially dangerous;~~ (4-2-08)(\_\_\_\_)

b. Failure to protect from abuse, ~~abandonment, or~~ neglect, or abandonment as described in Section 16-1602, Idaho Code, ~~that is potentially dangerous;~~ (4-2-08)(\_\_\_\_)

c. Failure to discharge parental responsibilities described under Section 16-1602(23), Idaho Code, ~~in situations that are potentially dangerous or pose a substantial risk of harm to the health, safety, welfare, or well-being of a child;~~ or (4-2-08)(\_\_\_\_)

d. Physical abuse as described in Section 16-1602(1)(a), Idaho Code, or neglect as described in Section 16-1602(25), Idaho Code, that causes minor injuries or damage that does not require medical treatment. (4-2-08)

~~**04. Child Protection Level Four.** An individual with a Level Four designation has been determined to pose a low risk of future harm to children and will not be placed on the Child Protection Central Registry. Names of individuals who are substantiated for any of the following are given the designation of Level Four. (4-2-08)~~

~~a. Mild physical neglect due to poverty issues, including no heat or utilities; (4-2-08)~~

~~b. Minor injury of a child while parent was attempting to protect himself or another; (4-2-08)~~

~~c. Unsanitary house with timely clean up; or (4-2-08)~~

~~d. Circumstances in which parent(s) cannot safely provide for their child because the child poses a threat to the safety of the parent(s) or other children in the home and the parent(s) are actively working with the Department or other agency to find a safe and appropriate placement solution for the child. (4-2-08)~~

**564. NOTIFICATION OF A SUBSTANTIATED INCIDENT OF ABUSE, NEGLECT, OR ABANDONMENT, AND RELATED ADMINISTRATIVE REVIEW AND CONTESTED CASE APPEAL RIGHTS.**

**01. Notification of Substantiated Incident.** Prior to placement on the Child Protection Central Registry, the Department will notify by certified mail, return receipt requested, each individual for whom an incident of abuse, neglect, or abandonment has been substantiated. The individual has twenty-eight (28) days from the date on the notification to file a request for an administrative review under the requirements in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." The Department's written notice will state: ( )

**a.** The risk level assigned to the incident; ( )

**b.** The basis for the Department's decision; ( )

**c.** The individual's right to request an administrative review by the Department's Family and Community Services (FACS) Division Administrator of the Department's decision; and ( )

**d.** The Department's contact information under Section 007 of these rules. ( )

**02. Administrative Review Not Requested.** If the individual does not request an administrative review by the FACS Division Administrator within twenty-eight (28) days from the date on the notification, his name will automatically be entered on the Child Protection Central Registry without further notice or right for appeal. ( )

**03. Administrative Review Requested.** If the individual requests an administrative review by the FACS Division Administrator within twenty-eight (28) days from the date on the notification, the incident will be reviewed by the FACS Division Administrator and a decision will be rendered to either affirm, reverse, or modify, the decision to substantiate the incident of abuse, neglect, or abandonment. The Department will notify the individual of the FACS Division Administrator's decision by mail. ( )

**04. Reversal of Decision to Substantiate.** When the FACS Division Administrator completes the administrative review and reverses the decision to substantiate the incident of abuse, neglect, or abandonment, and determines that the incident is not substantiated, then no further action is required by the individual. The individual's name will not be placed on the Child Protection Central Registry. ( )

**05. Contested Case Appeal.** When the FACS Division Administrator completes the administrative review and affirms the decision to substantiate the incident of abuse, neglect, or abandonment, the individual will be notified by mail that his name has been placed on the Child Protection Central Registry and informed of: ( )

**a.** The basis for the Department's decision; ( )

**b.** The procedures for filing a contested case appeal under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 101; ( )

**c.** The procedures for filing a petition for removal from the Child Protection Central Registry after the applicable minimum time has passed under Section 566 of these rules; and ( )

**d.** The Department's contact information under Section 007 of these rules. ( )

**565. PETITION FOR REMOVAL OF AN INDIVIDUAL'S NAME ON THE CHILD PROTECTION CENTRAL REGISTRY PRIOR TO OCTOBER 1, 2007.**

After January 1, 2008, an individual whose name was placed on the Child Protection Central Registry prior to October 1, 2007, may file a petition to have his name removed from the registry in accordance with Subsection 566.01 of these rules. The petitioner will be assigned a child protection risk level in accordance with criteria under Section 563 of these rules and the case will be reviewed to determine if it meets the requirements for removal. ( )

**5646. PETITIONING FOR REMOVAL OF AN INDIVIDUAL'S NAME FROM THE CHILD PROTECTION CENTRAL REGISTRY.**

Any individual whose name is on the Child Protection Central Registry and whose required minimum time on the registry has elapsed, may petition the Department to remove his name from the Registry. An individual whose name appears with a Level One designation on the Child Protection Central Registry is not eligible to petition for removal.

( )

**01. ~~Petitioning~~ for Removal From the Child Protection Central Registry.** Any individual whose name appears on the Child Protection Central Registry, ~~other than an individual with a Level One designation~~ with a designation of either Level Two or Level Three, may, ~~after the applicable minimum period of time has passed,~~ petition to have his name removed from the Child Protection Central Registry after the minimum period of time has elapsed for the applicable level. The petition must include a written statement from the petitioner to the Department's FACS Division Administrator requesting that the petitioner's name be removed from the Child Protection Central Registry. ~~The petition will be granted if:~~ The Department's address is found under Section 007 of these rules.

(4-2-08)( )

**02. Criteria for Granting Petition for Removal From the Child Protection Central Registry.** The petition for removal from the Child Protection Central Registry will be granted if: ( )

a. There are no additional substantiated reports on the Child Protection Central Registry or that of other states in which the petitioner has resided since the last substantiated report of abuse, ~~abandonment, or neglect,~~ or abandonment in Idaho; and (4-2-08)( )

b. There are no convictions, adjudications, or withheld judgments for any of the following crimes listed under Subsection 566.03 of this rule: ( )

i. ~~On the state's~~ Idaho's central repository of criminal history records as established and maintained by the Idaho State Police under Title 67, Chapter 30, Idaho Code; or ( )

ii. ~~On the~~ criminal history repository of other states in which the petitioner has resided since the last substantiated report of abuse, ~~abandonment, or neglect,~~ or abandonment in Idaho. ( )

**03. Criminal History Checks.** It is the responsibility of the petitioner to request, pay for, and obtain these criminal history checks and submit them to the Department. (4-2-08)( )

**ia.** The Department will not remove a petitioner from the Child Protection Central Registry if a criminal history check reveals any of the following, within five (5) years of the receipt of the petition: (4-2-08)

(1)i. Physical Assault; (4-2-08)

(2)ii. Battery; or (4-2-08)

(3)iii. A drug-related offense. (4-2-08)

**ib.** The Department will not remove a petitioner from the Child Protection Central Registry if a criminal history check reveals any of the following: (4-2-08)

(1)i. Child abuse or neglect; (4-2-08)

(2)ii. Spousal abuse; (4-2-08)

(3)iii. A crime against children, including child pornography; or (4-2-08)

(4)iv. A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery. (4-2-08)

**024. Granting or Denying the Petition for Removal From the Child Protection Central Registry.**

The Department will issue a letter granting or denying removal of the petitioner's name from the Child Protection Central Registry within twenty-eight (28) days of receipt of the petition. (4-2-08)(\_\_\_\_)

**035. Appeal of a Denial ~~for Petition for~~ of Removal From the Child Protection Central Registry.**  
The individual may ~~file an~~ appeal ~~from~~ the denial of removal of his name from the Child Protection Central Registry under IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings," Section 101. (4-2-08)(\_\_\_\_)

~~**04. Petition for Removal of Individuals on the Child Protection Central Registry Prior to October 1, 2007.**~~ *After January 1, 2008, an individual whose name was placed on the Child Protection Central Registry prior to October 1, 2007, may file a petition to have his name removed from the registry in accordance with Subsection 564.01 of this rule. The petitioner will be assigned a child protection risk level in accordance with criteria under Section 563 of these rules and the case will be reviewed to see if it meets the requirements for removal.* (4-2-08)

**5657. "SAFE HAVEN" EXEMPTION FOR PARENTS OF CERTAIN ABANDONED INFANTS.**  
No disposition will be made on the parent(s) and no information will be entered into the Child Protection Central Registry when a parent(s) relinquishes their infant within the first thirty (30) days of life to a "Safe Haven" according to Title 39, Chapter 82, Idaho Code, Idaho Safe Haven Act. (4-2-08)

**5668. COURT-ORDERED CHILD PROTECTION RISK ASSESSMENT.**  
When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court may order that an investigation/risk assessment be conducted by the Department. Court orders for preliminary child protective risk assessment and for any subsequent assessment the court may deem necessary will be served on the Department supervisor for child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor must immediately initiate the risk assessment and consult with the court promptly if there are any obstacles proceeding its completion. Immediately upon completing the report, the Department must make a written report to the court. (4-2-08)

**5679. PETITION UNDER THE CHILD PROTECTIVE ACT.**  
If any incidence of child abuse, ~~abandonment, or~~ neglect, ~~or abandonment~~ is substantiated through an immediate safety or comprehensive assessment, or both, or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department will request the prosecuting attorney to file a Child Protective Act petition. (4-2-08)(\_\_\_\_)

**56870. COOPERATION WITH LAW ENFORCEMENT.**  
The Department will cooperate with law enforcement personnel in their handling of criminal investigations and the filing of criminal proceedings. (4-2-08)

**56971. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.**  
Where no other community resources are available and when ordered by the district courts, the Department will, for a fee of thirty-five dollars (\$35) per hour, conduct immediate safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. (3-30-07)

**01. Requests From Private Attorney.** If a parent's attorney requests an immediate safety or comprehensive assessment, or both, and a report of findings regarding the fitness of a parent, the attorney must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (3-30-07)

**02. Conduct of the Assessment.** In conducting the assessment, the family services worker must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (3-30-07)

**03. Report to Court.** The family services worker will provide a report only to the Magistrate judge



who ordered the assessment, and must use the Department's format for the assessment of need. The report must describe what was observed about the home conditions and the care of the child(ren). (3-30-07)

**04. Department Clients.** If the family is or has been a client of the Department, disclosure of information must comply with *Idaho Department of Health and Welfare Rules*, IDAPA 16.05.01, "Use and Protection of Department Records." (3-30-07)(\_\_\_\_)

5702. -- 6399. (RESERVED).

~~CHILDREN'S MENTAL HEALTH SERVICES  
(Sections 640—699)~~

~~640. CHILD MENTAL HEALTH SERVICES.~~

~~Section 16-2402, Idaho Code, designates the Department as the lead agency in establishing and coordinating community supports, services, and treatment for children with serious emotional disturbances and their families. Core services provided are identified in Section 030. (3-30-01)~~

~~641. OUTCOMES.~~

~~01. Outcomes. Outcomes are measured through administration of a standardized assessment tool both before and after intervention. Major life areas such as school, community, mental status, family life are the focus of the assessment. (3-30-01)~~

~~02. Progress. Progress on each of the following behavioral indicators would be suggestive of a positive outcome: (3-30-01)~~

- ~~a. Child lives at home; (3-30-01)~~
- ~~b. Child has positive peers; (3-30-01)~~
- ~~c. Child attends and participates regularly in school; (3-30-01)~~
- ~~d. Child manages psychiatric symptoms and is not a danger to self or others; and (3-30-01)~~
- ~~e. Child does not exhibit criminal behavior. (3-30-01)~~

~~642. ACCESS TO SERVICES.~~

~~The Department will prioritize services to seriously emotionally disturbed children and their families. Services may be accessed through a voluntary application for services or through involuntary legal proceedings. When regional service capacity is reached, every reasonable effort will be made to obtain alternative services for the child and family. Their names will also be placed on a waiting list for Department services. (3-30-01)~~

~~01. Local Resources and Plan Development. Children with serious emotional disturbances and their families may have access to local resources and services which do not require placement outside their home into alternate care. A plan will be developed between the Department, the parent(s) or legal guardian(s), the child, if appropriate, and the service provider. This plan will be specific, measurable and realistic in the identification of the goal(s), relevant areas of concern, and desired results. (3-30-07)~~

~~02. Payment for Treatment. When parent(s) or legal guardian(s) request Department payment for a child's treatment, a service agreement must be negotiated and signed by the parent(s) or legal guardian(s) and the Department. A referral will be made to Child Support Services to collect payment for the cost of out of home care. (5-3-03)~~

~~03. Involuntary Placement Under the Children's Mental Health Services Act. When a seriously emotionally disturbed child presents a significant danger to himself or herself and/or to others and the child's~~

~~parent(s) or legal guardian(s) will not consent to a voluntary placement of the child, the child can be placed involuntarily through a court order. Involuntary Treatment Orders are limited to one hundred twenty (120) days and can be changed to a voluntary placement upon the request of the consenting parent(s) or legal guardian(s). At the end of one hundred twenty (120) days, a judicial redetermination is required to extend the involuntary treatment order for an additional set period of time.~~ (5-3-03)

~~**04. Use of Public Funds and Benefits.** Public funds and benefits will be used to provide services for children with serious emotional disturbances and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources will be provided to minimize the need for institutional or other residential placement. Services will be individually planned with the family to meet the unique needs of each child and family. Services will be provided without requiring that parent(s) or legal guardian(s) relinquish custody of the child.~~ (3-30-07)

~~**643. CHARGES TO PARENT(S) OR LEGAL GUARDIAN(S).** Parent(s) or legal guardian(s) of children with serious emotional disturbances who are receiving services either directly from the Department's Family and Children's Services program or through Department contracts with private providers, are responsible for paying for services provided to their child and to their family. The amount charged for each service shall be in accordance with the parent(s)' or legal guardian(s)' ability to pay as determined by a sliding fee scale. The amount charged for services when a child is living outside of his or her home, such as foster care, residential care or hospital shall be in accordance with the parent(s)' or legal guardian(s)' ability to pay as determined by a sliding scale (cost of care as compared with parent(s)' or legal guardian(s)' available income and consideration of indebtedness) applied by the Division of Welfare's Bureau of Child Support Services.~~ (5-3-03)

~~**644. SLIDING SCALE FEE TABLE 644.** Sliding scale fee for services provided to a child in their home will be calculated using the following table. This sliding fee scale is based on the current Poverty Guidelines published in the Federal Register. Incomes below the five percent (5%) level are not to be charged.~~

<b>ANNUAL HOUSEHOLD INCOME</b>									
<b>Family Size</b>								<b>each add'l person</b>	<b>% pay child at home</b>
<b>4</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>		
<\$8,050	<\$10,850	<\$13,650	<\$16,450	<\$19,250	<\$22,050	<\$24,850	<\$27,650		0 %
\$8,050	\$10,850	\$13,650	\$16,450	\$19,250	\$22,050	\$24,850	\$27,650	+\$2,800	0 %
\$10,062	\$13,562	\$17,062	\$20,562	\$24,062	\$27,562	\$31,062	\$34,562	+\$3,500	5 %
\$12,075	\$16,275	\$20,475	\$24,675	\$28,875	\$33,075	\$37,275	\$41,475	+\$4,200	10 %
\$14,087	\$18,987	\$23,887	\$28,787	\$33,687	\$38,587	\$43,487	\$48,387	+\$4,900	15 %
\$16,100	\$21,700	\$27,300	\$32,900	\$38,500	\$44,100	\$49,700	\$55,300	+\$5,600	20 %
\$18,112	\$24,412	\$30,712	\$37,012	\$43,312	\$49,612	\$55,912	\$62,212	+\$6,300	30 %
\$20,125	\$27,125	\$34,125	\$41,125	\$46,625	\$55,125	\$62,125	\$69,125	+\$7,000	40 %
\$22,137	\$30,712	\$37,537	\$45,237	\$51,437	\$60,637	\$68,337	\$76,037	+\$7,700	50 %
\$24,150	\$32,550	\$40,950	\$49,350	\$57,750	\$66,150	\$74,550	\$82,950	+\$8,400	60 %
\$26,162	\$35,262	\$44,362	\$53,462	\$62,562	\$71,662	\$80,762	\$89,862	+\$9,100	70 %
\$28,175	\$37,975	\$47,775	\$57,575	\$67,375	\$77,175	\$86,975	\$96,775	+\$9,800	80 %
\$30,187	\$40,687	\$51,187	\$61,687	\$72,187	\$82,687	\$93,187	\$103,687	+\$10,500	90 %
\$32,200	\$43,400	\$54,600	\$65,800	\$77,000	\$88,200	\$99,400	\$110,600	+\$11,200	100 %

(3-30-01)

**645. FEE DETERMINATION FOR SERVICES OTHER THAN OUT-OF-HOME CARE.**

Parent(s) or legal guardian(s) must complete an application for service and a "Fee Determination Form" prior to the delivery of services. The fee determination process includes the following features: (5-3-03)

**01. Ability to Pay.** Charges are based upon the number of dependents and family income. (3-18-99)

**a.** An ability to pay determination will be made at the time of the voluntary request for services or as soon as possible. (3-18-99)

**b.** Redetermination of ability to pay will be made at least annually or upon request of the parent(s) or legal guardian(s) or at any time changes occur in family size, income or allowable deductions. (5-3-03)

**c.** In determining the family's ability to pay for services, the Department shall deduct annualized amounts for: (3-18-99)

i. Court-ordered obligations; (3-18-99)

ii. Dependent support; (3-18-99)

iii. Child care payments necessary for parental or legal guardian(s) employment; (5-3-03)

iv. Medical expenses; (3-18-99)

v. Transportation; (3-18-99)

vi. Extraordinary rehabilitative expenses; and (3-18-99)

vii. State and federal tax payments, including FICA taxes. (3-18-99)

**d.** Information regarding third party payors and other resources including Medicaid or private insurance must be identified and developed in order to fully determine the parent(s)' or legal guardian(s)' ability to pay and to maximize reimbursement for the cost of services provided. (5-3-03)

**e.** It is the responsibility of the parent(s) or legal guardian(s) to obtain and provide information not available at the time of the initial financial interview whenever that information becomes available. (5-3-03)

**02. Time of Payment.** Normally charges for services will be due upon delivery of the service unless other arrangements are made, such as for monthly billing. (3-18-99)

**03. Charges.** Using the sliding fee scale in Section 644, an amount will be charged based on family size, resources, income, assets and allowable deductions, exclusive of third party liable sources, but in no case will the amount charged exceed the cost of the services. (3-30-01)

**04. Established Fee.** The maximum hourly fees or flat fees charged for children's mental health services shall be established by the Department of Health and Welfare. The current charges are set out in Table 645.

<b>Table 645—Hourly Charges for Children's Mental Health Services</b>		
		<b>Hourly Charge</b>
<b>a.</b>	<b>Psychosocial Rehabilitation Services</b>	
i.	Individual Psychosocial Rehabilitation	\$74
ii.	Group Psychosocial Rehabilitation	\$18

<b>Table 645—Hourly Charges for Children's Mental Health Services</b>		
iii.	Rehabilitative Evaluation	\$74
iv.	Task Plan Development	\$74
v.	Community Crisis Support	\$74
vi.	Psychopharmacological Management	\$32
vii.	Psychological Test	\$63
viii.	Medical Report (new)	\$63
ix.	Medical Report (past record)	\$63
x.	Consultation/Collateral	\$63
xi.	Crisis Intervention (at Emergency Room)	\$74
xii.	Diagnostic Interview/Screening	\$63
<b>b. Psychotherapy</b>		
i.	Individual	\$63-\$83*
ii.	Group Psychotherapy	\$24
iii.	Family Psychotherapy	\$63-\$77*
		*M.D. rate

(3-30-01)

~~646. — 699.~~ (RESERVED).

**ADOPTION SERVICES**  
 (Sections 700 -- 710)

**700. ADOPTION SERVICES POLICY.**

Where reasonable efforts to reunite or preserve a family are unsuccessful, or where relinquishment is requested by the parent(s), the Department ~~shall~~ will consider whether termination of parental rights is in the best interests of the child. The Department ~~shall~~ must make every effort to place any child legally free for adoption in an appropriate adoptive home. Each child will be placed with an adoptive family who can support the racial, ethnic or cultural identity of the child, and is able to cope with any forms of discrimination the child may experience. (5-3-03)(\_\_\_\_)

**701. SERVICES TO BE PROVIDED IN ADOPTIONS.**

In addition to the core *family and children's* services provided ~~in accordance with~~ under these rules, the Department must assure provision of the following: (3-30-07)(\_\_\_\_)

**01. Response to Inquiries.** Written or personal inquiries from prospective adoptive families must be answered within two (2) weeks. (3-30-07)

**02. Pre-Placement Child/Family Assessment.** An assessment of the child's family of origin history, needs as an individual and as part of a family, and completion of a life story book for each child preparing for adoptive placement. (3-18-99)

**03. Compliance with Multi-Ethnic Placement Act and Interethnic Adoption Provisions.** Selection of the most appropriate adoptive family consistent with the Multi-Ethnic Placement Act and Interethnic Adoption Provisions, if the child is not an Indian. (3-30-01)

**04. (Pre-Placement) Home Study.** An adoptive home study to ensure selection of an appropriate adoptive home. (3-18-99)

**05. Preparation for Placement.** Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parents and assisting the child with the transition into an adoptive home. (5-3-03)

**06. Technical Assistance.** Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (3-18-99)

**07. Adoption Assistance.** A determination of eligibility for adoption assistance must be made for each child placed for adoption through the Department prior to the finalization of his adoption. Eligibility for adoption assistance is determined solely on the child's need. No means test may be applied to the adoptive family's income or resources. Once eligibility is established, the Division will negotiate a written agreement with the adoptive family. The agreement must be fully executed by all parties prior to the finalization of the adoption in order to be valid. (3-30-07)

**08. Period of Support Supervision.** Once a child is placed with an adoptive family, a period of support and supervision by the Department lasting at least six (6) months must be completed prior to the finalization of the adoption. If the child has been a foster child placed with the family for a period of at least six (6) months, the family may submit a written request to the Department's ~~Family and Children's~~ and Family Services Program Manager to reduce the supervisory period to a minimum of three (3) months. (~~3-30-07~~)(    )

**09. Post Adoption Services.** Services after an adoption is final are provided within available resources. Children with negotiated adoption assistance agreements, whether from Idaho or from another state, are eligible for any services available to Idaho children. International adoptees residing in Idaho are also eligible for any services available to Idaho children under the Inter-Country Adoption of 2000 (P.L.106-279). Children with either IV-E or state adoption assistance agreements are eligible for Medicaid in Idaho. A referral from an Interstate Compact on Adoption and Medical Assistance member state will serve as a formal application for services in Idaho. Applications for Medicaid are made through the Department in accordance with IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (3-30-07)

**702. SERVICES TO BE PROVIDED IN LEGAL GUARDIANSHIPS.**

In addition to the family services provided ~~in accordance with~~ under these rules, the Department will provide the following: (~~3-30-07~~)(    )

**01. Preparation for Placement.** Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parent(s) and assisting the child with the transition into the home of the legal guardian(s). (5-3-03)

**02. Licensure.** Potential legal guardian(s) must apply for and receive a foster care license before any child in the guardianship of the Department can be placed in their home. (5-3-03)

**03. Financial Assistance to Obtain Guardianship.** For potential legal guardian(s) who are not able to afford the attorney and court costs to obtain legal guardianship of a child in the Department's guardianship, financial assistance may be available from the Department. Financial assistance may be provided regardless of the guardian's state of residence. (5-3-03)

**04. Eligibility for Guardianship Assistance.** A determination of eligibility for guardianship assistance must be made for each child placed in a legal guardianship through the Department prior to the finalization of the guardianship. Eligibility for guardianship assistance is based on the child's identified needs, and requires completion of the legal termination of parental rights and documentation of unsuccessful efforts to place the child for adoption. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. (3-30-07)

**05. Guardianship Assistance Agreement.** The region will negotiate a written guardianship assistance

agreement with the prospective legal guardian(s). The agreement must be fully executed by all parties prior to the finalization of the guardianship in order to be valid. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate the child would receive if he or she were living in family foster care in Idaho. Idaho Medicaid benefits can only be used in Idaho. There is no reciprocity with other state's Medicaid programs. Guardianship benefits are subject to availability and are to be reviewed by the Department and the legal guardian(s) at least annually. This benefit terminates on the child's eighteenth birthday regardless of the child's academic standing, physical, or developmental delays. (3-30-07)

**06. Revocation of Legal Guardianship.** Any party including the Department or the child, if age fourteen (14) or older, may petition the court to have the legal guardian(s) removed. Guardianship assistance is terminated when a court revokes the guardianship. (5-3-03)

**07. Termination of Guardianship Assistance When Child Leaves Home of the Legal Guardian(s).** If guardianship is revoked and the child(ren) are returned to the Department's guardianship, guardianship assistance will be terminated. If it is anticipated that another legal guardian(s) will be appointed by the court, the new guardian(s) will need to complete application for guardianship assistance before the guardianship is finalized. The guardian(s) is required to immediately report to the Department any reason which would make them ineligible to receive guardianship assistance, such as, the child leaves the home, the child marries or enters the military. (5-3-03)

**08. Retroactive Benefits.** Legal guardians appointed on or before July 1, 2001, are not eligible for guardianship assistance. There will be no retroactive benefits paid by the Department for a child whose legal guardian(s) was appointed before July 1, 2001 or for guardians who did not negotiate a guardianship assistance agreement prior to the finalization of the guardianship. (5-3-03)

**703. -- 709. (RESERVED).**

**710. FAMILY HISTORY.**

If the family case plan is termination of parental rights and adoption is considered a part of the total planning for the child, the following information ~~shall~~ will be obtained and placed in the child's permanent adoption record:

~~(3-30-01)~~(\_\_\_\_)

**01. Informational Forms.** Informational background forms regarding the birth mother, birth father, and the child. (3-18-99)

**02. Hospital Records.** Hospital birth records on child. (3-18-99)

**03. Evaluations/Assessments.** Evaluations/Assessments previously completed on child. (3-18-99)

**04. Current Picture.** Current picture of child. (3-18-99)

**05. Narrative Social History.** ~~Family and~~ Child's and family's narrative social history that addresses: ~~(3-18-99)~~(\_\_\_\_)

**a.** Family dynamics and history; (3-18-99)

**b.** Child's current functioning and behaviors; (3-18-99)

**c.** Interests, talents, abilities, strengths; (3-18-99)

**d.** Child's cultural and racial identity needs. The ability to meet the cultural and racial needs of the child does not necessitate a family have the same culture or race as the child; (3-18-99)

**e.** Life story, moves, reasons, key people; (3-18-99)

**f.** Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (3-18-99)

- g.** Medical, developmental and educational needs; (3-18-99)
- h.** Child's history, past experiences, and previous trauma; (3-18-99)
- i.** Indian child's membership or eligibility for membership in tribe(s); (3-18-99)
- j.** Membership or eligibility for membership in, and social and cultural contacts with, tribe(s) of parent(s), if any, including names and addresses of extended family and membership in tribe(s); (3-18-99)
- k.** Indian child's contacts with tribe(s); (3-18-99)
- l.** Individualized recommendations regarding each child's need for permanency; and (3-18-99)
- m.** Reasons for requesting termination of parental rights. (3-18-99)

**TERMINATION OF PARENT-CHILD RELATIONSHIP**  
**(Sections 711 -- 749)**

**711. DECISION AND APPROVAL PROCESS FOR TERMINATION OF PARENT AND CHILD RELATIONSHIP (TPR).**

~~01. Recommendation for Termination.~~ Any recommendation to the ~~Family and Children's and Family Services Program Manager~~ regarding the termination of parental rights ~~shall will~~ be based on the outcome of a team decision-making process ~~and must receive written approval by the program manager before a petition may be filed.~~ (3-30-01)(\_\_\_\_)

~~02. Approval to File a Petition.~~ ~~When the Program Manager has approved, in writing, the request to file a petition for Termination of Parent and Child Relationship, the child's worker shall send the following information to the State Adoption Program Specialist:~~ (3-30-01)

- ~~a. Child's name;~~ (3-30-01)
- ~~b. Child's date of birth;~~ (3-30-01)
- ~~c. Racial background;~~ (3-30-01)
- ~~d. Sibling names and dates of birth; and~~ (3-30-01)
- ~~e. The permanent plan for the child.~~ (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**715. VOLUNTARY CONSENT.**

In obtaining a parent's consent to terminate their parental rights through the Department, a Consent to Terminate Parental Rights and Waiver of Rights to Hearing ~~shall must~~ be signed before the Magistrate Judge. Once a parent's consent has been given before the court, a corresponding petition under the Termination of Parent and Child Relationship Act ~~shall will~~ be filed by legal counsel representing the Department. (3-20-04)(\_\_\_\_)

**716. VOLUNTARY TERMINATION OF PARENTAL RIGHTS TO AN INDIAN CHILD.**

Consent to voluntary termination of parental rights by the parent(s) or Indian custodian(s) of an Indian child ~~shall is~~ not ~~be~~ valid unless executed in writing and recorded before a court of competent jurisdiction, which may be a tribal court. The written consent must be accompanied by the presiding judge's certificate that: (5-3-03)(\_\_\_\_)

**01. Explanation of Consent.** The terms and consequences of the consent were fully explained in detail and were fully understood by the parent(s) or Indian custodian(s); and (5-3-03)

**02. Interpretation If Necessary.** The parent(s) or Indian custodian(s) fully understood the explanation in English or it was interpreted into a language the parent(s) or Indian custodian(s) understood. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**718. REPORT TO COURT -- VOLUNTARY TERMINATION.**

If a voluntary consent to termination has been signed by the parent(s) before the Magistrate Court, an investigation or Report to the Court under the Termination Act is at the court's discretion. If the petition has been filed by the Department of Health and Welfare, Division of Family and Community Services, a report is required to accompany the petition, *pursuant to* under Section 16-2008(b), Idaho Code. (5-3-03)(\_\_\_\_)

**719. INVESTIGATION.**

An investigation of the allegations in the petition and a report recommending disposition of the petition under the Termination of Parent and Child Relationship Act *shall will* be completed and submitted to the court within thirty (30) days, unless an extension of time is granted by the court. The purpose of this investigation is to verify the allegations through all available sources, including the petitioner, parent(s) and possibly the extended family of the child. The Report to the Court under the Termination of Parent and Child Relationship Act, is to serve as an aid to the court in determining a disposition that complies with the Indian Child Welfare Act where applicable, or that will be in the best interest of the child. If a petition is filed by a party other than the Department, the court may order such an investigation by the Department. The law also allows completion of an investigation by an authorized agency or a certified adoption professional, prior to adjudication and disposition. If the Department is the petitioner, the report *shall will* accompany the petition. Reports submitted under the Termination of Parent and Child Relationship Act based on a parent's voluntary consent *shall will* include: (3-20-04)(\_\_\_\_)

**01. Description of Investigation.** The circumstances of the petition and the facts determined from the investigation; and (3-18-99)

**02. Child-Related Factors.** Child related factors, including: (3-18-99)

**a.** Child's current functioning and behaviors; (3-18-99)

**b.** Medical, educational and developmental needs of the child; (3-18-99)

**c.** Child's history and past experiences; (3-18-99)

**d.** Child's identity needs; (3-18-99)

**e.** Child's interests and talents; (3-18-99)

**f.** Child's attachments to current caretakers and any absent parent; (3-18-99)

**g.** Child's current living situation; (3-18-99)

**h.** Indian child's membership or eligibility for membership in tribe(s); (3-18-99)

**i.** Indian child's contacts with tribe(s); (3-18-99)

**j.** The present circumstances, history, condition and desire of the parent whose rights are being terminated regarding plans for the child; (3-18-99)



**k.** Such other facts as may be pertinent to the parent and child relationship and this particular case; i.e., compliance with Interstate Compact Placement on Children; and (3-18-99)

**l.** A recommendation and reasons as to whether or not the termination of the parent and child relationship should be granted. (3-18-99)

**720. FILING OF A PETITION FOR INVOLUNTARY TERMINATION OF PARENT AND CHILD RELATIONSHIP.**

Unless there are compelling reasons it would not be in the interest of the child, the Department ~~shall be~~ is required to file a Petition to Terminate the Parent and Child Relationship within sixty (60) days of a judicial determination that one (1) or more of the following has occurred: (~~3-30-01~~)(\_\_\_\_)

**01. Abandonment.** An infant has been abandoned; (3-30-01)

**02. Reasonable Efforts to Reunify the Family Are Not Required.** That reasonable efforts, as defined in Section 16-1610(b)(2)(iv), Idaho Code, are not required because the court determines the parent(s) has subjected a child or children to aggravated circumstances. (5-3-03)

**721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.**

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department a report is required ~~pursuant to~~ under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights ~~shall~~ must include: (~~3-30-01~~)(\_\_\_\_)

**01. Allegations.** The allegations contained in the petition. (3-30-01)

**02. Investigation.** The process of the assessment and investigation. (3-30-01)

**03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)

**04. Medical Information.** The information forms regarding the child, birth mother, and birth father ~~shall will~~ be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (~~3-30-01~~)(\_\_\_\_)

**05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family. (3-30-01)

**06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement ~~pursuant to~~ under Section 16-1513, Idaho Code. (~~3-20-04~~)(\_\_\_\_)

**07. Planning.** Proposed plans for the child consistent with: (3-30-01)

**a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)

**b.** The Multi-Ethnic Placement Act and Interethnic Placement Act and regulations prohibiting states from delaying or denying cross-jurisdictional adoptive placements with an approved family which ~~shall~~ must include individualized documentation regarding this child's needs in permanent placement. (~~3-30-01~~)(\_\_\_\_)

**08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)

**a.** Notification of the pending proceedings by registered mail with return receipt requested, to the

parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (5-3-03)

**b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)

**c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) ~~shall~~ have the right to court-appointed counsel; (~~5-3-03~~)(\_\_\_\_)

**d.** Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)

**e.** A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and (3-30-01)

**f.** Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-30-01)

**722. -- 749. (RESERVED).**

**BECOMING AN ADOPTIVE PARENT**  
**(Sections 750 -- 850)**

**750. APPLICATION TO BE ADOPTIVE PARENT(S).**

Each field office ~~shall be~~ is responsible for compiling the names and addresses of adoptive applicant(s), along with the dates of inquiry and membership in an Indian tribe, if any. A database or register must be maintained in order to assure the orderly completion of home studies. (~~5-3-03~~)(\_\_\_\_)

**01. Interviews with Potential Applicant(s).** Initial interviews with groups of applicants or with individual families ~~shall will be~~ scheduled promptly and ~~shall will~~ be used to explain Department policies and procedures regarding adoptive placement, the kinds of children available, and the nature of the home study. (~~5-3-03~~)(\_\_\_\_)

**02. Screening of Adoptive Applicants.** Screening of the adoptive applicants will assist the agency or family services worker in assessing, on an individualized basis, the prospective adoptive parent(s)' suitability to care for a specific child, or general description of children through: (5-3-03)

**a.** The family's ability to form relationships and to bond with a specific child, or general description of children; (3-18-99)

**b.** The family's ability to help the child integrate into the family; (3-18-99)

**c.** The family's ability to accept the child's background and help the child cope with his or her past; (3-18-99)

**d.** The family's ability to accept the behavior and personality of a specific child or general description of children; (3-18-99)

**e.** The family's ability to nurture and validate a child's particular cultural, racial, and ethnic background; and (3-18-99)

**f.** The family's ability to meet the child's particular educational, developmental or psychological needs. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

**761. DENIAL OF APPLICATION.**

Following an initial interview, an applicant who does not appear to meet the Department's requirements at the time of initial application may be denied a full home study. The family *shall will* be advised why they were ineligible for a full home study and provide notice to the applicant of their right to appeal this decision. Upon resolution of the factors leading to the denial, the applicant may again file an application and receive a home study. (3-20-04)(\_\_\_\_)

**762. ~~APPLICATION AND DATA COLLECTION~~ COMPLETING THE ADOPTION HOME STUDY.**

Following the initial interview, the application, medical forms, list of items to be verified and other pertinent information needed to complete the adoptive home study *shall will* be given to the prospective adoptive parent(s). (3-20-04)(\_\_\_\_)

**01. Interviews.** Family assessment interviews as well as individual interviews must be held with the prospective adoptive parent(s). (3-20-04)

**02. Home Study of Applicant.** A full home study must then be made to determine the ability of the applicant to meet the needs of children available for adoption, and the specific characteristics of children the applicant indicates would be most suitably placed in the home. For an Indian child, the study *shall will* also determine the prevailing social and cultural standards of the Indian community in which the parent(s) or extended family resides or maintains social and cultural ties. (3-20-04)(\_\_\_\_)

**03. ~~Submission of Timeframes for a Completed Home Study.~~** Once the adoptive home study has been initiated, the completion of the home study *shall must* occur within three (3) months. ~~The original and one (1) copy of the completed home study and all supporting documentation must be submitted to the State Adoption Program Specialist immediately upon approval of the supervisor.~~ (3-18-99)(\_\_\_\_)

**763. APPLICANT RESPONSIBILITIES.**

~~It shall be the responsibility of~~ The adoptive applicant *is responsible* to keep the *field office* agency or Certified Adoption Professional that completed the home study informed of any changes *of in* the family's circumstances, or of any subsequent decision against adoption. ~~An applicant is to maintain contact with the Department on an annual basis. In the absence of contact from the adoptive applicant, the Department shall initiate contact on an annual basis to confirm the accuracy of information in the files and the status of the application. The contact shall be verified by a written annual update to the adoption home study.~~ (3-20-04)(\_\_\_\_)

**764. PRE-PLACEMENT ADOPTIVE HOME STUDY.**

Upon application by a potential adoptive family, the family services worker *shall will* conduct the pre-placement adoptive home study and issue the verification of positive recommendation where appropriate. The home study *shall must* be completed prior to placement of any child for adoption in that home. (3-18-99)(\_\_\_\_)

**765. -- 769. (RESERVED).**

**770. ADOPTIVE HOME STUDIES.**

Pre-placement home studies for Department adoptions, independent, relative and step-parent adoptions must document the following: (3-30-07)

**01. Residence.** References who can verify that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition. (3-18-99)

**02. Verification of Ages of Adopting Parent(s).** Legal verification that the person(s) adopting is at least fifteen (15) years older than the child or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of the child's parent, must be accomplished by: (3-30-07)

- a. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (3-18-99)
- b. Viewing one (1) of the following documents for which a birth certificate was presumably required prior to its issuance, such as armed services or other governmental identification, including a valid Idaho driver's license, passport, visa, alien identification cards or naturalization papers. (3-30-01)
- c. If verifying documentation is not available, the report must indicate the date and place of birth and reason for lack of verification. (3-30-07)
- 03. Medical Statement.** A medical statement for each applicant, signed by a qualified medical professional, within the twelve (12) month period prior to application to be an adoptive parent, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care of the adopted child. (3-30-07)
- 04. ~~Photograph.~~ A photograph of the adopting family. References.** The applicant must provide at least three (3) satisfactory references, one (1) of which may be from a person related to the applicant. An applicant must provide additional references upon the request of the children's agency. (~~3-18-99~~)( )

**771. ANNUAL HOME STUDY UPDATE.**

An adoptive home study must be updated on an annual basis. A current home study is defined as a home study completed within the previous twelve (12) months. ( )

~~772.~~ -- 779. (RESERVED).

**780. FACTORS TO BE CONSIDERED IN DETERMINING SUITABILITY OF ADOPTIVE PARENTS.**

- 01. Indian Child.** For an Indian child, absent good cause to the contrary, the following preferences for placement under the Indian Child Welfare Act ~~shall~~ must be followed: (~~3-18-99~~)( )
- a. Extended family; (3-18-99)
- b. Other members of the child's tribe; or (3-18-99)
- c. Other Indian families. (3-18-99)
- 02. Needs of Adoptive Child.** The primary factor in the review of a prospective adoptive family's eligibility is the ability to protect and promote the best interests of a child to be placed in their home. (3-20-04)
- 03. Availability of Prospective Adoptive Families.** The Department will not delay or deny the placement of a child with an approved family that is located outside of the jurisdiction responsible for the care and planning for the child. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

**800. PLACEMENT OF THE CHILD.**

The field office ~~shall~~ must provide full confidential background information and discuss the child's history fully with the prospective adoptive parent(s) prior to the placement. The disclosure of background information ~~shall~~ must be confirmed at the time of placement by a written statement from the family services worker to the prospective adoptive family which they will be asked to acknowledge and sign. A copy of this statement ~~shall~~ must be provided to the adoptive family and one (1) copy will be kept in the child's permanent record. The child's record ~~shall~~ will be reviewed by the placing region's Program Manager or designee prior to being forwarded to the supervising family services worker. The child's case record must be complete and transferred to the supervising family services worker at the time of placement. (~~3-20-04~~)( )

(BREAK IN CONTINUITY OF SECTIONS)

**831. HOME STUDY, SUPERVISORY REPORTS, AND REPORTS OF THE COURT FEES.**

A family who cares for a child or children with special needs through the Department foster care program, who is not able to pay the costs associated with the pre-placement home study, supervisory reports, or the report to the court, may apply to the regional ~~Family and Children's~~ Family Services Program Manager for a waiver of some or all of the fees. If a family who receives a waiver of the pre-placement home study fee uses that home study to pursue adoption of a child not in the Department's custody, the Department will rescind the waiver and the family will be expected to pay the Department for the full cost of the study. (3-30-07)(\_\_\_\_)

(BREAK IN CONTINUITY OF SECTIONS)

**833. PLACEMENT SUPERVISION -- TRANSFER FROM OUT OF STATE PRIVATE AGENCY.**

When a prospective adoptive parent(s) moves to Idaho, with a child who has been placed with them by a private agency in their former state of residency, the sending state agency ~~shall~~ must arrange through the Interstate Compact on the Placement of Children, services through one of Idaho's private, licensed adoption agencies, or a certified adoption professional. (3-20-04)(\_\_\_\_)

**834. -- 849. (RESERVED).**

**850. INDEPENDENT, RELATIVE AND STEPPARENT ADOPTIONS.**

Independent adoptive placements ~~shall be~~ are handled ~~in accordance with~~ under Section 16-1506, Idaho Code. ~~Person(s) petitioning to adopt a child should have initially completed a pre placement home study that includes a positive recommendation for adoption. Proceedings to adopt a child shall be commenced by the filing of a petition by the person(s) proposing to adopt the child. Within five (5) days of receiving a petition to adopt a minor child by a person(s) unrelated to the child or not married to a parent of the child, the court shall serve a copy of the petition on the Director. The court may also request the Department to conduct an investigation in the case of a relative or step parent adoption. The pre placement investigation home study and the adoption investigation report to the court shall be completed by qualified staff of the Department, staff of a qualified child placing children's adoption agency, or a certified adoption professional.~~ (3-20-04)(\_\_\_\_)

~~01. Prospective Adoptive Parent Is the Spouse of a Child's Parent. When a prospective adoptive parent is married to the parent of the child being adopted, the report to the court under the Adoption of Children Act shall be completed for the prospective adoptive parent only upon order of the court.~~ (3-20-04)

~~02. Exigent Circumstances. In exigent circumstances where the prospective adoptive parent(s) are determined by the court to have been unable to complete the pre placement study with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines that another placement is appropriate. When exigent circumstances exist, the pre placement home study, combined with the adoption report under the Adoption of Children Act, shall be initiated within five (5) days of placement, and shall be completed within sixty (60) days.~~ (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

**862. PETITION TO ADOPT UNDER THE ADOPTION OF CHILDREN ACT.**

**01. Filing a Petition.** When the family and the child who was placed for adoption in that home are ready to finalize the adoption, the family's attorney ~~shall~~ files a petition to adopt with the court. A copy of that

petition ~~shall be~~ is served upon the director of the Department. Upon receipt of a copy of the petition to adopt, the family services worker, licensed children's adoption agency worker or certified adoption professional ~~shall~~ verify the allegations set forth in the petition and make a thorough investigation of the matter and report the findings in writing to the court within thirty (30) days. (3-20-04)(\_\_\_\_)

**02. Registration and Acknowledgment.** Upon receipt of the petition to adopt, the field office ~~shall~~ registers the petition and acknowledge receipt to the court and to the petitioner(s) or private adoption agency. If the licensed adoption agency or certified adoption professional who completed the pre-placement home study is not identified, the information should be obtained from the petitioner(s)' attorney. The register ~~shall~~ will indicate the date the petition was received, the date the study is due in court, the date the completed study was sent to the court, whether an Indian child is involved, and other pertinent data. (3-20-04)(\_\_\_\_)

**863. INVESTIGATION OF PETITION TO ADOPT AND REPORT TO THE COURT.**

According to Section 16-1506, Idaho Code, an investigation regarding the allegations stated in the petition and subsequent written report of findings must be filed with the court unless the investigation is waived by order of the court. The prospective adoptive family's pre-placement home study will be filed at the same time as the written report of investigation. If the family services worker, licensed child placing agency staff, or certified adoption professional is unable to complete the study within thirty (30) days, an extension of time ~~shall~~ must be requested in writing of the court, stating the reasons for the request. If the worker suspects that the child is of Indian heritage and the child's tribe or the Secretary of the Interior has not been notified, the worker ~~shall~~ must inform the court and the petitioner's attorney and the independent agency of the need to comply with the Indian Child Welfare Act. This adoption report to the court ~~shall~~ must address the following: (3-20-04)(\_\_\_\_)

**01. Legal Availability of the Child.** It is the responsibility of the petitioners, through their attorney, to present documentary evidence to the court so the judge can examine it and be satisfied that the identity, birthdate, and parentage of the child are as represented in the petition. The family services worker ~~shall~~ will interview the family and any other person(s) having knowledge in the matter, review all documentary evidence presented by the petitioner(s), record the information and source of the information, noting any discrepancies. Such documentary evidence ~~shall~~ must include ~~but is not limited to~~ the following: (3-20-04)(\_\_\_\_)

- a. The birth certificate of the child; (3-20-04)
- b. The consent(s) of the child's parent(s) to terminate their parental rights, termination decrees for any parent(s) whose parental rights have been terminated involuntarily by the court, and documentation of marriage and divorce; (3-20-04)
- c. Indian child's parent(s) or Indian custodian(s), and tribe have received notice of their right to intervene; and (5-3-03)
- d. Consent to adoption has been secured for all persons from whom it is required, including a legal guardian(s), to make the child legally available for adoption. (3-20-04)
- e. The death certificate of a deceased parent; (3-20-04)
- f. Verification from the Bureau of Vital Statistics of the registry of any putative father; and (3-20-04)
- g. The Interstate Compact on the Placement of Children Form 100-A, for a child born outside of the state of Idaho, to determine if required state authorizations have been given, or if the Compact does not apply. (3-20-04)

**02. Needs of the Child.** The report to the court ~~shall~~ must address the needs of the child, including but ~~not limited to~~: (3-20-04)(\_\_\_\_)

- a. The history of the child and the child's birth family; (3-18-99)
- b. The family history for a child who has been previously adopted, should include information about the child's previous adoptive family and the circumstances of the disruption; (3-20-04)

c. A detailed description of the circumstances that brought about the placement with the prospective adoptive family; (3-20-04)

d. The state of Idaho Social, Medical, and Genetic History forms *shall must* be completed and submitted to the court, showing reasonably known or available medical and genetic information regarding both birth parents and the child, as well as reasonably known or available providers of medical care and services to birth parents and child; and (3-30-01)(\_\_\_\_)

e. The appropriateness of the prospective adoptive family for the particular child or children who are the subject of the petition. (3-20-04)

**03. Degree of Relationship of the Child to Petitioners.** In those cases where the court has ordered an investigation of petitions to adopt by relatives or step parents, the study *shall must* record such alleged relationship and specify the documentary evidence the petitioners have of that relationship. (3-30-01)(\_\_\_\_)

**04. Evaluation and Recommendation.** The family services worker *shall must* provide a brief summary of data presented in prior sections and the pre-placement home study, supporting the recommendation regarding the adoption. (3-20-04)(\_\_\_\_)

**05. Medical Information.** A copy of medical and genetic information compiled in the investigation *shall must* be made available to the prospective adoptive family by the family services worker or certified adoption professional prior to the final order of adoption. (3-20-04)(\_\_\_\_)

**06. Confidentiality of Information.** The family services worker *shall must* exercise caution in discussing identifying information and avoid revealing that information in the petition while attempting to secure the necessary facts for the study. (3-30-01)(\_\_\_\_)

**07. Financial Accounting.** A financial accounting must be approved by the court, of any financial assistance given to the birth parent(s) which exceeds five hundred dollars (\$500), in accordance ~~to~~ with Section 18-1511, Idaho Code. (3-20-04)(\_\_\_\_)

**864. -- 869. (RESERVED).**

**870. REMOVAL OF A CHILD FROM A PROSPECTIVE ADOPTIVE HOME.**

Despite careful assessment of the child and the family prior to placement, circumstances may arise which make it necessary to remove the child from the prospective adoptive home prior to adoption. The child may manifest problems the family is unable to accept or to handle constructively; or changed circumstances may develop which make it inadvisable for the placement to continue. The final decision to remove a child from a prospective adoptive home will be made by the Department as the legal guardian of the child ~~and reported to the State Adoption Program Specialist.~~ (3-20-04)(\_\_\_\_)

**871. TEMPORARY REPLACEMENT AFTER DISRUPTION.**

When a disruption occurs and it becomes necessary to remove a child from a prospective adoptive home, the field office where the child has been placed ~~shall be~~ is responsible for finding a temporary arrangement for the child until another permanent placement can be arranged. In the case of the adoption of an Indian child, the consent of the parent(s) may be withdrawn for any reason at any time prior to the entry of a final decree of adoption, and the child returned to the parent(s). (3-20-04)(\_\_\_\_)

**872. PREFERENCES FOR TEMPORARY PLACEMENT -- INDIAN CHILD.**

Preferences for placement of an Indian child *shall must* be observed in the temporary and permanent placement unless the child is being returned to the parent(s) or Indian custodian(s) from whose custody the child was originally removed. (3-18-99)(\_\_\_\_)

**873. -- 879. (RESERVED).**

**880. APPLICATIONS FOR SUBSEQUENT ADOPTIONS.**

When adoptive applicants on the Department's list of families waiting to adopt receive a child, either through the Department or as an independent placement, their home study will be closed. Following the finalization of the adoption, the family may again apply to be considered for another placement. (3-30-01)

**01. Reapplication Process.** Adoptive parent(s) who have experienced a successful adoption and wish to reapply ~~shall~~ **must** complete an adoption application and financial statement, and submit medical reports and ~~four~~ **three (3)** references. One (1) reference may be from a person related to the applicant. When requested by the Department, an applicant must provide additional references. (~~5-3-03~~)(    )

**02. Update of Adoption Study.** The prospective adoptive family ~~shall~~ **will** assist in amending the original adoption study to include information concerning the acceptance and adjustment of the child previously placed in the home, ~~a photograph of the family, including the child previously placed in the home,~~ and their ~~special~~ request for another placement. (~~3-30-01~~)(    )

**881. CLOSURE OF CASE.**

The family services worker ~~shall~~ **must** request from the adopting parent(s)' attorney, a certified copy of the final order of adoption, and a copy of the family service worker's executed consent to adoption taken at the time of the adoption finalization. These documents are necessary to close the adoption file and initiate the child's adoption assistance benefits. (~~5-3-03~~)(    )

**882. RECORDS OF PLACEMENT.**

Upon finalization of the adoption, the complete record from the local field office, regarding the child and family will be requested by the State Adoption Program Specialist for permanent storage. Records of adoption involving Indian children ~~shall~~ **must** be forwarded by the State Adoption Program Specialist to the Secretary of the Interior. (~~3-18-99~~)(    )

**883. POST-LEGAL ADOPTION SERVICES.**

Upon finalization of the adoption, the Department can offer post-legal adoption services upon request, including ~~but not limited to,~~ case management services, referrals for counseling or other supportive services. (~~3-18-99~~)(    )

**884. OPENING SEALED RECORDS OF ADOPTIONS.**

In addition to the exceptions noted in Section 16-1511, Idaho Code, a sealed adoption proceedings may be opened in the following circumstances according to the Indian Child Welfare Act: (3-20-04)

**01. Motion of an Indian Individual.** Upon motion of an Indian individual who has reached the age of eighteen (18) and was the subject of an adoption, the court ~~shall~~ **must** provide tribal affiliation, if any, of the individual's biological parent(s) and other information necessary to protect any rights flowing from the individual's tribal relationship. (~~3-20-04~~)(    )

**02. Request From the Secretary of the Interior or the Indian Child's Tribe.** Upon request of the Secretary of the Interior or the Indian child's tribe, evidence of efforts to comply with the Indian Child Welfare Act ~~shall~~ **must** be made available to the parties requesting such information. (~~3-20-04~~)(    )

**885. -- 888. (RESERVED).**

**CERTIFIED ADOPTION PROFESSIONAL**  
**(Sections 889 -- 899)**

**889. CERTIFIED ADOPTION PROFESSIONAL REQUIREMENTS.**

An applicant requesting to become a Certified Adoption Professional must meet the following criteria: (3-20-04)

**01. College Degree.** A minimum of a bachelor's degree in a field deemed related to adoptions by the Department's ~~Family and Children's~~ **and Family** Services Program, such as social work, psychology, family counseling or other related behavioral science; ~~and~~ (~~3-20-04~~)(    )



**02. Adoption Training.** Must have completed a minimum of twenty (20) hours of training in adoption services within the last four (4) years; and ~~(3-20-04)~~(\_\_\_\_)

**03. Department Criminal History and Background Clearance.** Must complete a Department criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," and receive a clearance. (\_\_\_\_)

**034. Designee of a Tribe.** Individuals designated by the Indian child's tribe to perform these duties are not subject to the provisions in Subsections 889.01 and 889.02~~3~~ of this rule. ~~(3-20-04)~~(\_\_\_\_)

**890. TERMS OF CERTIFICATION FOR ADOPTION PROFESSIONALS.**

**01. Certification.** Certification for adoption professionals will be completed through the regional *Family and Children's and Family Services* office and will be effective for a period of four (4) years. ~~(3-20-04)~~(\_\_\_\_)

**02. Recertification.** Certified adoption professionals must apply for renewal of their certificate every four (4) years and provide documentation of twenty (20) hours of ~~current~~ adoption training taken during that period. ~~(3-20-04)~~(\_\_\_\_)

**03. Lapse of Certification.** If a certified adoption professional does not apply for recertification within four (4) years in accordance with Subsection 890.02 of this rule, this will result in a lapse of certification. Any lapse in certification will require completion of a new certified adoption professional application, documentation of twenty (20) hours of adoption training during the four (4) years previous to this new application, and a new criminal history and background check. (\_\_\_\_)

**a.** If the individual applying for certification has received a Department criminal history and background check clearance within three (3) years of the date of this application and has not lived outside the state of Idaho since his last criminal history and background check, all of the following must be conducted and no disqualifying crimes or appearance on a registry found: (\_\_\_\_)

i. A name-based background check by the Idaho State Police; (\_\_\_\_)

ii. A check of the Idaho Child Protection Central Registry; (\_\_\_\_)

iii. A check of the Idaho Adult Protection Registry; and (\_\_\_\_)

iv. A check of the Idaho Sexual Offender Registry. (\_\_\_\_)

**b.** If the individual has lived outside the state of Idaho for any amount of time during the three (3) years since the previous Department criminal history and background check clearance was completed, he must get a new Department criminal history and background check clearance. (\_\_\_\_)

**034. Denial of Recertification.** The Department may choose not to recertify a certified adoption professional. Notification of denial will be made by the Department by certified mail. The notice ~~shall~~ will state the specific grounds for denial of recertification. This decision may be appealed within twenty-eight (28) days of receipt of notification under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." Grounds for denial of recertification are one (1) or more of the following: ~~(3-20-04)~~(\_\_\_\_)

**a.** Substandard quality of work following the development of a quality improvement plan; (3-30-01)

**b.** Failure to gain twenty (20) additional hours of adoption continuing education required for recertification; or (3-30-01)

**c.** A demonstrated pattern of negligence or incompetence in performing the duties of a certified adoption professional. (3-20-04)

**045. Decertification.** A certified adoption professional can be decertified by the Department at any time

during a four (4) year period of certification. Notification of decertification will be made by the Department by certified mail. The notice *shall will* state the specific grounds for decertification. This decision may be appealed within twenty-eight (28) days of receipt of notification under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." Grounds for decertification are one (1) or more of the following: (3-20-04)(\_\_\_\_)

- a. Conviction for a felony; (3-30-01)
- b. Negligence in carrying out the duties of a certified adoption professional; (3-20-04)
- c. Misrepresentation of facts regarding their qualifications and/or the qualifications of a prospective adoptive family to adopt; and (3-20-04)
- d. A demonstrated pattern of failure to obtain Departmental review and approval of pre-placement homestudies, court reports and placement supervision reports. (3-20-04)(\_\_\_\_)

**891. CERTIFIED ADOPTION PROFESSIONAL'S CLIENT RELATIONSHIP.**

A certified adoption professional *shall may* not assume a legal relationship with any child for whom they have been contracted to perform services. (3-20-04)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**893. RECORDS OF THE CERTIFIED ADOPTION PROFESSIONAL.**

Records of the pre-placement home studies, court reports, and supervisory reports provided by the certified adoption professional must be made available to the regional *Family and Children's and Family* Services program manager or designee one (1) week prior to the required court filing date. The regional designee will be responsible for monitoring of quality of the services provided. (3-20-04)(\_\_\_\_)

**894. FEES CHARGED BY THE DEPARTMENT.**

Monitoring fees *shall will* accompany the submission of each report and be paid directly to the Department through the *Family and Children's and Family* Services<sup>2</sup> regional office as follows:

Table 894 - Qualified Individuals	
Home Study or Court Report	\$50
Supervision Report or Home Study Update	\$30

(3-30-01)(\_\_\_\_)

**895. DEPARTMENT RESPONSIBILITY TO CERTIFIED ADOPTION PROFESSIONAL.**

The regional *Family and Children's and Family* Services designee *shall will* review the reports provided within a timely manner to insure filing of documentation by required court date by the certified adoption professional. The region *shall will* initiate corrective action plans when the documentation of any certified adoption professional is determined to be incorrect or substandard. (3-20-04)(\_\_\_\_)

**896. -- 899. (RESERVED).**

**ADOPTION ASSISTANCE**  
**(Sections 900 -- 999)**

**900. ADOPTION ASSISTANCE.**

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Service's, the Division will respond with a determination of the child's eligibility within forty-five (45) days.  
(3-30-07)

**01. Determination of Eligibility for Title IV-E Adoption Assistance.** ~~The Bureau of Family and Children's and Family~~ Services will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of 1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance:  
(3-30-07)(\_\_\_\_)

**a.** Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria ~~both~~ at the time of removal from his home ~~and in the month the adoption petition is filed.~~  
(5-3-03)(\_\_\_\_)

i. If the child is removed from his home ~~pursuant to~~ in accordance with the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home.  
(5-3-03)(\_\_\_\_)

ii. If the child is removed from the home ~~pursuant to~~ in accordance with a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance.  
(5-3-03)(\_\_\_\_)

**b.** Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs.  
(5-3-03)

i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits;  
(5-3-03)

ii. The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care is not relevant.  
(5-3-03)

**c.** Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs.  
(5-3-03)

i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which lead to the removal of the child from his home;  
(5-3-03)

ii. At the time of the voluntary ~~placement or~~ relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home.  
(5-3-03)(\_\_\_\_)

**d.** Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs.  
(5-3-03)

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and  
(5-3-03)

ii. The child continues to reside in the foster home with his minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances.  
(5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

**02. Special Needs Criteria.** The definition of special needs includes the following factors: (3-30-07)

a. The child cannot or should not be returned to the home of the parents as evidenced by an order from a court of competent jurisdiction terminating parents rights or an Abandonment Certificate or its equivalent issued by a governmental entity either domestic or foreign; and ~~(3-18-99)~~( )

b. The child has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history, or (3-18-99)

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is a member of a sibling group that must not be placed apart; and (5-3-03)

e. State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. (5-3-03)

**03. Determination of Eligibility for State Funded Adoption Assistance.** Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. (3-30-07)

**04. Interjurisdictional Adoptions.** When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E adoption assistance benefits. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**911. ADOPTION ASSISTANCE PROGRAM AGREEMENT.**

A written agreement ~~shall~~ must be negotiated and fully executed between the Department and adopting family prior to the finalization of adoption and implementation of benefits. ~~(3-18-99)~~( )

**01. Agreement Specifications.** The agreement ~~shall specify~~ specifies the following: ( )

**a.** ~~The type and amount of assistance to be provided;~~ and ( )

**b.** That there will be an annual review of each agreement by the Department to evaluate the need for continued subsidy and the amount of the subsidy; ( )

**c.** ~~That #~~ the agreed upon type and amount of assistance may be adjusted periodically only with the concurrence of the adoptive parent(s) to reflect changing based upon changes in the needs of the child or changes in the circumstances of the adoptive family; the date for annual renewals and that the renewal depends on ( )

**d.** That assistance is subject to the continuing availability of funds; and that payments shall begin after the final certified copy of the Order of Adoption is received by the Department. ( )

**e.** That ~~The~~ adoptive parent(s) are required to inform the ~~state agency~~ Department of any circumstances which would make them ineligible for adoption assistance payments, or eligible for adoption assistance payments in a different amount. (5-3-03)( )

**02. Termination of Adoption Assistance.** Adoption assistance will be terminated if the adoptive parent(s) no longer have legal responsibility for the child as a result of termination of parental rights, the child is no longer receiving any financial support from the parents, or the child has reached the age of eighteen (18) years regardless of the child's educational status. (4-11-06)

**03. Adoption Assistance Follows the Child.** If the adoptive parents are located in a state other than Idaho, or move out of Idaho with the child, the adoption assistance payments initiated by Idaho will continue for the child. If the child is IV-E or state-funded adoption assistance eligible, referral for Medicaid or other state medical insurance and social service benefits will be forwarded to the new state of residence through the Interstate Compact on Adoption and Medical Assistance. Non IV-E eligible children receiving a state adoption subsidy, may not be eligible for Medicaid in a state other than Idaho. (5-3-03)

**912. -- 919. (RESERVED).**

**920. REQUEST FOR RECONSIDERATION FOR ADOPTION ASSISTANCE.**

Families who adopted a child, or children with special needs on or after April 1, 1982, through either the Department or a licensed Idaho children's adoption agency may be eligible for benefits through the Adoption Assistance program. Persons who adopted their relative children, may also be eligible for these adoption assistance benefits. Per Public Law 96-272, the adoptive family must sign an adoption assistance agreement prior to the finalization of the adoption in order for the child to receive benefits. Adoptive families who were not informed of these benefits or who were wrongly denied these benefits may submit an application to the Department prior to the eighteenth birthday of the adopted child for a determination of eligibility for these benefits. The Division of Family and Community Services ~~shall~~ determines eligibility based on the eligibility factors determining a special needs child that were in effect at the time of the child's adoption. If the IV-E eligibility determination finds that a child was eligible for these benefits at the time of the child's adoption, and an agreement was not signed prior to the finalization, the Department is required to deny benefits to the child, since no contract was in effect at the time of the adoption finalization. The adoptive family may request a fair hearing for adoption assistance IV-E eligibility determination. The determinations to be made at this hearing are whether extenuating circumstances exist and/or whether the family was wrongly denied eligibility. The Division of Family and Community Services may not change its eligibility determination for a child eligible for IV-E adoption assistance benefits and provide adoption assistance based on extenuating circumstances without obtaining a favorable ruling from a fair hearing officer. (3-18-99)( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING**  
**DOCKET NO. 16-0602-0802 (FEE RULE)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

To help assure the health and safety of children across the state, the Department has established standards for day care licensing and certification. These standards are being amended to clarify the application, inspection, and criminal history fees charged for licensing. Obsolete language is also being deleted.

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

This rulemaking increases the fee to employees of child care licensee applicants, volunteers, household members, and others who have unsupervised direct contact with children in a day care who are required to have a criminal history and background check through the Department. Under Section 56-1004A, Idaho Code, applicants are required to pay the cost of these checks which have increased from \$45 to \$55. Each individual required to complete a criminal history and background check will pay an extra \$10 with the exception of the initial licensee applicant.

**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 anticipated fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes are being made to bring the criminal history checks requirements into compliance with IDAPA 16.05.06, "Criminal History and Background Checks."

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lorraine Clayton at (208) 334-5699.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0602-0802

300. STANDARDS FOR DAY CARE.

**01. Purpose.** The stated legislative purpose of Sections 39-1101 through 39-1117, Idaho Code, ~~enacted in 1987 and as amended in 1990, 1992 and 1994,~~ is to provide for minimum statewide day care licensing for children less than twelve (12) years of age. ~~The purpose is to provide a statement of policy, provide exemption, define terms, designate licensing authorities and authorize the promulgation of rules.~~ Persons with certain criminal backgrounds are prohibited from working in day care centers. Responsibilities for regulatory authority are divided between the Board, the state fire marshal, and the ~~district public health departments~~ districts. As stated in Section 39-1101, Idaho Code: "It is declared to be the policy of the state to establish a minimum statewide system for the protection of children in day care centers. This system is intended to establish minimum standards, while still leaving primary responsibility for evaluation and selection of day care services with parents. The minimum standards established by this chapter ~~shall~~ are not to be construed as preempting more stringent regulation by county or city ordinance."

~~(3-30-01)~~(\_\_\_\_)

**02. Fee Charged.** Fees ~~shall be~~ are charged at the time of initial application for a basic day care license or certification. The fees will be used to cover the expenses for fire inspections, health inspections and criminal history and background checks. The initial application inspection fees ~~shall not be~~ are non-refundable. Basic day care licenses and certifications ~~shall be~~ are valid for a period of two (2) years.

~~(3-30-01)~~(\_\_\_\_)

**a.** Fees ~~shall~~ will also be charged at the time of application for renewal of a license or certification. An application for renewal must be filed every two (2) years prior to the expiration of a current basic day care license or certification in order for the current license or certification to remain valid, pending the completion of the appropriate inspections. Application and inspection fees for renewal ~~shall not be~~ are non-refundable.

~~(3-30-01)~~(\_\_\_\_)

**b.** Fees for initial application inspection and renewal of basic day care licenses and certifications ~~shall~~ must be paid directly to the inspecting fire and health ~~agencies, except for agencies.~~ ~~#~~The criminal history checks ~~that~~ with fees and application fee for renewal must be paid directly to the Department.

~~(3-30-01)~~(\_\_\_\_)

**c.** The applicable license fee payable to the Department upon initial application or a renewal ~~shall~~ will be reduced for any day care facility which provides evidence that at least fifty percent (50%) of its staff is certified in infant/child first aid and cardiopulmonary resuscitation.

~~(3-30-01)~~(\_\_\_\_)

**i.** To receive such refund of monies paid to the Department for licensure or renewal, the applicant or owner/operator of such day care facility ~~shall~~ must submit to the Department day care licensing unit, at any time during the period of a valid license or certificate for day care, written documentation of the number of staff in the day care facility and that at least fifty percent (50%) of that staff is certified in infant/child first aid and cardiopulmonary resuscitation.

~~(3-30-01)~~(\_\_\_\_)

**ii.** Upon receipt of valid documentation that fifty percent (50%) of the staff of that day care facility is so certified, a payment equal to twenty-five percent (25%) of the licensing fee paid ~~shall~~ will be made to the applicant or owner/operator of such licensed day care facility.

~~(3-30-01)~~(\_\_\_\_)

**03. Initial Application Fees for Basic Day Care License.** All unlicensed and previously licensed day care centers caring for thirteen (13) or more children are required to submit an initial application for a basic day care license. The maximum fees for both unlicensed and previously licensed centers ~~shall~~ cannot exceed one hundred dollars (\$100) for a state license.

~~(3-30-01)~~(\_\_\_\_)

**a.** The following fees will be included with the initial application for a basic day care license:

(3-30-01)

**i.** ~~Criminal History Check - forty five dollars (\$45) per person payable to the Department, when~~

~~applicable;~~ (3-30-01)

i. Health Inspection - thirty-five dollars (\$35) payable to the Health District; (3-30-01)

ii. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; and (3-30-01)

~~iii.~~ The fee of Criminal History Check - forty-five dollars (\$45) for the criminal history check will be charged for each licensing applicant, ~~owner, operator, employee and volunteer at the day care center requiring a criminal history check~~ and ~~shall be is~~ separate ~~and apart~~ from the application fees for health and fire inspections. The fees for criminal history checks ~~shall be are~~ the responsibility of the individual or day care center with which they are associated. (3-30-01)(\_\_\_\_)

b. Posting of license in a conspicuous place at the day care center is required. (3-30-01)

c. The Department shall obtain a criminal history check on only those applicants, owners, operators, employees or volunteers who have direct contact with the children in care and on all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. "Volunteers" when used in this chapter ~~shall~~ means only those persons who have direct unsupervised contact with children in care for more than twelve (12) hours in any one (1) month. (3-30-01)(\_\_\_\_)

**04. Application Fees for Renewal of Basic Day Care License.** A basic day care license must be renewed every two (2) years. The application fee for renewal of a license ~~shall~~ cannot exceed sixty dollars (\$60). The following fees will be included with an application for renewal of a basic day care license: (3-30-01)(\_\_\_\_)

a. Department - ten dollars (\$10) payable to the Department; (3-30-01)

b. Health Inspection - thirty dollars (\$30) payable to the Health District; and (3-30-01)

c. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)

d. It will be the responsibility of the applicant, owner, or operator of a day care center to ensure that a criminal history check is initiated within ten (10) days for staff having direct contact with children to include employees and volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (3-30-01)

**05. Initial Application Fees for Certification.** All unlicensed and previously licensed group day care facilities caring for seven (7) to twelve (12) children ~~shall are~~ not ~~be~~ required to be licensed but ~~shall~~ must be certified by obtaining a fire inspection and criminal history check for applicant and staff. (3-30-01)(\_\_\_\_)

a. The following fees shall be included with the initial application for a state certification: (3-30-01)

i. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; (3-30-01)

~~ii.~~ ~~Criminal History Check~~ ~~forty five dollars (\$45) per person payable to the Department, when~~ ~~applicable; and~~ (3-30-01)

~~iii.~~ The fee of Criminal History Check - ~~forty~~ fifty-five dollars (\$45) will be charged for each certification applicant, owner, operator, employee or volunteer at the group day care facility requiring a criminal history check and ~~shall be is~~ separate ~~and apart~~ from the application fee for a fire inspection and ~~shall be is~~ the responsibility of the individual or group day care facility. (3-30-01)(\_\_\_\_)

b. The fire inspection certification and verification of the required criminal history check ~~shall~~ must be available for inspection on the premises. (3-30-01)(\_\_\_\_)



c. The Department ~~shall~~ obtain a criminal history check on only those applicants, owners, operators, employees, or volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (3-30-01)(\_\_\_\_)

**06. Application Fee for Renewal of Certification.** A certification must be renewed every two (2) years. The application fee for renewal of a certification ~~shall~~ will not exceed thirty dollars (\$30). The following fees will be included with the application for renewal of certification: (3-30-01)(\_\_\_\_)

a. Department - ten dollars (\$10) payable to the Department; and (3-30-01)

b. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)

c. It will be the responsibility of the applicant, owner or operator of a group day care facility to ensure that any employees and volunteers having direct contact with children have, upon employment or assignment, a criminal history check initiated within ten (10) days for staff. (3-30-01)

**07. Voluntary Compliance by Group Day Care Facilities for Basic Day Care License.** A group day care facility may elect voluntarily to secure a basic day care license and must meet the same requirements as for day care centers. Group day care facilities wishing to apply for a basic day care license must comply in all cases with the requirements of a fire inspection, health inspection and criminal history check. Group day care facilities electing to secure a basic day care license ~~shall~~ will be charged the same fees as for day care centers. (3-30-01)(\_\_\_\_)

**08. Family Day Care Homes.** Family day care homes caring for six (6) or fewer children are not required to have a basic day care license or certification. A family day care home may, however, elect voluntarily to secure a basic day care license and must meet the same requirements as for day care centers. Family day care homes wishing to apply for a basic day care license must comply with the requirements of a fire inspection, health inspection and criminal history check, when required. Family day care homes electing to secure a basic day care license ~~shall~~ will be charged the same fees as for day care centers. (3-30-01)(\_\_\_\_)

**09. Procedure for Criminal History Checks.** The Department is hereby authorized to obtain and submit criminal history checks with fingerprints on applicants, owners, operators, employees and volunteers of day care centers, group day care facilities and family day care homes, when the home wishes to voluntarily comply with the requirements for a basic day care license. The criminal history check ~~shall be~~ is conducted ~~pursuant to~~ under Sections 39-1113 and 56-1004A, Idaho Code, and IDAPA 16.05.06, "Criminal History and Background Checks." ~~There shall be no additional fee charged for this criminal background check.~~ Criminal history checks are required on employees, volunteers, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. Basic day care licenses, certifications and/or day care provider permits ~~shall~~ will be used as a means of verifying that no record has been found ~~pursuant to~~ under Sections 39-1113 and 39-1115(3), Idaho Code, on licensing and certification applicants, owners, operators, employees and volunteers requiring criminal history checks. (3-30-01)(\_\_\_\_)

**10. Temporary Basic Day Care Licenses, Certifications, and Day Care Provider Permits.** (3-30-01)

a. The Department may issue temporary basic day care license, temporary certifications and temporary day care provider permits to licensing or certification applicants pending the completion of the necessary day care inspections or criminal history checks. The Department may also issue temporary day care provider permits to day care providers who are owners, operators, employees and volunteers pending the completion of the criminal history check. All temporary basic day care licenses, temporary certifications and temporary day care provider permits ~~shall~~ will be issued under the following conditions: (3-30-01)(\_\_\_\_)

i. ~~Shall be~~ Issued for a period not to exceed one hundred twenty (120) days, unless otherwise extended by the Department. (3-30-01)(\_\_\_\_)

ii. Applicants, owners, operators, employees and volunteers requiring a criminal history check properly completing and signing a notarized self-declaration certifying that they have never been found guilty of or

received a withheld judgement for any of the crimes enumerated in Sections 39-1113 and 39-1115(3), Idaho Code, pending the completion of the criminal history check. (3-30-01)

iii. All temporary basic day care licenses and certifications are conditional upon satisfactory day care facility inspections and applicants' satisfactory criminal history checks. (3-30-01)

iv. All temporary day care provider permits are conditional upon satisfactory criminal history checks. (3-30-01)

b. If a criminal history check on an applicant for licensing or certification or a currently licensed or certified day care facility discloses an owner, operator, employee or volunteer with a guilty conviction or a withheld judgement ~~pursuant to~~ under Sections 39-1113 and 39-1115(3), Idaho Code, the individual ~~shall~~ must be suspended immediately from continued employment or volunteering. The day care facility and individual ~~shall~~ will be in violation of these rules and subject to a misdemeanor if the individual is retained after receiving notice by certified mail from the Department that the individual has been found guilty of or received a withheld judgement for an offense ~~pursuant to~~ under Sections 39- 1113 and 39-1115(3), Idaho Code. (~~3-30-01~~)(    )

**11. Responsibilities of Applicants, Owners or Operators.** It ~~will be~~ is the responsibility of the applicant, owner or operator of a day care facility to maintain a personnel record on each employee and volunteer at the day care facility having direct contact with children. The personnel record ~~shall~~ must include date of initial employment or assignment, date of termination or extended leave from employment or assignment, a copy of the day care provider permit and any other information which may be necessary to establish day care facility and personnel compliance with Section 39-1105, Idaho Code. It ~~shall also be~~ is the responsibility of the applicant, owner or operator of a day care facility to ensure new employees and volunteers having direct contact with children, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children, submit to the Department within ten (10) days from the date of initial employment or assigned self-declaration certifying they have not been found guilty of or received a withheld judgement for the crimes ~~pursuant to~~ under Section 39-1115(3), Idaho Code. Two (2) fingerprint cards (FD-258) with fingerprints for personnel requiring criminal history checks ~~shall~~ must also be completed within ten (10) days from the date of initial employment or assignment. (~~3-30-01~~)(    )

**12. Immunizations Required.** ~~Pursuant to~~ Under Section 39-1118, Idaho Code, the immunizations required and the manner and frequency of their administration are ~~referenced in Idaho Department of Health and Welfare Rules,~~ provided in IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho." (~~3-30-01~~)(    )

**13. Employee Training.** The owner operator of a day care center ~~shall~~ must ensure through documentation that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's hire date. (~~3-30-01~~)(    )

**14. Preemption.** These rules do not preempt more stringent local regulation or requirements. (3-30-01)

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

**16.06.12 - IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-0802 (FEE RULE)**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

**FRIDAY - OCTOBER 10, 2008 - 9:00 am**

**DEPARTMENT OF HEALTH & WELFARE  
450 West State Street, Conference Rm. 7-A  
Boise, ID**

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

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

To protect and better ensure the health and safety of children receiving ICCP benefits, the Department is requiring that providers and individuals living in the home with direct contact with children, to have a criminal history and background check if they are receiving ICCP payments. These rules are being amended to provide the criminal history and background checks requirements.

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

This rulemaking adds a fee to registered ICCP providers, applicants, volunteers, household members, and other individuals who have direct contact with children in a child care setting who are required to have a criminal history and background check through the Department. Under Section 56-1004A, Idaho Code, it is the responsibility of the criminal history applicant to pay the cost of the check which is \$55.

**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 state general funds associated with this rulemaking. The cost of the criminal history and background check is the responsibility of the applicant or provider.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules are being amended to protect the health and safety of children receiving Idaho Child Care Program benefits.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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THE FOLLOWING IS THE TEXT OF DOCKET 16-0612-0802

007. -- 0098. (RESERVED).

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department Criminal History and Background Check.** Criminal history and background checks are required for ICCP providers. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**02. ICCP Provider is Approved.** The ICCP provider must have completed a criminal history and background check, and received a clearance, prior to becoming an ICCP provider. ( )

**03. Individual in the Home.** Any individual age thirteen (13) or older living in the home where care is provided must complete a criminal history application and self-disclosure form, be fingerprinted, and can not have any disqualifying crimes listed in IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**04. Availability to Work or Provide Service.** ( )

**a.** The employer or provider, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. ( )

**b.** Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. ( )

**c.** Individuals living in the home who have direct contact with children are allowed contact after the criminal history application and self-disclosure is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a disqualifying crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**04. Applicants, Providers, and Other Individuals Subject to Criminal History Check Requirements.** The following applicants, providers and other individuals listed below must receive a criminal history and background check: ( )

**a.** Child care center employees and volunteers who have direct contact with children; ( )

**b.** Group child care employees and volunteers who have direct contact with children; ( )

c. Family child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; ( )

d. Relative child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; and ( )

e. In-home child care provider. ( )

**04. Criminal History and Background Check at Any Time.** The Department can require a criminal history and background check at any time on any individual providing child care to an ICCP eligible child. ( )

**05. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the child care provider to the Department when the provider learns of the conviction. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**803. TEMPORARY REGISTRATION OF AN ICCP ~~PENDING COMPLETION OF THE HEALTH DISTRICT INSPECTION PROVIDER APPLICANT.~~**

The Department may issue a temporary registration to an ICCP provider applicant pending completion of the necessary ~~Health District~~ and safety inspections, ~~and~~ CPR/First Aid Certification, ~~and~~ Department criminal history and background check. ~~A~~ temporary ICCP registration ~~will~~ may be issued under the following conditions: (4-2-08)( )

**01. Length of Temporary Registration.** A temporary registration will be issued for a period of time not to exceed ninety (90) days, unless otherwise extended by the Department. (4-2-08)

**02. Applicants Must Sign a Provider Agreement.** All ICCP provider applicants must sign the ICCP provider agreement prior to issuance of a temporary registration. (4-2-08)

**03. Self-Disclosure.** Individuals age thirteen (13) or older who have direct contact with or provide direct care to children receiving ICCP benefits, must self-disclose all arrests and convictions pending satisfactory completion of the criminal history and background check. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, a temporary registration will not be issued. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**805. ~~CONVICTION OR WITHHELD JUDGMENT~~ CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENT.**

*A child care provider must sign a self declaration attesting he has not been convicted or received a withheld judgement for any of the following crimes: homicide; kidnaping; arson; assault and battery; sexual abuse of a child; a sex crime as defined in Chapter 66, Title 18, Idaho Code; rape as defined in Chapter 61, Title 18, Idaho Code; injuring a child as defined in Section 18-1501, Idaho Code; selling or bartering a child as defined in Section 18-1511, Idaho Code; sexually abusing a child as defined in Section 18-1506, Idaho Code; sexually exploiting a child as defined in Section 18-1507, Idaho Code; or any similar provision in another jurisdiction.*

Applicants, providers, employees, volunteers, and individuals age thirteen (13) or older who have direct contact with or provide care to children eligible for ICCP benefits must comply with the requirements and receive clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)( )

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

**16.06.12 - IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-0803**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

**FRIDAY - OCTOBER 10, 2008 - 9:00 am**

**DEPARTMENT OF HEALTH & WELFARE  
450 West State Street, Conference Rm. 7-A  
Boise, ID**

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

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

The 2008 Legislature adopted legislation, SB1340 and SB1341, amending the Department's statutes concerning fraud investigations and enforcement remedies. In order to investigate allegations and complaints of fraud and abuse under ICCP, these rules are being amended to provide:

1. Definitions of terms defining fraudulent types of activities and terms used for enforcement actions;
2. Requirements for reporting for providers and parents; records and documentation of services, payment rates; documentation to aid in investigations and protections for allegations of fraud and abuse;
3. Clarification of immunization record requirements and discontinue parent provision of documentation of immunization as an eligibility requirement for ICCP benefits;
4. Enforcement actions for denial of payments, recoupment for overpayments, termination of provider status, refusal to enter into an agreement, notification to licensing authorities, and provider notification of Department actions.

**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.

There is no anticipated fiscal impact to state general funds associated with this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules are being amended to add investigation and enforcement remedies to meet requirements in 2008 legislation.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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THE FOLLOWING IS THE TEXT OF DOCKET 16-0612-0803

~~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 or Misconduct." ( )

~~007.~~ (RESERVED).

**010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH L.**

The following definitions and abbreviations apply to this chapter: (4-2-08)

**01. AABD.** Aid to the Aged, Blind, and Disabled. (4-2-08)

**02. Abuse or Abusive.** Provider practices that are inconsistent with sound fiscal, business, or child care practices and result in an unnecessary cost to the Idaho Child Care Program, in reimbursement that is not necessary, or that fail to meet professional recognized standards for child care, or result in physical harm, pain, or mental anguish to children. ( )

**023. Child.** Any person under age eighteen (18) under the care of a parent, or a person eighteen (18) years of age or older who is claimed on tax returns as a dependent. (4-2-08)

**034. Child Care.** Care, control, supervision, or maintenance of a child provided for compensation by an individual, other than a parent, for less than twenty-four (24) hours in a day. (4-2-08)

**05. Claim.** Any request or demand for payment, or document submitted to initiate payment, for items or services provided under the Idaho Child Care Program. ( )

**046. Department.** The Idaho Department of Health and Welfare or its designee. (~~7-1-99~~)( )

**057. Earned Income.** Income received by a person as wages, tips, or self-employment income before deductions for taxes or any other purposes. (4-2-08)

**068. Employment.** A job paying wages or salary at federal or state minimum wage, whichever is applicable, including work paid by commission or in-kind compensation. Full or part-time participation in a VISTA or AmeriCorps program is also employment. (4-2-08)

**079. Foster Care.** The twenty-four (24) hour substitute care of children provided in a foster home by persons who may or may not be related to a child. Foster care is provided in lieu of parental care and is arranged through a private or public agency. (4-2-08)

~~0810.~~ **Foster Child.** A child placed for twenty-four (24) hour substitute care by a private or public agency. (4-2-08)

~~0911.~~ **Foster Home.** The private home of an individual or family licensed or approved as meeting the standards for foster care and providing twenty-four (24) hour substitute care to six (6) or fewer children. (4-2-08)

~~12.~~ **Fraud or Fraudulent.** An intentional deception or misrepresentation made by a person with knowledge that the deception could result in some unauthorized benefit to himself or some other person. ( )

~~103.~~ **Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-99)

~~144.~~ **In Loco Parentis.** Acting “in loco parentis” means a person who acts in place of a parent, assuming care and custody of a child by a formal or informal agreement with the child’s parent. (4-2-08)

~~15.~~ **Intentional Program Violation (IPV).** An intentional false or misleading action, omission, or statement made in order to qualify as a provider or recipient in the Idaho Child Care program or to receive program benefits or reimbursement. ( )

~~126.~~ **Job Training and Education Program.** A program designed to provide job training or education. Programs may include high school, junior college, community college, college or university, general equivalency diploma (GED), technical school, and vocational programs. To qualify as a Job Training and Education Program, the program must prepare the trainee for employment. (4-2-08)

~~17.~~ **Knowingly, Known, or With Knowledge.** With respect to information or an action about which a person has actual knowledge of the information or action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. ( )

~~138.~~ **Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. (4-2-08)

**011. DEFINITIONS AND ABBREVIATIONS -- M THROUGH Z.**  
The following definitions and abbreviations apply to this chapter of rules: (4-2-08)

~~01.~~ **Managing Employee.** A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an organization or entity. ( )

~~042.~~ **Minor Parent.** A parent under the age of eighteen (18). (4-2-08)

~~023.~~ **Non-Recurring Lump Sum Income.** Income received by a family in a single payment, not expected to be available to the family again. (7-1-99)

~~034.~~ **Parent.** A person responsible for a child because of birth, adoption, step-parent, or guardianship; or a person acting in loco parentis. (4-2-08)

~~045.~~ **Preventive Services.** Services needed to reduce or eliminate the need for protective intervention. Preventive services permit families to participate in activities designed to reduce or eliminate the need for out-of-home placement of a child by the Department. (4-2-08)

~~056.~~ **Prospective Income.** Income a family expects to receive within a given time. This can be earned or unearned income. (7-1-99)

~~067.~~ **Provider.** An individual, organization, agency, or other entity providing child care. (7-1-99)

~~078.~~ **Relative Provider.** Grandparent, great-grandparent, aunt, uncle, or adult sibling by blood or



current marriage who provides child care. (4-2-08)

**089.** SSI. Supplemental Security Income. (4-2-08)

**0910.** **Special Needs.** Any child with physical, mental, emotional, behavioral disabilities, or developmental delays identified on an Individual Education Plan (IEP) or an Individualized Family Service Plan (IFSP). (4-2-08)

**101.** TAFI. Temporary Assistance for Families in Idaho. (4-2-08)

**142.** **Unearned Income.** Unearned income includes retirement, interest child support, and any income received from a source other than employment or self-employment. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. ELIGIBLE CHILD.**

A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: (4-2-08)

~~**01.** **Immunizations Requirements.** A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school.~~ (4-2-08)

**021.** **Citizenship or Alien Status Requirement.** A child must be one (1) of the following: (4-2-08)

**a.** A citizen; (4-2-08)

**b.** Living lawfully in the United States. (4-2-08)

**032.** **Child's Age Requirement.** A child must be under thirteen (13) years of age, with the following exceptions: (4-2-08)

**a.** A child thirteen (13) years of age or older may be eligible for child care benefits if he meets one (1) or more of the following criteria: (4-2-08)

**i.** A child is eligible for child care benefits until the month of his eighteenth birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. (4-2-08)

**ii.** A child may be eligible for child care benefits until the month of his eighteenth birthday if a court order, probation order, child protection, or mental health case plan requires constant supervision. (4-2-08)

**b.** A child who is eligible under Subsection 105.03.a. may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. AMOUNT OF PAYMENT.**

Child care payments will be based on Subsections 501.01 through 501.04 of this rule. (4-2-08)

**01. Payment Rate.** Payment will be based on the lower of the ~~billed cost of child care, provider's usual and customary rates~~ or the local market rate. (4-2-08)(\_\_\_\_)

**a.** The local market rate is determined from a survey of providers' child care charges which is conducted every two years. The local market rate is set at the seventy-fifth percentile and updated as the budget allows. (4-2-08)

**b.** Each Region has a separate local market rate. Payment rates will be determined by the location of the child care facility. (4-2-08)

**c.** If the child care facility is not in Idaho, the local market rate will be the rate where the family lives. (4-2-08)

**d.** The rate survey will be conducted at least every two (2) years. (4-2-08)

**02. Usual and Customary Rates.** Rates charged by the child care provider must not exceed the usual and customary rates charged ~~to all families~~ for child care to persons not entitled to receive benefits under ICCP. (4-2-08)(\_\_\_\_)

**03. In-Home Care.** Parents are responsible to pay persons providing care in the child's home the minimum wage, as required by the Fair Labor Standards Act (29 U.S.C. 206a) and other applicable state and federal requirements. Department payments must not exceed the lower of the hourly federal minimum wage or actual cost of care. (4-2-08)

**04. Payments.** Payments will be issued directly to eligible providers. A warrant may be issued to a parent only when the parent provides proof the provider was paid in full, and no longer provides child care for the family. (4-2-08)

**502. SLIDING FEE SCHEDULES.**

Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and may not waive or defer these costs. (4-2-08)(\_\_\_\_)

**01. Poverty Rates.** Poverty rates will be one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines published in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-2-08)

**02. Calculating Family Payment.** Families must pay the provider their share of costs for child care services which include the families' co-payments and any charges not paid by the Department. Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment listed in the following table: (4-2-08)

**03. ICCP Sliding Fee Schedule.**

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
7%	\$499	\$599	\$699	\$799	\$899	\$1,099	\$1,199	\$1,399	\$1,499
11%	\$799	\$1,099	\$1,299	\$1,499	\$1,699	\$1,999	\$2,199	\$2,399	\$2,599

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
16%	\$949	\$1,249	\$1,449	\$1,699	\$1,999	\$2,299	\$2,549	\$2,799	\$3,049
21%	\$1,099	\$1,399	\$1,599	\$1,899	\$2,299	\$2,599	\$2,899	\$3,199	\$3,499
26%	\$1,165	\$1,465	\$1,731	\$2,031	\$2,399	\$2,731	\$3,031	\$3,365	\$3,665
31%	\$1,231	\$1,531	\$1,863	\$2,163	\$2,499	\$2,863	\$3,163	\$3,531	\$3,831
36%	\$1,299	\$1,599	\$1,999	\$2,299	\$2,599	\$2,999	\$3,299	\$3,699	\$3,999
41%	\$1,308	\$1,616	\$2,008	\$2,316	\$2,625	\$3,016	\$3,325	\$3,716	\$4,025
46%	\$1,317	\$1,633	\$2,017	\$2,333	\$2,651	\$3,033	\$3,351	\$3,733	\$4,051
51%	\$1,326	\$1,650	\$2,026	\$2,350	\$2,677	\$3,050	\$3,377	\$3,750	\$4,077
56%	\$1,335	\$1,667	\$2,035	\$2,367	\$2,703	\$3,067	\$3,403	\$3,767	\$4,103
61%	\$1,344	\$1,684	\$2,044	\$2,384	\$2,729	\$3,084	\$3,429	\$3,784	\$4,129
66%	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156
71%	\$1,386	\$1,743	\$2,100	\$2,457	\$2,814	\$3,171	\$3,528	\$3,885	\$4,242
76%	\$1,416	\$1,780	\$2,144	\$2,508	\$2,872	\$3,236	\$3,600	\$3,964	\$4,328
81%	\$1,446	\$1,817	\$2,188	\$2,559	\$2,930	\$3,301	\$3,672	\$4,043	\$4,414
86%	\$1,476	\$1,854	\$2,232	\$2,610	\$2,988	\$3,366	\$3,744	\$4,122	\$4,500
91%	\$1,506	\$1,891	\$2,276	\$2,661	\$3,046	\$3,431	\$3,816	\$4,201	\$4,586
96%	\$1,540	\$1,932	\$2,323	\$2,715	\$3,106	\$3,498	\$3,889	\$4,281	\$4,672

(4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. DEPARTMENT ACTION ON RESPONSIBILITY TO REPORT CHANGES.**

*The Department must take action on the following reported changes: Providers and those eligible for child care assistance are responsible for reporting changes which may affect child care benefits.* (4-2-08)( )

**01. Change in Income or Hours of Activity.** If a change in income or hours of qualifying activity results in a decrease in the amount of the child care benefit, the Department will make the change effective the month following the month the change is reported. (4-2-08)

**02. Change in Billed Amount.** If the billed amount of child care results in a decrease in the amount of the child care benefit, the Department will make the changes effective in the month the changes were reported. (4-2-08)

**03. Change Resulting in an Increase.** If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the changes were reported. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

**701. RECOUPMENT OF OVERPAYMENTS AND RECOVERY.**

*An overpayment for child care services may occur as the result of Department, family or provider error, intentional program violations (IPV), or fraud, as established by a judicial or administrative determination as described in Section 56-227, Idaho Code.*

**01. Recoupment of Overpayments.** The Department may recoup or recover the amount paid for child care services from a provider. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. **Recovery** Recoupment of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more. Interest will not accrue on overpayments made due to Department error. An overpayment due to family or provider error, IPV or fraud must be recovered in full. (4-2-08)( )

~~**01. Provider Repayment Requirement.** A provider must repay any overpayment resulting from the provider's failure to report changes within ten (10) days as required under Section 808 of these rules. A provider may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of eligibility to receive ICCP payments. Ineligibility will continue until the provider repays the overpayment or a new repayment agreement is negotiated with the Department. (4-2-08)~~

**02. Parental Repayment Requirement.** A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section 201 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

**704. DENIAL OF PAYMENT.**

The Department may deny payment for the reasons described in Subsections 704.01 through 704.04 of this rule. ( )

**01. Services Not Provided.** Any or all claims for child care services it determines were not provided. ( )

**02. Services Not Documented.** Child care services not documented by the provider as required in Subsection 810.01 of these rules. ( )

**03. Contrary to Rules or Provider Agreement.** Child care services provided contrary to these rules or the provider agreement. ( )

**04. Failure to Provide Immediate Access to Records.** The Department may deny payment when the provider does not allow immediate access to records as provided in Subsection 810.02 of these rules. ( )

**7045. FUNDING RESTRICTIONS.**

If a funding shortfall is projected, the Department may reduce child care benefits to ensure that ICCP operates within its financial resources. (4-2-08)

~~7056. -- 7949. (RESERVED).~~

**ENFORCEMENT REMEDIES**  
**(Sections 750 through 799)**

**750. TERMINATION OF PROVIDER STATUS.**

Under Section 56-209h, Idaho Code, the Department may terminate the provider agreement of, or otherwise deny provider status for a period up to five (5) years from the date the Department's action becomes final to any individual or entity providing ICCP. ( )

**01. Submits an Incorrect Claim.** Submits a claim with knowledge that the claim is incorrect. ( )

**02. Fraudulent Claim.** Submits a fraudulent claim. ( )

**03. Knowingly Makes a False Statement.** Knowingly makes a false statement or representation of material facts in any document required to be maintained or submitted to the Department. ( )

**04. Immediate Access to Documentation.** Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. ( )

**05. Non-Compliance With Rules and Regulations.** Fails repeatedly or substantially to comply with the rules and regulations governing Idaho child care payments. ( )

**07. Violation of Material Term or Condition.** Knowingly violates any material term or condition of the provider agreement. ( )

**08. Failure to Repay.** Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement. ( )

**09. Fraudulent or Abusive Conduct.** Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of child care services. ( )

**10. Failure to Meet Qualifications.** Fails to meet the qualifications specifically required by rule or by any applicable licensing entity. ( )

**751. REFUSAL TO ENTER INTO AN AGREEMENT.**

The Department may refuse to enter into a provider agreement for the reasons described in Subsections 751.01 through 751.06 of this rule. ( )

**01. Convicted of a Felony.** The provider has been convicted of a felony relating to their involvement in a public assistance program or of a crime listed in Section 805 of these rules. ( )

**02. Committed an Offense or Act Not in Best Interest of a Child Care Participants.** The provider has committed an offense or act which the Department determines is inconsistent with the best interests of ICCP participants. ( )

**03. Failed to Repay.** The provider has failed to repay the Department monies which had been previously determined to have been owed to the Department. ( )

**04. Investigation Pending.** The provider has a pending investigation for program fraud or abuse. ( )

**05. Terminated Provider Agreement.** The provider was the managing employee, officer, or owner of an entity whose provider agreement was terminated under Section 750 of these rules. ( )

**06. Excluded Individuals.** The provider has a current exclusion from participation in federal programs

by the Office of Inspector General List of Excluded Individuals and Entities. ( )

**752. PROVIDER NOTIFICATION.**

When the Department determines actions defined in Sections 701 through 705, 750, and 751 of these rules are appropriate, it will send written notice of the decision to the provider or person. The notice will state the basis for the action, the length of the action, the effect of the action on that person's ability to provide services under state and federal programs, and the person's appeal rights. ( )

**753. NOTICE TO STATE LICENSING AUTHORITIES.**

The Department will promptly notify all appropriate licensing authorities having responsibility for licensing, of a Department action, and the facts and circumstances of that action. The Department may request certain action be taken and that the Department be informed of actions taken. ( )

**754. -- 799. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. HEALTH AND SAFETY REQUIREMENTS.**

All providers must ~~submit a written statement that they~~ comply with the health and safety requirements listed in Subsections 802.01 through 802.101 of ~~these~~ this rules. The provider must agree to a health and safety inspection. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law. (4-2-08)( )

**01. Age of Provider.** All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. (4-2-08)

**02. Sanitary Food Preparation.** Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. (4-2-08)

**03. Food Storage.** All food served in child care facilities must be stored to protect it from potential contamination. (4-2-08)

**04. Hazardous Substances.** Medicines, cleaning supplies, and other hazardous substances must be stored out of the reach of children. (4-2-08)

**05. Emergency Communication.** A telephone or some type of emergency communication system is required. (4-2-08)

**06. Smoke Detectors, Fire Extinguishers, and Exits.** A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. (4-2-08)

**07. Hand Washing.** Each provider must wash his hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. (4-2-08)

**08. CPR/First Aid.** Providers must insure that at all times children are present at least one (1) adult on the premises has current certification in pediatric rescue breathing and first aid treatment from a certified instructor. (4-2-08)

**09. Health of Provider.** Each provider must certify that he does not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in his care. (4-2-08)

10. **Child Abuse.** Providers must report suspected child abuse to the appropriate authority. (4-2-08)

11. **Immunization Records.** Providers must obtain immunization records for all children enrolled and attending child care. ( )

(BREAK IN CONTINUITY OF SECTIONS)

809.—999. (RESERVED).

**810. DOCUMENTATION OF SERVICES AND ACCESS TO RECORDS.**

01. **Documentation of Services.** Providers must generate documentation at the time of service sufficient to support the reimbursement for child care services. Documentation must be legible and must be retained for a period of three (3) years from the date the child care was provided. Documentation to support child care services includes: ( )

a. **Records of attendance;** ( )

b. **Billing records and receipts;** ( )

c. **Policies regarding sign-in procedures, and others as applicable; and** ( )

d. **Sign-in records, electronic or manual, or the Child and Adult Food Care Program records.** ( )

02. **Immediate Access to Records.** Providers must grant to the Department and its agents, immediate access to records for review and copying during normal business hours. These records are defined in Subsection 810.01 of this rule. ( )

03. **Copying Records.** The Department and its authorized agents may copy any record as defined in Subsection 810.01 of this rule. The Department may request in writing to have copies of records supplied by the provider. The requested copies must be furnished within twenty (20) working days after the date of the written request, unless an extension of time is granted by the Department for good cause. Failure to timely provide requested copies will be a refusal to provide access to records. ( )

04. **Removal of Records From Provider's Premises.** The Department and its authorized agents may remove from the provider's premises copies of any records defined in Subsection 810.01 of this rule. ( )

811. -- 999. (RESERVED).

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

**16.07.33 - ADULT MENTAL HEALTH SERVICES**

**DOCKET NO. 16-0733-0801**

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2009 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 Sections 39-3133, and 56-1003(3)(c), 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 Wednesday, January 2, 2008, Idaho Administrative Bulletin, Vol. 08-1, pages 159 through 166.

**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 Scott Tiffany, Division of Behavioral Health, at (208) 332-7243.

DATED this 18th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**DOCKET NO. 16-0733-0801 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 08-1, January 2, 2008, pages 159 through 166.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2009 Idaho State Legislature for final adoption.**



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

### **16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES**

#### **DOCKET NO. 16-0737-0801 (NEW CHAPTER)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, 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 Wednesday, October 15, 2008.

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:

In accordance with Executive Order 2006-18, the Department created a new Division of Behavioral Health. This new division is responsible for administering mental health services for children under the Children's Mental Health (CMH) Program. In order to execute this responsibility, the rules governing Department-administered children's mental health services are being repromulgated in a new chapter under this docket. These rules are administered by the Division of Behavioral Health under the authority of the Department Director.

The new chapter of rules is IDAPA 16.07.37, "Children's Mental Health Services." The chapter defines the scope of services under the Children's Mental Health Program and describes the eligibility criteria, application requirements, services, and appeal process under this program. The new CMH chapter incorporates and replaces the rules pertaining to children's mental health services currently contained in IDAPA 16.06.01, "Rules Governing Family and Children's Services." IDAPA 16.06.01 is being amended under companion Docket No. 16-0601-0801.

**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

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was conducted in April and May of 2008. The Notice of Intent to Promulgate a Rule - Negotiated Rulemaking published in the April 2, 2008, Administrative Bulletin Vol. 08-4.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Chuck Halligan at (208) 334-6559.

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 Wednesday, October 22, 2008.

DATED this 20th day of August, 2008.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036

(208) 334-5564 phone (208) 334-6558 fax  
dhwrules@dhw.idaho.gov

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0737-0801**

**IDAPA 16, TITLE 07, CHAPTER 37**

**16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES**

**000. LEGAL AUTHORITY.**

Under Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code, the Idaho Legislature has delegated to the Department the responsibility to establish and enforce rules and methods of administration needed to provide children's mental health services in accordance with the Children's Mental Health Services Act. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.07.37, "Children's Mental Health Services." ( )

**02. Scope.** This chapter defines the appeal process, scope of services, eligibility criteria, and application requirements for the provision of children's mental health services by the Department. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost in the main office of the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. ( )

**003. ADMINISTRATIVE APPEALS.**

**01. Appeal from a Denial Based on Eligibility Criteria.** Administrative appeals from a denial of children's mental health services based on the eligibility criteria under Section 407 of these rules are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**02. Appeal of Decision Based on Clinical Judgment.** All decisions involving clinical judgment, which may include the category of services, the particular provider of services, or the duration of services, are reserved to the Department, and are not subject to appeal, administratively or otherwise, in accordance with *Maresh v. State*, 132 Idaho 221, 970 P.2d 14 (Idaho 1999). ( )

**004. INCORPORATION BY REFERENCE.**

American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), Washington, D.C., American Psychiatric Association, 2000, is hereby incorporated by reference under this chapter of rules. Copies of the manual are available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. ( )

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- 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. ( )

**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. ( )

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

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at <http://>

www.healthandwelfare.idaho.gov. ( )

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

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**007. -- 008. (RESERVED).**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department Criminal History and Background Check.** Department employees, applicants, transfers, reinstated former employees, student interns, contract employees, volunteers, and others assigned to programs that involve direct contact with children or vulnerable adults as defined under Section 39-5302, Idaho Code, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**02. Availability to Work or Provide Service.** Certain individuals are allowed to provide services after the criminal history and background check is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." The criminal history and background check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. ( )

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**

For the purposes of these rules, the following terms apply: ( )

**01. Alternate Care.** Temporary living arrangements outside the family home which may include licensed foster care, residential treatment, and other facilities licensed by the state to provide twenty-four (24) hour care for children in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." ( )

**02. Alternate Care Plan.** A federally-required component of the treatment plan for children in alternate care. The alternate care plan contains elements related to reasonable efforts, the treatment plan, child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical and other information important to the day-to-day care of the child. An alternate care plan is part of the treatment plan for children placed in alternate care. ( )

**03. Area(s) of Concern.** A circumstance or circumstances that brought a child and family to the attention of the Department. ( )

**04. Assessment.** The gathering of historical and current clinical information through a clinical interview and from other available resources to identify the child's mental health issues, the child's strengths, the family's strengths, and the service needs. ( )

**05. Case Management.** A change-oriented service provided to families that assures and coordinates the provision of an assessment, treatment planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. ( )

**06. Case Record.** Compilation of all electronic and hard copy documentation relating to a child who is receiving or has received children's mental health services including legal documents, identifying information, and assessments. ( )

- 07. Child.** An individual who is under the age of eighteen (18) years. ( )
- 08. Children's Mental Health Services.** The children's mental health services are listed under Section 400 of these rules. These services are provided in response to the mental health needs of children eligible for services under Subsection 407 of these rules and their families in accordance with the provisions of the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code. ( )
- 09. Clinician.** Any of the direct service personnel with a Master's degree working in regional Children's Mental Health programs, including master's level social workers, psychologists, counselors, and family therapists. ( )
- 10. Crisis Intervention.** A set of planned activities for a child eligible for services under Subsection 407 of these rules designed to reduce the risk of life-threatening harm to self or another person. ( )
- 11. Crisis Response.** A service for a child that involves immediate actions taken to assess risk or intervene in an emergency as defined in Section 16-2403(6), Idaho Code. A determination of eligibility under Subsection 407 of these rules is not required for crisis response. ( )
- 12. Day Treatment Services.** Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational, and family interventions provided on a regularly scheduled, typically daily, basis. ( )
- 13. Department.** The Idaho Department of Health and Welfare or its designee. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code. ( )
- 14. Desired Result.** Behaviorally-specific description of the child's and family's circumstances when the factors that brought the child and family to the Department's attention, either no longer exist or are significantly reduced. ( )
- 15. Director.** The Director of the Idaho Department of Health and Welfare or his designee. ( )
- 16. Emergency.** Emergency, as defined in Section 16-2403(6), Idaho Code, means a situation in which the child's condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child's condition which cannot be eliminated by the use of supportive services or intervention by the child's parents, or mental health professionals, and treatment in the community while the child remains in his family home. ( )
- 17. Extended Family Member of an Indian Child.** As defined by the law or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. ( )
- 011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**  
For the purposes of these rules, the following terms apply: ( )
- 01. Family.** A family is two (2) or more persons related by blood, marriage, or adoption. ( )
- 02. Family Support Services.** Assistance provided to a family to assist them in caring for a child eligible for services under Subsection 407 of these rules. The purpose of family support services is to strengthen adults in their role as parents through the provision of services including: assistance with transportation, family counseling services, training, education, and emergency assistance funds in accordance with IDAPA 16.06.13, "Rules Governing Emergency Assistance for Families and Children." Family support services must be on the treatment plan. ( )
- 03. Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. ( )

- 04. Guardian.** ( )
- a.** As set forth under Title 15, Chapter 5, Part 2, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, as set forth under Title 15, Chapter 5, Part 2, Idaho Code; or ( )
- b.** The Department, an agency, or an individual, other than a parent, who is acting in the place of a parent (in loco parentis) and has assumed legal responsibility for, custody of, or possession of a child. ( )
- 05. Independent Living.** Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. ( )
- 06. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 USC 1606. ( )
- 07. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: ( )
- a.** A member of an Indian tribe; or ( )
- b.** Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. ( )
- 08. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 USC 1901, et seq. ( )
- 09. Indian Child's Tribe.** ( )
- a.** The Indian tribe in which an Indian child is a member or eligible for membership; or ( )
- b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. ( )
- 10. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 USC 1602(c). ( )
- 11. Inpatient Services.** Mental health and medical services provided to a child admitted to a psychiatric hospital. ( )
- 012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.** ( )  
For the purposes of these rules, the following terms apply: ( )
- 01. Licensed.** Facilities or programs that are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or hospitals licensed in accordance with IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." ( )
- 02. Medicaid.** Idaho's Medical Assistance Program administered under Title XIX of the Social Security Act. ( )
- 03. Outpatient Services.** Mental health services provided to a child who is not admitted to a psychiatric hospital or in a residential treatment setting. ( )
- 04. Parent.** A person who, by birth or through adoption, is considered legally responsible for a child. The term "guardian" is not included in the definition of parent. ( )
- 05. P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." ( )

( )

**06. P.L. 105-89.** Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. ( )

**07. Reasonable Efforts.** A court determination that the Department offered or provided services to a family intended to assist a child eligible for services under Subsection 407 of these rules to remain in the family home, return to the family home, or to finalize a permanency plan. ( )

**08. Residential Treatment.** A treatment facility licensed as a children's residential care facility that provides twenty-four (24) hour care in a highly-structured setting delivering substitute parental care and mental health services. ( )

**09. Respite Care.** Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. ( )

**013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.**

For the purposes of these rules, the following terms apply: ( )

**01. Sliding Fee Scale.** A scale used to determine an individual's cost for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." ( )

**02. Teens at Risk.** Individuals attending Idaho secondary public schools who have been identified as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance use disorder. ( )

**03. Teen Early Intervention Specialist.** A person with a master's degree in social work, psychology, marriage and family therapy, counseling, chemical dependency, addictive studies, psychiatric nursing, or very closely-related field of study contracted to work with teens at risk. ( )

**04. Treatment Foster Care.** A service that provides clinical intervention for children eligible for services under Subsection 407 of these rules within the private homes of trained, licensed foster families. ( )

**05. Title IV-E.** Title IV-E under the Social Security Act provides funding for foster care maintenance and adoption assistance payments for certain eligible children. ( )

**06. Title XIX (Medicaid).** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. ( )

**07. Treatment Plan.** A written and signed agreement between the Department and a parent or guardian that serves as the guide for the provision of services. The plan contains treatment goals, areas of concern, desired results, and task responsibilities, including payment for services. The plan, developed with the child, when possible, and the child's parent or guardian clearly identifies who does what, when, and how. The treatment plan includes the alternate care plan, if the child is in alternate care. ( )

**08. Voluntary Placement Agreement.** A standardized written agreement signed by a parent or guardian and the Department that outlines specific responsibilities of each party and authorizes the Department to place a child in alternate care. ( )

**09. Wraparound.** Wraparound is a planning process that brings together a team of professionals and citizens working together to support children eligible for services under Subsection 407 of these rules and their families. Members of the team include the child, family members, representatives of public and private agencies, civic groups, and other community members. The services and supports focus on the strengths of the child and

family, are provided in the local community, and are customized to fit the individual culture of the family. ( )

**014. -- 099. (RESERVED).**

**GENERAL PROVISIONS FOR CHILDREN RECEIVING MENTAL HEALTH  
SERVICES AND THEIR FAMILIES  
(Sections 100 Through 399)**

**100. GENERAL REQUIREMENTS FOR CHILDREN AND FAMILIES.**

**01. Reasonable Efforts.** The Department must document services offered or provided to a family to assist a child eligible for services under Subsection 407 of these rules to remain in the family home, return to the family home, or finalize a permanency plan. The court will make the determination of whether or not the Department's efforts were reasonable. ( )

**02. Least Restrictive Setting.** Whenever possible, the Department will arrange placement: ( )

**a.** In the least restrictive setting available that will meet the child's mental health treatment needs; and ( )

**b.** That is in close proximity to the parent or guardian. ( )

**c.** If the placement does not meet the requirements of Subsections 100.02.a. and 100.02.b. of this rule, the Department will provide written justification to the child's parent or guardian that the placement is in the best interests of the child. ( )

**03. Visitation for Child's Parent or Guardian.** Visitation arrangements will be documented in the alternate care plan. ( )

**04. Notification of Change in Placement.** ( )

**a.** The Department will provide written notification to the child's parent or guardian no later than seven (7) days after a child's change of placement. ( )

**b.** If an Indian child under jurisdiction of the court is relocated to another alternate care setting, similar notice must be sent to the child's Indian custodian, and the child's tribe. Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who will provide notice to the parent or Indian custodian and tribe. ( )

**101. TREATMENT PLAN DEVELOPMENT.**

**01. Development of Treatment Plan.** A treatment plan will be completed within fifteen (15) days of the date the child was determined eligible for Children's Mental Health services. The parent or guardian will be given the opportunity to participate in the development of the treatment plan and to sign it. If the services are court-ordered and the parent or guardian refuses to sign the plan, the reason for their refusal will be documented on the plan. If the services are voluntary and the parent or guardian refuses to sign the plan, the Department may close the case. ( )

**02. Annual Development of Treatment Plan.** The Department will develop a plan at least annually. The parent or guardian will be given the opportunity to participate in the annual development of the treatment plan and to sign it. ( )

**03. One Hundred Twenty Day Review.** Treatment plans are to be reviewed with the family at least

once every one hundred twenty (120) days. ( )

**04. Goals and Tasks.** Treatment plans must include a long-term goal that identifies specific behavior changes, has measurable desired results, and has specific tasks that identify who, how, and when the tasks will be completed. ( )

**102. -- 104. (RESERVED).**

**105. CASE RECORDS.**

**01. Electronic and Physical Files.** The Department must maintain an electronic file and a physical file containing information on each child receiving children's mental health services. The physical file may include non-electronic documentation such as originals or copies of all court orders, birth certificates, social security cards and assessment information which originates outside the Department. ( )

**02. Storage of Records.** All physical case records must be stored in a secure file storage area, away from public access and retained not less than five (5) years after the case is closed, after which they may be destroyed.

**a.** Exception for Adoption Records. Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. ( )

**b.** Exception for Case Records Involving an Indian Child. A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. ( )

**106. -- 399. (RESERVED).**

**CHILDREN'S MENTAL HEALTH SERVICES  
(Sections 400 through 499)**

**400. CHILDREN'S MENTAL HEALTH SERVICES.**

The Department is the lead agency in establishing and coordinating community supports, services, and treatment for children eligible for services under Subsection 407 of these rules and their families. The following services, as defined under Sections 010 through 013 of these rules, are provided by or through Children's Mental Health field offices in each region: ( )

- 01. Assessment.** ( )
- 02. Case Management.** ( )
- 03. Crisis Response.** ( )
- 04. Day Treatment Services.** ( )
- 05. Family Support Services.** ( )
- 06. Independent Living.** ( )
- 07. Inpatient Services.** ( )
- 08. Outpatient Services.** ( )
- 09. Residential Treatment.** ( )
- 10. Respite Care.** ( )
- 11. Treatment Foster Care.** ( )



**12. Wraparound.** ( )

**401. TEENS AT RISK PROGRAM.**

The Teens at Risk program is for individuals attending Idaho secondary public schools who have been identified as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance use disorder. The Department may enter into contracts for Teens at Risk programs in cooperation with Idaho public school districts. The Department reserves the right to make the final determination to award a school district a Teens at Risk contract. ( )

**01. Application.** School districts may apply to the Department through a competitive application process. The Department will provide written information to the State Department of Education and interested school districts on the amount of funding available, closing date for submission of applications, and information on how to obtain application forms and instructions by July 1 of each year that funding is available. Only applications submitted on the prescribed forms and consistent with Department instructions will be considered for evaluation. ( )

**02. Contracting Process.** ( )

**a.** A team comprised of at least one (1) Department staff person, a representative from the state Department of Education, a representative from the local school district, and a parent, will evaluate the applications from school districts for contracts for Teens at Risk programs. The evaluation criteria will include the demonstrated need for the program in the school district and the contribution the school district is providing to the program, with a preference for rural school districts. The Department will consider the team recommendations and make the final determination of contracts for Teens at Risk programs. ( )

**b.** The number of school districts awarded a Teens at Risk program will depend upon the amount of specific funding appropriated by the legislature for this program. ( )

**c.** The Department will enter into a written contract with each school district awarded a Teens at Risk program. The contract will set forth the terms, services, data collecting, funding, and other activities prior to the implementation of the program. ( )

**03. Services.** Teen early intervention specialists hired or under contract with the school district will be available to serve teens at risk within the school setting. Services will include group counseling, recovery support, suicide prevention and other mental health and substance use disorder counseling services as needed. Teens at risk who are not enrolled in public schools may only participate in services with the permission of the local school principal for the Teens at Risk program or when ordered by a judge. Parents of teens participating in the Teens at Risk program will not be charged for services provided by the program. ( )

**04. Outcomes.** The Department will gather data and evaluate the effectiveness of the Teens at Risk program. In accordance with Section 16-2404A(7), Idaho Code, the Department may contract with state universities or colleges to assist in the identification of appropriate data elements, data collection, and evaluation. Data elements used to evaluate the program may include: ( )

**a.** Teen arrests, detention, and commitments to state custody; ( )

**b.** Teen suicide rates; ( )

**c.** Impacts on juvenile mental health and drug courts; ( )

**d.** Access to mental health services; and ( )

**e.** Academic achievement and school disciplinary actions. ( )

**402. -- 404. (RESERVED).**

**405. ACCESSING CHILDREN'S MENTAL HEALTH SERVICES.**

Children's mental health services may be accessed either through an application for services or through a court order for services. An application for services must be signed by a child's parent or guardian. ( )

**406. MENTAL HEALTH ASSESSMENT.**

Once an application has been signed or a court order has been received for children's mental health services, the Department will schedule and conduct a mental health assessment. A Department clinician will either complete a mental health assessment, or, at the Department's discretion, accept an assessment completed by another mental health professional. In order to be considered, assessments completed by other mental health professionals must have occurred within ninety (90) days prior to the date of application or court order. The Department clinician will gather additional information, as needed, in order to complete the assessment process. ( )

**407. ELIGIBILITY DETERMINATION.**

**01. Eligibility Requirements.** To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: ( )

a. Be under eighteen (18) years of age; ( )

b. Reside within the state of Idaho; ( )

c. Have a DSM-IV-TR Axis I diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible Axis I diagnosis, although one (1) or more of these conditions may co-exist with an eligible Axis I diagnosis; and ( )

d. Have a substantial functional impairment as assessed by using the Child and Adolescent Functional Assessment Scale (CAFAS) or the Preschool and Early Child Functional Assessment Scale (PECFAS). Substantial functional impairment requires a full eight (8) (CAFAS) or seven (7) (PECFAS) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: ( )

i. Self-harmful behavior; ( )

ii. Moods/emotions; or ( )

iii. Thinking. ( )

**02. Court-Ordered Assessment, Treatment, and Services.** The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. ( )

**03. Ineligible Conditions.** A child who does not meet the requirements under Subsections 407.01 and 407.02 of this rule is not eligible for children's mental health services, other than crisis response. A child with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services" or IDAPA 16.04.11, "Developmental Disabilities Agencies," for substance use or developmental disability services. ( )

**408. -- 409. (RESERVED).**

**410. NOTICE OF DECISION ON ELIGIBILITY.**

**01. Notification of Eligibility Determination.** The Department will determine the child's eligibility for children's mental health services, in accordance with Section 407 of these rules, within thirty (30) calendar days of receipt of a signed application for services. Within five (5) working days of the determination of eligibility, the Department will send written notification to the child's parent or guardian of the eligibility determination. The written notice will include: ( )

- a. The child's name and identifying information; ( )
- b. A statement of the decision; ( )
- c. A concise statement of the reasons for the decision; and ( )
- d. The process for pursuing an administrative appeal regarding eligibility determinations. ( )

**02. Parental Rights.** If the Department determines that an applicant is eligible for children's mental health services through the Department, the Department clinician must inform the child's parent or guardian that they have the right to reject the services offered by the Department, unless imposed by court order. ( )

**03. Other Information that Must be Provided to the Parent.** The clinician must also inform the parent that fees may be charged for certain services, in accordance with IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," and that a parent has financial responsibility for the child. ( )

**04. Reapplication for Mental Health Services.** If the Department determines that a child is not eligible for children's mental health services through the Department, the child's parent or guardian may reapply after six (6) months or at any time upon a showing of a substantial, material change in circumstances. ( )

**411. -- 414. (RESERVED).**

**415. TREATMENT PLAN.**

A treatment plan will be developed by the Department, a parent or guardian, and the child, if appropriate, and may include the service provider. This plan will be specific, measurable, and realistic in the identification of the goal(s), relevant areas of concern, and desired results, and will be developed in accordance with the requirements under Section 101 of these rules. ( )

**416. OUTCOMES FOR CHILDREN'S MENTAL HEALTH SERVICES.**

Outcomes for children's mental health services are measured through the administration of a satisfaction survey and a standardized functional assessment tool, such as CAFAS or PECFAS. ( )

**417. USE OF PUBLIC FUNDS AND BENEFITS.**

Public funds and benefits will be used to provide services for children eligible for services under Subsection 407 of these rules and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources will be provided to minimize the need for institutional or alternate care placement. Services will be individually planned with the family to meet the unique needs of each child and family. Services will be provided without requiring that a parent or guardian relinquish custody of the child. ( )

**418. CHARGES TO PARENT(S).**

Parent(s) of a child eligible for services under Subsection 407 of these rules who is receiving outpatient services either directly from the Department or through Department contracts with private providers, are responsible for paying for services provided to their child and to their family, including court-ordered children's mental health services. The amount charged for each service will be in accordance with the ability of parent(s) to pay as determined under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." Parent(s) will not be charged for services provided to their child through a Teens at Risk program. ( )

**419. SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.**

The fee charged to parents for outpatient children's mental health services is determined using the sliding fee schedule under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 300. ( )

**420. FEE DETERMINATION FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.**

Prior to the delivery of outpatient services, a "Fee Determination" form must be completed by a child's parent when requesting children's mental health services. The fee determination process includes the considerations found under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 400. ( )

**421. -- 499. (RESERVED).**

**ALTERNATE CARE  
(Sections 500 Through 599)**

**500. AUTHORITY FOR ALTERNATE CARE PLACEMENT.**

The Department may place a child into alternate care under either of the following conditions in Subsection 500.01 or 500.02 of this rule: ( )

**01. Court Order.** The Department may place a child into alternate care when the Department has been ordered by the Court to provide alternate care for a child; or ( )

**02. Voluntary Placement.** The Department may place a child into alternate care with the Department when a parent or guardian is no longer able to maintain a child eligible for services under Subsection 407 of these rules in the child's home and the Department determines that the child would benefit from alternate care and treatment services. A treatment plan, alternate care plan, and a voluntary placement agreement must be developed by the Department and the parent or guardian prior to the child's placement in alternate care. The treatment plan will identify areas of concern, goals, desired results, time frames, tasks and task responsibilities. ( )

**a.** A voluntary placement agreement entered into between the Department and a parent or the guardian of a minor child may be revoked at any time by the child's parent or guardian. ( )

**b.** Voluntary alternate care placements exceeding one hundred eighty (180) days, without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. The Department may request the court hold a hearing for the child in accordance with 16-2407(3), Idaho Code. ( )

**501. PROTECTIONS FOR CHILDREN IN ALTERNATE CARE.**

**01. Statutory Requirements.** The Department must arrange alternate care in accordance with the protections established in Public Law 96-272; the federal "Adoption Assistance and Child Welfare Act of 1980," as amended by Public Law 105-89; the Adoption and Safe Families Act of 1997; the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code; the Child Protective Act, Title 16, Chapter 16, Idaho Code; and the Indian Child Welfare Act. ( )

**02. Requirement for Licensure.** A child that is placed in alternate care must be placed in a licensed foster home, licensed residential care facility, or in a licensed hospital. ( )

**03. Out-of-State Placement.** Placement of a child in an alternate care setting outside the state of Idaho requires that the Department comply with the Interstate Compact on the Placement of Children, in accordance with Section 16-2102, Idaho Code. ( )

**502. (RESERVED).**

**503. DATE A CHILD ENTERED ALTERNATE CARE.**

A child is considered to have entered alternate care on the date the child is actually placed in an alternate care setting. All alternate care benefits, eligibility determinations, and required reviews are based on the date the child entered alternate care. ( )

**504. TITLE IV-E AND TITLE XIX ELIGIBILITY.**

Children placed in alternate care through the Department are eligible for Title IV-E funding and Title XIX, if they meet the eligibility requirements as defined in IDAPA 16.06.01, "Rules Governing Family and Children's Services." Application for these programs will be made by Department clinicians on the forms and in the manner prescribed by the Department's Division of Family and Community Services. ( )

**505. ALTERNATE CARE LICENSURE.**

All private homes and facilities in Idaho providing alternate care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed, approved, or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. ( )

**506. ALTERNATE CARE CASE MANAGEMENT.**

Case management must continue while the child is in alternate care and must include the following: ( )

**01. Preparation for Placement.** Preparing a child for placement in alternate care is the joint responsibility of the child's parent or guardian, the child (when appropriate), the clinician and the alternate care provider. ( )

**02. Information for Alternate Care Provider.** The Department and the child's parent or guardian must inform the alternate care provider of the alternate care provider's roles and responsibilities in meeting the needs of the child and provide the following information to the alternate care provider: ( )

**a.** Any medical, health, and dental needs of the child including the names and addresses of the child's doctor, dentist, and other health providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; ( )

**b.** The child's current functioning and behaviors; ( )

**c.** The child's history, past experiences, and reasons for placement into alternate care; ( )

**d.** The child's cultural and racial identity; ( )

**e.** Any educational, developmental, or special needs of the child; ( )

**f.** Names and addresses of the child's current or last school attended, including homeschool or alternate school, if applicable; ( )

**g.** The child's interests and talents; ( )

**h.** The child's attachment to current caretakers; ( )

**i.** The individualized and unique needs of the child; ( )

**j.** Procedures to follow in case of emergency; and ( )

**k.** Any additional information that may be required to meet the needs of the child. ( )

**03. Consent for Medical Care.** A parent or guardian must sign a Departmental form of consent for medical care and keep the clinician advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the case record. ( )

**04. Financial Arrangements.** The clinician is responsible for explaining the financial and payment arrangements to the alternate care provider and must complete the documentation required for payment to the alternate care provider. ( )

**05. Contact with Child.** The child's parent or guardian, the clinician, the alternate care provider, and the child, if of appropriate developmental age, must establish a schedule for frequent and regular visits between the child and the family and the clinician or his designee. ( )

**a.** Face-to-face contact in the alternate care or treatment setting between the child and the clinician must occur at least monthly. ( )

**b.** Face-to-face contact between the child's parent or guardian and the clinician must occur at least

monthly. ( )

**c.** Frequent and regular contact between the child, the child's parent or guardian, and other family members will be encouraged and facilitated unless it is specifically determined by the Department not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. ( )

**d.** When a child is placed in alternate care in another state, a Department clinician must maintain at least monthly contact with the child, the child's family, and the alternate care provider with whom he has been placed as long as the state of Idaho has the placement responsibility for the child, in accordance with Section 500 of these rules. The supervising agency in the state where the child is living will be requested to maintain monthly, face-to-face contact with the child and make quarterly reports to the Department in accordance with arrangements made through the Interstate Compact on the Placement of Children. ( )

**06. Transition Planning.** Planning for transition from alternate care will be developed with all concerned parties. Transition planning will be initiated at the time of placement and completed prior to the child's return home or to another living arrangement. ( )

**07. Financial and Support Services.** As part of the transition planning, Departmental and community resources will be coordinated to expedite access to Department financial and medical assistance and community support services. ( )

**507. -- 521. (RESERVED).**

**522. ALTERNATE CARE PLANNING.**

Alternate care planning is mandated by the provisions of Sections 471(a)(15) and 475, P.L. 96-272. ( )

**01. Alternate Care Plan Required.** Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. ( )

**a.** The purpose of the plan is to facilitate the provision of mental health treatment services and the safe return of the child to his or her own home as expeditiously as possible, or to make other permanent arrangements for the child if such return is not feasible. ( )

**b.** The alternate care plan must be included as part of the treatment plan. ( )

**02. Written Alternate Care Plan.** The Department must have completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care. ( )

**a.** A parent or guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. ( )

**b.** The alternate care plan must include documentation that a parent or guardian has been provided written notification of: ( )

**i.** Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; ( )

**ii.** Any change of placement, when the child is relocated to another alternate care or institutional setting as soon as possible, but no later than seven (7) days after placement; and ( )

**iii.** Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements. ( )

**c.** All parties involved in developing the alternate care plan, including the alternate care provider, parent or guardian, and the child, if of appropriate developmental age: ( )

i. Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and ( )

ii. Will receive a copy of the alternate care plan from the Department. ( )

**523. -- 535. (RESERVED).**

**536. PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.**

In accordance with Sections 56-203B and 16-2406, Idaho Code, parent(s) are responsible for costs associated with the care of their child in alternate care. ( )

**01. Notice of Parental Responsibility.** The Department will provide the parent(s) with written notification of their responsibility to contribute toward the cost of their child's support, treatment, and care, including clothing, medical, incidental, and educational costs. ( )

**02. Financial Arrangements with Parent(s).** Parent(s) are responsible to reimburse the Department for the costs of alternate care when their child is placed in alternate care in accordance with a court order or voluntary placement agreement. ( )

**a.** Parents are expected to contribute to the cost of their child's care, but parents will not be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. ( )

**b.** The Department will refer the parent(s) to the Bureau of Child Support Services for support payment calculation and payment arrangements. ( )

**537. SUPPORT AGREEMENTS AND SUPPORT ORDERS.**

**01. Support Agreement for Voluntary Placement.** If the placement is voluntary, a parent must sign a support agreement that specifies the amount of support to be paid to the Department, when it is to be paid, and the address to which it is to be paid. ( )

**02. Support Order for Payment of Involuntary Placement Costs.** In the case of a court-ordered placement, if no support agreement has been reached with a parent prior to the court hearing, the Department may request the Court hold a support hearing to establish a support order for payment of involuntary placement costs. ( )

**538. -- 539. (RESERVED).**

**540. INSURANCE COVERAGE.**

The parent or guardian must inform the Department of all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health, and dental insurance coverage is available for the child, the parent must acquire and maintain such insurance. ( )

**541. MEDICAL CARD FOR CHILDREN IN ALTERNATE CARE.**

The Department will issue a medical card to cover medical expenses for each child placed in alternate care. ( )

**542. - 543. (RESERVED).**

**544. MEDICAL EMERGENCIES.**

In case of serious illness, the alternate care provider must immediately seek medical attention for the child and notify the Department as soon as possible. A parent or guardian, the court in an emergency, or the Department, if it is the guardian of the child, has the authority to consent to major medical care or hospitalization in accordance with Section 39-4504, Idaho Code. ( )

**545. DENTAL CARE.**

Each child age three (3) years or older who is placed in alternate care must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter according to a schedule prescribed by the

dentist. ( )

**01. Costs Paid by Medicaid.** If dental care not included in the state medical assistance program is recommended, a request for payment will be submitted to the state Medicaid dental consultant. ( )

**02. Emergencies.** Emergency dental services will be provided for children in alternate care and paid for by the Department, if there are no other financial resources available. ( )

**546. COSTS OF PRESCRIPTION DRUGS.**  
The Department will purchase prescribed drugs, at the Medicaid rate, for a child in alternate care through participating pharmacies. ( )

**547. MEDICAL EXAMINATION UPON ENTERING ALTERNATE CARE.**  
Within thirty (30) days of entering alternate care, each child will receive a medical examination to assess the child's health status, and thereafter according to a schedule prescribed by the child's physician or other health care professional. ( )

**548. -- 550. (RESERVED).**

**551. DRIVERS' TRAINING AND LICENSES FOR CHILDREN IN ALTERNATE CARE.**  
Only a parent or guardian of a child in alternate care may authorize drivers' training, provide payment, and sign for drivers' licenses and permits. ( )

**552. -- 582. (RESERVED).**

**583. PAYMENT TO FAMILY ALTERNATE CARE PROVIDERS.**  
Monthly payments for care provided by family alternate care providers:

Family Alternate Care Payments - Table 583			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$274	\$300	\$431

( )

**01. Gifts.** An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts will be paid in the appropriate months. ( )

**02. Clothing.** Costs for clothing will be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. ( )

**03. School Fees.** School fees due upon enrollment will be paid directly to the school or to the foster parents, based upon the Department's determination of the child's needs. ( )

**584. ADDITIONAL PAYMENTS TO FAMILY ALTERNATE CARE PROVIDERS.**  
For those children who require additional care above room, board, shelter, daily supervision, school supplies, and personal incidentals, the Department may pay the family alternate care provider an additional amount to that paid under Section 583 of these rules. The family alternate care rate is based upon a continuous ongoing assessment of the child's circumstances which necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. Additional payment will be made as follows:

Additional Family Alternate Care Payments - Table 584		
Lowest Level of Need	Moderate Level of Need	Highest Level of Need
\$90 per month	\$150 per month	\$240 per month



- ( )
- 01. Lowest Level of Need.** Ninety dollars (\$90) per month for a child requiring a mild degree of care for documented conditions including: ( )
- a. Chronic medical problems; ( )
  - b. Frequent, time-consuming transportation needs; ( )
  - c. Behaviors requiring extra supervision and control; and ( )
  - d. Need for preparation for independent living. ( )
- 02. Moderate Level of Need.** One hundred fifty dollars (\$150) per month for a child requiring a moderate degree of care for documented conditions including: ( )
- a. Ongoing major medical problems; ( )
  - b. Behaviors that require immediate action or control; and ( )
  - c. Alcohol or other substance use disorder. ( )
- 03. Highest Level of Need.** Two hundred forty dollars (\$240) per month for a child requiring an extraordinary degree of care for documented conditions including: ( )
- a. Serious emotional or behavioral disorder that requires continuous supervision; ( )
  - b. Severe developmental disability; and ( )
  - c. Severe physical disability such as quadriplegia. ( )
- 04. Reportable Income.** Additional payments for more than ten (10) qualified children received during any calendar year must be reported as income to the Internal Revenue Service. ( )

**585. -- 599. (RESERVED).**

**600. TREATMENT FOSTER CARE.**

A family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision. Services provided in treatment foster care are at a more intense level than provided in foster care and at a lower level than provided in residential care. Services may include the following: participation in the development and implementation of the treatment plan, crisis intervention, documentation of services and the child's behavior, participation as a member of a multi-disciplinary team, and transportation. Placement into a treatment foster home for children eligible for services under Subsection 407 of these rules is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs. ( )

- 01. Qualifications.** A treatment foster parent must: ( )
- a. Meet all foster family licensure requirements as set forth in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing"; and ( )
  - b. Complete fourteen (14) hours of additional training per year. The fourteen (14) hours of additional training will be specified in an agreement developed between the treatment foster parents and the Department. ( )
- 02. Availability.** At least one (1) treatment foster parent must be available twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the foster child. ( )

**03. Payment.** The Department will pay treatment foster parents up to one thousand eight hundred (\$1,800) dollars, which includes the monthly payment rate specified in Section 583 of these rules. The payment will be made to treatment foster parents in accordance with a contract with the Department to enable them to fulfill the requirements for treatment foster parents under the treatment plan referenced in Subsection 600.05 of this rule. ( )

**04. Payment to Contractors.** The Department may also provide treatment foster care through a contract with an agency that is a private provider of treatment foster care. The Department will specify the rate of payment in the contract with the agency. ( )

**05. Treatment Plan.** The treatment foster parent(s) must implement a treatment plan, developed in conjunction with the child's clinician, for each child in their care. This plan is incorporated as part of the treatment plan identified in Section 101 of these rules. ( )

**601. -- 699. (RESERVED).**

**700. RESIDENTIAL CARE FACILITIES.**

Residential care facilities provide a more restrictive setting than treatment foster care. Residential care facilities in Idaho are licensed under IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing" to provide residential care for children and staffed by employees who cover assigned shifts. Children placed in residential care facilities receive services that may include the following: assessment, supervision, treatment plan development and implementation, documentation, behaviorally focused skill building, service coordination or clinical case management, consultation, psychotherapy, psychiatric care, and twenty-four (24) hour crisis intervention. Placement into a residential care facility for children eligible for services under Subsection 407 of these rules is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs. ( )

**01. Prior Authorization.** Prior authorization must be obtained from an authorized representative in the Department's Division of Behavioral Health for placement of a child in a residential care facility where the Division of Behavioral Health is making full or partial payment. ( )

**02. Payment.** When care is purchased from private providers, payment will be made in accordance with a contract authorized by the Department, based on the needs of each child being placed and the services to be provided. ( )

**701. -- 799. (RESERVED).**

**800. SIX-MONTH REVIEWS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.**

When a judicial review does not occur at the end of a six (6) month period for any child in an alternate care placement, the Department will conduct a case review to assure compliance with all applicable state and federal laws, and to ensure the plan focuses on the goals of safety, permanency, and well-being of the child. ( )

**01. Notice of Six-Month Review.** The parent or guardian, foster parent of a child, relative providing care for the child or any preadoptive parent are to be provided with notice of their right to be heard in the six-month review. In the case of an Indian child, the child's tribe and any Indian custodian must also be provided with notice. This must not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the review solely on the basis of the receipt of such notice. Participants have the right to be represented by the individual of their choice. ( )

**02. Procedure in the Six-Month Review.** The parties who received notice will be given the opportunity to participate in the case review. ( )

**03. Members of Six-Month Review Panel.** The six-month review panel must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent or guardian. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes, and citizens qualified by experience, professional background, or training. Members of the panel will be chosen by and receive instructions from an authorized representative in the Department's Division of Behavioral Health, to enable them to understand the review process and their roles as participants. ( )

**04. Considerations in Six-Month Review.** Whether conducted by the court in a review hearing or a Department review panel, under state law, federal law and regulation, each of the following must be addressed in a six-month review: ( )

- a.** Determine the extent of compliance with the treatment plan; ( )
- b.** Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; ( )
- c.** Review compliance with the Indian Child Welfare Act, when applicable; ( )
- d.** Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and ( )
- e.** Project a date by which the child may be returned and safely maintained at home or placed for adoption, guardianship, or other permanent placement. ( )

**05. Recommendations and Conclusions of Six-Month Review Panel.** Following the six-month review, written conclusions and recommendations will be provided to all participants, subject to Department safeguards for confidentiality. The document containing the written conclusions and recommendations must also include appeal rights. ( )

**801. PERMANENCY HEARINGS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.**

Under Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must have a permanency hearing conducted by the court or a court designee. Permanency hearings must be held no later than twelve (12) months after the date of the child's placement in alternate care and no later than every twelve (12) months thereafter while the child remains in alternate care. A twelve (12) month permanency hearing will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department. ( )

**01. Department Request for Permanency Hearing.** The Department may request the court hold a permanency hearing for a child in accordance with Section 16-2407(3), Idaho Code. ( )

**02. Attendance at Permanency Hearings.** The permanency hearing includes, at a minimum, the child's parent or guardian, foster parent of a child, and any preadoptive parent or relative providing care for the child. In the case of an Indian child, the child's tribe and Indian custodian (if there is one), must also be included in the permanency hearing. Parties will be provided, by the court, with written notice of the hearing and of their right to be heard. This is not to be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis of the receipt of such notice. ( )

**03. Judicial Determinations.** ( )

**a.** The court, or an officer designated by the court, will determine if the Department has made reasonable efforts to finalize a permanency plan for the child and issue an order specifying the permanency plan. ( )

**b.** In cases where the Department has documented, in the alternate care plan component of the treatment plan, compelling reasons for not terminating the parent and child relationship, the court reviews and determines if the compelling reasons exist. ( )

**802. -- 999. (RESERVED).**

# IDAPA 17 - INDUSTRIAL COMMISSION

## 17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0802

### 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) 72-508, 72-720, 72-721, 72-722, AND 72-723, Idaho Code, and Section 72-803 of the Idaho Code.

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

<b>WEDNESDAY OCTOBER 15, 2008 3:00 pm - 5:30 pm</b>	<b>TUESDAY OCTOBER 28, 2008 3:00 pm - 5:30 pm</b>	<b>WEDNESDAY OCTOBER 29, 2008 3:00 pm - 5:30 pm</b>
<b>Best Western Coeur d'Alene Inn 506 W. Appleway Ave. Coeur d'Alene, ID</b>	<b>Industrial Commission 700 S. Clearwater Lane Boise, ID</b>	<b>Holiday Inn Express 2270 Channing Way Idaho Falls, ID</b>

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:

1. Mandated by Section 72-803, Idaho Code, requiring an adjustment each fiscal year by the amount determined by the Director of Health and Welfare in accordance with the procedure set out in Section 56-136, Idaho Code. Adjusts the conversion factors paid to medical providers by the inflation factor percentage determined by the Director of Health and Welfare for Medicaid covered services.
2. To clarify that these rules are applicable to all entities providing services to injured workers even as agents. Changes the definition of a medical "provider" to include any person or entity acting on behalf of a provider with respect to medical charges payable under this rule.
3. To provide a medical fee schedule for hospitals providing medical services to injured Idaho workers similar to that established for physicians.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: There is no fiscal impact with the proposed changes.

**NEGOTIATED RULEMAKING:** In compliance with Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it was determined that broader input would be obtained through formal rulemaking and public hearings or the changes were mandated by statute.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Patti Jarossy at (208)334-6084.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 31, 2008.

DATED this 19th day of August, 2008.

Mindy Montgomery, Director  
Idaho Industrial Commission  
700 S. Clearwater Lane, P.O. Box 83720  
Boise, ID 83720-0041  
Phone: 208-334-6000; Fax: 208-334-5145

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0208-0802**

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

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided under the Idaho Workers' Compensation Law: (3-12-07)

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

**a.** "Acceptable Charge"; ~~means~~ The lower of the charge for medical services calculated in accordance with this rule or as billed by the provider, or the charge agreed to pursuant to written contract. (3-12-07)( )

**b.** Ambulatory Payment Classification (APC). A payment system adopted by Medicare for outpatient services. ( )

**bc.** "Ambulatory Surgery Center (ASC)"; ~~means~~ a facility providing surgical services on an outpatient basis only. (4-2-08)( )

**d.** Critical Access Hospital. A hospital which meets all of the current designation criteria of the Centers for Medicare and Medicaid Services (CMS) for a critical access hospital, including, but not limited to, the maximum number of beds and minimum distance from other hospitals. ( )

**ee.** "Hospital"; ~~is a~~ Any acute care facility providing medical or hospital services and which bills using a Medicare universal hospital billing form. (4-2-08)( )

*i.* Large hospital is any hospital with more than one hundred (100) acute care beds. (4-2-08)

*ii.* Small Hospital is any hospital with one hundred (100) acute care beds or less. (4-2-08)

**f.** Implantable Hardware. Objects or devices that are made to support, replace or act as a missing anatomical structure and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. ( )

**g.** Medicare Severity -- Diagnosis Related Group (MS-DRG). A system adopted by the Centers for Medicare and Medicaid Services (CMS) that groups hospital admissions based on diagnosis codes, surgical procedures and patient demographics. ( )

**hh.** "Provider"; ~~means~~ Any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which ~~are~~ is compensable under Idaho's Workers' Compensation Law. This includes any person or entity acting for, on behalf of, or in place of a provider, or one that has acquired or succeeded to the interests of a provider with respect

to charges payable under this rule. (3-12-07)(\_\_\_\_)

**ei.** “Payor” ~~means~~ ~~the~~ legal entity responsible for paying medical benefits under Idaho’s Workers’ Compensation Law. (6-1-92)(\_\_\_\_)

**fi.** “Medical Service” ~~means~~ ~~m~~ Medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply. (3-12-07)(\_\_\_\_)

**gk.** “Reasonable” ~~means~~ ~~a~~ charge that does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined below. (3-12-07)(\_\_\_\_)

**hl.** “Usual” ~~means~~ ~~t~~ The most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (3-12-07)(\_\_\_\_)

**im.** “Customary” ~~means~~ ~~a~~ charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (3-12-07)(\_\_\_\_)

**02. Acceptable Charge.** Payors shall pay providers the acceptable charge for medical services. (3-12-07)

**a.** Adoption of Standard for Physician Services. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by providers other than hospitals and ASCs. *The standard for determining the acceptable charge for hospitals and ASCs shall be:* (4-2-08)(\_\_\_\_)

*i. For large hospitals: Eighty five percent (85%) of the appropriate inpatient charge. (4-2-08)*

*ii. For small hospitals: Ninety percent (90%) of the appropriate inpatient charge. (4-2-08)*

*iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the appropriate charge. (4-2-08)*

*iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). (4-2-08)*

*v. Paragraph 031.02.e., shall not apply to hospitals or ASCs. The Commission shall determine the appropriate charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. (4-2-08)*

**b.** Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Anesthesia	00000 - 09999	Anesthesia	<del>\$58.19</del> \$ 60.05

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	<del>\$140</del> <u>\$144.48</u>
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	<del>\$125</del> <u>\$129.00</u>
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	<del>\$110</del> <u>\$113.52</u>
Surgery - Group Four	20000 - 20615 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Musculoskeletal System Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	<del>\$85</del> <u>\$87.72</u>
Surgery - Group Five	10000 - 12999 29000 - 29799	Integumentary System Casts & Strapping	<del>\$67</del> <u>\$69.14</u>
Radiology	70000 - 79999	Radiology	<del>\$85</del> <u>\$87.72</u>
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	<del>\$45</del> <u>\$46.44</u>
Medicine - Group Two	90800 - 92999 96040 - 96999 99000 - 99607	Psychiatry & Medicine Assessments & Special Procedures E / M & Miscellaneous Services	<del>\$64.50</del> <u>\$66.56</u>
Medicine - Group Three	93000 - 93999 95000 - 96020	Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures	<del>\$70</del> <u>\$70.24</u>

(4-2-08)( )

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be

used for CPT Code 01996.

(4-2-08)

**d.** Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year (FY), starting with FY 2009, as determined by the director of the Department of Health and Welfare using the methodology set forth in section 56-136, Idaho Code, pursuant to Section 72-803, Idaho Code. (4-2-08)

**e.** Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.02.b., determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. (4-2-08)

**f.** Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers that affect payment will be reimbursed as follows: ~~(3-12-07)~~(\_\_\_\_)

i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (3-12-07)

ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (3-12-07)

iii. Modifier 80: Twenty-five percent (25%) of coded procedure. (3-12-07)

iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (3-12-07)

**g.** Adoption of Standard for Hospitals. The Commission hereby adopts the following standards for determining the acceptable charge for hospital services. (\_\_\_\_)

i. Critical Access and Rehabilitation Hospitals. The standard for determining the acceptable charge for inpatient and outpatient services provided by a critical access or rehabilitation hospital is ninety percent (90%) of the reasonable charge. The acceptable charge for implantable hardware shall be the actual cost plus fifty percent (50%). (\_\_\_\_)

ii. Hospital Inpatient Services. The standard for determining the acceptable charge for inpatient services provided by hospitals, other than critical access and rehabilitation hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate is eleven thousand two hundred dollars (\$11,200). Inpatient services that do not have a DRG code or relative weight shall be paid at eighty-five percent (85%) of the reasonable charge. (\_\_\_\_)

iii. Hospital Outpatient and Ambulatory Surgical Center (ASC) Services. The standard for determining the acceptable charge for outpatient services provided by hospitals (other than critical access and rehabilitation hospitals) and for services provided by ambulatory surgical centers is calculated by multiplying the base rate by the current APC weight. The base rate for a hospital is one hundred forty-three dollars (\$143). The base rate for an ASC is ninety-three dollars (\$93). (\_\_\_\_)

(1) If there is no weight listed for APC status codes A, B, C, D, E, F, G, H, K, L, M, O, S, T, V, X, or Y, then reimbursement shall be seventy-five percent (75%) of the reasonable charge. (\_\_\_\_)

(2) Status code N items (other than implantable hardware) or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment. (\_\_\_\_)

(3) Two (2) or more medical procedures with a status code T on the same claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status



code T items paid at fifty percent (50%). ( )

(4) Status code Q items will not be discounted. ( )

iv. Hospitals Outside of Idaho. Reimbursement for services provided by hospitals outside the state of Idaho may be based upon the agreement of the parties. If there is no agreement, services shall be paid in accordance with the workers' compensation fee schedule in effect in the state in which services are rendered. If there is no fee schedule in effect in such state, or if the fee schedule in that state does not allow reimbursement for the services rendered, reimbursement shall be paid in accordance with these rules. ( )

v. Additional Hospital Payments. When the charge for a medical service provided by a hospital (other than a critical access or rehabilitation hospital) meets the following standards, additional payment shall be made for that service as indicated. ( )

(1) Inpatient Threshold Exceeded. When the charge for a hospital inpatient MS-DRG coded service exceeds thirty thousand dollars (\$30,000) plus the payment calculated under the provisions of Subparagraph 031.02.g.ii. of this rule, the total payment for that service shall be the sum of the MS-DRG payment and the amount charged above that threshold multiplied by seventy-five percent (75%). ( )

(2) Outpatient Threshold Exceeded. When the charge for a hospital or ASC outpatient APC coded service exceeds one thousand dollars (\$1,000) plus the payment calculated under the provisions of Subparagraph 031.02.g.iii. of this rule, the total payment for that service shall be the sum of the APC payment and the amount charged for that service above that threshold multiplied by seventy-five percent (75%). ( )

(3) Inpatient Implantable Hardware. Hospitals may seek additional reimbursement beyond the MS-DRG payment for invoiced implantable hardware. Additional reimbursement shall be the invoice cost plus ten percent (10%). Handling and freight charges shall be included in invoice cost. When a hospital seeks additional reimbursement pursuant to this rule, that additional implantable charge shall be excluded from the calculation for an additional inpatient payment under Subparagraph 031.02.g.v.(1) of this rule. ( )

(4) Outpatient Implantable Hardware. Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced implantable hardware. Additional reimbursement shall be the invoice cost plus ten percent (10%). Handling and freight charges shall be included in invoice cost. When a hospital seeks additional reimbursement pursuant to this rule, that additional implantable charge shall be excluded from the calculation for an additional outpatient payment under Subparagraph 031.02.g.v.(2) of this rule. ( )

h. Paragraph 031.02.e. of this rule shall not apply to hospitals or ASCs. The Commission shall determine the acceptable charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. ( )

i. Adjustment of Hospital and ASC Base Rates. The Commission may periodically adjust the base rates set out in Subparagraphs 031.02.g.ii. and 031.02.g.iii. of this rule to reflect changes in inflation or market conditions. ( )

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

**01. Authority and Definitions.** Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule augmenting IDAPA 17.02.08.031. The definitions set forth in IDAPA 17.02.08.031 are incorporated by reference as if fully set forth herein. (3-12-07)

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

**03. Provider to Furnish Information.** A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was

provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with Subsection 032.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 032.10 for that service. (3-12-07)

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

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

**c.** Report to Accompany Bill. If requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04.322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 032.04 and 032.06, below, shall not begin to run until the Payor receives the Report. (3-12-07)

**04. Prompt Payment.** Unless the Payor denies liability for the claim or, pursuant to Subsection 032.06, sends a Preliminary Objection Request for Clarification, or both, as to any charge, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. (3-12-07)

**05. Partial Payment.** If the Payor acknowledges liability for the claim and, pursuant to Subsection 032.06 below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection and/or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. (3-12-07)

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

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

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

**c.** Provider Contact. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. (3-12-07)

**d.** Failure of Payor to Object or Request or Provide Contact. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill and/or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 032.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (3-12-07)

**07. Provider Reply to Preliminary Objection and/or Request for Clarification.** (1-1-93)

**a.** Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection and/or Request for Clarification. (1-1-93)

**b.** Failure of Provider to Reply to Preliminary Objection. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (1-1-93)

c. Failure of Provider to Reply to Request for Clarification. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (1-1-93)

**08. Payor Shall Pay or Issue Final Objection.** The Payor shall pay the Provider's bill in whole or in part and/or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (1-1-93)

**09. Failure of Payor to Finally Object.** Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (1-1-93)

**10. Dispute Resolution Process.** If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the ~~appropriate~~ charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may ~~move the Commission~~ file a request to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors as Referenced in Sections 031 and 032 of this rule. If Provider's motion disputing CPT or MS-DRG coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. ~~For motions filed by a hospital or ambulatory surgical center, under section 031.02.a.v., or by a provider under 031.02.e, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order.~~ (3-12-07)( )

## **IDAPA 18 - DEPARTMENT OF INSURANCE**

### **18.01.39 - REBATES AND ILLEGAL INDUCEMENTS IN TITLE INSURANCE BUSINESS**

#### **DOCKET NO. 18-0139-0801 (CHAPTER REPEAL)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 41-211 and 41-1314 and 41-2708 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

It was determined in a hearing conducted before the Director of the Idaho Department of Insurance that Rule 18.01.39 as currently written goes beyond the scope of Idaho insurance statutes by prohibiting producers of title insurance from having a financial interest in a title entity. The current rule is being completely rewritten so as to conform with Idaho law. The purpose of this Rule is to supplement the provisions of Chapter 13 and Chapter 27, Title 41, Idaho Code, which pertain to illegal rebates and inducements in the insurance business, particularly in the title insurance business, to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace by requiring that producers of title provide disclosure of a financial interest in a title entity to which they refer title insurance consumers.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with title industry representatives.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dale Freeman (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August, 2008.

William W. Deal, Director  
Idaho Department of Insurance  
700 West State Street, 3<sup>rd</sup> Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

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**IDAPA 18.01.39 IS BEING REPEALED IN ITS ENTIRETY**

## **IDAPA 18 - DEPARTMENT OF INSURANCE**

### **18.01.39 - REBATES AND ILLEGAL INDUCEMENTS IN TITLE INSURANCE BUSINESS**

#### **DOCKET NO. 18-0139-0802 (CHAPTER REWRITE)**

#### **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) 41-211 and 41-1314 and 41-2708 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

It was determined in a hearing conducted before the Director of the Idaho Department of Insurance that Rule 18.01.39 as currently written goes beyond the scope of Idaho insurance statutes by prohibiting producers of title insurance from having a financial interest in a title entity. The current rule is being completely rewritten so as to conform with Idaho law. The purpose of this Rule is to supplement the provisions of Chapter 13 and Chapter 27, Title 41, Idaho Code, which pertain to illegal rebates and inducements in the insurance business, particularly in the title insurance business, to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace by requiring that producers of title provide disclosure of a financial interest in a title entity to which they refer title insurance consumers.

**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 Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with title industry representatives.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dale Freeman (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August, 2008.

William W. Deal, Director  
Idaho Department of Insurance  
700 West State Street, 3<sup>rd</sup> Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0139-0802**

**IDAPA 18**  
**TITLE 01**  
**CHAPTER 39**

**18.01.39 - REBATES AND ILLEGAL INDUCEMENTS IN TITLE INSURANCE BUSINESS**

**000. LEGAL AUTHORITY.**

This Rule is promulgated pursuant to the general rule making authority in Idaho Code, Sections 41-211, to aid in the effectuation of Idaho Code, Sections 41-1314 and 41-2708. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The Title of this chapter is IDAPA 18.01.39, "Rebates and Illegal Inducements in Title Insurance Business." ( )

**02. Application of Rule.** The provisions of this Rule shall apply to all title insurers and title insurance agents. This Rule does not limit the Director's authority to determine that other title insurance practices constitute violations of Idaho Code Sections 41-1314 and 41-2708. ( )

**03. Purpose.** The purpose of this Rule is to supplement the provisions of Chapter 13 and Chapter 27, Title 41, Idaho Code, which pertain to illegal rebates and inducements in the insurance business, and particularly in the title business; to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace. ( )

**002. WRITTEN INTERPRETATIONS.**

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

**003. ADMINISTRATIVE APPEALS.**

There is no appeal to the Attorney General from application of this Rule. All such appeals must be instituted by written demand for a hearing before the Director of Insurance, Section 41-232, Idaho Code. Further appeal from the Director's decision can be taken to district court, pursuant to Sections 67-5270, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB ADDRESS.**

**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, 3<sup>rd</sup> Floor, Boise, ID 83720-0043. ( )

**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 provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

All terms defined in Chapters 1, 13, and 27, Title 41 Idaho Code, which are used in this rule shall have the same meaning as used in those chapters. ( )

**01. Applicant.** Applicant is a party to a real estate transaction who may be the buyer, seller and/or a proposed or named insured on a title commitment, policy, guaranty or other title insurance product. ( )

**02. Financial Interest.** Financial Interest means any interest that entitles the holder in any manner to Two and one-half percent (2.5%) or more of the profits or net worth of the title entity in which the interest is held. ( )

**03. Producer of Title Business.** Producer of title business includes any person engaged in this state in the trade, business, occupation or profession of: ( )

**a.** Buying or selling interest in real property; or ( )

**b.** Making loans by interest in real property; and ( )

**c.** Shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, attorneys, developers, subdividers, auctioneers engaged in the sale of real property, consumers, and the employees, agents, representatives, or solicitors of any of the foregoing; and ( )

**d.** Shall include any legal entity whose ownership is, directly or indirectly, comprised fifty-one percent (51%) or more by entities or individuals described in Paragraph 010.03.c. of this rule. ( )

**04. Thing(s) of Value.** Thing(s) of value means anything that has a monetary value and includes, but is not limited to, tangible objects, services, use of facilities, monetary advances, extension of lines of credit, creation of compensating balances, uncollected cancellation fees for issuance of title commitments, and all other forms of consideration. ( )

**05. Title Entity.** Title entity includes both title insurance agents and title insurers along with their employees, agents, or representatives. ( )

**011. DISCLOSURE BY PRODUCER OF TITLE BUSINESS.**

No title entity may accept any order for; issue a title commitment, guarantee, title insurance policy for; or provide services, including but not limited to escrow closing and foreclosure services, to; an applicant if it knows or has reason to believe that the applicant was referred by a producer of title business, where the producer of title business has a financial interest in the title entity to which the business is referred unless the producer of title business has disclosed to the applicant the financial interest of the producer of title business. The disclosure must be made in writing and contain the items required in Section 012 of this rule. ( )

**012. DISCLOSURE REQUIREMENTS.**

**01. Disclosure Required By Section 011.** Shall be provided to the applicant at the time the sell and/or purchase contract is entered into. A signed copy of the disclosure shall be maintained by the producer of title business and provided to the title entity prior to or simultaneously with, the placing or the order for a title insurance commitment or guarantee or escrow closing services. The title entity shall maintain a copy of said disclosure for a minimum period of five (5) years. ( )

**02. Disclosure.** Disclosure shall contain a heading, in bold face, all caps, type font 14 or higher that states: "NOTICE OF FINANCIAL INTEREST IN TITLE ENTITY BY PRODUCER OF TITLE BUSINESS."

( )

**03. Statement.** Disclosure shall contain the following statement in type 12 font or higher: “We call this interest to your attention for disclosure purposes. (Provide name of Producer of Title Business) has a financial interest in this title entity (provide title entity name). This financial interest may result in a conflict of interest in our representation of you. Accordingly, you are free to choose any other title entity which is licensed by the Idaho Department of Insurance in the county in which the property is located. A list of title insurers and title agents licensed in the county in which the property is located may be found by contacting the Idaho Department of Insurance.”

( )

**04. Chooses to Have Transaction Served.** Disclosure shall contain a statement that the Applicant has read the aforementioned disclosure and chooses to have their transaction served by the Title Entity referred by the Producer of Title Business.

( )

**05. Signature.** Disclosure shall contain the signature of the applicant along with the date the signature was accomplished.

( )

**06. Other information** the Director of the Department of Insurance may require. ( )

**013. FINANCIAL INTEREST NOTICE.**

**01. Names and Addresses of All Producers.** A title entity shall notify the Director of the Department of Insurance the names and addresses of all producers of title business that have a financial interest in the title entity, including the financial interest held by the producer of title business and the date the financial interest was acquired.

( )

**02. Financial Interest Notice.** The title entity will provide the financial interest notice to the Director of the Department of Insurance prior to the granting of a title agent license and upon request for renewal of a title agent license.

( )

**014. UNLAWFUL INDUCEMENT OR REBATE.**

**01. Title Entity or Any Person Shall Not Except.** Except as provided in Subsection 014.02 of this rule, a title entity or any person shall not except as otherwise authorized in Title 41, Idaho Code:

( )

**a.** Give or accept a fee, or other thing of value pursuant to an agreement or understanding, express or implied, that title insurance business or escrow closing services will be referred to a title entity; or

( )

**b.** Give or accept a portion, split or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state.

( )

**02. A Presumption of Unlawful Inducement or Rebate.** Arises if a producer of title business or any other person receives a thing of value from a title entity without the payment or exchange to the title entity of consideration with a similar fair market value. A title entity may pay a return on an investment, based on a percentage of a financial interest in that title entity if all the requirements of this rule are met.

( )

**015. SEVERABILITY.**

If any provision of this Rule is for any reason held to be invalid, the remainder of the Rule shall not be affected thereby.

( )

**016. -- 999. (RESERVED).**



# IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

## 18.01.43 - CERTIFICATION OF FIRE INSPECTORS

DOCKET NO. 18-0143-0801

### 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 Title 41, Chapter 2, Idaho Code, 41-254(4) and 41-255(6).

**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, October 15, 2008.

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:

HB 620 was passed during the 2008 legislative session which mandates the Fire Marshal to establish a rule for uniform training for all persons acting as assistants to the state fire marshal and a mechanism for continuing education. Changes chapter name from Certification of Fire Inspectors to Certification of Fire Code Officials and amends the scope of the rule. Also adds required sections to the rule.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule was necessary to comply with newly enacted legislation.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Larson at (208) 334-4271.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

William Deal, Director  
Idaho Department of Insurance  
700 West State Str, 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0143-0801

18.01.43 - CERTIFICATION OF FIRE ~~INSPECTORS~~ CODE OFFICIALS

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to authority granted by 41-254(4), Idaho Code, 41-255(6), Idaho Code, and Title 67, Chapter 52, Idaho Code. (7-1-93)( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 18.01.43, "Certification of Fire Code Officials." ( )

**02. Scope.** The purpose of this rule is to ensure the people of Idaho that ~~fire inspections are being done by a qualified fire inspector~~ the fire code, as adopted by the State Fire Marshal, is being applied by a qualified fire code official who has met the minimum standards of certification prescribed in this rule. (7-1-93)( )

**002. WRITTEN INTERPRETATIONS.**

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

**003. ADMINISTRATIVE APPEALS.**

All 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 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 000 through 099. ( )

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEBSITE.**

**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. -- 010. (RESERVED).**

**011. GENERAL REQUIREMENTS FOR FIRE ~~INSPECTOR~~ CODE OFFICIAL CERTIFICATION.**

**01. Member of Organized Fire Department or Inspector.** Applicants for certification must be a regular member of an ~~organized~~ fire department organized under state law, either paid or volunteer; ~~which is listed with the State Fire Marshal;~~ or be a regular inspector of a city or county building department; and in areas where no fire department exists, the county sheriff or his deputy may be an applicant. (7-1-93)( )

**02. Application Form and Fees.** Applicants must file ~~Form No. AFF/FIC-1,~~ an application form approved by the State Fire Marshal along with ten dollars (\$10) for the examination fee and five dollars (\$5) for the certificate fee, to the State Fire Marshal. Forms are available from the Idaho State Fire Marshal upon request. (7-1-93)( )

- 03. Denial of Application.** Applications may be denied by the State Fire Marshal if: (7-1-93)
- a.** ~~Form No. AFF/FIC-1~~ The application is filled out erroneously; (7-1-93)(    )
  - b.** ~~False information is placed on Form No. AFF/FIC-1;~~ (7-1-93)
  - eb.** The applicant's immediate supervising authority will not endorse the applicant ~~on Form No. AFF/~~  
*FIC-1*; (7-1-93)(    )
  - d.** ~~Applicant has poor past record of performance as a certified fire inspector;~~ (7-1-93)
  - ec.** Applicant has not adhered to the provisions of this rule; or (7-1-93)
  - fd.** Applications are not accompanied by prescribed fees. (7-1-93)
- 04. Examination.** ~~Upon receipt and acceptance of an application, the State Fire Marshal shall~~ An individual desiring certification as a fire code official must: (7-1-93)(    )
- a.** ~~Arrange for applicant to a~~ Attend a training program based on the stated adopted International Fire Code; and the related sections of the International Building Code. (5-3-03)(    )
  - b.** ~~Arrange for applicant to t~~ Take an examination developed and offered by the State Fire Marshal that is based on the state adopted International Fire Code and all related sections of the Uniform Building Code; and (5-3-03)(    )
  - c.** ~~Grade the examination and notify the applicant as to whether the applicant passed or failed. A score of seventy percent (70%) must be made to qualify as a certified fire inspector code official.~~ (7-1-93)(    )
  - d.** ~~Issue a certificate to the applicant, upon qualifying by examination, that he or she is a state of Idaho certified fire inspector for a period of one (1) year. If the individual desiring certification completes the training, passes the examination, and submits an acceptable application the State Fire Marshal will issue a certificate to the applicant that is valid for a period not to exceed twelve (12) months.~~ (7-1-93)(    )
- 012. RE-CERTIFICATION OF FIRE INSPECTORS CODE OFFICIALS AFTER ONE YEAR.**  
~~Re-certification will be accomplished by filing Application Form No. AFF/FIC-1, accompanied by a five dollar (\$5) certification fee, with the State Fire Marshal.~~ (7-1-93)
- 01. Initial Certification Period.** In order to re-certify after the initial certification period the fire code official must: (    )
- a.** Take a re-certification examination offered by the State Fire Marshal. A score of seventy percent (70%) is considered a passing score; (    )
  - b.** Complete a re-certification application form approved by the State Fire Marshal; and (    )
  - c.** Remit a re-certification application fee of five dollars (\$5) with the application form to the State Fire Marshal. (    )
  - d.** Upon completion of the above listed steps the State Fire Marshal will issue a certificate valid for a period of time not to exceed twelve (12) months. (    )
- 02. Reactivation of Lapsed Certification.** Reactivation of a lapsed fire code official certification. (    )
- a.** If a fire code official has not renewed his certificate for a period of up to twelve (12) months, he must take and pass the examination required for a new applicant before submitting a re-certification application.

( )

**b.** If a fire code official has not renewed his certificate for a period of greater than twelve (12) months, the State Fire Marshal may require him to complete the certification process as if he were a new applicant. ( )

**013. FIRE INSPECTIONS - UNCERTIFIED PERSONNEL.**

Fire inspections may only be performed by a regular member of a fire department organized under state law, either paid or volunteer, or representatives of any city or county government for that purpose. ~~Violations under the International Fire Code may only be cited by fire inspectors duly certified under this rule.~~ Notice of violations may only be issued by a fire code official duly certified under this rule. (5-3-03)( )

**APPENDIX IS BEING DELETED IN ITS ENTIRETY**

Approved  
Disapproved

**APPLICATION  
IDAHO STATE CERTIFIED FIRE INSPECTOR**

Applicant Name \_\_\_\_\_ Tel. \_\_\_\_\_

Home/Office

\_\_\_\_\_  
Address City County

Government Unit to be Served \_\_\_\_\_ Tel. \_\_\_\_\_

\_\_\_\_\_  
Address City County

Endorsement by Government Unit Official:

\_\_\_\_\_  
Date Signature of Fire Chief, Sheriff,  
Fire District Commissioners, or  
County Commissioners

\_\_\_\_\_  
Date Signature of Applicant

STATE FIRE MARSHAL \_\_\_\_\_  
Department of Insurance Date Approved  
700 W. State St.  
Boise, ID 83270

\_\_\_\_\_  
State Fire Marshal

A ten dollar (\$10) Examination Fee and five dollar (\$5) Certification Fee must accompany this application unless it is for re-certification, and then a five dollar (\$5) Certification fee ONLY must accompany this application.

## **IDAPA 18 - DEPARTMENT OF INSURANCE**

### **18.01.44 - SCHEDULE OF FEES, LICENSES AND MISCELLANEOUS CHARGES**

#### **DOCKET NO. 18-0144-0801 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-401, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 rulemaking amends IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges," to impose a filing fee for policy rates and forms submitted for filing in paper form. Insurers filing ten or fewer policy rates and forms per year will not be charged a fee; however, a fee of \$20 will be charged for each paper rate or form filed in excess of ten. The fee will not apply to any filings made electronically through the national System for Electronic Rates and Forms Filing (SERFF). The use of electronic filing provides conveniences to the insurer and eliminates the need for Department staff to convert paper forms to electronic format.

**FEE SUMMARY:** The rule imposes a fee of twenty dollars (\$20) per rate or form filed with the Department of Insurance in excess of ten (10) forms per year unless the rate or form is filed using the national System for Electronic Rates and Forms Filing. Section 41-401, Idaho Code, authorizes the Director of the Department of Insurance to adopt fees in accordance with the Administrative Procedures Act.

**FISCAL IMPACT:** This rule will not have a negative fiscal impact to the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the August 6, 2008 Administrative Bulletin, Volume 08-8, page 97. The Department received only one general inquiry regarding the rulemaking, and no comments or requests for meetings on the rulemaking were received in response to the notice. Therefore, no negotiated rulemaking meetings were conducted.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Shad Priest at 208/334-4214.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

Dated this 21st day of August, 2008.

William W. Deal  
Director  
Idaho Department of Insurance  
700 W. State St. Fl. 3  
PO Box 83720  
Boise, Idaho 83720-0043

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0144-0801**

**020. INSURER FEES.**

**01. Annual Continuation Fee.** All insurers and other entities (set forth in Section 020) licensed, listed, or otherwise approved to do business in the state of Idaho shall pay an annual continuation fee. (7-1-00)

**a.** The annual continuation fee shall be due on March 1st each year and shall provide for payment of the insurer's fees due through the last day of February next proceeding. (7-1-00)

**b.** The annual continuation fee shall be charged at the time the insurer applies for admission to do business in the state of Idaho. If the application is approved, the fee paid shall cover the insurer's fees through the last day of February next proceeding. (7-1-00)

**02. Fee for Insurers.** For all insurance companies receiving a certificate of authority pursuant to Chapter 3, Title 41, Idaho Code, the amount of the annual continuation fee shall be as follows: (7-1-00)

**a.** If insurer's surplus as regards policyholders at the preceding December 31 is less than ten million dollars (\$10,000,000) - One thousand dollars (\$1,000). (7-1-00)

**b.** If insurer's surplus as regards policyholders at the preceding December 31 is ten million (\$10,000,000) or more, but less than one hundred million (\$100,000,000) - Two thousand five hundred dollars (\$2,500). (7-1-00)

**c.** If insurer's surplus as regards policyholders at the preceding December 31 is on hundred million (\$100,000,000) or greater - Four thousand five hundred dollars (\$4,500). (7-1-00)

**03. Fees of Other Entities.** For the following entities, the amount of the annual continuation fee shall be: (7-1-01)

**a.** Five hundred dollars (\$500): (7-1-01)

i. Accredited reinsurers, listed pursuant to Section 41-514(1)(b), Idaho Code. (7-1-00)

ii. Trusteed reinsurers, listed pursuant to Section 41-514(1)(d), Idaho Code. (7-1-00)

iii. Authorized surplus line insurers. (7-1-00)

iv. County mutual insurers. (7-1-00)

v. Fraternal benefit societies. (7-1-00)

vi. Hospital and/or professional service corporations. (7-1-00)

vii. Hospital liability trusts. (7-1-00)

viii. Self funded employee health care plans. (7-1-00)

ix. Domestic Risk retention groups. (7-1-01)

x. Petroleum clean water trusts. (7-1-00)

xi. Rating organizations. (7-1-00)

- xii. Advisory organizations. (7-1-00)
  - b. One hundred dollars (\$100): (7-1-01)
  - i. Purchasing groups. (7-1-00)
- 04. What Payment of Fee Shall Cover.** Payment of the annual continuation fee shall be deemed to be payment of all fees that would ordinarily be paid to the Department by the insurer or entity during the relevant year, including, but not limited to, the following: (7-1-00)
- a. Certificate of authority renewal, license renewal, and annual registration. (7-1-00)
  - b. Arson, Fire and Fraud. (7-1-00)
  - c. Annual statement filing. (7-1-00)
  - ~~d. Filing of policy rates and forms. (7-1-00)~~
  - ~~e.~~ Agent appointment and renewal of appointment. (7-1-00)
  - ~~f.~~ Filings under Chapter 38, Title 41, Idaho Code, Acquisition of control and insurance holding company systems. (7-1-00)
  - ~~g.~~ Filing of amendments to Articles of Incorporation. (7-1-00)
  - ~~h.~~ Filing of amendments to Bylaws. (7-1-00)
  - ~~i.~~ Amendments to Certificate of Authority. (7-1-00)
  - ~~j.~~ Filing of notice of significant transactions pursuant to Section 41-345, Idaho Code. (7-1-00)
  - ~~k.~~ Quarterly statement filing. (7-1-00)
  - ~~l.~~ Examination expenses, except for those set forth in Subsection 020.05.g. (7-1-01)
- 05. Fees Not Included.** Payment of the annual continuation fee will not exempt the insurer or entity from the following: (7-1-00)
- a. Fees for application for producer license. (7-1-00)
  - b. Costs incurred by the Department for investigation of an applicant for producer license. (7-1-00)
  - c. Attorney's fees and costs incurred by the Department when allowed pursuant to Idaho Code. (7-1-00)
  - d. Costs incurred for experts and consultants when allowed by Idaho Code. (7-1-00)
  - e. Penalties or fines levied by or payable to the Department of Insurance. (7-1-00)
  - f. All fees set forth under Section 040. (7-1-00)
- 06. Failure to Pay Fee.** Failure to pay the annual continuation fee on or before March 1st each year shall be treated as failure to pay the continuation fee and will result in expiration of the insurer's or entity's authority to do business in the state of Idaho pursuant to Section 41-324, Idaho Code. (7-1-00)
- 07. Reinstatement Fee.** The reinstatement fee referenced in Section 41-324(3), Idaho Code, shall be the amount referenced above for the insurer or entity continuation fee. (7-1-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. MISCELLANEOUS FEES.**

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

**01. Certified Copy.** Certified copy of certificate of authority, license or registration - Fifty dollars (7-1-00)  
(\$50).

**02. Solicitation Permit.** Organization and financing of insurer: (7-1-00)

**a.** Filing application for solicitation permit -- Nine hundred dollars (\$900). (7-1-00)

**b.** Issuance of solicitation permit -- One hundred eighty dollars (\$180). (7-1-00)

**03. Certificate Under Seal.** Director's certificate under seal (except for those under Subsection 040.01 of this rule) - Twenty dollars (\$20). (7-1-00)

**04. Documents Filed.** For each copy of document filed in his office, a reasonable cost as fixed by the director. For rate and form filings not submitted electronically through the national System for Electronic Rate and Form Filing (SERFF) -- Twenty dollars (\$20) for each rate or form filed in excess of ten (10) per calendar year.  
(7-1-00)(\_\_\_\_\_)

**05. Life Insurance Valuation.** For valuing life insurance, actual cost of valuation but not to exceed one cent (\$.01) for each one thousand dollars (\$1,000) of insurance. (7-1-00)

**06. Insurer Service of Process.** For receiving and forwarding copy of summons or other process served upon the director as process agent of an insurer -- Thirty dollars (\$30). (7-1-00)

**07. Agent Service of Process.** For receiving and forwarding copy of summons or other process served upon the director as process agent of a nonresident agent, broker or consultant -- Thirty dollars (\$30). (7-1-00)

**08. Continuing Education.** Filing continuing education applications for approval and certification of subjects of courses (each application) -- Twenty-five dollars (\$25). (7-1-00)

**09. Small Employer Health Program.** Administrative expenses incurred in implementing and approving Idaho small employer health reinsurance program and plan of operation: (7-1-00)

**a.** Initial deposit for program setup, approval and processing - One thousand dollars (\$1,000). (7-1-00)

**b.** Any additional reasonable expenses incurred in establishing and maintaining the program. (7-1-00)

**c.** Annual filings of Board, pursuant to Section 41-4711(12), Idaho Code - Three hundred dollars (\$300). (7-1-00)



**IDAPA 18 - DEPARTMENT OF INSURANCE**  
**18.01.61 - CREDIT LIFE AND CREDIT DISABILITY INSURANCE**  
**DOCKET NO. 18-0161-0801**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-2314, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

In 2003, Idaho adopted a model law governing licensing of insurance agents, now known as "producers." The rule amended by this proposed rulemaking was never changed to conform to the model law. The proposed rule will correct obsolete code references and terminology, and remove inconsistencies with the current law. Changes are also made to conform the rule to Office of Administrative Rules standards.

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

**FISCAL IMPACT:** This amendment will not have any fiscal impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because the simple nature of the rulemaking that simply corrects code references and wording to make the rule consistent with statutory changes adopted in 2003.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Jim Genetti, 208-334-4340.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

Dated this 21st day of August, 2008.

William W. Deal  
Director  
Idaho Department of Insurance  
700 W. State St. Fl. 3  
PO Box 83720  
Boise, Idaho 83720-0043

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0161-0801**

**002.—003. (RESERVED) WRITTEN INTERPRETATIONS.**

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

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Subchapter A - General Provisions, Sections 000 through 099. ( )

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference. ( )

**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, 3<sup>rd</sup> Floor, Boise, Idaho 83720-0043. ( )

**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 provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. ( )

**007. -- 009. (RESERVED).**

**00410. DEFINITIONS.**

**01. Closed-End Credit.** "Closed-end credit" means a credit transaction that is not open-end credit. (7-1-93)

**02. Compensation.** "Compensation" means money or anything else of value. (7-1-93)

**03. Credit Disability Insurance.** "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. (7-1-93)

**04. Credit Insurance.** "Credit insurance" means both credit life insurance and credit disability insurance. (7-1-93)

**05. Credit Life Insurance.** "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction. (7-1-93)

**06. Credit Transaction.** "Credit transaction" means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services or properties sold or leased, is to be made at a future date or dates. (7-1-93)

**07. Creditor.** "Creditor" means the lender of money or vendor of goods, services or property, rights or privileges, including a lessor under a lease intended as security for which payment is arranged through a credit

transaction, or any successor to the right, title or interest of any such lender or vendor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them. (7-1-93)

**08. Debtor.** "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction. (7-1-93)

**09. Identifiable Charge.** "Identifiable charge" is the amount the debtor is charged for insurance which is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, and including any differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status. (7-1-93)

**10. Indebtedness.** "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction. (7-1-93)

**11. Net Written Premium.** "Net written premium" means gross written premium minus refunds on terminations. (7-1-93)

**12. Open-End Credit.** "Open-end credit" means an arrangement as defined in Section 28-41-301(25), Idaho Code, including revolving charge accounts, pursuant to which: (7-1-93)

**a.** A creditor may permit a debtor, from time to time, to purchase on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card; (7-1-93)

**b.** The amounts financed and the finance and other appropriate charges are debited to an account; (7-1-93)

**c.** The finance charge, if made, is computed on the account periodically; and (7-1-93)

**d.** Either the debtor has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the debtor to continue to purchase on credit. (7-1-93)

**13. Preexisting Condition.** "Preexisting condition" means a health condition, including sickness or injury, for which there has been medical advice, diagnosis or treatment within six (6) months preceding the effective date of the debtor's coverage and which exists prior to the effective date of the coverage. (7-1-93)

~~005-010: (RESERVED)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. PROHIBITED TRANSACTIONS.**

The following practices, when engaged in by insurers in connection with the sale or placement of credit insurance, or as an inducement thereto, shall constitute unfair methods of competition and shall be subject to the Unfair Trade Practices Act of this State as outlined in Chapter 13, Title 41, Idaho Code. (7-1-93)

**01. Special Advantages or Services.** The offer or grant by an insurer to a creditor of any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than the payment of ~~agent's~~ producer commissions. (7-1-93)(\_\_\_\_)

**02. Deposit by Insurer of Money or Securities Required of Creditor.** Agreement by an insurer to deposit with a bank or financial institution money or securities of the insurer with the design or intent that the same shall affect or take the place of a deposit of money or securities which otherwise would be required of the creditor by such bank or financial institution as a compensating balance or offsetting deposit for a loan or other advancement.

(7-1-93)

**03. Deposit by an Insurer Without Interest or at a Lessor Rate of Interest.** Deposit by an insurer of money or securities without interest or at a lesser rate of interest than is currently being paid by the creditor, bank or financial institution to other depositors of like amounts and terms. This paragraph shall not be construed to prohibit the maintenance by an insurer of such demand deposits or premium deposit accounts as are reasonably necessary for use in the ordinary course of the insurer's business. (7-1-93)

**022. AGENT'S PRODUCER'S LICENSE REQUIRED.**

**01. Life and Disability Insurance License or Limited License.** To solicit credit life and credit disability insurance as provided in Chapter 23, Title 41, Idaho Code, and in this rule chapter, ~~an Agent~~ producer must: (7-1-93)( )

a. Be licensed to sell life and disability insurance in compliance with Chapter 10, Title 41, Idaho Code; or (7-1-93)

b. Be issued a "Limited License" as ~~provided for~~ defined in Section ~~41-1045(1)(d)~~ 41-1003(4), Idaho Code, covering only credit life and credit disability insurance, and no individual so licensed shall during the same period hold a license as ~~agent or solicitor~~ a producer as to any other or additional ~~kinds~~ major line of insurance. (7-1-93)( )

**02. Individual, Firm or Corporation.** Sections ~~41-1030, 41-1036 and 41-1045(1)(d)~~ 41-1004, 41-1005, 41-1007, Idaho Code, provide that a limited ~~agent's~~ producer's limited license for credit life and credit disability insurance shall be issued to individuals, firms or corporations qualifying for such license. Any individual who ~~sells, solicits or negotiates with~~ debtors to purchase individual credit life or credit disability insurance, or who explains such coverage, must be licensed as an insurance ~~agent~~ producer. Any firm or corporation offering such individual coverage must ~~engage at least one individual who has an individual agent's license for such coverage, unless the enterprise itself holds a firm or corporate agent's license for credit life and credit disability and has personnel qualified to transact insurance under such license~~ comply with the provisions of Section 41-1007(2) by ~~having a designated licensed producer, who is an individual responsible for the business entity's compliance with the insurance laws and rules of this state.~~ (7-1-93)( )

**03. Administration of Group Policy.** Under Section ~~41-1032~~ 41-1005(2)(b), Idaho Code, the issuance of group certificates of credit life insurance and credit disability insurance and the performance of other ministerial duties in connection with group insurance policy administration does not require the person doing such acts to be licensed as ~~an agent~~ producer provided that no commission is paid for such services. A group policyholder may be reimbursed its expense of administering a group policy without being licensed as ~~an agent~~ producer, and such reimbursement will not be considered a commission provided it is reasonably computed to equate to the actual administrative expenses. It will be presumed that an amount of reimbursement not exceeding ten percent (10%) of the net written prima facie premium for the group policy is reasonably computed to equate to the administrative expenses of the group policyholder. Amounts exceeding ten percent (10%) of the net written prima facie premium will be presumed to exceed actual administrative expenses unless prior approval to pay such greater amount is secured pursuant to the insurer demonstrating to the director's satisfaction that such higher amount does not exceed the policyholder's actual administrative expenses. For purposes of this subsection, "prima facie premium" means premiums at the rates set forth in Section 014 without adjustment pursuant to Section 018. (7-1-93)( )

**04. Dividends and Other Compensation Permitted by Law.** Subsections 022.01, 022.02, and 022.03 do not apply to compensation that is otherwise permitted by law, such as the payment of dividends on participating policies. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

~~026. EFFECTIVE DATE.~~

~~01. **Forms and Rates.** This rule chapter shall become effective January 1, 1992. No credit insurance form or credit insurance rate approved or filed before the date of this rule chapter shall be used in this state after January 1, 1992, unless it is in compliance with this rule chapter. All existing group credit insurance contracts on forms required to be filed with the director shall be amended to conform to the requirements of this rule chapter or be terminated not later than the anniversary date of issue of the contract next following the effective date of this rule chapter. The effective date for prima facie rates shall be January 1, 1993. (7-1-93)~~

~~02. **Deviations.** Any deviations thought to be appropriate by an insurer as a result of promulgation of this rule chapter shall be filed in accordance with the provisions of Section 019. (7-1-93)~~

~~03. **Existing Group Policies, Certificates, Notices and Premium Rates.** Certificates, notices of proposed insurance and premium rates in connection with existing group policies shall conform to the requirements of this rule chapter not later than the anniversary date of the group policy next following the effective date of this rule chapter. (7-1-93)~~

~~04. **Issuance, Renewal or Replacement of Group Credit Life or Disability Insurance.** Existing group credit life and group credit disability contracts that are renewed, reissued or replaced, other than on their normal anniversary date of issue, and all group credit life and group credit disability contracts newly issued to replace or supplement a creditor's existing insurance program shall conform to the requirements of this rule chapter on and after January 1, 1992. No replacement or amendment of group policies to postpone the effect of this rule chapter will be recognized for the purpose of this section. (7-1-93)~~

0276. -- 999. (RESERVED).

## **IDAPA 18 - DEPARTMENT OF INSURANCE**

### **18.01.62 - ANNUAL AUDITED FINANCIAL REPORTS**

**DOCKET NO. 18-0162-0801**

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2009 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 41-211, 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 rule is being renamed "Annual Financial Reporting" and revised to require that insurers comply with certain best practices related to auditor independence, corporate governance and internal control over financial reporting in order to comply with amendments to the National Association of Insurance Commissioners (NAIC) Model Audit Rule that are required to be in place by 2010 to meet NAIC Accreditation Standards.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 6, 2008 Idaho Administrative Bulletin, Vol. 08-8, pages 103 through 118.

**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 Martha Smith, Senior Financial Examiner, Idaho Department of Insurance, at 208/334-4315.

DATED this 29th day of August, 2008.

Martha Hopper Smith, FLMI/M  
Senior Financial Examiner  
Idaho Department of Insurance  
700 West State Street, 3rd Floor  
Boise, ID 83720-0043  
208-334-4315 (Voice)  
208-334-4298 (Fax)  
Martha.Hopper@doi.idaho.gov

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#### **DOCKET NO. 18-0162-0801 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 08-8, August 6, 2008, pages 103 through 118.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2009 Idaho State Legislature for final adoption.**

## **IDAPA 18 - DEPARTMENT OF INSURANCE**

### **18.01.73 - RULE TO IMPLEMENT THE INDIVIDUAL HEALTH INSURANCE AVAILABILITY ACT PLAN DESIGN**

**DOCKET NO. 18-0173-0801**

#### **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 41-211, Idaho Code and Title 41, Chapter 55, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The proposed rule amends IDAPA 18.01.73, which sets forth the required benefits for health insurance products reinsured through the Idaho Individual High Risk Reinsurance Pool established pursuant to Chapter 55, Title 41, Idaho Code. The proposed changes include an increase in the lifetime maximum benefit for organ transplants from \$150,000 to \$250,000, a change to a section dealing with cosmetic surgery to make it consistent with the minimum requirements for individual health benefit plans established by IDAPA 18.01.30, some wording changes for consistency and clarity, and changes to conform the rule to Office of Administrative Rules guidelines.

**FEE SUMMARY:** The following is a descriptive summary of the fee or charge being imposed or increased: The rule does not impose or increase a fee.

**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: No fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because the primary change being made, an increase in the lifetime maximum benefit for organ transplants, was approved and requested by the board overseeing the state's High Risk Pool Program. This board is made up of members of the affected industry. The remaining changes include a change to make the rule consistent with requirements of another existing administrative rule and immaterial changes for consistency and clarity.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Shad Priest, 208-334-4214.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 21st day of August, 2008.

William W. Deal, Director  
Idaho Department of Insurance  
700 West State Street, 3<sup>rd</sup> Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0173-0801

**003. ADMINISTRATIVE APPEALS.**

All ~~contested cases shall be governed by the provisions of~~ administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General;" Subchapter A - General Provisions, Sections 000 through 099. (3-15-02)( )

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEBSITE.**

**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.**

For the purposes of this rule, the following terms will be used as defined below: (6-30-95)

**01. Benefit Percentage.** Benefit percentage is the percentage of the cost of a health care service paid by the insurer under a health insurance plan, as ~~defined shown~~ in the schedule of benefits. (6-30-95)( )

**02. Calendar Year.** Calendar year is a period of one (1) year which starts on January 1st and ends on December 31st. (6-30-95)

**03. Coinsurance.** Coinsurance is a percentage of the cost of a health care service, paid by the insured under a health insurance plan, as ~~defined shown~~ in the schedule of benefits. (3-15-02)( )

**04. Copayment.** Copayment is a specified charge that must be paid each time care is received of a particular type or in a designated setting. The instances in which a copayment will be required are specified in the schedule of benefits. The copayments must be paid before any other payment will be made under the policy. The copayment will not count toward any deductible or out-of-pocket expense required under the policy, with the exception of the HSA. (4-11-06)( )

**05. Deductible.** Deductible means the amount of the covered charge each insured is obligated to pay each calendar year before the plan will pay for covered medical services. All covered charges are subject to the deductible amount unless specifically noted otherwise. (3-15-02)

**06. Out-of-Pocket Expense Maximum.** Out-of-pocket expense maximum is the maximum medical expense that an insured is obligated to pay, which includes coinsurance as ~~defined shown~~ in the schedule of benefits.



Under the Basic, Standard, and Catastrophic A and B health benefit plans, the out-of-pocket expense maximum does not include deductibles, copayments, pharmacy expenses, expenses for non-covered services and supplies, and charges in excess of the eligible expense. After the out-of-pocket expense maximum has been reached, covered services will be provided at one hundred percent (100%) except for specific deductibles, copayments, pharmacy benefits, non-covered services and supplies, and charges in excess of the eligible expense. HSA annual out-of-pocket expense maximum, subject to any policy limitations, or ineligible out-of-pocket expenses, includes deductibles, copayments, and coinsurance including pharmacy expenses. After the HSA out-of-pocket expense maximum has been reached, covered services will be provided at one hundred percent (100%) with the exception of services, supplies, and charges in excess of the eligible expense. ~~(4-11-06)~~(\_\_\_\_\_)

- 07. Pre-Existing Condition.** Pre-existing condition is defined in Section 41-5208(3), Idaho Code. (6-30-95)
- 08. Provider.** Provider means any of the following licensees duly licensed to practice in any of the following categories of health care professions: (3-15-02)
- a. Licensed general hospital; (3-15-02)
  - b. Chiropractor; (6-30-95)
  - c. Dentist; (6-30-95)
  - d. Optometrist; (6-30-95)
  - e. Pharmacist; (6-30-95)
  - f. Physician and surgeon, of either medicine and surgery or of osteopathic medicine and surgery; (6-30-95)
  - g. Podiatrist; and (6-30-95)
  - h. Any other licensed facility or practitioner who is acting within the scope of that license and who performs a service which is payable under the policy when performed by any of the above health care providers. (3-15-02)
  - i. A provider does not include a person who lives with the insured or is part of the insured's family (insured, insured's spouse, or a child, brother, sister, or parent of insured or insured's spouse). (3-15-02)
- 09. Eligible Expense.** Eligible expense means the expense incurred for a covered service or supply. A physician or other licensed facility or provider has to order or prescribe the service or supply. Expense is considered incurred on the date the service or supply is received. Expense does not include any charge: (3-15-02)
- a. For a service or supply which is not medically necessary; (3-15-02)
  - b. Which is in excess of reasonable and customary charge for a service or supply; (3-15-02)
  - c. Which is in excess of any contractual arrangements; (3-15-02)
  - d. For any services or supplies which an insured would have no legal obligation to pay in the absence of coverage under this policy or any similar coverage; or (3-15-02)
  - e. For which no charge or a different charge is usually made in the absence of insurance coverage. (3-15-02)
- 10. Medically Necessary Service or Supply.** Medically necessary service or supply means one which is ordered by a provider and which the carrier's medical staff or another qualified party or entity determines is: ~~(3-15-02)~~(\_\_\_\_\_)

- a. Provided for the diagnosis or direct treatment of an injury or sickness; (6-30-95)
- b. Appropriate and consistent with the symptoms and findings of diagnosis and treatment of the insured's ~~persons~~ injury or sickness; (~~6-30-95~~)(    )
- c. Is not considered experimental or investigative; (6-30-95)
- d. Provided in accord with generally accepted medical practice; (6-30-95)
- e. The most appropriate supply or level of service which can be provided on a cost effective basis (including, but not limited to, in-patient vs. out-patient care, electric vs. manual wheelchair, surgical vs. medical or other types of care); (6-30-95)
- f. The fact that the insured's provider prescribes services or supplies does not automatically mean such service or supply ~~are~~ is medically necessary and covered by the policy. (~~3-15-02~~)(    )

**11. Emergency Services.** Emergency services means those health care services that are provided in a hospital or other emergency facility after the sudden onset of a medical condition that manifests itself by symptoms of such sufficient severity including, but not limited to, severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent person who possesses an average knowledge of health and medicine, to result in: (3-15-02)

- a. Placing the insured's health in serious jeopardy; (3-15-02)
- b. Serious impairment to bodily functions; or (3-15-02)
- c. Serious dysfunction of any bodily organ or part. (3-15-02)

~~005. -- 009.~~ (~~RESERVED~~).

**011. -- 019.** (**RESERVED**).

**~~0420.~~ COORDINATION OF BENEFITS.**

Coordination of Benefits shall be utilized on the Individual Basic, Standard, and Catastrophic A, Catastrophic B plans, and HSA Compatible benefit plans based upon IDAPA 18.01.74, "Coordination of Benefits." (4-11-06)

**~~0421.~~ LIMITATIONS AND EXCLUSIONS.**

- 01. Not Medically Necessary.** Any service not medically necessary or appropriate unless specifically included within the coverage provisions. (6-30-95)
- 02. Custodial, Convalescent, Intermediate.** Custodial, convalescent or intermediate level care or rest cures. (6-30-95)
- 03. Experimental, Investigational.** Services which are experimental or investigational. (6-30-95)
- 04. Workers Compensation, Medicare or CHAMPUS.** Services covered by Workers' Compensation, Medicare or CHAMPUS. (3-15-02)
- 05. No Charges, No Legal Obligation to Pay.** Services for which no charges are made or for which no charges would be made in the absence of insurance or for which the insured has no legal obligation to pay. (6-30-95)
- 06. No Medical Diagnosis.** Services for weight control, nutrition, and smoking cessation, including self-help and training programs, as well as prescription drugs used in conjunction with such programs and services. (7-1-98)

- 07. Cosmetic Surgery.** Cosmetic surgery and services, except for ~~treatment or surgery for congenital anomalies~~ reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other disease of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child. Mastectomy reconstruction is covered as described in the Women's Health and Cancer Rights Act. (3-15-02)(\_\_\_\_)
- 08. Artificial Insemination and Infertility Treatment.** Artificial insemination and infertility treatment. Treatment of sexual dysfunction not related to organic disease. (6-30-95)
- 09. Reversal of Elective Infertility.** Services for reversal of elective, surgically or pharmaceutically induced infertility. (3-15-02)
- 10. Vision Therapy.** Vision therapy, tests, glasses, contact lenses and other vision aids. Radial keratotomy, myopic keratomileusis and any surgery involving corneal tissue to alter or correct myopia, hyperopia or stigmatic error. (6-30-95)
- 11. Weak, Strained, or Flat Feet.** For treatment of weak, strained, or flat feet, including orthopedic shoes, orthotic devices, or other supportive devices, or for cutting, removal, or treatment of corns, calluses, or nails other than corrective surgery, or for metabolic or peripheral vascular disease. (3-15-02)
- 12. Manipulative Therapy and Related Treatment.** Manipulative therapy, including heat treatments and ultrasound, of the musculoskeletal structure and other fractures and dislocations of the extremities will be subject to the rehabilitation therapy limit described in the schedule of benefits. (3-15-02)
- 13. Dental, Temporomandibular Joint (TMJ) and Orthodontic Services.** Dental and orthodontic services, except those needed for treatment of an accidental injury to sound natural teeth incurred while covered by the plan and limited to six (6) months from the date of injury. (3-15-02)
- 14. Hearing Tests and Hearing Aids.** Hearing tests without illness being indicated. Hearing aids and supplies, tinnitus maskers, cochlear implants and exams for the prescription or fitting of hearing aids. (3-15-02)
- 15. Private Room.** Private room accommodation charges in excess of the institution's most common semi-private room charge except when prescribed as medically necessary. (6-30-95)
- 16. Prior to Effective Date.** Care incurred before the effective date of the ~~person's insured's~~ coverage. (6-30-95)(\_\_\_\_)
- 17. Immunizations and Medical Exams and Tests.** Immunizations and medical exams and tests of any kind not related to treatment of covered injury or disease, except as specifically stated in the policy. (6-30-95)
- 18. Injury or Sickness.** Injury or sickness caused by war or armed international conflict or incurred as a result of voluntary participation in an assault, felony, insurrection or riot. (3-15-02)
- 19. Sex Change Operations.** Sex change operations and treatment in connection with transsexualism. (6-30-95)
- 20. Marriage and Family Counseling.** Marriage and family counseling except as specifically allowed in the policy. (3-15-02)
- 21. Acupuncture.** Acupuncture, except when used as pain management by a licensed provider. (3-15-02)
- 22. Private Duty Nursing.** Private duty nursing except as specifically allowed in the policy. (6-30-95)
- 23. Medical Services Received From Employer, Labor Union, Association.** Services received from a medical or dental department maintained by or on behalf of an employer, a mutual benefit association, labor union, trust, or similar person or group. (6-30-95)

- 24. Termination.** Services incurred after the date of termination of an ~~covered person's~~ insured's coverage. (3-15-02)( ) (6-30-95)
- 25. Personal Hygiene and Convenience Items.** Expenses for personal hygiene and convenience items such as air conditioners, humidifiers, and physical fitness equipment. (6-30-95)
- 26. Failure to Keep a Scheduled Visit.** Charges for failure to keep a scheduled visit, charges for completion of any form, and charges for medical information. (6-30-95)
- 27. Screening Examinations.** Charges for screening examinations except as otherwise provided in the policy. (6-30-95)
- 28. Wigs or Hair Loss.** Charges for wigs or cranial prostheses, hair analysis, hair loss and baldness. (6-30-95)
- 29. Pre-Existing Conditions.** Pre-existing conditions, except as provided specifically in the policy. (6-30-95)
- 30. Obesity.** Medical or surgical procedures primarily for treatment of obesity or for reversal, revision, or complications thereof. (3-15-02)
- 31. Maternity.** Not a covered benefit under the HSA Compatible Plan. (4-11-06)
- 32. Expenses Exceeding the Carrier's Allowable Amount.** Expenses and/or charges which exceed the carrier's allowable amount for a service or supply. (4-11-06)

**0422. BENEFITS.**

Based on the provisions of Section 41-5511, Idaho Code, the Guaranteed Issue Schedule of Benefits Attachments for Basic Benefit Plan, Standard Benefit Plan, Catastrophic "A" Benefit Plan, and Catastrophic "B" Benefit Plan have been replaced by the new Idaho Individual High-Risk Plan Designs, as follows:

<b>BASIC BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas - Lifetime Benefit Maximum per Carrier</b>	\$500,000
Preventive Services - <b>Benefit Area "A"</b> Annual Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas B, C, D, E, F</b>	
Calendar Year Deductible - Individual	\$500
Benefit Percentage	50%
Coinsurance Percentage	50%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$20,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	\$ <del>250,000</del>
Skilled Nursing Facility - <b>Benefit Area "C"</b> Annual Benefit Maximum	45 days

<b>BASIC BENEFIT PLAN</b>	
Rehabilitation Therapy - <b>Benefit Area "C"</b> Annual Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined Annual Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined Annual Benefit Maximum	\$5,000
Pharmacy - <b>Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$250
Benefit Percentage	50%
Coinsurance Percentage	50%
Does not apply to Out-of-Pocket Expense limit	

<b>STANDARD BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas</b> - Lifetime Benefit Maximum per Carrier	\$1,000,000
Preventive Services - <b>Benefit Area "A"</b> Annual Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas B, C, D, E, F</b>	
Calendar Year Deductible - Individual	\$1,000
Benefit Percentage	70%
Coinsurance Percentage	30%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$10,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	<del>\$250,000</del>
Skilled Nursing Facility - <b>Benefit Area "C"</b> Annual Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> Annual Inpatient Benefit Maximum	\$25,000

<b>STANDARD BENEFIT PLAN</b>	
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined Annual Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined Annual Benefit Maximum	\$5,000
Pharmacy - <b>Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$250
Benefit Percentage	50%
Coinsurance Percentage Does not apply to Out-of-Pocket Expense limit	50%

<b>CATASTROPHIC "A" BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas</b> - Lifetime Benefit Maximum per Carrier	\$1,000,000
Preventive Services - <b>Benefit Area "A"</b> Annual Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas B, C, D, E, F</b>	
Calendar Year Deductible - Individual	\$2,000
Benefit Percentage	70%
Coinsurance Percentage	30%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$10,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	<del>\$</del> 250,000
Skilled Nursing Facility - <b>Benefit Area "C"</b> Annual Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> Annual Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined Annual Outpatient Benefit Maximum	\$2,000

<b>CATASTROPHIC "A" BENEFIT PLAN</b>	
Home Health Care Benefits - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined Annual Benefit Maximum	\$5,000
Pharmacy - <b>Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$500
Benefit Percentage	50%
Coinsurance Percentage	50%
Does not apply to Out-of-Pocket Expense limit	

<b>CATASTROPHIC "B" BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas</b> - Lifetime Benefit Maximum per Carrier	\$1,000,000
Preventive Services - <b>Benefit Area "A"</b> Annual Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas B, C, D, E, F</b>	
Calendar Year Deductible - Individual	\$5,000
Benefit Percentage	80%
Coinsurance Percentage	20%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$10,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	<del>\$</del> 250,000
Skilled Nursing Facility - <b>Benefit Area "C"</b> Annual Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> Annual Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined Annual Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000

<b>CATASTROPHIC "B" BENEFIT PLAN</b>	
Hospice Care - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined Annual Benefit Maximum	\$5,000
Pharmacy - <b>Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$500
Benefit Percentage	50%
Coinsurance Percentage	50%
Does not apply to Out-of-Pocket Expense limit	

<b>HSA – COMPATIBLE BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas -</b> Lifetime Benefit Maximum per Carrier	\$1,000,000
Preventive Services - <b>Benefit Area "A"</b> Annual Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas C, D, E, F, G</b>	
Calendar Year Deductible - Individual	\$3,000
Family	\$6,000
Benefit Percentage	60%
Coinsurance Percentage	40%
Individual Out-of-Pocket Expense Maximum including Deductible or copayments, and coinsurance	\$5,000
Family Out-of-Pocket Expense Maximum	\$10,000
Maternity Benefit - <b>Benefit Area "B"</b> Not available under the HSA Compatible Benefit Plan	Not Covered
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	\$ <del>4</del> 250,000
Skilled Nursing Facility - <b>Benefit Area "C"</b> Annual Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> Annual Inpatient Benefit Maximum	\$25,000



Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined Annual Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D"</b> Annual Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> Annual Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined Annual Benefit Maximum	\$5,000
Pharmacy - <b>Benefit Area "G"</b> Calendar Year Pharmaceutical Subject to Deductible and Coinsurance	\$6,000

(4-11-06)( )

**0433. -- 999. (RESERVED).**

**IDAPA 18 - DEPARTMENT OF INSURANCE**  
**18.01.77 - ACTUARIAL OPINION AND MEMORANDUM RULE**  
**DOCKET NO. 18-0177-0801**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2009 Idaho State Legislature for final approval. The effective date of the pending rule is December 31, 2008 and it becomes final 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) 41-211 and 41-612, 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:

Section 41-612(12)(d)(iv), Idaho Code, permits the Director to rely on a foreign or alien insurer's home state regulator regarding the preparation and filing of an actuarial report. This proposed rule amends IDAPA 18.01.77 to provide an exemption from filing with Idaho a report known as the Regulatory Asset Adequacy Issues Summary (the "RAAIS") for a foreign or alien insurer whose state of domicile imposes reporting requirements substantially similar to those imposed by Idaho. The RAAIS is not part of the NAIC's electronic filings due to its confidential nature. Therefore, insurers must file a paper copy with the Idaho Department of Insurance, or an electronic copy, which is printed. The Department does not utilize an actuary to review RAAIS reports filed by non-domestic insurers, thus this filing requirement is largely perfunctory. The rule change is proposed to take effect December 31, 2008 so the exemption can be implemented for the 2008 annual financial filing period, thus reducing the use and cost of paper and expense of mailing for affected insurers.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 2, 2008 Idaho Administrative Bulletin, Vol. 08-7, pages 59 through 63.

**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 Martha Smith, Senior Financial Examiner, Idaho Department of Insurance, at 208/334-4315.

DATED this 29th day of August, 2008.

Martha Hopper Smith, FLMI/M  
Senior Financial Examiner  
Idaho Department of Insurance  
700 West State Street, 3rd Floor

Boise, ID 83720-0043  
208-334-4315 (Voice)  
208-334-4298 (Fax)  
Martha.Hopper@doi.idaho.gov

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**DOCKET NO. 18-0177-0801 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 08-7, July 2, 2008, pages 59 through 63.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2009 Idaho State Legislature for final adoption.**

## **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. 21-0101-0801**

#### **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 October 15, 2008.

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 Division has been involved in increasingly complicated appeals. The revisions align the appeals process with the Administrative Procedure Act and provide changes designed to accommodate more complicated appeals. The Division has also noted gaps in its rules concerning notices to applicants and residents. The revisions provide provisions to address these gaps. The revisions establish provisions addressing notices of transfer and notices of discharge for bases not previously addressed. They allow the Administrator to designate a hearing officer other than the Veterans Affairs Commission where the issues are legally complex or where the Commission does not have sufficient time to handle the matter. The proposed rules also revise the procedures relating to appeals to provide a more efficient process that aligns the procedures with the Administrative Procedure Act.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

David E. Brasuell  
Administrator  
Division of Veterans Services  
320 Collins Road  
Boise, ID 83702  
Phone: (208) 334-351  
Fax: (208) 334-2627

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0101-0801**

**202. ACKNOWLEDGMENT OF CONDITIONS LEADING TO DISCHARGE.**

Upon admission to a Home, each resident will be advised in writing of the conditions under which immediate discharge will occur, as specified in ~~Subsection 350-07~~ of these rules. Each resident must acknowledge receipt of this information by signature, and that acknowledgment will be a permanent part of each resident's file. ~~(3-30-01)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. TRANSFER AND DISCHARGE OF RESIDENTS.**

A resident can be transferred or discharged, for a period to be determined by the Home Administrator, for the bases set forth in Section 350 of these rules. The Home Administrator will provide notice of transfer or discharge and the opportunity to appeal a transfer or discharge in accordance with Section 9820 of these rules. ~~(4-2-08)~~(\_\_\_\_)

**01. Emergency Discharge or Transfer.** Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged or transferred. ~~(4-2-08)~~(\_\_\_\_)

**02. General Discharge or Transfer.** If the Home Administrator determines that one (1) or more of the following is present or has occurred, the resident may be ~~given notice in accordance with Subsection 982.03 of these rules and~~ discharged or transferred from the Home: ~~(4-2-08)~~(\_\_\_\_)

**a.** Possession of a lethal weapon of any kind by the resident on Division property; possession of wine, beer, or liquor by the resident on Division property; or possession of a controlled substance or medication by the resident, unless prescribed by the resident's physician; (4-2-08)

**b.** The resident's excessive or habitual intoxication; (4-2-08)

**c.** Disruption of the peace of the Home by the resident; (4-2-08)

**d.** The resident strikes or threatens harm to another person; (4-2-08)

**e.** The resident willfully destroys or wrongfully appropriates state or another person's property; (4-2-08)

**f.** The resident commits a felony; (4-2-08)

**g.** The resident uses abusive language or gestures or intentionally commits assault or battery; (4-2-08)

**h.** The resident fails to comply with the rules of this Chapter or a written directive of the Home Administrator or the Division Administrator; (4-2-08)

**i.** The financial conditions set forth in Section 950 of these rules are present; (4-2-08)

**j.** The resident engages in a pattern of behavior that infringes upon the rights of another person; (4-2-08)

**k.** The resident has unauthorized absences from the Home in excess of those permitted by Section 352 of these rules; (4-2-08)

**l.** Continued residency at the Home by the resident presents a danger to the resident or other persons; (4-2-08)

**m.** The resident is required by law to register as a sex offender and the Home has determined that the Home must provide resources in excess of those provided to other residents to ensure the safety of the resident or other persons; (4-2-08)

**n.** The resident does not meet the requirements and limitations set forth in Section 100 of these rules. (4-2-08)

**03. Discharge or Transfer During Absence.** A resident who is absent from the Home may be discharged or transferred due to one (1) or more of the following: ( )

**a.** The Home will not have the capability or services to provide an appropriate level of care to the resident upon the resident's return to the Home; ( )

**b.** The resident has not returned to the Home from an absence prior to the expiration of the bed hold period established by a third party payer paying more than half of the resident's maintenance charges; ( )

**c.** The resident ceases to pay the resident's maintenance charges or a bed hold charge applicable to an absence. ( )

**04. Voluntary Transfer or Discharge.** A resident may be transferred or discharged at any time upon voluntary consent of the resident. ( )

**351. (RESERVED).**

**352. UNAUTHORIZED ABSENCES -- RESIDENTIAL AND DOMICILIARY CARE.**

**01. Unauthorized Absences Prohibited.** For residential and domiciliary care residents, no more than three (3) unauthorized absences may be accumulated in a thirty (30) day period. If more than three (3) unauthorized absences are accumulated, the resident ~~will~~ may be discharged for a period of thirty (30) days. (~~3-30-01~~)( )

**02. Yearly Maximum.** The maximum number of unauthorized absences allowable in a one (1) year period is twelve (12). Any resident who exceeds twelve (12) unauthorized absences in one (1) year ~~will~~ may be discharged for a period of up to one (1) year. (~~3-30-01~~)( )

**03. Readmission Requirements.** Residents discharged ~~pursuant to this Section~~ for unauthorized absences must reapply for admission and are subject to the same restrictions and conditions as other applicants. (~~3-30-01~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**98016. MONTHLY CHARGES AND ALLOWANCES.**

**01. Nursing Care.** Pursuant to Section 66-907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of each Home. Charges and allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-30-01)

**a.** Changes to Charges and Allowances. Members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

**b.** Notification and Posting. When changes are made to charges or allowances, residents or their families or sponsors will receive written notification and changes will be posted in the business office of each Home a minimum of thirty (30) days prior to the effective date of the change. (3-30-01)

**02. Residential and Domiciliary Care.** Pursuant to Section 66-907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of the Homes. Allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-20-04)

**a.** Changes to Charges and Allowances. Pursuant to Paragraphs 915.05.b. and 915.05.c. of these rules, monthly charges for residential and domiciliary care will be adjusted automatically when a change is made to the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12). Relative to monthly allowances, members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

**b.** Notification and Posting of Changes to Allowances. When changes are made to allowances, residents or their families or sponsors will receive written notification, and changes will be posted in the business office of the Veterans Homes a minimum of thirty (30) days prior to the effective date of the change. (3-20-04)

**9167. -- 949. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

***CODIFIED SECTION 980 HAS BEEN MOVED AND RENUMBERED TO SECTION 916.***

**980. NOTICE OF RESIDENT TRANSFER OR DISCHARGE AND NOTICE OF DENIAL OF AN APPLICATION FOR RESIDENCY.**

The Home Administrator or his designee must notify the applicant or resident of any action to be taken regarding rejection of an application or transfer or discharge from a Home. ( )

**01. Form of Notice.** The notice of intended action must be in writing. ( )

**02. Content of Notice.** The notice must state the following: ( )

**a.** The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; ( )

**b.** The effective date of the action; ( )

**c.** The applicant's or resident's right to request a hearing according to the provisions in Section 982 of these rules; and ( )

**d.** The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. ( )

**03. Notification Deadlines for Domiciliary Care.** The following notification deadlines are established for Domiciliary Care only: ( )

**a.** Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01 and 350.03 through 350.04 of these rules. ( )

**b.** Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. ( )

**04. Notification Deadlines for Residential Care.** The following notification deadlines are established for Residential Care only: ( )

a. Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01 and 350.03 through 350.04 of these rules. ( )

b. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. ( )

**05. Notification Deadlines for Nursing Care.** The following notification deadlines are established for Nursing Care only: ( )

a. Notices of general discharge or transfer pursuant to Subsection 350.02 of these rules must be sent to the resident thirty (30) days prior to the intended effective date of the action. ( )

b. Notices of emergency discharge or transfer pursuant to Subsection 350.01 of these rules must be sent to the resident as soon as practical. ( )

c. Notices of discharge or transfer during absence pursuant to Subsection 350.03 of these rules must be sent to the resident within three (3) working days of the Home's determination to transfer. ( )

d. Notice of discharge for unauthorized absences pursuant to Paragraph 350.02.k. of these rules must be sent to the resident within three (3) days of the last unauthorized absence establishing a basis for discharge. ( )

e. The Home is not required to provide notice of voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. ( )

f. Notification of the denial of an application for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. ( )

**06. Notice of Denial of Emergency Relief.** The Veterans Services Program Supervisor or his designee must notify the applicant of the denial of his application for emergency relief. ( )

a. The notice of denial must be in writing. ( )

b. The notice must state the following: ( )

i. The reason for denial and a reference to the pertinent rules under which the denial was made; and ( )

ii. The applicant's right to request a hearing according to the provisions in these rules; and ( )

iii. The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. ( )

c. Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. ( )

**981. APPEAL PROCEDURE.**

Upon notification to a resident of transfer or discharge from a Home by the Home Administrator, the resident may request a hearing in accordance with the provisions in Section 982, "Provisions for Contested Cases," of these rules. Any additional violation of Home rules by a resident while on notice *for disciplinary action* of transfer or discharge will be treated independent of any pending appeal. (3-20-04)( )

**982. PROVISIONS FOR CONTESTED CASES.**

**01. Inapplicability of Idaho Rules of Administrative Procedure of the Attorney General.** All contested cases shall be governed by the provisions of these rules. The Commission and Division Administrator find that the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General,"

are inapplicable and inappropriate for contested cases before the Commission, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time lines, and other provisions requiring the Division to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgate and adopt alternative procedures and elect not to be governed by any of the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General." (3-30-01)

**02. Hearing Rights.** ~~Through compliance with these rules, r~~Residents and applicants have the following rights to a hearing: (3-30-01)(\_\_\_\_)

**a.** If a resident of a Home is notified of ~~pending disciplinary action, including~~ transfer or discharge, the resident will be afforded an opportunity for a hearing ~~with the Commission~~. A resident of a Home must attempt to resolve the ~~violations bases~~ stated on the notice of action through verbal discussions with the Home Administrator or his designee prior to submission of a written request for a hearing ~~before the Commission~~. A resident will not be afforded an opportunity for a hearing based upon a voluntary transfer or discharge under Subsection 350.04 of these rules. (3-20-04)(\_\_\_\_)

**b.** If an application for residency in a Home is rejected, the applicant may request a hearing ~~before the Commission~~. (3-30-01)(\_\_\_\_)

**c.** If an application for emergency relief is denied, the applicant may request a hearing ~~before the Commission~~. (3-30-01)(\_\_\_\_)

**03. Notice of Action.** ~~The Home Administrator or his designee must notify the applicant/resident of any action to be taken regarding rejection of an application or discharge from a Home.~~ (3-20-04)

**a.** ~~The notice of intended action must be in writing.~~ (3-30-01)

**b.** ~~The notice must state the following:~~ (3-30-01)

**i.** ~~The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made;~~ (3-30-01)

**ii.** ~~The effective date of the action;~~ (3-30-01)

**iii.** ~~The applicant's/resident's right to request a hearing according to the provisions in Section 982 of these rules; and~~ (4-2-08)

**iv.** ~~The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05 of these rules.~~ (4-2-08)

**e.** ~~The following notification deadlines are established for Domiciliary Care only:~~ (3-30-01)

**i.** ~~Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules.~~ (4-2-08)

**ii.** ~~Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection.~~ (3-30-01)

**d.** ~~The following notification deadlines are established for Residential Care only:~~ (3-30-01)

**i.** ~~Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules.~~ (4-2-08)

**ii.** ~~Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection.~~ (3-30-01)



- ~~e. The following notification deadlines are established for Nursing Care only: (3-30-01)~~
- ~~i. Discharge notices must be sent to the resident thirty (30) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules. (4-2-08)~~
- ~~ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-30-01)~~
- ~~**04. Notice of Denial of Emergency Relief.** The Veterans Services Program Supervisor or his designee must notify the applicant of the denial of his application for emergency relief. (3-30-01)~~
- ~~a. The notice of denial must be in writing. (3-30-01)~~
- ~~b. The notice must state the following: (3-30-01)~~
- ~~i. The reason for denial and a reference to the pertinent rules under which the denial was made; and (3-30-01)~~
- ~~ii. The applicant's right to request a hearing according to the provisions in these rules; and (3-30-01)~~
- ~~iii. The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05 of these rules. (4-2-08)~~
- ~~e. Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. (3-30-01)~~
- 053. Requesting a Hearing. (3-30-01)**
- a. A request for a hearing from a resident or an applicant for residency in a Home must be submitted through the Home Administrator to the Division Administrator for possible resolution or the scheduling before the Commission of a hearing. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Paragraph 982.02.a. of these rules. ~~Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (4-2-08)(\_\_\_\_)~~
- b. A request for a hearing from an applicant for emergency relief must be submitted through the Veterans Services Program Supervisor to the Division Administrator for possible resolution or the scheduling before the Commission of a hearing. ~~Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (3-30-01)(\_\_\_\_)~~
- c. A request for a hearing must be in writing and signed by the applicant/resident. (3-30-01)
- d. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (3-30-01)
- e. Pending a hearing, benefits will be continued or held in abeyance as follows: (3-30-01)
- i. Benefits for domiciliary care, residential care, and nursing care residents will not be continued when the transfer or discharge is an emergency discharge under Subsection 350.01 of these rules or a discharge for unauthorized absences under Paragraph 350.02.k. of these rules. ~~If the hearing request is made before the effective date of action and within three (3) days of receipt of the notice, no action will be taken by the Home Administrator on a general discharge under Subsection 350.02 of these rules, except Paragraph 350.02.k., or a transfer under Subsection 350.03 of these rules pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Paragraph 350.01.a. of these rules final order. (4-2-08)(\_\_\_\_)~~
- ii. ~~Benefits for residential care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the~~

~~conditions noted in Paragraph 350.01.a. of these rules.~~ (4-2-08)

~~iii. Benefits for nursing care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Paragraph 350.01.a. of these rules.~~ (4-2-08)

~~iv. Benefits for emergency relief applicants will not be granted until the Commission renders a written decision following the hearing issuance of the final order.~~ (3-30-01)( )

**f.** The Division Administrator will not accept a request for a hearing from a voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. ( )

**983. PREHEARING PROVISIONS.**

The following general provisions are applicable to those phases of all ~~contested case proceedings~~ appeals which occur before the hearing is conducted unless precluded by statute or rule. (3-30-01)( )

**01. Limitation of Time Periods.** ~~In the event there is no other specific provision in these rules or in the Idaho Code, a resident, applicant, or other person aggrieved by any final decision of the agency shall have thirty five (35) days to file an appeal of any adverse order or notice of decision of the Division, Division Administrator, or Home Administrator.~~ (3-30-01)

**021. Notice of Hearing.** ~~All parties in a contested case proceeding shall be afforded an opportunity upon the receipt of a timely request for a hearing after reasonable notice, or within such time period as may be mandated by law. The hearing shall be arranged by the Division Administrator and a notice sent to all parties. The notice shall include:~~ (3-30-01)( )

- a.** A statement of the time, place and nature of the hearing; (3-30-01)
- b.** A statement of the legal authority under which the hearing is to be held; (3-30-01)
- c.** A reference to the particular sections of any statutes and rules involved; (3-30-01)
- d.** A statement of the issues involved; (3-30-01)
- e.** A statement that all documents to be relied upon by the ~~Commission~~ hearing officer to make its order or notice of decision, or otherwise related to the issues involved in the hearing and relied upon by any party, are to be filed with the Division Administrator and that each party must serve its own documents unless otherwise stated by law; (3-30-01)( )
- f.** A statement that all parties may be represented by counsel; and (3-30-01)
- g.** A statement concerning advance requests for hearing transcripts pursuant to Subsection 983.08 of these rules. (3-30-01)

**h.** The assignment of a hearing officer for the hearing. The Division Administrator may designate the Commission as a hearing officer. ( )

**032. Prehearing Conference.** The Division Administrator or ~~Commission~~ hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference for the following purposes: (3-30-01)( )

- a.** To formulate or simplify the issues; (3-30-01)
- b.** To obtain admissions or stipulations of fact and of documents; (3-30-01)
- c.** To arrange for exchange of proposed exhibits or prepared expert testimony; (3-30-01)

- d. To limit the number of witnesses; (3-30-01)
- e. To determine the procedure at the hearing; and (3-30-01)
- f. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (3-30-01)

**043. Disposition of Case Without a Hearing.** Unless precluded by law, disposition without a hearing may be made of any contested case by stipulation, agreed settlement, consent order, motions to dismiss, summary judgment, or default. (3-30-01)

**054. Withdrawal of Appeal.** The initiating party at any time may withdraw from any contested case proceeding upon serving written notice of withdrawal to the Division Administrator. (3-30-01)

**065. Withdrawal of Attorney or Representative.** Any attorney or other person representing a party in a contested case proceeding who wants to withdraw from such proceeding must immediately notify, in writing, the Division Administrator, and all involved parties. (3-30-01)

**076. Intervention.** Persons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, may intervene if they first secure an order from the Division Administrator granting leave to intervene. (3-30-01)

**a. Granting of Leave to Intervene.** The granting of leave to intervene or to otherwise appear in any matter or proceeding shall not be construed to be a finding or determination that such party will or may be a party aggrieved by any ruling, order or decision of the agency for purposes of judicial review or appeal. (3-30-01)

**b. Form and Content of Petitions.** Petitions for leave to intervene must be in writing and must clearly: (3-30-01)

i. Identify the proceeding in which it is sought to intervene, setting forth the name and address of the intervenor; (3-30-01)

ii. Make a clear and concise statement of the direct and substantial interest of the intervenor in such proceeding and the relationship of the intervenor to the other parties; (3-30-01)

iii. State the manner in which such intervenor will be affected by such proceeding, outlining the matters and things relied upon by such intervenor as a basis for his request to intervene in such cause; (3-30-01)

iv. If affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof; and (3-30-01)

v. A statement as to the nature and quantity of evidence the intervenor will present if such petition is granted. (3-30-01)

**c. Filing of Petitions.** All petitions must be filed with the Division Administrator. Petitions to intervene and proof of service thereof on all other parties of record must be filed within seven (7) days after receiving notice of the proceeding, or if no notice is received, not less than fourteen (14) days prior to the date set for hearing and, if filed thereafter, must state a substantial reason for such delay; otherwise the petition will not be considered. (3-30-01)

**087. Hearing Record.** The ~~Commission~~ hearing officer or the Division Administrator will arrange for a record to be made of the ~~contested case~~ hearing. The record must be a verbatim record and it will be ~~magnetically~~ recorded by ~~two (2)~~ a recording devices, unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record shall be transcribed at the expense of the party requesting a transcription, and prepayment or guarantee of payment may be required. Once a transcription is requested, any party may obtain a copy at the party's own expense. The recorded proceedings will be provided to the

Division Administrator for inclusion into the record. The Division shall maintain an official record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. The record shall include all notices of proceedings, pleadings, motions, briefs, petitions and intermediate rulings, evidence received or considered, any oral or written statements allowed by the Commission hearing officer or the Division Administrator, statement of matters officially noticed, offers of proof and objections and rulings thereon, the recording of the proceedings or any transcript of all or part of the proceedings, staff memoranda or data submitted to the Commission hearing officer or the Division Administrator in connection with the proceeding, and any recommended order, preliminary order, final order or order on reconsideration. ~~(3-30-01)~~(\_\_\_\_)

**098. Subpoenas.** ~~Where authorized by law, the~~ Commission hearing officer may compel the attendance of specific persons and the production of specific documents, materials, or objects at any ~~contested case proceeding hearing~~ by subpoena issued by the Division Administrator. (3-30-01)

**109. Stipulations.** The parties to a contested case proceeding may stipulate as to any fact at issue, either by written stipulation or by oral statement shown upon the record. Any such stipulation shall be binding upon all parties so stipulating and may be considered by the Commission hearing officer and the Division Administrator. The Commission hearing officer and the Division Administrator may require proof by evidence of any facts stipulated to, notwithstanding the stipulation of the parties. ~~(3-30-01)~~(\_\_\_\_)

**140. Rules of Civil Procedure.** As contested case proceedings and hearings are informal, the Idaho Rules of Civil Procedure shall not apply. The Commission hearing officer shall provide the procedure at the hearing, as required by the provisions of Section 67-5242(3), Idaho Code. ~~(3-30-01)~~(\_\_\_\_)

**121. Discovery.** Prehearing discovery shall be strictly limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer or present at the hearing. The Commission hearing officer may order disclosure of this information if a party refuses to comply after receiving a written request. ~~(3-30-01)~~(\_\_\_\_)

**132. Briefing Schedule.** The Commission hearing officer may require briefs and written memoranda to be filed by the parties, and may establish a reasonable briefing schedule. ~~(3-30-01)~~(\_\_\_\_)

**143. Informal Disposition.** Unless otherwise prohibited by statute or rule, the Commission hearing officer may decline to initiate a contested case. Informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement or consent order, which informal settlement is encouraged. The parties may stipulate as to the facts, reserving their right to appeal to a court of competent jurisdiction on issues of law. The Commission hearing officer may request such additional information as may be required to decide whether to initiate or to decide a contested case. If the Commission hearing officer declines to initiate or decide a contested case, a brief statement of the reasons for that decision will be furnished to all persons or parties involved. This disposition of a contested case by informal disposition shall be a final agency action pursuant to Section 67-5241, Idaho Code. ~~(3-30-01)~~(\_\_\_\_)

**984. HEARING PROVISIONS.**

The following general provisions are applicable to those phases of all ~~contested case proceedings which occur during the~~ hearings, unless precluded by statute or rule. ~~(3-30-01)~~(\_\_\_\_)

~~01. Classification of Proceedings. Proceedings before the Commission will be classified according to their nature, the relief sought, the need for proof, and the requirements of due process. (3-30-01)~~

~~02. Formal Complaints and Petitions. Complaints and petitions must be in writing and shall set forth clearly and concisely the grounds of the complaint and a statement of the facts, actions or things done or omitted. Facts constituting such acts or omissions, together with citations, statutes, or rules involved, should be stated, together with the dates on which the acts or omissions occurred. The initial pleading of each party must provide the name and the address of the complainant or petitioner or representative, together with the name, address and telephone number of his attorney, if any, upon the complaint or petition. Service of documents on the named representative or attorney is valid service upon the party for all purposes. (3-30-01)~~

~~031. Computation of Time.~~ In computing any period of time relating to a ~~contested case proceeding~~

hearing, the first day of the period is not to be included. The last day of the period is to be included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until 5 p.m. of the next working day, unless otherwise provided by law. (3-30-01)(\_\_\_\_)

**042. Service of Documents.** Documents concerning ~~contested case proceedings~~ hearings must be served as follows: (3-30-01)(\_\_\_\_)

**a.** All pleadings, briefs and subsequent papers must be served upon every party of record concurrently with the filing with the Division Administrator. (3-30-01)

**b.** All notices and orders required to be served, other than the initial complaint or petition, must be served in person or by first-class mail. (3-30-01)

**c.** The initial complaint or petition must be served in person or by certified mail. (3-30-01)

**c.** The initial ~~complaint or petition~~ hearing request must be served in person or by certified mail. (3-30-01)(\_\_\_\_)

**d.** Service by first-class or certified mail will be deemed complete when the document, properly addressed and stamped, is deposited in the United States mail. The postmark shall be the determinative date for all time lines. (3-30-01)

**e.** Proof of service must accompany all documents when they are filed with the ~~hearing coordinator~~ Division Administrator. (3-30-01)(\_\_\_\_)

**053. Commission Hearing Officer Authority.** The ~~Commission~~ hearing officer shall, in the context of each proceeding and unless precluded by law, have the discretion, power and authority to: (3-30-01)(\_\_\_\_)

**a.** Determine the order of presentation; (3-30-01)

**b.** Grant or deny petitions for reconsideration; (3-30-01)

**c.** Determine the need, if any, for consolidation; (3-30-01)

**d.** Rule on all evidentiary questions; (3-30-01)

**e.** Rule on motions and objections and dispose of procedural requests; (3-30-01)

**f.** Determine the need for prehearing conferences, recesses, adjournments, hearings on motions and postponements; (3-30-01)

**g.** Administer oaths and affirmations; (3-30-01)

**h.** Examine witnesses; (3-30-01)

**i.** Issue subpoenas or request orders in the form of subpoenas as provided by law; (3-30-01)

**j.** Prescribe general rules of hearing decorum and conduct; (3-30-01)

**k.** Regulate the course of the proceeding; (3-30-01)

**l.** Formulate a reasoned statement in support of the decision. Findings of fact should be set forth in statutory language and shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. (3-30-01)

**m.** Perform any functions including those set forth in Sections 67-5241 through 67-5251, Idaho Code; and (3-30-01)

- n. All other functions specifically authorized by statute or rule. (3-30-01)
- o. The ~~Commission~~ hearing officer shall not have the jurisdiction or authority to invalidate any federal or state statute, rule, or regulation. ~~(3-30-01)~~(\_\_\_\_)
- 064. Ex Parte Consultations.** Ex parte communications between the ~~Commission~~ hearing officer and any party to a contested case proceeding are precluded pursuant to Section 67-5253, Idaho Code. ~~(3-30-01)~~(\_\_\_\_)
- 075. Representation by Counsel.** Any party in a contested case proceeding may be represented by counsel, at the party's own expense. (3-30-01)
- 086. Open Hearings.** All ~~contested case~~ hearings ~~must~~ may be open to the public, unless precluded by law. ~~Unless otherwise permitted by~~ When the Commission is acting as a hearing officer, hearings shall be held during regular meetings of the Commission unless otherwise scheduled by the Commission and will be arranged by the Division Administrator. ~~(3-30-01)~~(\_\_\_\_)
- 097. Testimony Under Oath.** All testimony to be considered, with the exception of matters officially noticed or entered by stipulation, must be given under oath, as administered by the ~~Commission~~ hearing officer or other authority authorized to administer oaths. ~~(3-30-01)~~(\_\_\_\_)
- 108. Appearance and Representation.** Any party to a proceeding may appear and be heard in person or may authorize an attorney to represent the party at the party's own expense. Unless otherwise ~~expressly allowed prohibited~~ by these rules, law and with the prior approval of the ~~Commission~~ hearing officer, a party may be assisted, but not represented, by a friend or relative. When a party chooses to appear in person and does not speak or understand the English language, an interpreter shall be allowed to interpret under oath. The interpreter shall not be allowed to act as a representative of the party and shall act at the party's own expense. ~~(3-30-01)~~(\_\_\_\_)
- 109. Default.** If a party fails to appear at a scheduled hearing or at any stage of a contested case without good cause and reasonable notice to the ~~Commission~~ hearing officer and to all other parties, the ~~Commission~~ hearing officer may enter a notice of proposed default order against the nonappearing party. A default order may be altered or set aside upon petition filed within seven (7) days of service of the order showing sufficient good cause stating the grounds relied on, and providing reasonable notice to all parties. ~~(3-30-01)~~(\_\_\_\_)
- 120. Order of Presentation and Burden of Proof.** At any contested case hearing, the party having the burden of proof (~~usually the petitioner or complainant~~) shall be the first to present testimony unless the ~~Commission~~ hearing officer determines otherwise. Unless otherwise determined, in advance, by the ~~Commission~~ hearing officer, the burden of proof shall be preponderance of the evidence. ~~(3-30-01)~~(\_\_\_\_)
- 131. Evidence.** Pursuant to Section 67-5251, Idaho Code, the hearing shall be informal and technical rules of evidence shall not apply, except that irrelevant, immaterial, incompetent, duly repetitious evidence, or evidence excludable on constitutional or statutory grounds protected by the rules of privilege recognized by law may be excluded. Hearsay evidence may be received if it is relevant to or corroborates competent evidence, but shall not be the sole basis for any finding of fact. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. (3-30-01)
- 142. Testimony by Telephone or Other Electronic Means.** With the prior approval of the ~~Commission~~ hearing officer, witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all parties. ~~(3-30-01)~~(\_\_\_\_)
- 153. Official Notice.** (3-30-01)
- a. Discretionary Notice. Notice may be taken of judicially cognizable facts by the ~~Commission~~ hearing officer on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the ~~Commission's~~ hearing officer's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed

including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The ~~Commission's~~ hearing officer's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (3-30-01)(\_\_\_\_)

**b.** Mandatory Notice. For all hearings, the ~~Commission~~ hearing officer must take official notice of the following materials on its own motion or on the motion of any party. Objections going to such notice must become a part of the record. For the purposes of the hearing, it is established as true without proof that the following are admissible, valid and enforceable: (3-30-01)(\_\_\_\_)

- i. Rules of the Division and other state agencies; (3-30-01)
- ii. Federal regulations; (3-30-01)
- iii. The constitution and statutes of the United States and Idaho; (3-30-01)
- iv. Public records; and (3-30-01)
- v. Such other materials that a court of law must judicially notice. (3-30-01)

**14. Hearing Officer Decision.** The hearing officer will issue a written order as provided in Section 67-5243, Idaho Code. (\_\_\_\_)

**a.** Recommended orders will contain a statement of the schedule for review of that order by the Division Administrator. (\_\_\_\_)

**b.** Preliminary orders will include notice of the right to seek a review of the order by the Division Administrator and a statement that the order will become final without a request for such review. A request for review shall be filed no later than fourteen (14) days following the issuance of the preliminary order, unless a request for reconsideration by the hearing officer is filed prior to the expiration of such fourteen (14) day period. If a petition for reconsideration is made, a request shall be filed within fourteen (14) days of the hearing officer's order disposing of the petition or the deemed denial of the petition pursuant to Section 67-5243, Idaho Code. (\_\_\_\_)

**c.** A party may file a motion for reconsideration with the hearing officer no later than fourteen (14) days following the issuance of the preliminary order or the recommended order. (\_\_\_\_)

**165. Contents of the Record.** Pursuant to Section 67-5249(2), Idaho Code, the record in a contested case proceeding shall be kept by the Division Administrator, on behalf of the ~~Commission~~ hearing officer, and must include the following: (3-30-01)(\_\_\_\_)

- a.** All notices, pleadings, motions and rulings; (3-30-01)
- b.** All evidence received or considered; (3-30-01)
- c.** A statement of all matters officially noticed; (3-30-01)
- d.** A record of testimony and offers of proof, objections and rulings thereon; (3-30-01)
- e.** A record of proposed findings and exceptions; (3-30-01)
- f.** Any decision, opinion, or report by the Commission; (3-30-01)
- g.** All staff memoranda or data submitted to the Commission in connection with consideration of the case; (3-30-01)
- h.** All briefs or memoranda submitted by any party; and (3-30-01)
- i.** Any recommended order, preliminary order, final order, or order on reconsideration. (3-30-01)

**16. Review by the Division Administrator and Issuance of the Final Order.** Following the issuance of an order by the hearing officer, the Division Administrator will: ( )

**a. Review recommended orders as provided in Section 67-5244, Idaho Code;** ( )

**b. Review preliminary orders upon the appeal of a party or upon the Division Administrator's own motion as provided in Section 67-5245, Idaho Code; and** ( )

**c. Issue a final order as provided in Section 67-5246, Idaho Code.** ( )

**17. Judicial Review.** In accordance with Section 67-5271, Idaho Code, a party which has exhausted all administrative remedies available within the Division may seek judicial review. Proceedings for judicial review shall be instituted in accordance with Sections 67-5270 and 67-5273, Idaho Code. (3-30-01)

**985. POST HEARING PROVISIONS.**

The following provisions are applicable to those phases of all contested case proceedings which occur after the hearing has been conducted: (3-30-01)

~~**01. Submission of Decision and Order.** *The Commission's decision and final order shall be served upon all parties personally or by mail.* (3-30-01)~~

**021. Service of Decisions and Orders.** Decisions and orders shall be deemed to have been served when copies thereof are mailed to all parties of record or their attorneys by the Division Administrator. (3-30-01)

**032. No Motions for Reconsideration.** Unless otherwise provided by law or these rules, motions for reconsideration shall not be permitted. (3-30-01)

**043. Public Inspection.** All final decisions and orders of the Commission must be maintained by the Division Administrator and made available for public inspection after service on the parties. (3-30-01)

**054. Effect of Petition for Judicial Review.** The filing of a petition for judicial review shall not stay compliance with the decision and order or suspend the effectiveness of the decision and order, unless otherwise ordered or mandated by law. (3-30-01)



## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY**

#### **DOCKET NO. 24-0401-0801**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-831, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 2008 Legislature passed HB375 which allows the Board of Cosmetology to use a third party exam administrator to provide the examination and it deletes the requirement for students enrolling in licensed cosmetology schools to register with the Board. These rules comply with the new law. They change the examination process to allow the third party administrator to schedule and give all examinations. With this change, exams will rotate on a monthly basis in three locations (Boise, Pocatello, and Post Falls). This change also deletes the requirement that applicants pass a jurisprudence examination. They will need to certify they know the laws and rules and agree to abide by them. The law also revises the application requirements to include proof of acceptable examination as information establishing qualifications.

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

The 2008 Legislature passed HB375 which allows the Board of Cosmetology to use a third party exam administrator to provide the examination and it deletes the requirement for students enrolling in licensed cosmetology schools to register with the Board. These rules comply with the new law. They change the examination process to allow the third party administrator to schedule and give all examinations. With this change, exams will rotate on a monthly basis in three locations (Boise, Pocatello, and Post Falls). This change also deletes the requirement that applicants pass a jurisprudence examination. They will need to certify they know the laws and rules and agree to abide by them. The law also revises the application requirements to include proof of acceptable examination as information establishing qualifications.

**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 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes are due to changes in Title 54, Chapter 8, Idaho Code.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., STE 220  
Boise, ID 83702  
(208) 334-3233 phone (208) 334-3945 fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0401-0801**

**150. REQUIREMENTS FOR LICENSURE BY ENDORSEMENT (RULE 150).**

**01. Filing Application.** Applicants for license by endorsement under the provisions of Section 54-812, Idaho Code, shall file an application on forms provided by the Board; and (7-1-97)

**a.** Furnish proof of current license in another state, territory, possession or country, having requirements equal to the requirements of Idaho; or (7-1-97)

**b.** Document by sworn affidavit attesting to having worked in a cosmetology establishment for three (3) years of practical experience under licensure within the five (5) years immediately preceding application. (3-30-01)

**02. Certification of Licensure.** Certification of licensure must be completed and submitted directly to the Board by the licensing agency of the other state, territory, possession or country, and filed in the office of the Board with the application for license and required fee. (3-8-02)

**03. Application Must Be Accompanied by Proof of Meeting Educational Requirements.** Application for license by endorsement must be accompanied by proof of the applicant having met the educational requirements as set forth in Section 54-805, Idaho Code. (3-30-01)

**04. Submit Proof of Birth.** Endorsement applicants must furnish a copy of their birth certificate or other acceptable proof of birth. (7-1-97)

**05. Application Must Be Accompanied by Endorsement Fee and Original License Fee.** Applications for license by endorsement must be accompanied by the endorsement fee and the original license fee. If the Board finds that the applicant is ineligible for license by endorsement, but is eligible for license by examination, the endorsement fee shall be utilized as the examination fee, and the applicant permitted to take the examination. (3-30-01)

~~**06. Jurisprudence Examination Required.** The Board shall require all applicants for endorsement to pass the Idaho jurisprudence examination as noted under Section 450 prior to licensure by endorsement. (3-30-01)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. APPLICATIONS (RULE 200).**

**01. Application for License by Examination.** Application for license by examination shall be made on forms furnished by the Board. (3-8-02)

**a.** Applicant. Each applicant for licensure by examination shall be required to submit to the Board an application, ~~and the required fees; and submit or facilitate the submission of the following:~~ ~~(3-8-02)(7-1-08)T~~

**b.** Records. ~~The school or apprenticeship instructor shall submit the following directly to the Board:~~ ~~(3-8-02)(7-1-08)T~~

**i.** The official record of instruction; ~~(3-8-02)(7-1-08)T~~

**ii.** A signed and notarized certificate of graduation; (3-8-02)

**iii.** Proof of the required high school education (pursuant to Section 54-805, Idaho Code) or equivalent; ~~and~~ ~~(3-8-02)(7-1-08)T~~

**iv.** Acceptable verification of applicants age ~~upon registration as a student or apprentice;~~ ~~and~~ ~~(3-8-02)(7-1-08)T~~

**v.** Examination scores. (7-1-08)T

**02. Applications Must Be Complete to Be Accepted.** Applications shall not be considered complete and accepted until all required information, documents, and fees are received by the Board. (3-8-02)

**03. Examination.** Proof of successful passage of a practical and written examination as approved by the Board. (4-2-08)

**04. Out of State Applicants.** (3-8-02)

**a.** Applicants not completing their instruction in Idaho and currently licensed in another state, territory, possession or country, must also document their other licensure and provide verification of practical experience, in addition to the required application and fees. (3-8-02)

**b.** Applicants not currently licensed in another state, territory, possession or country must provide certified documentation of all instruction received. Records of instruction must be received by the Board directly from the applicable regulatory agency or the facility that provided the instruction. (3-8-02)

**05. Lack of Activity.** Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for five (5) consecutive years shall be deemed denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board. (7-1-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. EXAMINATIONS - GENERAL (RULE 450).**

Examination for licensure shall consist of both a practical and written examination for each of those disciplines included in Chapter 8, Title 54, Idaho Code. (5-3-03)

~~01. Dates and Places.~~ ~~(7-1-97)~~

~~a. Examinations for licensure are to be held at the discretion of the Board.~~ ~~(7-1-97)~~

~~*b.* The dates and places of examination will be published annually. (7-1-97)~~

**021. Written Examination.** The written examination consists of two (2) parts: theory and Idaho jurisprudence. (7-1-97)

~~*a.* The Idaho jurisprudence examination will be a comprehensive written examination that will include Chapter 8, Title 54, Idaho Code and these rules. (5-3-03)~~

~~*b.* The theory examination will be the national examination provided by the National Interstate Council of State Boards of Cosmetology (NIC). (5-3-03)(7-1-08)T~~

**032. The Practical Examination.** The practical examination will be the NIC examination specific to the discipline for which licensure is sought. (5-3-03)

~~**04. Failure to Pass Examination.** (7-1-99)~~

~~*a.* The practical examination is failed when an applicant obtains an average score below seventy five percent (75%). Reexamination shall consist of the entire examination. (7-1-98)~~

~~*b.* Written examination is failed when the applicant obtains a score of below seventy five percent (75%) on the national theory examination or the Idaho jurisprudence examination. Reexamination shall consist of the entire examination. (4-2-08)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. RULES OF SCHOOLS OF COSMETOLOGY (RULE 500).**

Section 54-808, Idaho Code, provides for the rules of schools of cosmetology. Supplementing this section, the Board adopts the following rules: (7-1-97)

**01. Application Before Opening and Operating a School.** No school of cosmetology will be opened and/or operated until the Board has issued its approval and a valid license has been received by the school. See Section 54-806, Idaho Code. Application for a school license shall be made on forms furnished by the Board. The fully completed application to operate a school, with the required fee, shall be submitted to the Board. (3-30-01)

**a.** As soon as practicable, upon receipt of said application, the Board or its designated agent, will cause the school to be inspected. Based on this inspection, a recommendation for the issuance or rejection of a license will be made and a decision entered, within a reasonable time not to exceed thirty (30) days, after said application has been received. (7-1-97)

**b.** All new schools applying for license must have one thousand eight hundred (1,800) square feet of space. Schools approved to teach electrology refer to Rule 550. (7-1-99)

**c.** All new schools must be separated completely from establishments and have no connecting entrances. (3-30-01)

**02. Adequate Space.** Schools provide adequate space for the number of students to be trained in said schools. An additional forty (40) square feet of floor space shall be provided in excess of the minimum one thousand eight hundred (1800) square feet required for each student enrolled over twenty (20) students. (7-1-97)

**03. Annual Review of Curriculum and Catalog.** Schools must provide a curriculum and catalog to the Board. Schools must provide a curriculum and catalog to the Board for review on an annual basis. Curricula must be submitted at the time of license renewal. If there are no changes in the curriculum or catalog during the previous year, the school may submit a letter of explanation to the Board. (7-1-97)

**04. Minimum Hours of Instruction.** Students shall not be permitted to render any clinical service to patrons until students have completed at least five percent (5%) of the required hours of instruction. (3-19-07)

**05. Records Required.** Records required of schools of cosmetology: (7-1-97)

**a.** Schools shall maintain records for each student as established by schools' policy and procedures which will show daily attendance and academic grades of instructional progress. (3-30-01)

**b.** Progress records shall be signed and dated by the student and school official. A copy of the signed and dated monthly record shall be provided to the student. The school shall maintain the records for a period of ~~two~~ five (25) years following completion or termination of the student instruction. These records are subject to inspection by the Board at any time. ~~(3-30-01)~~(7-1-08)T

**c.** When a student's course of instruction at a school has been completed or terminated, the completed operations, and number of hours of instruction are to be recorded by the school on the Record of Instruction Form. This form is to be ~~filed with the Board by the school within sixty (60) days of the completion or termination of instruction, or a letter of explanation shall be filed with the Board by the school as to why student's Record of Instruction is not being filed by the school~~ maintained by the school for a period of five (5) years from completion or termination date. ~~(3-30-01)~~(7-1-08)T

**d.** Schools shall maintain on the premises proof of student meeting education requirements. Schools must maintain proof of student having satisfactorily completed two (2) years of high school (tenth grade) or having equivalent education. If student is a high school graduate, schools may accept a photostatic copy of the high school diploma or transcript. A letter written on high school stationary, signed by an officer of the high school, may be accepted to verify student's satisfactory completion of the tenth grade and eligibility to commence the eleventh grade. (7-1-97)

**e.** Proof of age must be submitted. Schools must maintain on their premises proof of students compliance with minimum age requirement. Acceptable proof of birth date will be a copy of the student's birth certificate, a passport, military identification, drivers license or other similar form of documentation. (7-1-97)

**f.** Schools shall have a written (published) attendance policy. ~~When a school is determining student hours for their course of instruction, a school may define its attendance policy to include one hundred percent (100%) attendance for the course length or may allow excused absences for not more than ten percent (10%) of the course length for satisfactory completion.~~ ~~(3-30-01)~~(7-1-08)T

**06. Record of Instruction.** A record of the operations completed by each student shall be maintained and include the following: (3-30-01)

**a.** Creative hair styling which shall include hair styles, wet sets/styling, thermal styles, fingerwaving, braiding/free styling; (3-30-01)

**b.** Scalp Treatments; (3-30-01)

**c.** Permanent Waves (All Methods); (3-30-01)

**d.** Haircutting/shaping which shall include scissor and razor/clipper; (3-30-01)

**e.** Bleaching; (3-30-01)

**f.** Tinting; (3-30-01)

**g.** Semi Permanent/Temporary Color; (3-30-01)

**h.** Frosting/~~Hilites~~ Highlights; ~~(3-30-01)~~(7-1-08)T

**i.** Facials which shall include plain, makeup and arches; (3-30-01)

- j. Manicures which shall include plain and oil; (3-30-01)
- k. Pedicures; and (3-30-01)
- l. Artificial Nails. (3-30-01)

**07. Discontinuance of School.** If a school discontinues to operate as a school, records of instruction covering all students attending said school at the time of discontinuance or prior thereto, must be ~~filed in the office of the Board~~ provided to the student(s). ~~(7-1-97)(7-1-08)T~~

**08. Out-of-State Applicants.** Applicants who have received instruction in out-of-state schools and who wish to complete instruction in an Idaho school are required to file with the Board prior to applying for examination a copy of the record of instruction from the out of state school(s). For purposes of this section, the record of instruction will be a statement which gives detailed information regarding operations and hours of instruction, and which is to be verified by the licensing agency or school(s) in the state in which the instruction was obtained. (3-30-01)

~~**09. Student Registration.** Schools are required to register all students with the Board within five (5) days of beginning instruction (post office cancellation date will be accepted). Student registration fee must be submitted at time of registration. (3-19-07)~~

**409. Outside School Activities.** Schools may allow a student credit for no more than thirty (30) hours per ~~term~~ course for outside activities during the course of their instruction. These hours must be approved by the instructor. ~~(3-30-01)(7-1-08)T~~

~~**11. Probation for New Students.** All students shall be required to serve a probationary period subsequent to registration with the Board in a school of cosmetology. Students must maintain acceptable attendance, satisfactory progress in their instruction, and/or pass an examination at the end of the probationary period. If the student can not maintain these requirements, a written certified notification by the school shall be submitted to the Board and the students registration shall become void immediately with no refund of fees. (3-30-01)~~

~~**a.** The probationary period for students in an approved program of less than an academic year of nine hundred (900) hours and/or less than fifteen (15) weeks shall be a minimum of five percent (5%) of course length. (3-30-01)~~

~~**b.** The probationary period for students, in an approved program greater than an academic year of nine hundred (900) hours and/or more than thirty (30) weeks shall be a minimum of ten percent (10%) of course length. (3-30-01)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. INSTRUCTOR RULES (RULE 600).**

**01. Requirements for Instructor License. (7-1-97)**

**a.** Application for an instructor license shall be made on forms furnished by the Board and accompanied with the required fees. (7-1-97)

**b.** Section 54-805(2)(~~8~~), Idaho Code, provides for twelve (12) semester college credit hours or equivalent, as approved by the Board, or successful completion of the examination required by Board rules. Credit hours must be obtained from the Education Department, Speech Communications Department or from the Psychology/Sociology Department and other credit at the discretion of the Board. ~~(7-1-97)(7-1-08)T~~

- c. Equivalent: (7-1-97)
- i. Teaching seminars directed to cosmetology, nail technology, esthetics, or electrology must be approved by the Board. Fourteen (14) clock hours is equivalent to one (1) semester college credit hour in an approved seminar. Verification of satisfactory completion must be submitted to the Board for their approval. (3-30-01)
- ii. Verified satisfactory teaching as a qualified instructor from another state three (3) of the previous five (5) years immediately prior to application. (7-1-97)
- d. Experience Requirements for Instructor Applicant (Reference Section 54-805(2)(8), Idaho Code). Five (5) years experience is deemed "immediately preceding" if obtained during the seven (7) year period immediately preceding application for licensure. (7-1-97)
- e. An electrologist with fewer than five (5) years' experience as a licensed electrologist must complete three (3) months, five hundred (500) hours of teacher's instruction in a cosmetology school approved to teach electrology as set forth in Subsection 550.08. (3-30-01)
- f. Six (6) months of student teaching is considered to be one thousand (1,000) hours of instruction. Three (3) months of student teaching is considered to be five hundred (500) hours of instruction. (7-1-08)T
- ~~02. Examination Dates and Places. The dates and places of examination are subject to change. (3-30-01)~~
- ~~03. Termination. All application records in the bureau of applicants who have not qualified for reexamination within five (5) years of notification of failure in any examination under the Cosmetology Law will be terminated and destroyed. (7-1-97)~~
- ~~04. Instructor Recexamination. To be eligible for reexamination, an applicant who fails any portion of the examination on a second attempt and all subsequent attempts, must obtain two hundred (200) hours additional instruction in a school of cosmetology, nail technology, esthetics, or electrology as a student instructor. (5-3-03)~~
- ~~05. Requirements for Student Instructor. (7-1-97)~~
- ~~a. A student instructor shall file an application on forms provided by the Board before beginning instruction and shall at all times be under the direct supervision of a licensed instructor. (3-30-01)~~
- ~~b. The time spent as a student instructor to meet instructor licensure requirements will not be credited to the years experience required for an instructor license. (7-1-97)~~
- ~~c. One (1) year experience may be obtained within a school upon completion of instructor instruction. (3-30-01)~~
- ~~d. Six (6) months is considered to be one thousand (1,000) hours of instruction. Three (3) months is considered to be five hundred (500) hours of instruction. (3-30-01)~~
- ~~06. Student Registration. Schools are required to register all students with the Board prior to providing any instruction. Student registration fee must be submitted at time of registration. (7-1-97)~~
- ~~072. Records Required. Records required of schools teaching student instructors shall be maintained in accordance with the records required for schools of cosmetology. (3-30-01)~~
- ~~083. Record of Instruction. Records of the operations completed by each student shall be maintained of the following: (3-30-01)~~
- ~~a. Lesson Planning. (3-30-01)~~
- ~~b. Audio Visual Aid Preparation. (3-30-01)~~

- c. Theory Class. (3-30-01)
- d. Practical Demonstrations. (3-30-01)
- e. Testing and Evaluation Theory. (3-30-01)
- f. Testing and Evaluation. (3-30-01)
- g. Clinic Floor Supervision. (3-30-01)



## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY**

#### **DOCKET NO. 24-0401-0802 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-831, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 Board of Cosmetology operates on fees paid by its licensees. This change would decrease the initial license fee and renewal fee in an attempt to reduce the Board's cash balance. The examination fee is being stricken as the fee is paid directly to the test administrator. The change to the requirements for establishment is needed to clarify the location of restroom facilities. The addition of hours credited toward licensure allows partial credit for courses if training is changed from cosmetology to esthetics. There is a correction to the rule reference for electrology apprentice for clarification. Finally, it adds haircutter into the apprentice sections.

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

Section 125 - Original license and annual renewal fees are being reduced from \$25 to \$20 for cosmetologist, haircutter, and nail technician; from \$30 to \$25 for instructor; from \$27 to \$20 for electrologist and esthetician; and the examination fee is being stricken. Section 300 - Clarifies location of restroom facilities in an establishment. Section 413 - Adds hours credited toward licensure when changing course of training to esthetics. Section 700 - Corrects a rule reference in 700.11.b.; and adds provision for haircutters under the apprenticeship program.

**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 fee change would reduce the cash balance in dedicated funds for this Board by approximately \$58,818 per year based on 11,792 licensees. There is no impact on removing the examination fee as the fee is paid directly to the test administrator.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because the increase is needed to help balance the Board's annual budget.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0401-0802**

**125. FEES (RULE 125).**

Fees are established in accord with Section 54-818, Idaho Code, as follows: (7-1-97)

**01. Original Permits, Licenses, and Annual Renewals.** (3-30-01)

**a.** Cosmetological establishment, original license - Fifty dollars (\$50). (3-30-01)

**b.** Cosmetological establishment, annual renewals - Thirty-five dollars (\$35). (3-18-99)

**c.** Retail cosmetics Dealer, original license - Fifty dollars (\$50). (3-30-01)

**d.** Retail cosmetics dealer, annual renewals - Thirty-five dollars (\$35). (3-18-99)

**e.** Makeover or glamour photography business, original license - Fifty dollars (\$50). (3-30-01)

**f.** Makeover or glamour photography business, annual renewals - Thirty-five dollars (\$35). (3-18-99)

**g.** Domestic school of cosmetology, original license - Five hundred dollars (\$500). (3-30-01)

**h.** Domestic school of cosmetology, annual renewals - One hundred fifty dollars (\$150). (7-1-97)

**i.** Registered cosmetologist, original license/annual renewals - ~~Twenty-five~~ Twenty dollars (~~\$250~~).  
(~~3-18-99~~)(    )

**j.** Nail technician, original license/annual renewals - ~~Twenty-five~~ Twenty dollars (~~\$250~~). (~~3-18-99~~)(    )

**k.** Apprentice, original license (no renewal fees required) - Twenty dollars (\$20). (7-1-97)

~~**l.** Student certificate (registration) (no renewal fees required) - Twenty dollars (\$20). (7-1-97)~~

~~**m.** Instructor, original license/annual renewals - ~~Thirty~~ Twenty-five dollars (~~\$3025~~). (~~3-18-99~~)(    )~~

~~**n.** Student instructor permit - Twenty five dollars (\$25). (~~3-30-01~~)~~

~~**o.** Electrologist, original license/annual renewals - ~~Twenty-seven~~ Twenty dollars (~~\$270~~). (~~3-18-99~~)(    )~~

~~**p.** Esthetician, original license/annual renewals - ~~Twenty-seven~~ Twenty dollars (~~\$270~~). (~~3-18-99~~)(    )~~

~~**q.** Haircutter, original license/annual renewals - ~~Twenty-five~~ Twenty dollars (~~\$250~~). (~~3-19-07~~)(    )~~

~~**r.** Endorsement fee - One hundred dollars (\$100). (3-30-01)~~

~~**s.** Temporary permit to demonstrate and teach - Ten dollars (\$10). (3-30-01)~~

**02. Examination Fees.** ~~An examination fee of seventy five dollars (\$75) shall be required for each examination administered by the Board.~~ The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator and shall be paid directly to the administrator by the applicant.  
(~~3-19-07~~)(    )

**03. Fees Shall Not Be Prorated or Returnable.** Fees shall not be prorated or returnable. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. LICENSURE AND OPERATION OF PRIMARY AND CONTIGUOUS ESTABLISHMENTS (RULE 300.)**

**01. Applications.** Application for establishment license shall be made on forms furnished by the Board. The fully completed application form, with the required fees, must be submitted to the Board and a license issued prior to the opening or operation of any cosmetological establishment. (7-1-97)

**02. Primary Establishment License.** A primary establishment license may be issued and annually renewed only under the following condition: (7-1-97)

**a.** Compliance with Subsection 300.01; and (7-1-97)

**b.** There is a clearly defined and designated working floor space of adequate dimension to allow the safe and sanitary practice of any one (1) or combination of defined practices of cosmetology for all individual stations that may be in operation in addition to any restroom and access areas; and (5-3-03)

**c.** There is an approved hot and cold running water source and drainage system that is available to any contiguous cosmetology establishment or barber shop that may exist; and must be within the perimeters of the licensed establishment and separate from the toilet facilities. (7-1-97)

**d.** The licensed area does not overlap any portion of a contiguous or other primary establishment designated area; and (7-1-97)

**e.** There ~~is access to~~ are restroom facilities ~~from within~~ in the building in which the primary establishment is located and which shall be accessible from the primary area and to all contiguous establishments. Said restroom facilities shall contain an approved hot and cold running water source and approved drainage system. Said water source shall be in addition to the work area facilities. (7-1-97)(    )

**f.** All primary areas shall be connected by an access area not less than three (3) feet wide and said access shall not be part of any contiguous establishment's designated area. (7-1-97)

**03. Contiguous Establishment License.** A contiguous establishment license may be issued and annually renewed only under the following condition: (7-1-97)

**a.** Compliance with Subsection 300.01; and (7-1-97)

**b.** The licensed area is contiguous to an area licensed as a primary cosmetology establishment or barber shop and which is accessible from the primary area by not less than a three (3) foot wide access area; and (7-1-97)

**c.** The licensed area does not overlap any portion of a primary or other contiguous establishments' designated area. "Overlap" will not include the cooperative or joint use of "common areas" such as shampoo bowls, restrooms, entrance or reception areas or the like, which are physically located within the designated licensed area of the primary shop but which are not within the designated licensed area of any contiguous shop. As these common areas are within the designated area licensed by the primary establishment, the holder of the primary license will be responsible for any violations which occur there; and (7-1-97)

**d.** The licensed contiguous shop area shall provide adequate dimension to allow the safe and sanitary practice of any one (1) or combination of the defined practices of cosmetology for all individual stations that may be in operation; and (5-3-03)

**e.** There is access to restrooms from within the building. (7-1-97)

**04. Businesses Other Than Cosmetological Establishments or Barber Shops.** Businesses other than

cosmetological establishments or barber shops, and living quarters shall be separate and apart. Home establishments must provide a separate outside entrance directly into the establishment and substantial partitions or walls shall extend from the floor to not less than seven (7) feet high, separating the establishment from adjoining rooms used for business or domestic purposes. All doors to an establishment from adjacent rooms shall be closed. (7-1-97)

**05. Adequate Toilet Facilities.** Adequate toilet facilities shall be conveniently located and accessible from within the building where the establishment is located. (7-1-97)

**06. Conditions for Issuance.** No cosmetological establishment license may be issued which includes or overlaps all or any portion of an existing establishment license. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**413. ESTHETICS REQUIREMENTS FOR LICENSURE BY EXAMINATION (RULE 413).**

**01. Filing of Record of Instruction.** Applicant must file Record of Instruction covering six hundred (600) hours as a student, or one thousand two hundred (1,200) hours as an apprentice. (3-8-02)

**02. Credit Given for Instruction.** Credit given for instruction as a student will be sixty (60) hours as a student, or one hundred twenty (120) hours as an apprentice, for each year of practical experience under licensure in another state, territory, possession, or country. (3-8-02)

**03. Six Month Allowance for Credit.** Credit for experience will be allowed only in full six (6) month increments. (7-1-99)

**04. Hours Credit Toward Licensure.** One-seventh (1/7) of cosmetology student training hours may be credited toward esthetics instruction requirements. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. COSMETOLOGY -- ELECTROLOGY, ESTHETICS, AND NAIL TECHNOLOGY APPRENTICE INSTRUCTION (RULE 700).**

Sections 54-805(6)(c) and 54-807, Idaho Code, provide for the practice of apprentices. (3-30-01)

**01. Cosmetology Apprentices.** There must be at least one (1) licensed cosmetology instructor and one (1) licensed cosmetologist in any cosmetological establishment at all times for each apprentice who is being trained therein. (7-1-99)

**a.** One (1) instructor shall train no more than three (3) currently registered apprentices. (3-8-02)

**b.** Each apprentice must also be supervised by a separate licensed cosmetologist. (3-8-02)

**02. Electrology Apprentices.** Apprentice instruction must be obtained under the direct personal supervision of an electrologist instructor. An electrologist instructor may train no more than one (1) apprentice at a time. (3-30-01)

**03. Esthetics Apprentices.** There must be at least one (1) licensed cosmetology instructor or esthetics instructor and one (1) licensed cosmetologist or licensed esthetician in any cosmetological establishment at all times for each apprentice who is being instructed therein. (3-8-02)

**04. Nail Technology Apprentices.** There must be at least one (1) licensed cosmetology instructor or nail technology instructor and one (1) licensed cosmetologist or nail technician in any cosmetological establishment

at all times for each apprentice who is being instructed therein. (3-8-02)

**05. Filing Application.** Application for permit as an apprentice must be made on forms furnished by the Board. (3-30-01)

**06. Application for Apprentice.** The application submitted for an apprentice permit must list the names and license numbers of the licensed cosmetologists, electrologists, estheticians, and nail technicians employed in the establishment in which an apprentice will serve apprenticeship. (3-30-01)

**07. Prior to Beginning Instruction.** Prior to beginning of instruction, the instructor for any apprenticeship must submit and have Board approval of a curriculum for the entire apprenticeship instruction. (3-30-01)

**08. Application Must Be Accompanied by Proof of Meeting Educational Requirements.** Applications must be accompanied by proof of having satisfactorily completed two (2) years of high school (tenth grade) or having equivalent education. If applicant is a high school graduate, a photostatic copy of the high school diploma may be submitted. A letter written on high school stationery, signed by an officer of the high school, may be forwarded with the application. Such letter shall indicate that the applicant has satisfactorily completed the tenth grade and is eligible to commence the eleventh grade. Do not send original high school diploma to the Board. (7-1-97)

**09. Submit Proof of Birth.** Apprentices must furnish a copy of their birth certificate or other acceptable proof of birth with application. (7-1-97)

**10. Apprentice Permit.** An apprentice permit must be obtained from the Board before instruction as an apprentice begins. An original apprentice permit shall be dated and valid until such time as said apprentice is no longer enrolled as an apprentice in said establishment. (3-30-01)

**11. Records Required.** Establishments instruction apprentices must maintain records as set forth: (3-30-01)

**a.** For cosmetology apprentice in Subsection 500.05. (7-1-99)

**b.** For electrology apprentice in Subsection 550.06-~~a.i.~~ (~~7-1-99~~)( )

**c.** For esthetics apprentice in Subsection 560.02. (7-1-99)

**d.** For nail technology apprentice in Subsection 570.02. (7-1-99)

**e.** For haircutter apprentice in Subsection 575.02. ( )

**ef.** Apprentices shall not be permitted to render any clinical service to patrons until said apprentice has completed at least five percent (5%) of the required hours of instruction. (4-2-08)

**12. Record of Instruction.** Records of the operations completed by each student shall be maintained of the following: (3-8-02)

**a.** For cosmetology apprentice in Subsection 500.06. (7-1-97)

**b.** For electrology apprentice in Subsection 550.07. (3-30-01)

**c.** For esthetics apprentice in Subsection 560.02-e. (~~7-1-99~~)( )

**d.** For nail technology apprentice in Subsection 570.03. (7-1-99)

**e.** For haircutter apprentice in Subsection 575.03. ( )

**13. Discontinuance of a Course.** When an apprentice discontinues a course of study, the salon is to complete a Record of Instruction Form with the credited hours completed by the apprentice. This form is to be submitted to the Board. If an apprentice discontinues a course of instruction and does not transfer to another salon within sixty (60) days, the apprentice permit is automatically canceled and is to be submitted to the Board along with the Record of Instruction. (3-30-01)

**14. Before Resuming Instruction.** Before resuming instruction, after having discontinued a course, an apprentice must file a new application and pay an additional fee. The apprentice must receive a permit before resuming instruction. (3-30-01)

**15. Discontinuance of Establishment Instruction Apprentices.** If a licensed establishment where apprentices are being trained discontinues to operate as a salon, records of instruction covering all apprentices obtaining instruction at the time of discontinuance or prior thereto, must be filed in the office of the Board. (3-30-01)

**16. Out of State Apprenticeship.** Prior to commencing a course of study in an Idaho approved establishment, an apprentice applicant is required to file with the Board a copy of the record of instruction from the out of state apprenticeship. For purposes of this section, the record of instruction will be a statement which gives detailed information regarding operations and hours of instruction, and which is to be verified by the licensing agency or instructor(s) in the state in which the instruction was obtained. (3-30-01)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS**

**DOCKET NO. 24-0801-0801**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 15, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-1107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 2008 Legislature approved HB454 which adds additional requirements for a mortician license. The legislation added the making at least twenty-five (25) funeral arrangements and the conducting at least twenty-five (25) funerals to be completed as a licensed resident trainee. Rule 300 is being revised to add the additional requirements.

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

The 2008 Legislature approved HB454 which adds additional requirements for a mortician license. This rule change is necessary to bring the rules into compliance with the changes to statute that became effective July 1, 2008.

**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 67-5220, Idaho Code, negotiated rulemaking was not conducted because this change is necessary to comply with changes made by the legislature in HB454 during the 2008 session.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., STE 220  
Boise, ID 83702  
(208) 334-3233 phone  
(208) 334-3945 fax

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0801-0801**

**300. APPLICATIONS AND EXAMINATION (RULE 300).**

In order to be admitted to the examination, the applicant must submit a completed application on forms provided by the bureau and provide all requested documentation including proof of having completed the training period as prescribed by law and these rules, and meet the specific requirements for license as set forth in Section 54-1109 of the Idaho Code as follows: (4-11-06)

**01. Age.** Applicant must have attained the age of twenty-one (21) years by the time of examination. (7-1-93)

**02. Moral Character.** Must be of good moral character. (7-1-93)

**03. Mortician Educational Requirements.** Applicants for a mortician license must have completed and received credit for at least sixty (60) semester hours or ninety (90) quarter hours instruction in a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in fields of liberal arts, business or science directly relating to the knowledge required to successfully compete in the field of mortuary science. In questionable cases the decision of the board shall be final. These requirements shall be in addition to and not considered a part of the completion of and graduation from a mortuary college accredited by the American Board of Funeral Service Education that includes an embalming course of study. (4-11-06)

**04. Funeral Director Educational Requirements.** Applicants for a funeral director license must have completed and received at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction from a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board. These requirements shall be in addition to completion of at least fifteen (15) semester credit hours or the equivalent from a mortuary college accredited by the American board of funeral service education, inc., or such credits as are otherwise approved by the board, with course of study to include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business. (4-11-06)

**05. Photo.** A photo as specified in Section 200 of these rules. (4-11-06)

**06. Completion of One Year as a Resident Trainee.** Must have served one (1) year as required by statute as a resident trainee and receive certification from a sponsoring mortician in Idaho. (4-11-06)

**a.** Trainees pursuing licensure as a mortician must document having assisted in embalming at least twenty-five (25) dead human bodies and assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals under the supervision of a sponsoring mortician. ~~(4-11-06)~~(7-15-08)T

**b.** Applicants pursuing licensure as a funeral director must document having assisted in making at least twenty-five (25) funeral arrangements and in conducting twenty-five (25) funerals under the supervision of a sponsoring mortician. (4-11-06)



## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS**

#### **DOCKET NO. 24-0801-0802 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 500.08 needs to be stricken from the rules as it conflicts with 54-1115A, Idaho Code, which establishes the reinstatement fee at \$250.00.

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

Rule 500.08 needs to be stricken from the rules as it conflicts with 54-1115A, Idaho Code, which establishes the reinstatement fee at \$250.00.

**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:

The fee that has been charged is consistent with the law so deleting the rule results in no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because the change is to correct a fee established in rule to comply with the law.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0801-0802**

**500. FEES (RULE 500).**

- 01. Funeral Director.** Funeral director - eighty-five dollars (\$85). (3-13-02)
- 02. Funeral Establishment.** Funeral establishment - one hundred twenty-five dollars (\$125) (original license/annual renewal). (3-13-02)
- 03. Crematory Establishment.** Crematory establishment - two hundred dollars (\$200) (original license/annual renewal). (3-16-04)
- 04. Mortician.** Mortician - eighty-five dollars (\$85) (original license/annual renewal). (3-13-02)
- 05. Resident Trainee.** Resident trainee - fifty dollars (\$50) (original license/annual renewal).(4-11-06)
- 06. Application Fee.** Application fee - one hundred dollars (\$100). (3-13-02)
- 07. Certificate of Authority.** Certificate of Authority - fifty dollars (\$50) (original certificate/annual renewal). (3-13-02)
- ~~**08. Application for Reinstatement.** Application for reinstatement within five (5) years -- twenty five dollars (\$25) reinstatement fee and annual renewal fees for back years (Reference Section 67-2614, Idaho Code). (7-1-93)~~

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.12.01 - RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-2305, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

Changes are being made to the rules in Sections 100, 125, 200, 260, 350, 401, 450, 500, and 600. These changes establish a deadline for applications and responsibility for updating files. They also clarify who sets the time and date of exams. These changes will help avoid confusion and also bring rules up to date. Changes are being made to senior psychologist qualifications to coincide with the law. The change to the code of ethics is being made since these are now available on the website. The continuing education rule is being changed to include 4 hours of ethics in a three year cycle. Language is being corrected and clarified in 450 to avoid confusion. The changes to the educational requirements are to bring the rules more in line with the American Psychology Association (APA) standards. The psychologist in training and psychologist under supervision rules are being clarified. Finally, a rule is being added for a guideline in employment of unlicensed individuals.

**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 67-5220, Idaho Code, negotiated rulemaking was not conducted because the discussion was held in an open meeting of the board and the changes should not be controversial.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1201-0801**

**100. CREDENTIALS TO BE FILED BY ALL APPLICANTS (RULE 100).**

**01. Completed Application.** An application shall be completed by all applicants for licensure upon a form prescribed by the State Board of Psychologist Examiners. No application shall be accepted or considered by the Board prior to the date the required doctoral degree was conferred upon the applicant. (3-20-04)

**02. Official Transcripts.** All applicants shall arrange for official transcripts of all credits earned, at each approved college or university, to be transmitted by the registrars of the educational institutions directly to the Board. (7-1-93)

**03. Letters of Reference.** Letters of reference, regarding the character, training, and experience of the applicant shall be returned to the Board by the references before decision is rendered on the application. (7-1-93)

**04. Post Graduate Experience.** One (1) of the two (2) years of post-graduate experience as required by Section 2307(b), Idaho Code, (not the internship) may be pre-doctoral. The second year must be post-doctoral work under appropriate supervision and must be verified by the appropriate supervisor. (3-15-02)

**05. Official Documentation.** Official documentation of meeting the requirements of Chapter 23, Title 54, Idaho Code and IDAPA 24.12.01, must be received by the Board directly from the entity or person responsible for providing such official documentation. Applicants are responsible for requesting the required documentation from the appropriate entities and persons. (3-15-02)

**06. Applications on File.** Applications on file with the Board for a period in excess of five (5) years from the date of receipt by the Bureau shall be terminated unless good cause is demonstrated to the Board. (3-20-04)

**07. Deadline.** To be considered by the Board, a properly completed application together with all supporting documentation and required fees must be received by the Bureau at least seven (7) calendar days prior to the next scheduled meeting of the Board. ( )

**101. -- ~~149~~24. (RESERVED).**

**125. FILE UPDATE RESPONSIBILITY (RULE 125).**

The licensure applicant or any person licensed by the Board is responsible for keeping his or her file updated. All substantive changes in professional status must be reported to the Board in writing within ninety (90) days. Substantive changes would include any criminal charges or convictions of felonies or misdemeanors other than traffic violations; administrative adjudicative proceedings against the applicant or psychologist in other states or jurisdictions; adjudicated ethics violations or other sanctions levied against the applicant or psychologist by a professional association or specialty association related to the practice of psychology; any civil proceedings adjudicated against the applicant or psychologist that is clearly related to the practice of psychology. This file update requirement also applies to other material changes in the manner in which the applicant or psychologist is represented to the public, such as name changes. ( )

**126. -- 149. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. EXAMINATIONS (RULE 200).**

**01. Written Exam Required.** The Board will require a written examination of applicants. The written examination will be the National Examination for Professional Practice In Psychology (EPPP). (3-20-04)

**02. Passing Score.** The Board has determined that a passing score on the EPPP shall be a raw score of one hundred forty (140) or, for examinations after April 1, 2001, a scaled score of five hundred (500) for licensure. (3-20-04)

**03. Time and Place of Exam.** The examination will be conducted at a time and place specified by the ~~Board~~ administrator of the national examination for professional practice in psychology (EPPP). (7-1-93)(\_\_\_\_)

**04. Failure of Exam.** The first time the examination is failed the applicant may take it again the next time it is given upon application and payment of fees. If the examination has been failed twice, ~~the individual must wait at least one (1) year before taking it a third time.~~ The individual must wait at least one (1) year and petition the Board for approval to take the examination the ~~fourth~~ third time, ~~which~~ The petition shall include evidence satisfactory to the Board that the applicant has taken additional study in the field of Psychology before approval will be granted. (7-1-93)(\_\_\_\_)

**05. Waiver of Exam.** Upon application, the examination may be waived to an applicant who is a diplomate in good standing of the American Board of Professional Psychology. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**260. SENIOR PSYCHOLOGY LICENSURE (RULE 260).**

Any person who has maintained a valid Psychology license based on a doctoral degree in the United States or Canada for a period of not less than twenty (20) years, is of good moral character, has documented practice of psychology for five (5) of the last seven (7) years, has maintained continuing education, and has not been subject to disciplinary action the last seven (7) years may apply for an Idaho psychology license under Section 54-2312A, Idaho Code. (3-15-02)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. CODE OF ETHICS (RULE 350).**

All licensees shall ~~be mailed a copy of the~~ have knowledge of the Ethical Principles of Psychologists and Code of Conduct, as published in the American Psychologist, as referenced in Section 004. (3-15-02)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. CONTINUING EDUCATION REQUIREMENTS FOR RELICENSURE IN PSYCHOLOGY (RULE 401).**

**01. Number of Hours Required.** All licensed psychologists, in order to renew their license, must have accumulated twenty (20) hours per year of continuing education credits. At the time of renewal of the psychologists' licenses, they will certify that they are aware of the requirements for continuing education and that they have met those requirements for the preceding year. A minimum of four (4) hours credit in ethics, standards of care, and/or review of laws pertaining to the practice of psychology is required every three (3) years. Areas covered may include practice, consultation, research, teaching, and/or supervision. These units may be used as part of the continuing education credit required. (7-1-93)(\_\_\_\_)

**02. Professional Level of Continuing Education -- Time Period Records Kept - Audit.** This continuing education experience must be at an appropriate level for professional training in psychology. The licensees have responsibility for demonstrating the relevance and adequacy of the educational experience they select.

The licensees are also responsible for keeping an accurate record of their own personal continuing education hours for a period of five (5) years. A random audit may be conducted to insure compliance. (7-1-93)

**03. Newly Licensed Individuals.** Newly licensed individuals will be considered to have satisfied the continuing education requirements for the remainder of the year in which their license is granted. (7-1-93)

**04. Certificates of Satisfactory Attendance and Completion.** Certificates of satisfactory attendance and completion, cancelled checks, participant lists, transcripts from universities, letters of certification on instructor's letterhead, and other reasonably convincing proof of the submitted activities may serve as documentation when persons audited are required to submit proof of continuing education. (7-1-93)

**05. Licensees Who Do Not Fulfill the Continuing Education Requirements.** Licensees who do not fulfill the continuing education requirements may be subject to disciplinary action. (7-1-93)

**06. Carryover of Continuing Education Hours.** Continuing education courses not claimed for CE credit in the current renewal year, may be credited for the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS (RULE 450).**

The Board recognizes that licensed psychologists may choose to extend their services by using service extenders. The Board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience. (7-1-93)

**01. General Provisions for Licensed Psychologists Extending Their Services Through Others.** (7-1-93)

**a.** The licensed psychologist exercising administrative control for a service extender shall: (7-1-93)

**i.** Have the authority to cause termination of compensation for the service extender. (7-1-93)

**ii.** Have the authority to cause the suspension or removal of the service extender from his position as a service provider. (7-1-93)

**b.** The licensed psychologist exercising professional direction for a service extender shall: (7-1-93)

**i.** Within thirty (30) days after employing the service extender, formulate and provide to the Board a written supervisory plan for each service extender. The plan shall include provisions for supervisory sessions and chart review. If the psychologist requires tapes to be made of psychological services delivered by the service extender, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the services of the licensed psychologist. The plan shall be accompanied by a completed application form and appropriate application fee. (3-19-07)

**ii.** Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week

following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and a licensed psychologist. (7-1-93)

iii. Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

**02. Qualifications for Service Extenders.** (7-1-93)

a. Category I: A service extender will be placed in Category I if: (7-1-93)

i. The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a license issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the Board; or (7-1-93)

ii. The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

b. Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree from a program in psychology, counseling, or human development as determined by the Board. (7-1-93)

**03. Conditions for Use of Service Extenders.** (7-1-93)

a. All persons used to extend the services of a licensed psychologist shall be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist," ~~etc.~~ (7-1-93)(    )

b. Work assignments shall be commensurate with the skills of the service extender and procedures shall be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

c. Public announcement of fees and services, as well as contact with lay or professional public shall be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or contacts. (7-1-93)

d. Setting and collecting of fees shall remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers shall be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations, licensed psychologists may neither claim or imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. (7-1-93)

e. All service recipients shall sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

f. Within the first three (3) contacts, the licensed psychologist shall have face-to-face contact with each service recipient. (7-1-93)

g. A licensed psychologist shall be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

**h.** Service Extenders shall be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders shall limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

**i.** A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week shall be exempted from these on-site provisions of Section 450 of this rule. Without notification to the Board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the Board on written request by the licensed psychologist to the Board. (~~7-1-93~~)(    )

**j.** The licensed psychologist shall employ no more than three (3) service extenders. (3-18-99)

**k.** When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the Board in writing within thirty (30) days. (7-1-93)

**l.** At the time of license renewal the licensed psychologist shall submit for each service extender the appropriate fee together with certification to the Board that they possess: (3-19-07)

**i.** A written record of supervisory contact for the previous twelve (12) months; and (3-20-04)

**ii.** The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site; and (3-20-04)

**iii.** An updated plan for the supervision of each of his service extenders. (3-20-04)

**m.** Documentation of supervisory ~~contact~~ notes, hours of supervision, number of hours of on-site while the service extender provided services, and plan of supervision shall be maintained by the supervisor for not less than three (3) years for each service extender and submitted to the Board upon request. (~~3-20-04~~)(    )

**451. -- 499. (RESERVED).**

**500. EDUCATIONAL AND CREDENTIALING REQUIREMENTS FOR LICENSURE (RULE 500).**

Applicants who receive a doctoral degree from a program accredited by the American Psychological Association are considered to have met all criteria outlined in Section 500. (5-3-03)

**01. Training in Professional Psychology.** Training in professional psychology is doctoral training offered in an institution of higher education accredited by: (7-1-93)

**a.** Middle States Association of Colleges and Schools. (7-1-93)

**b.** The New England Association of Schools and Colleges. (7-1-93)

**c.** The North Central Association of Colleges and Schools. (7-1-93)

**d.** The Northwest Association of Schools and Colleges. (7-1-93)

**e.** The Southern Association of Colleges and Schools. (7-1-93)

**f.** The Western Association of Schools and Colleges. (7-1-93)

**02. Training Program.** The training program must stand as a recognizable, coherent organizational entity within the institution. Programs that are accredited by the American Psychological Association or that meet the



criteria for such accreditation are recognized as meeting the definition of a professional psychology program.

(5-3-03)

**03. Authority and Primary Responsibility.** There must be a clear authority and primary responsibility for the core and specialty areas by a designated leader who is a doctoral psychologist and is a member of the core faculty. (7-1-93)(      )

**04. Content of Program.** The program must be an integrated, organized sequence of study. (7-1-93)

**05. There Must Be an Identifiable Training Faculty and a Psychologist Responsible for the Program.** There must be an identifiable training faculty on site of sufficient size and breadth to carry out the training responsibilities. A faculty psychologist must be responsible for the program. (5-3-03)

**06. Program Must Have an Identifiable Body.** The program must have an identifiable body of students who are matriculated in that program for a degree. (7-1-93)

**07. What the Program Must Include.** The program must include supervised practicum, and pre-doctoral internship, ~~field or laboratory training~~ appropriate to the practice of psychology. Pre-doctoral internships must be completed at member sites of the Association of Psychology Postdoctoral and Internship Centers, or sites demonstrating an equivalent program. (5-3-03)(      )

**08. Curriculum.** The curriculum shall encompass a minimum of three (3) academic years of full time graduate study at least one (1) year of which is spent in full-time physical residence at the degree granting educational institution. In addition to instruction in professional areas of competence, which include assessment and diagnosis, intervention, consultation, and supervision, the core program shall require each student to demonstrate competence in specific substantive areas. Minimal competence is demonstrated by passing a three (3) credit semester graduate course (or a five (5) credit quarter graduate course) in each of the substantive areas listed below: (3-20-04)

**a.** Biological Bases of Behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology. (7-1-93)

**b.** Cognitive-Affective Bases of Behavior: Learning, cognition, motivation, emotion. (3-20-04)

**c.** Social Bases of Behavior: Social psychology, group processes, organizational and systems theory. (7-1-93)

**d.** Individual Differences: Personality theory, human development, abnormal psychology. (7-1-93)

**e.** Scientific and Professional Standards and Ethics. (3-20-04)

**f.** Research Design and Methodology. (3-20-04)

**g.** Techniques of Data Analysis: statistics, multivariate statistics, factor analysis, multiple regression, non-parametric statistics. (3-20-04)

**h.** Psychological Measurement: psychometric principles, test theory, personality assessment, cognitive assessment. (3-20-04)

**i.** History and Systems of Psychology. (3-20-04)

**j.** Multiculturalism and Individual Diversity. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. GUIDELINES FOR THE SUPERVISION IN THE EDUCATION OF PSYCHOLOGISTS (RULE 600).**

The Board recognizes the importance of supervision in the education of psychologists, and that licensed psychologists within Idaho may be called on to provide supervision. It also recognizes that differing levels of supervision are appropriate for persons with differing levels of education and experience. Accordingly, the Board identifies ~~three~~ two (~~3~~2) levels within the education of psychologists, and specifies differing levels of supervision for each. These categories refer to persons pursuing a program of activities which, when completed, will allow them to meet the requirements for licensure as psychologists in Idaho. When providing supervision, the licensed supervising psychologist may receive compensation from the supervisee or other interested party, and shall be responsible to insure that supervision appropriate to the education and experience level of the supervisee is provided. Further, the licensed supervising psychologist shall also be responsible to insure that the appropriate documentation for a particular supervisee has been provided to the Board as specified below. The number of persons a psychologist may supervise within the ~~three~~ two (~~3~~2) educational levels does not limit the number of service extenders as specified under Subsection 450.03.j. (~~3-19-07~~)(    )

**01. General Provisions.** General provisions for licensed supervising psychologists. (7-1-93)

**a.** The licensed supervising psychologist exercising administrative control shall: (7-1-93)

i. Have the authority to cause termination of compensation for the supervisee when compensation is provided. (7-1-93)

ii. Have the authority to cause the suspension or removal of the supervisee from his position as a service provider. (7-1-93)

**b.** The licensed supervising psychologist exercising professional direction shall: (7-1-93)

i. Within thirty (30) days after initiating supervision, formulate a written supervisory plan for each supervisee. The plan shall include provisions for supervisory sessions and chart review. If the supervising psychologist requires tapes to be made of psychological services delivered by the supervisee, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the supervisee. (7-1-93)

ii. Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face individual supervisory contact by a licensed psychologist with the supervisee for each one (1) to twenty (20) hours of services provided by the supervisee during any calendar week. A written record of this supervisory contact, including the type of activities conducted by the supervisee, shall be maintained by the licensed supervising psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are provided or during the week following. In no case will services be provided more than two (2) weeks without supervisory contact between the supervisee and a licensed supervising psychologist. (7-1-93)

iii. Provide the supervisee a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the supervisee of his intention to abide by them. (7-1-93)

**02. Category II -- Psychologist in Training.** (~~7-1-93~~)(    )

**a.** Definition: A person having submitted an application for licensure to the Idaho Board of Psychologist Examiners and who has been found by the Board to have either: (7-1-93)

i. Obtained a doctoral degree ~~after completing~~ from a program accredited by the American Psychological Association or from an educational program which satisfies all the requirements of Section 500; or (~~7-1-93~~)(    )

ii. Obtained a doctoral degree and submitted a plan, approved by the Board for the completion of any deficiencies in their doctoral education with regard to the requirements of Section 500. (7-1-93)

**b.** Verification: The State Board of Psychologist Examiners has reviewed the application of the person in question and either: (7-1-93)

i. Verifies that the applicant has obtained a doctoral degree ~~after completing~~ from a program accredited by the American Psychological Association or from an educational program which satisfies all the requirements of Section 500; or (7-1-93)(    )

ii. Verified the applicant obtained a doctoral degree and approved a plan submitted by the applicant for the completion of any deficiencies in his doctoral education with regard to the requirements of Section 500. (7-1-93)

**c.** Supervision Requirements: (7-1-93)

i. Psychologists in Training must be under the direct and continuing administrative control and professional direction of the licensed supervising psychologist when providing psychological services. (7-1-93)

ii. Work assignments shall be commensurate with the skills of the Psychologist in Training and procedures shall be planned in consultation with the licensed supervising psychologist. (7-1-93)

iii. Psychologists in Training shall be housed in the service delivery site of the licensed supervising psychologist, and at least fifty percent (50%) of the Psychologist in Training's service delivery will occur while the licensed supervising psychologist is physically present on site; excepting that where Psychologists in Training are employed by agencies or corporations financed by public funds, licensed supervising psychologists may apply for exemption of this requirement. Exemptions will be made on review of the written supervisory plan, and granted at the discretion of the Board. (7-1-93)

iv. Public announcement of fees and services, and contact with lay or professional public shall be offered only by and in the name of the licensed supervising psychologist or his institutional affiliate. (7-1-93)

v. Setting and collecting of fees shall remain the sole domain of the licensed supervising psychologist or his institutional affiliate, excepting that when a supervisee provides psychological services, third party payers shall be informed of this occurrence in writing at the time of billing. (7-1-93)

vi. All persons receiving services from a Psychologist in Training shall sign a written notice indicating their understanding that the service provider is a Psychologist in Training and that the licensed supervising psychologist is responsible for their activity. A copy of the signed written notice will be maintained on file with the licensed supervising psychologist. (7-1-93)

vii. The licensed supervising psychologist's proficiencies will be commensurate with the services provided by the Category ~~II~~ Psychologist in Training. (7-1-93)(    )

**03. Category ~~II~~ -- Psychologist Under Supervision.** (7-1-93)(    )

**a.** Definition: A person having submitted an application for licensure to the Idaho Board of Psychologist Examiners and who has been found by the Board to have: (7-1-93)

i. Obtained a doctoral degree, ~~and completed~~ from a program accredited by the American Psychological Association or from an educational program which satisfies all the requirements of Section 500; and (7-1-93)(    )

ii. Completed the EPPP examination with a passing score. (7-1-93)

**b.** Verification: The State Board of Psychologist Examiners has reviewed the application and: (7-1-93)

i. Verified the applicant has obtained a doctoral degree ~~and completed~~ from a program accredited by the American Psychological Association or from an educational program which satisfies all the requirements of

Section 500; and (7-1-93)( )

- ii. Verified the applicant has completed the EPPP examination with a passing score. (7-1-93)
- c. Supervision Requirements: (7-1-93)
  - i. Psychologists Under Supervision shall be under the continuing professional direction, though not necessarily administrative control, of the licensed supervising psychologist when providing psychological services. (7-1-93)
  - ii. Work assignments shall be commensurate with the skills of the Psychologist Under Supervision and procedures shall be planned in consultation with the licensed supervising psychologist. (7-1-93)
  - iii. Public announcement of fees and services, and contact with lay or professional public shall be offered only by and in the name of the supervising licensed psychologist or his institutional affiliate. However, if the Psychologist Under Supervision is employed by either a privately financed agency or corporation or a publicly funded agency or corporation; then public announcement of fees and services with lay or professional public may be offered in the name of those organizations as long as the supervised status of the Psychologist Under Supervision and the name, address and telephone number of the licensed supervising psychologist are made clear to the public. (7-1-93)
  - iv. Setting and collecting of fees shall remain the sole domain of the licensed supervising psychologist or his institutional affiliate. However, if the Psychologist Under Supervision is employed by either a privately financed agency or corporation or a publicly funded agency or corporation; then the setting and collecting of fees may be offered in the name of those organizations as long as the supervised status of the Psychologist Under Supervision and the name, address and telephone number of the supervising psychologist are made clear to the public; and with the exception that when a supervisee provides psychological services, third party payers shall be informed of this occurrence in writing at the time of billing. (7-1-93)
  - v. All persons receiving services from a Psychologist Under Supervision shall sign a written notice indicating their understanding that the service provider is a Psychologist Under Supervision and that the licensed supervising psychologist is responsible for their activity. A copy of the signed written notice will be maintained on file with the licensed supervising psychologist. (7-1-93)
  - vi. The licensed supervising psychologist's proficiencies will be commensurate with the services provided by the Category II Psychologist Under Supervision. (7-1-93)( )

**601. -- ~~649~~24. (RESERVED).**

**625. EMPLOYMENT OF UNLICENSED, NON-EXEMPT INDIVIDUALS (RULE 625).**  
Psychologists may employ unlicensed, non-exempt individuals only to perform services which do not constitute the practice of psychology or the activities and services of another licensed profession. The psychologist assumes full responsibility for the services provided by the employee. ( )

**626. -- 649. (RESERVED).**

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

#### DOCKET NO. 24-1401-0801 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3204, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 Board of Social Work Examiners operates on fees paid by its licensees. The Board's expenses have been exceeding its revenues. This fee increase will help balance the Board's annual budget.

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

Section 225 adds an inactive status as allowed by passage of H361 in the 2008 session. Section 300 increases fees for application, original license, and renewal fees by \$10; increases endorsement fee by \$5; and finally, establishes renewal fees for inactive status for Licensed and Licensed Masters Social Worker at \$30 and Licensed Clinical Social Worker at \$35.

**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 fee would have a positive impact on dedicated funds of approximately \$33,970 based on 2,997 licensees and approximately 400 applications per year. The fiscal impact to dedicated funds for inactive status would be dependant on how many people choose an inactive status over an active license or over not renewing.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because the increase is needed to help balance the Board's annual budget.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses

1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-0801

203. -- ~~249~~24. (RESERVED).

**225. INACTIVE STATUS (RULE 225).**

**01. Request for Inactive Status.** Each person requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. ( )

**02. Inactive License Status.** ( )

**a. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho** ( )

**b. Inactive license renewal notices and licenses will be marked "Inactive."** ( )

**c. When the licensee desires active status, he must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee.** ( )

**d. Licensees shall not practice in Idaho while on inactive status.** ( )

**226. -- 249. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. FEES (RULE 300).**

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

**01. Application and Original License Fee.** Application and Original License Fee for licensed clinical social worker or licensed masters social worker or licensed social worker - ~~Fifty~~ sixty dollars (\$~~50~~60). (~~5-3-03~~)( )

**02. Examination Fee.** Examination fee will be set by the Board in concordance with the testing service fees. (7-1-93)

**03. Endorsement and License Fee.** Endorsement and License Fee for licensed clinical social worker or licensed masters social worker or licensed social worker - ~~Fifty-five~~ sixty dollars (\$~~55~~60). (~~5-3-03~~)( )

**04. Renewal Fee.** Renewal Fee: (7-1-93)

**a. Licensed Clinical Social Worker --** ~~Sixty~~ Seventy dollars (\$~~60~~70). (~~5-3-03~~)( )

**b. Licensed Masters Social Worker --** ~~Fifty~~ Sixty dollars (\$~~50~~60). (~~5-3-03~~)( )

**c. Licensed Social Worker --** ~~Fifty~~ Sixty dollars (\$~~50~~60). (~~5-3-03~~)( )

**d. Inactive Licensed Clinical Social Worker --** Thirty-five dollars (\$35). ( )

**e. Inactive Licensed Masters Social Worker --** Thirty dollars (\$30). ( )

**f. Inactive Licensed Social Worker --** Thirty dollars (\$30). ( )

**05. Reinstatement Fee.** Reinstatement fees in accordance with Section 67-2614, Idaho Code. (7-1-93)

**06. All Fees Under This Act Are Non-Refundable.** All fees under this Act are non-refundable. (7-1-93)

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**  
**24.21.01 - RULES OF THE IDAHO STATE CONTRACTORS BOARD**  
**DOCKET NO. 24-2101-0801**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-5207, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 change to rule 150 would allow the board to terminate pending or incomplete applications that have lacked activity for one year upon notification to the applicant. This would allow the board to keep applications current.

**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 67-5220, Idaho Code, negotiated rulemaking was not conducted because the discussion was held in an open meeting of the board and the changes should not be controversial.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2101-0801**

**150. APPLICATION (RULE 150).**

Each applicant for registration shall submit a complete application on applications forms approved by the board together with the required fee(s). The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months shall be deemed denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board.

~~(3-30-06)~~( )

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

**24.24.01 - RULES OF THE BOARD OF NATUROPATHIC MEDICAL EXAMINERS**

**DOCKET NO. 24-2401-0801 (NEW CHAPTER)(FEE RULE)**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-5109, Idaho Code.

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

**WEDNESDAY - OCTOBER 15, 2008 - 10:00 am - 12:30 pm**

**BUREAU OF OCCUPATIONAL LICENSES  
1109 Main St., Ste 220  
Boise, ID**

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

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

The proposed rules provide contact information, definitions, an application process, requirements for license, fees, examination, renewal process, scope of practice, certification, and set standards for continuing education.

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

This board does not have rules in place. Fees are being established in this 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 as a result of this rulemaking:

This board does not have rules in place. Fiscal impact would be dependant on the number of applications submitted to the Board. These fees are dedicated funds and used to administer the Board of Naturopathic Medical Examiners.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because a public hearing is scheduled to hear comments during comment period.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2009.

DATED this 21st day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax



**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2401-0801**

**IDAPA 24**  
**TITLE 24**  
**CHAPTER 01**

**24.24.01 - RULES OF THE BOARD OF NATUROPATHIC MEDICAL EXAMINERS**

**000. LEGAL AUTHORITY (RULE 0).**

These rules are hereby prescribed and established pursuant to the authority vested in the Board of Naturopathic Medical Examiners by the provisions of Section 54-5109, Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

These rules shall be cited as IDAPA 24.24.01, "Rules of the Board of Naturopathic Medical Examiners." ( )

**002. WRITTEN INTERPRETATIONS (RULE 2).**

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

**003. ADMINISTRATIVE APPEALS (RULE 3).**

Administrative appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE (RULE 4).**

These rules do not incorporate by reference any document other than those Sections of Idaho Code so referenced. ( )

**005. ADDRESS OF IDAHO BOARD OF NATUROPATHIC MEDICAL EXAMINERS (RULE 5).**

The office of the Board of Naturopathic Medical Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is nat@ibol.idaho.gov. The Board's official web site is at www.ibol.idaho.gov/nat.htm. ( )

**006. PUBLIC RECORDS (RULE 6).**

The records associated with the Board of Naturopathic Medical Examiners are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS (RULE 10).**

**01. Board.** The State Board of Naturopathic Medical Examiners as prescribed in Section 54-5108, Idaho Code. ( )

**02. Bureau.** The Bureau of Occupational Licenses as prescribed in Section 67-2602, Idaho Code. ( )

**011. -- 099. (RESERVED).**

**100. APPLICATIONS (RULE 100).**

**01. Application Form and Deadline.** An application shall be completed by all applicants for licensure

upon a form approved by the Board. No application shall be accepted or considered by the Board until it is complete and all required fees have been paid. Completed applications must be received by the bureau at least thirty (30) days prior to the next scheduled Board meeting. Applications received less than thirty (30) days in advance will be held until a subsequent meeting. ( )

**02. Official Transcripts.** All applicants shall arrange for official transcripts of all credits earned, at each approved educational institute, to be transmitted by the registrars of the educational institutes directly to the Board. If official transcripts are unobtainable, the applicant must submit a written explanation and provide any documentation the Board may request to assist in considering the application. ( )

**03. Official Documentation.** Official documentation of meeting the experience and examination requirements of law and rule must be received by the Board directly from the entity or person responsible for validating said documentation. Applicants are responsible for requesting the required documentation from the appropriate entities and persons. If official documentation is unobtainable, the applicant must submit a written explanation and provide any documentation the Board may request to assist in considering the application. ( )

**04. Termination.** Incomplete applications on file with the Bureau for a period in excess of one (1) year from the date of receipt by the Bureau shall be deemed denied and terminated by the Board. Application fees are non-refundable. ( )

**101. -- 124. (RESERVED).**

**125. REQUIREMENTS FOR LICENSURE (RULE 125).**

**01. New Applicants.** Pursuant to Section 54-5112, Idaho Code, new applicants will meet the following requirements: ( )

**a.** Provide proof, on a form provided by the board, of completion of an approved naturopathic medical program approved by the board. ( )

**b.** Have passed a competency-based examination approved by the board covering basic medical sciences and the diagnostic and clinical sciences consistent with the education, training and practice of naturopathic medicine. Such examination shall include, but not be limited to, exams in anatomy, biochemistry, microbiology, immunology, pathology, physiology, naturopathic philosophy and principles, physical and clinical diagnosis, lab diagnosis, diagnostic imaging, botanical medicine, naturopathic physical medicine, and nutrition. ( )

**c.** Applicants may be required to sit for a personal interview by the board to specifically review the applicant's qualifications, professional credentials, knowledge, and skills pertaining to the practice of naturopathic medicine. ( )

**d.** Possess a good, ethical and professional reputation. ( )

**e.** Be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation. ( )

**f.** Have never had a license to practice naturopathic medicine or other health care license, registration or certificate refused, revoked or suspended by any other state or country for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, or other health care profession unless that license, registration or certification has been restored to good standing by that state or country. ( )

**g.** All licensed naturopathic physicians shall have on file with the board a board-approved disclosure form stating the degrees, training, experience, credentials and the health care services they are board approved to provide. ( )

**h.** File a board-approved application and pay the required application and licensing fees. ( )

**02. Endorsement.** Endorsement applicants shall meet the following requirements: ( )

- a. Submit a complete application accompanied by the required application and licensure fees. ( )
- b. Cause to be submitted official certification of a current license in good standing. ( )
- c. The licensure requirements from the jurisdiction where the applicant is currently licensed shall be of a standard not lower than the Idaho requirements. ( )
- d. Sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Naturopathic Physicians Licensing Act, Title 54, Chapter 51, Idaho Code, and the Board's Rules, IDAPA 24.24.01, "Rules of the Board of Naturopathic Medical Examiners." ( )
- e. Have never had a license to practice naturopathic medicine or other health care license, registration or certificate refused, revoked or suspended by any other state or country for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, or other health care profession unless that license, registration or certification has been restored to good standing by that state or country. ( )

**126. -- 149. (RESERVED).**

**150. FEES (RULE 150).**

- 01. Application Fee.** Application Fee - Two hundred fifty dollars (\$250). ( )
- 02. Original License Fee.** Original License Fee - Two hundred fifty dollars (\$250). ( )
- 03. Annual Renewal Fee.** Annual Renewal Fee – Three hundred fifty dollars (\$350). ( )
- 04. Non-Refundable.** All fees are non-refundable. ( )

**151. -- 199. (RESERVED).**

**200. EXAMINATIONS (RULE 200).**

All applicants must pass a board approved examination in accordance with Sections 54-5109 and 54-5112, Idaho Code. ( )

- 01. Approved Examination.** The examination shall be the Naturopathic Physicians Licensing Examination (NPLEX) published by the North American Board of Naturopathic Examiners; or ( )
- 02. Other Examination.** Other examinations as may be approved by the Board. ( )
- 03. Minimum Passing Score.** The minimum passing score for each section of the NPLEX examination or any other examination approved by the Board shall be the passing score determined by the examination entity. ( )

**201. -- 249. (RESERVED).**

**250. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 250).**

- 01. Expiration Date.** All licenses expire and must be renewed annually in accordance with Section 67-2614, Idaho Code. Applicants for renewal must provide documentation of having met the continuing education requirement for the twelve (12) month period preceding renewal. Licenses not renewed prior to expiration shall be cancelled. ( )
- 02. Reinstatement.** Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code and the applicant shall submit proof of having met the required continuing education for the twelve (12) month period preceding renewal. ( )

**03. Cancelled License.** A license that has been cancelled for a period of more than five (5) years may be re-issued in accordance with Section 67-2614, Idaho Code. ( )

**251. -- 299. (RESERVED).**

**300. SCOPE OF PRACTICE (RULE 300).**

A naturopathic physician is authorized to provide only services and treatments for which that licensee has been appropriately trained and prepared by board approved education, continuing education, and practical experience. Information contained within the application together with supporting documentation maintained by the licensee shall be prima facie evidence of the licensee's education and experience. It is the responsibility of the individual licensee to maintain adequate documentation of education and experience appropriate to the services and treatments being provided to the public. ( )

**01. Treatments.** The scope of practice as defined in Section 54-5104, Idaho Code and may include dispensing, administering, ordering, prescribing or performing the following: ( )

**a.** Oral and parenteral food, extracts of food, nutraceuticals, vitamins, amino acids, minerals, enzymes, botanicals, and their extracts, homeopathic medicines, all dietary supplements and nonprescription drugs as defined by the Federal Food Drug and Cosmetic Act. ( )

**b.** Prescription substances as determined by the naturopathic formulary council. ( )

**c.** Hydrotherapy, naturopathic physical medicine and modalities consistent with naturopathic medical education and training, colon hydrotherapy, and therapeutic exercise. Devices including but not limited to therapeutic devices, barrier contraception, and durable medical equipment. ( )

**d.** Health education and health counseling. ( )

**e.** Repair and care incidental to superficial lacerations and abrasions, removal of foreign bodies located in the superficial tissues. ( )

**301. CERTIFICATION (RULE 301).**

**01. Intravenous Therapy Certification.** Intravenous therapy certification requires proof of completion of appropriate coursework and number of hours as determined by the formulary council. ( )

**302. -- 349. (RESERVED).**

**350. CONTINUING EDUCATION (RULE 350).**

**01. Hours.** Licensees must complete twenty (20) hours of continuing education each year of which at least five (5) hours must be in pharmacology. ( )

**02. Subject Material.** The subject material of the continuing education requirement shall be germane to the practice of naturopathic medicine and either: ( )

**a.** Sponsored by an approved naturopathic medical program; or ( )

**b.** Otherwise approved by the board. ( )

**03. Verification of Attendance.** It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the applicant. This verification shall be maintained by the licensee and provided to the Board upon the request of the Board or its agent. ( )

**04. Distance Learning and Home Study.** The board may approve any course of study for continuing

education credit that does not include the actual physical attendance of the applicant in a face-to-face setting with the course instructor. Such courses shall not be eligible for more than fifty percent (50%) of the required continuing education credits. ( )

**05. Requests for Approval.** All requests for approval or pre-approval of educational programs must be made to the board in writing, and must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course or other intended schedule, the specific agenda for the course, the number of continuing education credit hours requested, and a statement of how the course is believed to be germane to the practice of naturopathic medicine. ( )

**06. Attestation.** Licensees shall attest, on their annual license renewal application, that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. ( )

**07. Audit.** The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action. ( )

**351. -- 999. (RESERVED).**

## IDAPA 25- OUTFITTERS AND GUIDES LICENSING BOARD

### 25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 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 October 15, 2008.

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 will require that outfitters continue to verify that their guides are properly trained, however, the outfitter will no longer be required to submit all training documents to Board for review and storage. This will expedite the issuance of guide licenses. The Board has not had the means to verify individual guide training and has always been dependent on the outfitter verification. As such, all liability rests with the outfitter and not the State of Idaho. This change removes any doubt. Training will be verified by the Board on a case-by-case basis and in situations needing to be investigated by the Board enforcement unit. These changes will result in greater efficiency in the licensing process and allow to Board to more effectively deal with issues rather than processing paperwork with no real benefit.

**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 Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule affects a broad industry with varying interests.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 30th day of August, 2008.

Jake Howard  
Executive Director  
Outfitters and Guides Licensing Board  
1365 North Orchard, Suite 172  
Boise, ID 83706  
(208) 327-7380  
FAX (208) 327-7382

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 25-0101-0801**

**034. GUIDE APPLICATION REQUIREMENTS - GENERAL.**

To be complete, an application for a guide license must: (4-1-92)

**01. First Aid Card.** Be accompanied by an affidavit signed by the employing outfitter that the applicant will have a valid first aid card before they are employed as a guide. (4-11-06)

**02. Signatures.** Have the signature of the applicant and of the licensed outfitter(s) who wishes to employ the applicant as a guide, who shall certify that the applicant: (4-1-92)

**a.** Is qualified to perform the type of guiding activity(ies) for which the applicant seeks licensing; i.e., hunting, boating, skiing, or other as may be applicable. (4-11-06)

**b.** Has extensive, first-hand knowledge of the operating area(s) and water(s) in or on which the applicant will be guiding. (4-11-06)

**c.** If the applicant is land based, is able to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. (4-11-06)

**d.** Is clean and well-mannered with a desire to please those whom the applicant is called upon to serve. (4-11-06)

**e.** The applicant for a hunting or boating guide license shall satisfy the training requirements pursuant to Sections 035 through 042 of this rule, prior to performing guiding services for an outfitter. Power boat fishing guides shall satisfy the training requirements pursuant to Section 048 of this rule. ( )

**f.** For hunting and boating guide applicants, the training form or log set forth in Sections 035 through 042 and Section 048 of this rule and shall be completed in full on a form provided by the Board before the guide license application is submitted to the Board and shall be maintained by the outfitter during the time the guide is employed by the outfitter for one (1) complete license year following the termination of employment of the guide. ( )

**g.** The applicant for a ski guide license shall satisfy the training requirements pursuant to Section 044 of this rule prior to performing guide services for an outfitter. The training documentation required pursuant Section 044 of this rule shall be provided to the Board by the outfitter for each guide at the time of application. A copy shall be maintained by the outfitter for one (1) complete license year following the termination of employment of the guide. ( )

**h.** The applicant for a Technical Mountaineering/Rock Climbing license shall satisfy the training requirements pursuant to Section 045 of this rule prior to performing guide services for an outfitter. The training documentation shall be provided to the Board by the outfitter for each guide at the time of application. A copy shall be maintained by the outfitter for one (1) complete license year following the termination of employment of the guide. ( )

**i.** The applicant for a Snowmobiling guide license shall satisfy the training requirements pursuant to Section 047 of this rule prior to performing guide services for an outfitter. The training documentation on these forms shall be provided to Board the by the outfitter for each guide at the time of application. A copy shall be maintained by the outfitter for one (1) complete license year following the termination of employment of the guide. ( )

**03. Retention of Training Forms.** If a guide is involved in an accident or incident jeopardizing the health, safety or general welfare of a client, the training log shall be retained by the outfitter for a period of three (3) years from the date of the accident or incident. These forms shall be maintained by the outfitter for each guide and shall be available for inspection by the Board or agents of the Board. ( )

**035. GUIDE APPLICATION REQUIREMENTS - HUNTING.**

A guide applicant for big game hunting may be licensed either as apprentice guide, or as a guide. (3-1-86)

**01. Apprentice Guide.** An apprentice guide is a new hunting guide applicant who has not had previous experience as an Idaho hunting guide. He may be licensed as an apprentice guide by submitting a completed application form and fee. (3-1-86)

**02. Apprentice Guide.** An apprentice guide may assist a hunting guide while completing training necessary to become a guide, but may not be given primary responsibility for guiding a hunt. (3-1-86)

**03. ~~Minimum Training~~ Guide.** A new hunting guide applicant must have in addition to other general requirements outlined in Section 034 of this rule, the following minimum training certified by the employing outfitter before a guide license may be issued: (3-1-86)(\_\_\_\_)

**a.** The applicant must have been in the outfitter's operating area(s) for at least ten (10) days and must be knowledgeable of trails, terrain, drainages, and game habits and habitat. (3-1-86)

**b.** He must be able to correctly cape an animal and be adequately trained so as to be able to instruct and assist clients in the proper care of meat. (3-1-86)

~~**04. Submission.** Submission of a copy of a training form, with the employing outfitter's signature certifying that training is complete, will permit licensing as a guide rather than as an apprentice. (3-1-86)~~

~~**05. Expedite.** If an applicant wishes to expedite issuance of a hunting guide license, but does not have the required training and does not wish to be licensed as an apprentice guide, he must obtain from the Board, and have in his possession while training occurs, a validated training form. This form may be obtained by: (3-1-86)~~

~~**a.** Meeting all requirements for a hunting guide license except completion of the necessary training; and (3-1-86)~~

~~**b.** Submitting to the Board a completed guide license application form and guide license fee. (3-1-86)~~

~~**e.** Upon completion of the required training, the validated training form, with the outfitter's signature certifying that the required training has been completed, will serve as a twenty (20) day temporary license from the date the outfitter signs the form, provided that a copy of the validated training form has been immediately forwarded to the Board office for a license. (3-1-86)~~

**064. Upgraded.** If an apprentice guide license has been issued, the apprentice license may be upgraded to that of a guide when the required training is completed, when certified by the employing outfitter, and a copy of the completed training form is submitted to the Board along with the amendment fee. (3-1-86)(\_\_\_\_)

**036. ~~DESCRIPTION OF CLASSIFIED RIVERS~~ GUIDE APPLICATION REQUIREMENTS -- RIVERS, STREAMS, OR LAKES.**

Boating on any river, stream or lake is considered hazardous. For the purpose of these Rules, specific sections of some whitewater river or streams which are considered more hazardous have been designated "classified." Classified rivers are denoted by an asterisk (\*) in the list of rivers contained in Subsection 059.01. (3-1-86)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**038. FLOAT BOAT GUIDE -- UNCLASSIFIED RIVERS.**

To qualify as a float boat guide on unclassified rivers and streams, the applicant shall have had one (1) complete commercial float boat trip on each of the rivers applied for, (complete trip means the total section of river designated by the Board in Subsection 059.01), under the supervision of a float boat guide licensed for each of those rivers. A log



of this experience shall ~~be kept and submitted to~~ be recorded on a form provided by the Board office giving dates, and location, and the signature of shall be maintained by the outfitter. ~~This training must be recorded on a form provided by the Board.~~ (4-1-92)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. FLOAT BOATMAN QUALIFICATIONS -- CLASSIFIED RIVERS.**

An applicant for a float boatman license on classified rivers may qualify in one (1) of three (3) ways: (4-1-92)

**01. General.** He shall have had three (3) complete float boat trips on each of the classified rivers applied for under the direct supervision of a float boatman licensed for that river (complete trip means the total section of river designated by the Board in Subsection 059.01), or he shall have had one (1) or more complete float boat trips on each of the classified rivers applied for under the direct supervision of a float boatman licensed for that river with the remaining trip(s) in a boat with no more than one (1) other trainee, following a licensed float boatman for that river, but he must not have passengers in the boat. (4-1-92)

**a.** Allowances may be made for experience gained as a commercial boat operator on selected whitewater rivers with characteristics similar to Idaho's classified rivers; e.g. Colorado River (Grand Canyon or Cataract Canyon), Yampa River, Rogue River, American and Toulumne Rivers, other Idaho classified rivers, or the unclassified section of the Salmon River from North Fork to Corn Creek, provided the applicant has logged at least five hundred (500) miles as a commercial float boat operator on one (1) or more of those rivers. (4-1-92)

**b.** To ~~obtain credit for document~~ this experience, a statement signed by the applicant under oath or affirmation and notarized ~~must accompany the application~~ shall be recorded on a form provided by the Board office. The statement should include precise put-in and take-out points, miles logged for each trip, and the names and addresses of the boat operators who have employed them. (4-1-92)(\_\_\_\_)

**02. Other.** Or, he shall have logged at least five hundred (500) miles as a commercial float boat guide on any rivers applicable to Subsection 040.01.a., and shall have one (1) complete float boat trip on each river applied for under the direct supervision of a float boatman licensed for that river, or in a boat with no more than one (1) other trainee, following a float boatman licensed for that river, but there must not be any passengers in the boat. (Complete trip means the total section of river designated by the Board in Subsection 059.01). A log of this experience shall be recorded on a form provided by the Board office and maintained by the outfitter showing the dates, location of float boat trips and the signature of the outfitter. (4-1-92)(\_\_\_\_)

**03. Float Lead Boatman.** Or, if he is licensed as a float lead boatman on a classified Idaho river, he may qualify for a float boatman license on other classified rivers after one (1) complete float boat trip on each river applied for, under the direct supervision of a float boatman licensed for that river, or in a boat with no more than one (1) other trainee, following a float boatman licensed for that river, but he must not have passengers in the boat. (Complete trip means the total section of river designated by the Board in Subsection 059.01.) A log of this experience shall be ~~kept and submitted to~~ recorded on a form provided by the Board office and maintained by the outfitter showing the dates, location of float boat trips, and the signature of the outfitter. ~~This training must be recorded on a form provided by the Board.~~ (4-1-92)(\_\_\_\_)

**041. FLOAT LEAD BOATMAN QUALIFICATIONS.**

An applicant for a float lead boatman license must have had six (6) complete float boat trips except that upon Board approval, a licensee may train on and be licensed for a specific reach of a section only. (Complete trip means the total section or reach of a section of river designated by the Board in Subsection 059.01). One (1) trip must have been within the sixty (60) months preceding the date of the application on each of the classified rivers applied for. Any float boatman wishing to qualify for a lead float boatman license shall ~~maintain a log of~~ record on a form provided by the Board each commercial float boat trip made with dates, location, and signature of the outfitter. ~~This~~ The training ~~must~~ shall be recorded on a form provided by the Board and maintained by the outfitter. (4-5-00)(\_\_\_\_)

**042. POWER BOAT GUIDE.**

To qualify for a power boat guide license on:

(4-1-92)

**01. Classified Rivers.** An applicant shall have spent fifty (50) power boating hours on the total length of the river or section of river designated on the application by the Board for which he wishes to operate, under the direct supervision of a power boat guide licensed for that river. The fifty (50) hours required shall be distributed as evenly as possible along the total length of the river or section of river for which qualification is sought. The exception to this rule is the Salmon River from the mouth of the Middle Fork to Salmon Falls, Salmon Falls to Ludwig Rapids, and Ludwig Rapids to Vinegar Creek or Spring Bar, on which the applicant may train for twenty-five (25) hours on each section under the direct supervision of a power boat guide licensed for that river section. (4-1-92)

**02. Unclassified Rivers and Streams.** An applicant shall have spent at least ten (10) power boating hours on the total length of the river or section of river designated by the Board on the application for which he wishes to operate, under the direct supervision of a power boat guide licensed for that river or stream. The ten (10) hours required shall be distributed as evenly as possible along the total length of the river or section of river for which qualification is sought. (4-1-92)

**03. Lakes and Reservoirs.** An applicant shall have spent at least ten (10) power boating hours on the lake or reservoir on which he wishes to operate, under the direct supervision of a power boat guide licensed for that lake or reservoir. The ten (10) hours shall be distributed as evenly as possible on the entire area of the lake or reservoir for which qualification is sought. (4-1-92)

**04. Log.** A log of this experience shall be ~~kept and submitted with the application~~ recorded on a form provided by the Board office and maintained by the outfitter, showing the dates, river, lake or reservoir, location of put-in, destination, take-out, hours logged, and signature of outfitter. ~~This training must be recorded on a form provided by the Board.~~ (4-1-92)(      )

**043. ~~BOAT TRAINING LOGS/FORMS (RESERVED).~~**

~~Boat training logs are available from the Board to record training trips. Training logs may be used for licensing purposes as follows:~~ (4-1-92)

~~**01. First Time Applicant.** For a first time applicant, a copy of the completed training log that includes the applicant's signature and outfitter's dated signature verifying that the required training has been completed, shall be submitted, along with a completed guide application, copy of a current first aid card, and the necessary fees, to the Board before a guide license will be issued. (Exception: See Validated Training Form).~~ (4-1-92)

~~**02. Amend Current Guide License.** To amend a current guide license to add an additional river segment(s), a copy of the completed training log that includes the applicant's signature and outfitter's dated signature verifying that the required training has been completed, shall be submitted, along with the necessary fees, to the Board so that an amended guide license can be issued. Validated training forms may be used as a temporary guide license while the regular guide license is being processed. To obtain a validated training form, a guide must specify the particular river section on which he wishes to train, and meet the following requirements:~~ (4-1-92)

~~**03. Other.** If the guide is a first time applicant, he must submit a guide application form, first aid card, and necessary fees, and request a validated training form. When the completed paperwork is received at the Board, a validated training form will be issued to the applicant. Upon completion of training, a copy of the validated training form, containing the required guide's signature, supervisor's signature, and outfitter's dated signature, shall be returned to the Board. The validated training form retained by the guide will serve as a twenty (20) day temporary guide license effective the date of the employing outfitter's signature. The copy of the validated training form at the Board office will serve as an official training log to allow issuance of the regular guide license.~~ (4-1-92)

~~**04. Form.** A currently licensed guide may also request a validated training form to add additional river sections to his license. Upon receipt of a request for a validated training form accompanied by the appropriate amendment fees, the Board will issue said form for the specified river section. When training has been completed, a copy of the validated training form containing the required signatures shall be sent to the Board and will be considered an official training log. Upon receipt by the Board, the amended guide license will be issued. The validated training form retained by the guide will serve as a twenty (20) day temporary license, effective the date of the employing outfitters signature.~~ (4-1-92)

**(BREAK IN CONTINUITY OF SECTIONS)**

**048. POWER BOAT FISHING GUIDE -- (LAKES AND RESERVOIRS).**

All applicants for a power boat fishing guide license shall possess the ability and knowledge to: (10-15-88)

**01. Maneuver or Pilot.** Maneuver or pilot a power boat upon Idaho lakes and reservoirs open to power boat fishing. (10-15-88)

**02. Operation.** Have operated a power boat for a minimum of ten (10) hours upon the lakes and reservoirs being requested. (10-15-88)

**03. Log.** ~~Submit a log of said experience showing dates and hours logged, location of lakes and reservoirs upon which said experience has been gained as certified by the employing outfitter~~ A log of this experience shall be recorded on a form provided by the Board office and maintained by the outfitter showing the dates, location of power boat trips, and the signature of the outfitter. (10-15-88)( )

**04. Law.** Conduct his business in accordance with the Idaho Safe Boating Act (Idaho Code, Title 67, Chapter 10). (10-15-88)

**(BREAK IN CONTINUITY OF SECTIONS)**

**065. LICENSE AMENDMENTS.**

**01. Procedure for Amendment to Outfitter License.** An outfitter must procure an amendment to their license through the following procedure: (4-5-00)

**a.** The applicant requests an Amendment Request Form (OG9) from the Board. (4-5-00)

**b.** The applicant fills out and returns the completed Amendment Request Form to the Board along with an amended operating plan, financial statement, map (if applicable), land manager signoff sheets (if applicable), and the amendment fee as provided for in Section 009. (4-5-00)

**c.** The Board initiates a review and analysis of the application following which the applicant is informed that: (4-5-00)

**i.** Additional materials are needed to complete the application; or (4-5-00)

**ii.** The amendment request is granted; or (4-5-00)

**iii.** The amendment request is denied. (4-5-00)

**02. Procedure for Amendment to Guide License.** A guide must procure an amendment to their license through the following procedure: (4-5-00)

**a.** The guide or the outfitter must initiate the amendment request by contacting the Board. (4-5-00)

**b.** ~~The guide for which all amendment requests are made must meet and provide proof of original training requirements for the area and activity to be added or amended and proof of such training must be sent to the Board along with the amendment fee as provided for in Section 009.~~ The outfitter for which all amendment requests are made must submit: (4-5-00)( )

i. A properly completed amendment form that provides certification that training requirements for the area and activity to be added have been met and proof of such training will be available at the Board's request. ( )

ii. The amendment fee as provided for in Section 015. ( )

c. The Board initiates a review and analysis of the application following which the applicant is informed that: (4-5-00)

i. Additional materials are needed to complete the application; or (4-5-00)

ii. The amendment request is granted; or (4-5-00)

iii. The amendment request is denied. (4-5-00)

## **IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

### **26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES**

#### **DOCKET NO. 26-0120-0801 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

A significant portion of the annual operating budget for the agency is derived from self-generated dedicated funds. In order to be able to take optimum advantage of resource values related to campsites, the agency wants to increase the fee ceiling for park campsites as currently delineated in IDAPA. This adjustment will provide future flexibility for the agency to create unique "shoulder" and "prime" season rates, thereby improving agency revenues that help to sustain the level of service and quality of facilities and programs expected by our visitors.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased, in compliance with Section 67-4210, Idaho Code: The intent of this fee proposal is to increase the current authorized fee ceiling for park campsites in IDAPA 26.01.20.250.01. By taking this action, the agency will have future flexibility to establish adjusted "shoulder" and "prime" season rates at an amount less than the IDAPA-approved ceiling.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session if requested.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208-514-2260.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August, 2008.

Dean Sangrey  
Division Administrator, Operations  
Idaho Department of Parks and Recreation  
5657 Warm Springs Ave.  
Boise, ID 83716  
PO Box 83720  
Boise, ID 83720-0065  
Phone: 208-334-4199 Fax: 208-334-3741

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-0801

250. FEE SCHEDULE.

01. Campsites.

CAMPSITE FEE TABLE	
<b>Primitive Campsite</b> No amenities at site, camping area not defined	\$ <del>9</del> <u>13</u> /day
<b>Standard Campsite</b> Any defined campsite, either tent pad or RV pad/area (may include: table and/or grill)	\$ <del>12</del> <u>16</u> /day
<b>Serviced Campsite/ W</b> Any defined campsite, either tent pad or RV pad/area, with water at site (may include: table and/or grill)	\$ <del>16</del> <u>20</u> /day
<b>Serviced Campsite/ E</b> Any defined campsite, either tent pad or RV pad/area, with electricity at site (may include: table and/or grill)	\$ <del>16</del> <u>20</u> /day
<b>Serviced Campsite/ W, E</b> Any defined campsite, either tent pad or RV pad/area, with water and electricity at site (may include table and/or grill)	\$ <del>20</del> <u>24</u> /day
<b>Serviced Campsite/ W, E, SWR</b> Any defined campsite, either tent pad or RV pad/area, with water, electricity, and sewer at site (may include table and/or grill)	\$ <del>22</del> <u>26</u> /day
<b>Companion Campsite</b> May be any campsite type, regardless of amenities, that has greater equipment/people capacity (may include table and/or grill) Fee determined by actual site type.	Site type multiplied by two (2)
<b>Use of Campground Showers by Noncampers</b>	\$3/person
<b>Limited Income Discount</b> - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the Board) may receive a camping fee discount of:	\$4/day
<b>Resident Disabled Idaho Veterans</b> - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
<b>Senior Citizen Discount</b> - Pursuant to Section 67-4223, Idaho Code, and at the discretion of the Director, IDPR may provide, at selected under utilized locations and times, a senior citizen discount,	Maximum 50% of RV camping fee
<b>Extra Vehicle Charge</b>	\$ 7/day
<b>Camping Cabins and Yurts</b>	\$150/night
Each additional person above the sleeping capacity of camping cabin or yurt	\$12/night

(3-30-06)( )

02. Reservation Service Fees, Individual Campsite or Facility. A non-refundable non-transferable

(from one (1) party to another) service charge of ten dollars (\$10) may be assessed for each individual campsite or facility reserved. This fee will be waived for campers with a current Idaho RV registration sticker and reimbursed to the Department by the RV Program. A service charge of ten dollars (\$10) or the first night's fee, whichever is less, will be assessed for the cancellation or modification of each individual campsite or facility reserved that involves reducing the planned length of stay or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window) if notice is received more than twenty-four (24) hours in advance of the scheduled arrival time. Cancellations or modifications made less than twenty-four (24) hours in advance of the scheduled arrival time shall result in assessment of a ten dollar (\$10) service charge and may require the forfeiture of the first night's camping fee. Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and a re-book will be required. (3-30-06)

**03. Day Use Fee.**

<b>DAY USE FEE TABLE.</b>	
<b>Daily charge per motorized vehicle.</b> The day use fee expires at 10:00 p.m. on date of purchase or as posted Overnight camping guests are exempt from this fee.	\$ 5
Daily charge per commercial motor coach (no annual pass available)	\$25
Statewide Annual State Park Passport per motorized vehicle	\$35
<b>Disabled Idaho Resident Veterans</b> - The day use fee is waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
Second Vehicle Annual Passport.	\$ 5

(3-30-06)

**04. Special Charges.** The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. (3-7-03)

**05. Group Facility Fees.** Reservation service fee, designated group campground or facility. (3-30-06)

**a.** A non-refundable, non-transferable (from one (1) party to another) service charge of twenty-five dollars (\$25) will be assessed per designated group area or facility reserved. This fee will be charged in addition to the usage fees for each group or campsite or facility. (3-30-06)

**b.** Groups using overnight facilities shall be charged three dollars (\$3) per person per night camping fees for each individual above the authorized base occupancy rate for the specific site or facility. (3-30-06)

**c.** Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they shall be paid prior to check-in. Cleaning/damage deposits shall be fully refunded if the facility is left in the same condition in which it was accepted. (3-30-06)

**d.** Group use fees for day use facilities may be negotiated by the park manager or designee and will generally not fall below the cost of providing services. (3-30-06)

**06. Boating Facilities.**

<b>BOATING FACILITIES FEE TABLE</b>	
<b>Vessel launching</b> (per vessel/per day) (Annual park passport or day use fee apply toward vessel launching fees)	\$5/ day
<b>Overnight moorage</b> - any length of vessel. (Applicable to persons who have paid for a park campsite and are not camping on the vessel)	\$5/night

**BOATING FACILITIES FEE TABLE**

<b>Overnight moorage</b> - persons camping on vessel	
Any length vessel	\$8/night
Any length vessel moored at buoy	\$5/night

(3-30-06)

**07. Modification of Fees.** Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The Department reserves the right to waive or reduce fees and charges for Department sponsored promotions. (7-1-93)

**08. Sales Tax.** Applicable sales tax may be added to all sales excluding the day use fee. (3-30-06)

**09. Length of Stay.** Fifteen (15) days in any consecutive thirty (30) day period. (3-30-06)

**10. Nordic Ski Grooming Program Fee.** A fee of four dollars (\$4) per person per day and thirty-five dollars (\$35) per family per season will be required at Board-approved premium Nordic ski grooming program locations. These programs may include: maintained parking areas, warming facilities, winter accessible restroom facilities, regularly groomed ski trails, extensive signing, trail mapping and ski patrol services. (3-16-04)



## **IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

### **26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES**

**DOCKET NO. 26-0120-0802**

#### **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 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

This proposed rule addresses several issues pertaining to the operation of state parks and protection of the natural resources of the state that are further detailed below:

1. This rule change will clarify that operation of motorized vehicles for ingress and egress to campsites or other in-park destinations is permitted within the boundary of any Idaho state park, and not just designated campgrounds.
2. The new rule will clarify that group use permits require agency Director approval for groups larger than 250 people, including those permits that will involve the sale of alcoholic beverages. The 45 day advance notice requirement may be waived with approval of the Director or designee.
3. This rule change will clarify that the use of saddle or other recreational packing livestock, such as llamas, goats, etc., is prohibited on trails, roadways, and other areas unless designated through signing for that purpose or with permission of the park manager or designee.
4. Clarification is needed to effectively address more definitive guidance for agency staff when dealing with wildfire management issues. The change will speak to proper procedures to follow when large geographic areas may be affected by fire closures as mandated by statewide fire management agencies. The agency has a responsibility to inform the public regarding protection of wildlife within the boundaries of state park property.
5. We currently enforce prohibitions related to molesting, injuring, or killing any wild creatures in the parks, except as provided by specific action of the Park Board. It is necessary to clarify that any hunting or pursuit of wildlife in a park setting must also comply with current IDFG rules and regulations.

**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 Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session if requested.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208-514-2260.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August, 2008.

Dean Sangrey  
Division Administrator, Operations  
Idaho Department of Parks and Recreation  
5657 Warm Springs Ave., Boise, ID 83716  
PO Box 83720, Boise, ID 83720-0065  
Phone: 208-334-4199 Fax: 208-334-3741

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-0802**

**150. USE OF MOTORIZED VEHICLES.**

All motorized vehicles shall stay on authorized established Department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and vehicles operated within lands administered by the Department shall be licensed or certified as required under state law. The operators of all vehicles shall comply with the day use fee requirements, speed and traffic rules of the Department, and all other federal, state, local laws, and ordinances governing traffic on public roads. (3-30-06)

**01. Use of Parking Spaces for Persons With a Disability.** Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as provided in Section 49-213, Idaho Code. (3-7-03)

**02. Overdriving Road Conditions and Speeding Prohibited.** No person shall drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every person shall drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as provided in Section 49-654, Idaho Code. (3-7-03)

**03. Motorcycle and ATV Safety Helmets.** Persons under eighteen (18) years of age shall wear a protective safety helmet when riding upon a motorcycle or an all-terrain vehicle as operator or passenger as provided in Section 49-666, Idaho Code. (3-30-06)

**04. Snowmobile Operation Limited.** No person shall operate a snowmobile on any regularly plowed park road unless authorized by park manager or designee. Access on non-plowed roads and trails shall only be permitted when authorized by the park manager. (3-30-06)

**05. Compliance With Posted Regulatory Signs Required.** Persons operating vehicles within state parks are required to obey posted regulatory signs as provided in Section 49-807, Idaho Code. (3-7-03)

**06. Obedience to Traffic Direction Required.** No person shall willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control or regulate traffic within a state park. (3-30-01)

**07. Restrictions.** The operation of motorized vehicles within ~~a designated campground~~ any Idaho state park is restricted to ingress and egress to a campsite or other in-park destination by the most direct route.

~~(3-30-06)~~(\_\_\_\_)

**08. Official Use.** This rule does not prohibit official use of motorized vehicles by Department employees anywhere within lands administered by the Department. (1-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. FEES AND SERVICES.**

**01. Authority.** (3-13-97)

**a.** The Board shall adopt fees for the use of lands, facilities, and equipment. Visitors shall pay all applicable fees. (3-7-03)

**b.** Park managers or designees may set fees for goods available for resale and services provided by staff that enhance the users experience unique to the individual park. Fees for lands, facilities and equipment unique to an individual park will be posted at that site. (3-7-03)

**02. General Provisions.** All fees in this chapter are maximum fees unless otherwise stated. Actual fees charged shall be established by Board Policy. (3-7-03)

**03. Camping.** Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-16-04)

**04. Group Use.** (7-1-93)

**a.** Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (3-30-06)

**b.** Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of more than two hundred fifty (250) to one thousand (1,000) people may be approved by the Director with forty-five (45) days advance notice, including permits that will involve the sale of alcoholic beverages. Groups over one thousand (1,000) may be approved by the Board with sixty (60) days advance notice. The Director may approve groups over one thousand (1,000) with thirty (30) days advance notice, if they are repeat users. The advance notice requirement may be waived with approval of the director or designee. (1-1-94)(\_\_\_\_)

**c.** The day use fee may be charged to groups entering a designated area for a noncamping visit. (3-30-06)

**05. Fees and Deposits.** Fees and deposits may be required for certain uses or the reservation of certain facilities unique to an individual park and will be posted at that site. (3-30-06)

**06. Fee Collection Surcharge.** A five dollar (\$5) surcharge may be added to all established fees when the operator of a motorized vehicle or responsible party of a camping unit fails to pay required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the five dollar (\$5) surcharge will be assessed against the registered owner of the motorized vehicle or camping unit. (3-30-06)

**07. Admission Fees.** A maximum per person fee of ten dollars (\$10) may be charged for internal park facilities which provide an educational opportunity or require special accommodations. (3-10-00)

**08. Cooperative Fee Programs.** The Department may collect and disperse fees in cooperation with fee

programs of other state and federal agencies.

(3-10-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. LIVESTOCK.**

Grazing of livestock is not permitted within lands administered by the Department. Exceptions may be made by the board for grazing permits or otherwise permitting the use of lands administered by the Department for livestock. The use of saddle or other recreational packing livestock, such as llamas, goats, etc., is prohibited on trails, roadways, and other areas unless designated through signing for that purpose or with permission of the park manager or designee.

~~(3-7-03)~~(\_\_\_\_)

**501. -- 524. (RESERVED).**

**525. FIRES.**

**01. Use of Fires.** The use of fires shall be restricted to fire circles, grills or other places otherwise designated by the park manager. All fires shall be kept under control at all times, ~~and shall be extinguished before checking out of the campsite or whenever fire is left unattended.~~ Fires shall not be left unattended and will be extinguished before checking out of the campsite. (\_\_\_\_)

**02. Additional Restrictions.** ~~Some park Areas may be closed to open fires during extreme fire danger~~ implement restrictions in the use of open fires during extreme fire events. In certain instances, large geographic areas may be affected by fire closures as mandated by statewide fire management agencies. The Department will coordinate closely with field staff and these fire management agencies during these periods. Field staff will follow the established IDPR fire management policy and standard operating procedures. ~~(3-13-97)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**575. PROTECTION OF WILDLIFE.**

All molesting, injuring, or killing of any wild creature is strictly prohibited, except as provided by action of the Board and as established in Board Policy. Persons in possession of wildlife, which may be legally taken within state park boundaries, shall comply with all Idaho Department of Fish and Game rules and regulations. ~~(3-7-03)~~(\_\_\_\_)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

#### DOCKET NO. 27-0101-0805

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Pharmacy interns and externs, which are pharmacy students, are treated in the Board's rules in a manner which makes it more efficient to refer to them as within the single class of "student pharmacist," except where differentiation is required, so a change is proposed to include a definition of "student pharmacist." Several of the rule provisions regarding registration and experience requirements for pharmacy externs/interns and regarding pharmacist licensing requirements are redundant and/or obsolete and are being updated and rendered more concise. Current rule does not permit the reference library required in each pharmacy to include materials available to the pharmacy through on-line web applications but does permit certain items to be accessible by computer diskette, so the proposed changes permit on-line web applications as an acceptable access medium for the same types of items accessible through computer diskette. Current rule permits pharmacy externs and interns under the supervision of a pharmacist to communicate to another pharmacist prescription transfer information so long as the prescription is not for a controlled substance. The Board's experience with externs and interns is such that it believes that the foregoing limitation can be removed without risk to the public health and safety and proposes amending the rule to delete the controlled substance limitation. Additionally, in view of the definitional addition proposed, the Board proposes rule changes to substitute "student pharmacist" for "extern/intern" within those rules. Based on its regulatory experience, the Board believes it is appropriate and poses no risk to public health or safety to amend the rule to include skilled nursing facilities as an institution or facility permitted, as the rule currently permits hospitals, to use a formulary or drug list prepared by its pharmacy and therapeutics committee like hospitals for drug substitution purposes. Current rule requires that each pharmacy conduct an annual inventory of its stocks of controlled substances "on the same date each year" and specifies the time of day as of which the inventory may be taken. The inventory required by the rule can be made less burdensome for pharmacies without risk to the public health or safety by amending the rules to permit the annual inventory to be taken within a range of days of the prior year's inventory. The proposed rulemaking amends rules to: add a definition of "student pharmacist," which will be inclusive of interns and externs when differentiation is not required; delete redundant and/or obsolete provisions, consolidate existing rules, and renumber rules; permit the reference library required of pharmacies to include certain items in the form of on-line web application access; substitute the term "student pharmacist" for "extern/intern" and delete the provision which restricts prescription transfer communications between an "extern/intern" ("student pharmacist") under the direct supervision of a pharmacist and another pharmacist to non-controlled substances; include a "skilled nursing facility" as an institution or facility permitted, as currently are hospitals, to use a formulary or drug list prepared by its pharmacy and therapeutics committee for drug substitution purposes, and to provide a definitional reference for "skilled nursing facility;" and clarify the time frame within which a pharmacy is to conduct its annual inventory of its stocks of controlled substances.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 13th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho 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. 27-0101-0805**

**010. DEFINITIONS.**

**01. Board.** Idaho Board of Pharmacy. (6-16-06)T

**02. Pharmacist Extern.** Any person enrolled in an approved college of pharmacy who has not received his first professional degree in pharmacy, and who is obtaining experience under the supervision of a pharmacist preceptor. (6-30-95)

**03. Pharmacist Intern.** Any person who has successfully completed a course of study at an accredited college or school of pharmacy and received the first professional degree in pharmacy, and who is obtaining practical experience under the supervision of a pharmacist preceptor. (6-30-95)

**04. Preceptor.** A licensed pharmacist in good standing engaged in the practice of pharmacy at a registered training site and directly responsible in supervising the training of a student pharmacist ~~extern or intern~~. The preceptor shall be responsible for: (6-30-95)(\_\_\_\_)

**a.** Personally providing the ~~extern or intern~~ student pharmacist with training experience which in his judgment will increase the ~~extern or intern's~~ student pharmacist's proficiency; and (6-30-95)(\_\_\_\_)

**b.** Reporting to the Board upon request, the progress of any ~~pharmacy extern or intern~~ student pharmacist under his supervision; and (6-30-95)(\_\_\_\_)

**c.** Certifying the ~~extern or intern's~~ student pharmacist's experience affidavits when the extern or intern leaves his supervision. (6-30-95)(\_\_\_\_)

**05. Ratios.** ~~A ratio of one (1) pharmacist preceptor to one (1) extern or intern will be required for dispensing functions.~~ **Student Pharmacist.** A term inclusive of intern and extern when differentiation is not needed.

(6-30-95)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. REGISTRATION.**

**01. Interns.** Interns shall, prior to obtaining practical experience, make application for registration to the Board, on forms provided by the Board, along with the appropriate fee. Registrations and the renewals of registrations are the responsibility of the intern and expire on ~~May 15~~ June 30, annually. (3-15-02)(\_\_\_\_)

**02. Externs.** Externs shall, prior to obtaining practical experience, be enrolled in an accredited college of pharmacy and make application for registration to the Board, on forms provided by the Board, along with the appropriate fee. The registration will remain in effect as long as the extern remains in the college of pharmacy and until July 15 following graduation from the college of pharmacy, provided the registration has not been revoked or suspended by the Board. (3-15-02)

**03. Forms.** Registration forms issued to student pharmacists will provide a personal registration-receipt copy that shall be carried by the registrant whenever engaged in extern or intern training. (\_\_\_\_)

**034. Registration.** ~~The~~ An approved training site shall ~~make be registered by the Board as a place providing practical and professional training deemed applicable for preparing the student pharmacist for licensure.~~ Application to the Board for registration shall be completed on the forms provided by the Board along with the appropriate fee. This registration expires on June 30, annually. (6-30-95)(\_\_\_\_)

**045. Credit.** Credit for practical experience will not be accepted unless the ~~extern or intern~~ student pharmacist and the training site have been registered. (6-30-95)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. PRACTICAL EXPERIENCE TIME REQUIRED.**

The ~~extern or intern~~ student pharmacist must acquire one thousand five hundred (1,500) hours of practical pharmacy experience under a licensed pharmacist, at a registered training site, said one thousand five hundred (1,500) hours to be acquired after the individual is enrolled in a college of pharmacy. Practical experience may be acquired concurrently with college attendance. (6-30-95)(\_\_\_\_)

**103. CERTIFICATION OF EXPERIENCE.**

**01. Affidavit.** An Idaho Board of Pharmacy Employer's Affidavit will be supplied by the Board and will be certified by a pharmacist in any of the following situations: (6-30-95)

**a.** For ~~externs or interns~~ student pharmacists at the termination of any specific training period or training site; (6-30-95)(\_\_\_\_)

**b.** For interns as of the date the intern reaches the aggregated total of required experience hours. (6-30-95)

**02. Experience.** Experience time will not be accredited until these affidavits are submitted by the ~~extern or intern~~ student pharmacist. The affidavit must be submitted to the Board within thirty (30) days of the ending date of the training period. The ~~extern or intern~~ student pharmacist will be notified of the acceptance or denial of the experience submitted. (6-30-95)(\_\_\_\_)

**~~104. APPROVED TRAINING SITE REQUIREMENTS.~~**

*An approved training site shall be registered by the Board as a place providing practical and professional training deemed applicable for preparing the extern or intern for licensure. One half (1/2) the experience must be gained at a community or hospital pharmacy. Approved training site may include:* (6-30-95)

~~01. **Community Pharmacy, Registered by the Board.** It shall provide adequate experience in recognized and accepted pharmaceutical procedures normally encountered in a community pharmacy only while under the direct, personal supervision of a licensed pharmacist.~~ (6-30-95)

~~02. **Hospital Pharmacy, Registered by the Board.** It shall provide adequate experience in recognized and accepted pharmaceutical procedures normally encountered in an accredited and licensed hospital pharmacy and only while under the direct, personal supervision of a licensed pharmacist.~~ (6-30-95)

~~03. **Pharmaceutical Manufacturing Company or Lab.** A pharmaceutical manufacturing company or laboratory may provide experience in testing, analysis, manufacturing, packaging, labeling, the development and research of pharmaceutical products, and the applicable laws relative to training. One half (1/2) of the experience may be gained with a pharmaceutical manufacturing company or laboratory. The balance shall be in other approved training areas.~~ (7-1-93)

~~04. **Pharmaceutically Related Research Programs.** Externs or interns participating in pharmaceutically related research programs supervised by instructors who are licensed pharmacists, may gain one-fourth (1/4) of the experience required in this area. The extern or intern shall outline the research experience in a manner that will assure the Board that such experience has contributed to his fitness for licensure.~~ (6-30-95)

~~05. **Instructorship and Teaching Assistant.** Pharmacy interns employed as instructors and pharmacy externs or interns employed as teaching assistants in an accredited college or school of pharmacy and teaching required pharmacy courses, may gain experience equivalent to one fourth (1/4) of the required training. This experience must be gained under the supervision of a licensed pharmacist instructor on the staff where the extern or intern is teaching. The extern or intern shall outline the scope of the teaching experience in a manner that will assure the Board that such experience has contributed to his fitness for licensure. The intern instructor shall be deemed eligible to participate in this area of experience only after he has obtained the first professional degree in pharmacy.~~ (6-30-95)

~~06. **Other.** Experience may be gained in other areas related to pharmacy with prior approval by the Board.~~ (6-30-95)

**1054. PRACTICE LIMITATION OF ~~EXTERN OR INTERN~~ STUDENT PHARMACIST.**

**01. Activities.** The ~~extern or intern~~ student pharmacist shall be allowed to engage in any of the practice activities of a licensed pharmacist provided that: (7-1-93)(\_\_\_\_)

**a.** Such activity is under the immediate supervision of a licensed pharmacist who is present in the pharmacy; (6-30-95)

**b.** Any activity of a compounding, dispensing, or interpretive nature is checked by a licensed pharmacist; (7-1-93)

**c.** Any recording activity which requires the initial or signature of a licensed pharmacist is countersigned by a licensed pharmacist. (7-1-93)

**02. Violation.** Violation of the above practice limitations will result in the ~~cancellation~~ revocation of the registration of the training site, disciplinary action against the pharmacist and an evaluation for acceptance or rejection of the hours the ~~extern or intern~~ student pharmacist has obtained while under the supervision of a preceptor at this training site. (6-30-95)(\_\_\_\_)

**1065. LICENSURE EXAMINATIONS.**

*The examination of candidates for licensure as a pharmacist will be administered at least two (2) times during each fiscal year of the state.* A person who has successfully completed a course of study at an accredited college or school



of pharmacy and received the first professional degree in pharmacy may file an application to sit for the North American Pharmacists Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Exam (MPJE), or any other Board examinations approved programs. ~~The applicant, if examined after June 1, 1986, must pass the National Association of Boards of Pharmacy standard examination for licensure, or equivalent examination, jurisprudence and practical pharmacy. Applicant must obtain a score of not less than seventy five (75) to pass the examination. NABPLEX, jurisprudence and practical examinations are not averaged to obtain a final score. Both exams must be passed in accordance with National Association of Boards of Pharmacy (NABP) standards. Failure will subject the applicant to re-examination and payment of the original fee in accordance with NABP standards. All NABPLEX failures must wait until a regularly scheduled uniform testing date to retake examinations. State jurisprudence and practical examinations may be arranged through the Board office, providing at least thirty (30) days from the date of the failed examination have elapsed. After candidate has successfully passed the examination, licensure will be completed when certification of the required extern/internship has been filed with the Board office. After an applicant for examination has completed and filed the official application, he will be notified by the Board as to the time and place of the examination and, should the applicant fail to appear for an examination, the applicant may apply for a refund. Upon application for a refund, the Board will refund thirty dollars (\$30) of the original fee. Only under these circumstances will a refund be made to applicant.~~ (7-1-93)(\_\_\_\_)

**~~107. FORMS.~~**

~~Registration forms issued to externs/interns will provide a personal registration receipt copy that shall be carried by the registrant whenever engaged in extern/intern training.~~ (7-1-93)

**~~108. APPLICANT FOR LICENSURE BY EXAMINATION.~~**

**~~01. General Requirements.~~** ~~The applicant, if examined after June 1, 1986, must pass the National Association of Boards of Pharmacy standard examination for licensure, or equivalent examination, jurisprudence and practical pharmacy. Applicant must obtain a score of not less than seventy five (75) to pass the examination. NABPLEX, jurisprudence and practical examinations are not averaged to obtain a final score.~~ (7-1-93)

**~~02. Failure of Examinations.~~** ~~Failure will subject the applicant to re-examination and payment of the original fee. All NABPLEX failures must wait until a regularly scheduled uniform testing date to retake examinations. State jurisprudence and practical examinations may be arranged through the Board office, providing at least thirty (30) days from the date of the failed examination have elapsed.~~ (7-1-93)

**~~03. Upon Completion of Application.~~** ~~After an applicant for examination has completed and filed the official application, the applicant will be notified by the Board as to the time and place of the examination and should the applicant fail to appear for an examination, the applicant may apply for a refund. Upon application for a refund, the Board will refund thirty dollars (\$30) of the original fee. Only under these circumstances will a refund be made to applicant.~~ (7-1-93)

**~~109. EXAMINATION APPLICATION.~~**

~~All applications for examination as provided for in Section 54-1722, Idaho Code, must be filed with the Board together with all fees, at least thirty (30) days prior to the date of the examination.~~ (7-1-93)

**~~106. FOREIGN PHARMACY GRADUATES.~~**

~~Only those schools or colleges of pharmacy which have demonstrated that the standards of their respective undergraduate degree programs are at least equivalent to the minimum standards of accreditation established by the American Council on Pharmaceutical Education shall be deemed "approved" by the Board for the purposes of Section 54-1722(1)(d), Idaho Code. However, graduates of schools or colleges of pharmacy located outside the United States which have not demonstrated that the standards of their respective undergraduate degree programs are at least equivalent to the minimum standards for accreditation established by the ACPE shall have satisfied the requirements of Section 54-1722(1)(d), Idaho Code, by providing evidence satisfactory to the Board of graduation from such school, by successfully passing an equivalency examination, and tests of both spoken and written English, recognized by the Board must provide a Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification, or other Board approved program, prior to applying for the NAPLEX and MPJE.~~ (7-1-93)(\_\_\_\_)

**~~107. ACCREDITED PHARMACY COLLEGE.~~**

~~For the purposes of Section 54-1722, Idaho Code, a college recognized by the Board is an institution which meets the~~

minimum standards of the ~~American Accreditation Council on Pharmaceutical for Pharmacy Education~~ and appears on its list of accredited colleges of pharmacy ~~as published by the Council as of July 1 of each year. The Board also approves the accreditation standards of the American Council on Pharmaceutical Education as they appear in Section IV, pages 11 through 17 of the Accreditation Manual, Seventh Edition, January 1, 1974, a copy of which is kept on file at the Board office.~~ (7-1-93)(\_\_\_\_)

**11208. RECIPROCITY.**

~~01. Applicant for Reciprocity. After an applicant for reciprocity has completed and filed the official application he will be notified by the Board as to the time and place the application will be acted upon, at which time and place the applicant must be present. The Board will reciprocate through NABP's Electronic Licensure Transfer Program (ELTP), or any other Board approved program, and reserves the right to approve ELTP applications. Applicants may be are also required to take an examination in jurisprudence pass the MPJE. An applicant who has not actively engaged in the practice of pharmacy as a registered pharmacist during the year preceding the time of filing the application, may be compelled required to take the practical examination complete forty (40) intern hours for each year away from the profession of pharmacy.~~ (7-1-93)(\_\_\_\_)

~~02. Compliance with Instructions. If the instructions accompanying the application are not fully complied with, if application is filed and withdrawn, if applicant does not present himself to the Board and make it possible for the Board to act upon the application, the applicant will not be entitled to any refund.~~ (7-1-93)

~~03. Denial of Reciprocal Licensure by Board. If the applicant completes and files the official application as instructions require, and personally appears before the Board but is denied reciprocal licensure, he may then apply for a refund. When the Board office receives the application for refund a refund of fifty dollars (\$50) will be made. Only under these circumstances will a refund be made to applicants.~~ (7-1-93)

~~113. FAILURE. Failure to pass the jurisprudence examination will result in a re-examination fee as set by these rules.~~ (7-1-93)

**11409. -- 130. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. REFERENCE LIBRARY.**

**01. Required ~~Books~~ References.** The latest editions and supplements, either in book, computer diskette or on-line web application, of the following: (3-20-04)(\_\_\_\_)

- a. Idaho Pharmacy Law and Rules; (3-20-04)
- b. One (1) of the following current pharmacy references: (3-20-04)
  - i. Facts and Comparisons; (3-20-04)
  - ii. Clinical Pharmacology; (3-20-04)
  - iii. Micromedex; and (3-20-04)
- c. One (1) other current pharmacy reference of your choice (~~book or computer diskette~~). (3-20-04)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. PRESCRIPTION TRANSFER**

A pharmacist may transfer prescription order information for the purpose of refilling a prescription only if the information is communicated orally directly by one (1) pharmacist to another pharmacist. Such oral information can be communicated by ~~an extern/intern student pharmacist~~ under the direct supervision of a pharmacist to another pharmacist as long as one (1) of the parties involved in the communication is a pharmacist ~~and the order is not for a controlled substance~~. In the alternative, the transferring pharmacist may transfer the prescription order information by facsimile transmission to the receiving pharmacist. In the case of a facsimile transmission, the transmission shall be signed by the transferring pharmacist. (3-30-01)(\_\_\_\_)

**01. Prescriptions for Controlled Substances.** Prescriptions for controlled substances may be transferred only from the pharmacy where it was originally filled, and never from the pharmacy that received the transfer. (7-1-93)

**a.** In addition to the information required below, the pharmacist transferring the prescription shall record on the back of the original order, the DEA number and address of the pharmacy to which the transfer was made. (7-1-93)

**b.** The receiving pharmacist must record the DEA number and address of the pharmacy transferring the order. (7-1-93)

**02. Transferring a Prescription.** The pharmacist (~~extern/intern~~) who transfers the prescription shall: (7-1-93)(\_\_\_\_)

**a.** Invalidate the original prescription by writing the word “void” across the face of the form. (7-1-93)

**b.** On the reverse side of the form shall record the following information: his name; name of the receiving individual; name of the receiving pharmacy; date of the transfer and the number of authorized refills available. (7-1-93)

**03. Receiving Transferred Prescription.** The pharmacist (~~extern/intern~~) who receives the transferred prescription shall: (7-1-93)(\_\_\_\_)

**a.** Reduce the transferred information to writing including a notation that the prescription is a “transfer” and include all information required by law or rule. (7-1-93)

**b.** On the reverse side of the form he shall record the following information: his name; the name of the transferring individual; the name of the transferring pharmacy; the date of the original dispensing and transfer and the number of refills authorized; the number of valid refills remaining and the date of the last refill; the serial number of the prescription transferred. (7-1-93)

**04. Computer.** Transferring pharmacies that utilize a computer prescription database which contains all of the prescription information required by law or rule may enter the information required under Section 160 of these rules into the pharmacy’s prescription database (including de-activation of the transferred prescription in the database of the transferring pharmacy), in lieu of entry of the required information on the original written prescription. The receiving pharmacy must generate a hard copy to be treated as a new prescription, which hard copy shall also contain all of the information required under Section 160 of these rules. (3-30-01)

**05. Refills.** Prescriptions for non-controlled drugs may be transferred more than one (1) time as long as there are refills remaining and all of the provisions as listed above are followed. (7-1-93)

**06. Common Electronic Files.** (7-1-98)

**a.** For drugs other than controlled substances: Two (2) or more pharmacies may establish and use a common shared electronic prescription file to maintain required dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file. (7-1-98)

**b.** For controlled substances: Pharmacies must satisfy all information requirements of a manual mode for prescription transferal. (7-1-98)

**c.** All common electronic files must contain complete and accurate records of each prescription and refill dispensed. Hard copies must be generated and treated as a new prescription by the receiving pharmacy. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**187. PROHIBITED ACTS.**

**01. Substitution.** Substitution is prohibited and shall be deemed grounds for revocation of a license of a pharmacist pursuant to Section 54-1726, Idaho Code, and registration pursuant to Section 54-1732, Idaho Code. (6-1-94)

**02. Exception.** The use of a formulary or drug list prepared by: ( )

**a.** ~~The~~ pharmacy and therapeutics committee of a hospital and agreed to by the staff physicians of the hospital. (~~8-4-94~~)( )

**b.** The quality assessments and assurance committee of a skilled nursing facility, consisting of the director of nursing services, a physician designated by the facility, and at least three (3) other members of the facility's staff. For purposes of this rule, a "skilled nursing facility" means an institutional facility, or a distinct part of an institutional facility, which is primarily engaged in providing daily skilled nursing care and related services for residents who require medical or nursing care, or rehabilitation services for injured, disabled or sick persons. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**496. CONTROLLED SUBSTANCE INVENTORY.**

Each registered pharmacy shall maintain the inventories and records of controlled substances as follows: (7-1-93)

**01. Inventories and Records for Schedule I and II.** Inventories and records of all controlled substances listed in Schedule I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained in a separate prescription file; (7-1-93)

**02. Inventories and Records for Schedules III, IV, and V.** Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy and prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the pharmacy. (7-1-93)

**03. Readily Retrievable.** Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one (1) inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances, provided that for pharmacies employing an electronic record-keeping system for prescriptions which permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, the requirement to mark the hard copy prescription with a red "C" is waived. (7-1-99)

**04. Annual Inventory of Stocks of Controlled Substances.** Each registered pharmacy shall annually, ~~on the same date each~~ within seven (7) days of the prior year's inventory, take an inventory of all stocks of controlled

substances on hand, following the general requirements for inventories. (7-1-93)( )

**a.** The annual inventory as required in Section 496 of these rules shall be a written record resulting from a physical (or actual) count of stock on hand or in the control of the pharmacist in charge of a particular pharmacy. (7-1-93)

**b.** Automated data processing equipment may be used to provide lists of items (products) and to record receipts and issues of various items but not to produce the annual inventory. (7-1-93)

**c.** The record of inventory shall be kept in the inventory book provided by the Board or in another bound book (not loose leaf) suitable to meet the needs of inventory reports. (7-1-93)

**d.** Upon completion, the inventory will be dated as of the day taken, indicating whether it was taken at the opening or closing of business and signed by the party that took the inventory. (7-1-93)

**05. Separate Inventories for Each Location.** A separate inventory shall be made by a registrant for each registered location, such inventory for a registered location shall be kept at the registered location. (7-1-93)

~~**06. Time When Inventory Can Be Taken.** The registrant may take an inventory either as of the opening of business or as of the close of business on the inventory date indicating on the inventory records whether the inventory is taken as of the opening or as of the close of business and the date the inventory is taken. (7-1-93)~~

~~**076. Inventory Must Be In Written Form.** An inventory must be maintained in a written, typewritten or printed form, if taken by use of an oral recording device it must be promptly transcribed. (7-1-93)~~

~~**087. Maintaining Written Inventory.** Such inventory must be maintained on the premises for a minimum of three (3) years. (7-1-93)~~

~~**098. Additions to Schedules of Controlled Substances.** On the effective date of a rule adding a substance to any schedule of controlled substances, which substance was, immediately prior to that date, not listed on any such schedule, every registrant required to keep records who possesses that substance shall take an inventory of all stocks of the substance on hand and thereafter such substance shall be included in each inventory made by the registrant pursuant to Subsection 496.04 of these rules. (7-1-93)~~

~~**409. Maintaining Current List of Each Substance.** Each registered pharmacy shall maintain on a current basis a complete list of each substance manufactured, received, ordered, sold, delivered, or otherwise disposed of by him; order forms and other pertinent records in such a manner as to be readily retrievable. (7-1-93)~~

## **IDAPA 27 - BOARD OF PHARMACY**

### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

**DOCKET NO. 27-0101-0806**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Clarification is needed of evidentiary presumption in IDAPA 27.01.01.460. The proposed rulemaking amends the rule to limit the evidentiary presumption of the occurrence of a violation warranting discipline to a rebuttal presumption in proceedings to suspend or revoke the controlled substance registration of a registration for violation of Section 37-2720, Idaho Code, where there is evidence of an amount of a controlled substance unaccounted for by any record or inventory required by law.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 13th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho 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. 27-0101-0806**

**460. ~~POSSESSION OF GREATER OR LESSER AMOUNT OF CONTROLLED SUBSTANCE THAN SHOWN BY RECORDS -- EVIDENCE OF GUILT~~ REBUTTAL PRESUMPTION OF VIOLATION.**

~~In a prosecution under this act proof that a defendant received or has had in his possession at any time a greater proceeding to suspend or revoke the controlled substance registration of a registrant for violation of Section 37-2720, Idaho Code, and in which there is evidence of an amount of a controlled substances *than is accounted for by which is different from the amount reflected on any record or by any inventory required by federal law or that the amount of controlled substance possessed by a defendant is a lesser amount than is accounted for by any record required by law is prima facie evidence of guilt* and any additional rules, if any, issued by the Board, there shall be a rebuttable presumption that the registrant has failed to keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and any additional rules, if any, issued by the Board and is in violation of Section 37-2720, Idaho Code.~~

~~(7-1-93)( )~~

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-0807

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 rules were originally published as temporary on August 2, 2006 in the Administrative Bulletin, Vol. 06-8, pages 74 through 78 (Docket No. 27-0101-0601); approved and extended by the 2007 Legislature by SCR 120; and extended by the 2008 Legislature by SCR 139.

Based upon the passage of time and experience required by the Board with the pilot program, the Board proposes to make permanent the temporary rules regarding the Remote Dispensing Pilot Project.

The proposed rules make permanent the temporary rules regarding the remote pharmacy dispensing pilot project and amends those rules to substitute the phrase "pharmacist-in-charge" for "responsible pharmacist;"

To require that the operating agreement include the description of procedures detailing the security and accounting of returned, discarded, or unused medications in accordance with state and federal laws, rules, and regulations;

To permit access to the pharmacy's remote dispensing machine by certain persons other than a licensed pharmacist in situations specifically detailed in the operating agreement approved by the Board;

To delete the provision regarding wasted, discarded, or unused medications in view of the requirement that the operating agreement include procedures dealing with the security and accounting of returned, discarded, or unused medications;

To renumber paragraphs due to the foregoing deletion; and to require that the operating agreement include other provisions determined by the Board to be necessary to protect the public health, safety, and welfare.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.



DATED this 13th day of August 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho 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. 27-0101-0807**

**010. DEFINITIONS.**

**01. Board.** Idaho Board of Pharmacy. ( )

**042. Pharmacist Extern.** Any person enrolled in an approved college of pharmacy who has not received his first professional degree in pharmacy, and who is obtaining experience under the supervision of a pharmacist preceptor. (6-30-95)

**023. Pharmacist Intern.** Any person who has successfully completed a course of study at an accredited college or school of pharmacy and received the first professional degree in pharmacy, and who is obtaining practical experience under the supervision of a pharmacist preceptor. (6-30-95)

**034. Preceptor.** A licensed pharmacist in good standing engaged in the practice of pharmacy at a registered training site and directly responsible in supervising the training of a pharmacist extern or intern. The preceptor shall be responsible for: (6-30-95)

**a.** Personally providing the extern or intern with training experience which in his judgment will increase the extern or intern's proficiency; and (6-30-95)

**b.** Reporting to the Board upon request, the progress of any pharmacy extern or intern under his supervision; and (6-30-95)

**c.** Certifying the extern or intern's experience affidavits when the extern or intern leaves his supervision. (6-30-95)

**045. Ratios.** A ratio of one (1) pharmacist preceptor to one (1) extern or intern will be required for dispensing functions. (6-30-95)

**(BREAK IN CONTINUITY OF SECTIONS)**

**265. REMOTE DISPENSING PILOT PROJECT.**

The Board, through its Executive Director, may authorize specific pharmacies and the pharmacists practicing therein to participate in a Remote Dispensing Pilot Program. The following rules shall apply to pharmacies so authorized by the Board for conducting pharmacy through a Remote Dispensing Program. The purpose of the Remote Dispensing Pilot Program is to allow the provision of pharmaceutical care through the use of telecommunications and Remote Dispensing Machines (RDM) to patients at a distance from the pharmacy and pharmacist providing the pharmaceutical care. During the pilot project phase of the Remote Dispensing Pilot Program, designation to participate in the Remote Dispensing Pilot Program shall be at the discretion of the Board and the Executive Director. ( )

~~2656. --290.~~ (RESERVED).

**267. REMOTE PHARMACY REGISTRATION - OPERATING MEMORANDUM.**

**01. Registration.** During the pilot project phase of the Remote Dispensing Pilot Project, each Remote Pharmacy shall be registered with the Board as a Pilot Remote Pharmacy. Pilot Remote Pharmacies will only be approved for operating in medical care facilities operating in areas otherwise unable to obtain pharmaceutical care on a timely basis. RDMs must be used only in settings with an established program of pharmaceutical care that ensures prescription orders are reviewed by a pharmacist before release to the patient. The Responsible Pharmacy must establish the policies and procedures necessary to fulfill the requirements of all applicable state and federal laws, rules, and regulations. ( )

**02. Operating Memorandum.** Prior to issuance of a registration for a Pilot Remote Pharmacy, the Responsible Pharmacy, acting through its Pharmacist-In-Charge, and the Board, acting through its Executive Director, shall enter into an operating memorandum which shall contain: ( )

**a.** The operating protocols applicable to the Pilot Remote Pharmacy and which shall include written policies and procedures that: ( )

**i.** Ensure safety, accuracy, security, and patient confidentiality; ( )

**ii.** Define access to the RDM and to medications contained within or associated with the RDM, including but not limited to policies that assign, discontinue, or change access to the RDM and medications; and ( )

**iii.** Ensure that access to the medications complies with state and federal laws and regulations. ( )

**b.** A complete description of the RDM including the operating specifications therefore. ( )

**c.** An accurate scale drawing of the facility where the Automated Pharmacy System, including its RDM, will be located showing the layout of the location of the RDM, the facilities for the operating pharmacy technician operating the system, the location of a patient counseling area, all access points to the system and the RDM. ( )

**d.** A description of the training required for personnel who will access the Automated Pharmacy System (including the RDM) to ensure the competence and ability of all personnel who operate any component of the Automated Pharmacy System and a requirement that adequate documentation of training and continuing education be kept both in the Responsible Pharmacy and at the Pilot Remote Pharmacy, readily available for inspection by the Board. ( )

**e.** A description of the procedures for ensuring that the RDM is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate record-keeping and security safeguards. ( )

**f.** An ongoing quality assurance program that monitors performance of the Automated Pharmacy System, including the RDM, and the personnel who access it. ( )

**g.** Such other terms and conditions of operations as the Executive Director deems are reasonably

necessary to ensure the health, safety, and welfare of the public with respect to the operations of the Pilot Remote Pharmacy. ( )

**h.** A description of the procedures detailing the security and accounting of returned, discarded, or unused medications with existing state and federal laws, rules, and regulations. ( )

**03. Pilot Remote Pharmacy Operations.** The Operating Memorandum shall govern (in conjunction with all applicable laws, rules, and regulations) the operations of the Pilot Remote Pharmacy with respect to all aspects of the practice of pharmacy at the Pilot Remote Pharmacy. The Operating Memorandum may identify specific rules of the Board which are not applicable to the operation of the Pilot Remote Pharmacy or for which particular applications are modified due to the specific nature of the operations at the Pilot Remote Pharmacy, provided however, the Operating Agreement may not waive or modify application of Federal laws or regulations, or state statutes governing the practice of pharmacy. ( )

**04. Dispute Resolution.** In the event of a dispute between the Pharmacist-In-Charge and the Executive Director with respect to specific terms or conditions of the Operating Memorandum, either may petition the Board for a determination, which determination by the Board shall be final. The Operating Memorandum may be amended by agreement between the Pharmacist-In-Charge and the Executive Director. Any such amendment shall be in writing and shall be appended to the original Operating Memorandum. In addition, the Operating Agreement may be amended by order of the Board upon the petition of either the Pharmacist-In-Charge or the Executive Director to the Board, or upon the Board's own motion. Any such Board order shall be appended to the original Operating Memorandum. ( )

**268. PHARMACIST-IN-CHARGE.**

**01. Responsibilities.** The Pharmacist-In-Charge shall be responsible for all aspects of the operation of the Pilot Remote Pharmacy including safety, accuracy, security, and patient confidentiality. ( )

**02. Product Supply.** The Pharmacist-In-Charge shall ensure that the RDM is stocked accurately and in accordance with the established, written policies and procedures. A pharmacist must check the accuracy of the product supplied for stocking the machine. ( )

**269. DRUG DELIVERY AND CONTROL.**

**01. Licensed Pharmacist Present.** At all times the Automated Pharmacy System is being operated, there shall be a pharmacist licensed in the state of Idaho, or a technician registered in the state of Idaho, present at the Pilot Remote Pharmacy and attending to such operations. ( )

**02. Communication.** At all times the Automated Pharmacy System is being operated, there shall be a pharmacist licensed in the state of Idaho available at the Responsible Pharmacy for immediate communication through a two-way audio and video hookup between the Responsible Pharmacy and the Pilot Remote Pharmacy. ( )

**03. Electronic Recording.** All events involving the contents of the RDM must be recorded electronically. Records must be maintained by the Responsible Pharmacy for a minimum of three (3) years and must be readily available to the Board. Such records are in addition to any records required under other statutes, regulations, or rules, and shall be available for inspection by the Board in the same fashion as other required pharmacy records, and shall include: ( )

- a.** Identity of RDM accessed; ( )
- b.** Identification of the individual accessing the RDM; ( )
- c.** Type of transaction; ( )
- d.** Date and time of transaction; ( )

- e.** Name, strength, dosage form, and quantity of the drug accessed; ( )
- f.** Name of the patient for whom the drug was ordered; ( )
- g.** Name of the prescribing practitioner; and ( )
- h.** Such additional information as the Pharmacist-In-Charge may deem necessary. ( )
- 04.** Access to RDM. Only an Idaho licensed pharmacist may have access to the RDM, unless specifically detailed in the approved operating memorandum. ( )
- 05.** Stocking Medications. Only an Idaho licensed pharmacist may stock medications in the RDM unless specifically detailed in the approved Operating Memorandum. ( )
- 06.** Packaging and Labeling. All containers of medications stored in the RDM shall be packaged and labeled in accordance with state and federal laws, rules, and regulations. ( )
- 07.** Handling Controlled Substances. All aspects of handling controlled substances shall meet the requirements of all state and federal laws, rules, and regulations. ( )
- 08.** Counseling. Oral counseling shall be provided by a pharmacist licensed in Idaho at the time of dispensing by a two-way audio and video hookup between the Responsible Pharmacy and the Pilot Remote Pharmacy. ( )
- 09.** RDM Identification. The RDM must be clearly marked with the name, address, and phone number of the Responsible Pharmacy and Pharmacist-In-Charge. ( )
- 270. -- 290.** (RESERVED).

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-0808

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 National Association of Boards of Pharmacy (NABP) partnered with the American Society of Consultant Pharmacists (ASCP) to address areas of pharmaceutical care in the context of long-term care facilities, which are largely populated by the nation's growing number of seniors. In March 2007, the NABP and ASCP issued the "NABP/ASCP Joint Report: Model Rules for Long-Term Care Pharmacy Practice." The Joint Report recommends that states update their pharmacy practice rules to keep pace with the evolution of the practice of long-term care pharmacy in order to better serve the interests of and protect the health, safety, and welfare of the residents of long-term care facilities; and it has proposed various changes to the NABP Model Rules. The Board believes that the conclusions and recommendations of the Joint Report are well-taken and that it is in the interests of the public in Idaho for the Board to amend its rules regarding the practice of pharmacy in institutions in order to adopt recommendations of the Joint Report where appropriate. The proposed rulemaking amends rules which are related to the practice of pharmacy in institutional facilities; amends the rules to include "Long-Term Care Facility" within the definition of "Institutional Facility"; to define "Long-Term Care Facility"; to define "Chart Order;" and to define "Prepackaging"; amends the rules to permit chart orders to serve as a prescription drug order in institutional facilities; amends the rules to specify the use of chart orders as it relates to removal of drugs from emergency kits, to drugs orders for inpatient use, to drug order for outpatient use, to the administration of drugs in institutional facilities, and to the administration of the patient's own drugs when brought into the institutional facility; amends the rules to clarify to use of prepackaging in institutional facilities, including, but not limited to, prepackaged drugs dispensed from hospital emergency rooms by registered nurses; amends provisions dealing with the responsibility of the director of the institutional pharmacy for the dispensing of all drugs within the facility upon receipt of a physician's order to include a chart order; and amends the rule to permit, in certain circumstances, pharmacies which provide pharmaceutical care services under a contract with an institutional facility that does not have an institutional pharmacy to contract with another pharmacy for the limited purpose of assuring that drugs or devices are attainable to meet the immediate needs of patients and residents of the institutional facility when the first pharmacy cannot provide such services to meet the immediate need.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 13th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho 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. 27-0101-0808**

**252. PHARMACY PRACTICE IN INSTITUTIONS.**

**01. Definitions.** For purposes of these rules the following apply: (7-1-93)

**a.** Institutional Facility is defined as: Hospital, Skilled Nursing Care Facility, Intermediate Care Facility, Extended Care Facility, Long-Term Care Facility, and any other such ~~organization~~ facility or institution, including those operated by the state of Idaho, whose primary purpose is to provide a physical environment for patients to obtain health care services, except those places where physicians, dentists, veterinarians, osteopaths, or other practitioners of the healing arts who are duly licensed, engage in private practice. (~~7-1-93~~)(    )

**b.** Long-Term Care Facility is defined as a nursing home, retirement care, mental care, or other facility or institution that provides extended health care to resident patients. (    )

~~**bc.**~~ Institutional Pharmacy is defined as that portion of an Institutional Facility which is engaged in the distribution, prepackaging, or manufacture, production or sale of drugs, medications, devices and other materials used in the diagnosis and treatment of injury, illness and disease (hereinafter referred to as "drugs") and which shall be registered with the Board pursuant Title 54, Chapter 17, Idaho Code. (~~7-1-93~~)(    )

**d.** Centralized Prescription Filling is defined as the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order. (    )

**e.** Centralized Prescription Processing is defined as the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order. (    )

**f.** Chart Order is defined as a lawful order entered on the chart or a medical record of an inpatient or resident of an Institutional Facility by a practitioner or his designated agent for a drug or device and shall be considered a prescription drug order provided that it contains: (    )

**i.** The full name of the patient; (    )

**ii.** Date of issuance; (    )

**iii.** Name, strength, and dosage form of the drug prescribed; (    )

**iv.** Directions for use; and (    )

v. If written, the prescribing practitioner's signature or the signature of the practitioner's agent, including the name of the prescribing practitioner; or, if electronically submitted, the prescribing practitioner's electronic or digital signature. ( )

g. Prepackaging is defined as the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment in which the prepackaging occurred. ( )

**02. Purpose.** The purpose of the following rules is to accomplish the purposes of the Idaho Pharmacy Act as specified in Section 54-1703, Idaho Code, by implementing the provisions of that portion of the Act concerning Registration of Facilities as specified in Section 54-1729, Idaho Code. (7-1-93)

**03. Applicability.** The following rules are applicable to all institutions and institutional pharmacies as defined in ~~Paragraph~~ Section 252-01.a. of these ~~this~~ rules. (7-1-93)( )

**04. Registration of Institutional Pharmacies.** All institutional pharmacies shall register annually with the Board, certificates of registration shall be issued only to those institutional pharmacies which satisfy the provisions of Section 54-1729, Idaho Code, and Paragraph 251.05 through Section 259 of these rules. (7-1-93)

**05. Director of Institutional Pharmacy.** Each institutional pharmacy shall be directed by a pharmacist, hereinafter referred to as the Director, who is licensed to engage in the practice of pharmacy in this state and who is knowledgeable in, and thoroughly familiar with the specialized functions of institutional pharmacies. He shall be responsible for all activities of the institutional pharmacy, and for meeting the requirements of the Idaho Pharmacy Act and these rules. (7-1-93)

**06. Supportive Personnel.** The Director of an institutional pharmacy shall be assisted by a sufficient number of additional registered pharmacists and ancillary personnel as may be required to operate such pharmacy competently, safely, and adequately to meet the needs of the patients of the facility. (7-1-93)

a. Trained technical personnel may be employed. The Director shall develop and implement written policies and procedures to specify the duties to be performed by such technical personnel. (7-1-93)

b. Such policies and procedures shall, at a minimum, specify that ancillary technical personnel are personally and directly supervised by a registered pharmacist and that ancillary technical personnel are not assigned duties which may be performed only by registered pharmacists. (7-1-93)

c. Secretarial and clerical assistance and support should be provided as required to assist with record keeping, report submission and other administrative duties; provided, however, such personnel do not perform any technical duties. (7-1-93)

**07. Supervision by Director.** All of the activities and operations of each institutional pharmacy shall be personally and directly supervised by its Director. (7-1-93)

**08. Ancillary Personnel.** All functions and activities of ancillary personnel shall be personally and directly supervised by a sufficient number of registered pharmacists to insure that all such functions and activities are performed competently, safely and without risk of harm to patients. (7-1-93)

**09. Pharmacist Absence.** During such times as an institutional pharmacy may be unattended by a registered pharmacist, arrangements shall be made in advance by the Director for provision of drugs to the medical staff and other authorized personnel of the institutional facility. (7-1-93)

**10. Access to Pharmacy.** One (1) supervisory registered professional nurse and only one (1), in any given eight (8) hour shift, may have access to the pharmacy and may remove drugs there from. (7-1-93)

**11. Designated Nurse.** Such nurse shall be designated in writing by the Director or the appropriate committee of the institutional facility and shall prior to being permitted to obtain access to the pharmacy, receive

thorough education and training in the proper methods of access, removal of drugs, and records and procedures required. Such education and training shall be given by the Director, who shall require, at a minimum, the following records and procedures: (7-1-93)

a. Removal of any drugs from the pharmacy by an authorized nurse must be recorded on a suitable form showing name of drug, strength, amount, date, time and signature of nurse. (7-1-93)

b. Only prepackaged drugs in amounts sufficient for the immediate therapeutic needs shall be removed from the pharmacy when a pharmacist is not available. (7-1-93)

**253. EMERGENCY KITS.**

**01. Institutional Facility.** In a facility which does not have an institutional pharmacy, drugs may be provided for use by authorized personnel by emergency kits located at such facility, provided, however, such kits meet the following requirements. (7-1-93)

**02. Definition -- Emergency Kit Drugs.** Emergency kit drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining such drugs from such other source. (7-1-93)

**03. Supplying Pharmacy.** All emergency kit drugs shall be provided by one (1) pharmacy licensed by the Board, retained for such purpose; upon retaining each such pharmacy, the institutional facility shall notify the Board in writing. Such pharmacy shall meet the requirements of Subsection 257.01 of these rules. (7-1-93)

**04. Drugs Included.** The supplying pharmacist and the committee responsible for pharmaceutical services of the institutional facility shall jointly determine the drugs, by identity and quantity to be included in emergency kits. (7-1-93)

**05. Storage of Emergency Kits.** Emergency kits shall be stored in locked areas, suitable to prevent unauthorized access, and to insure a proper environment for preservation of the drugs within them. (7-1-93)

**06. Labeling, Exterior.** The exterior of emergency kits shall be labeled so as to clearly and unmistakably indicate that it is an emergency drug kit and it is for use in emergencies only; and in addition, such label shall also contain a listing of the drugs contained therein, including name, strength, quantity and expiration of contents, and the name, address and telephone number of the supplying pharmacist. (7-1-93)

**07. Labeling, Interior.** All drugs contained in emergency kits shall be labeled in accordance with Subsection 255.04 of these rules and shall also be labeled with such other and further information as may be required by the medical staff of the institutional facility to prevent misunderstanding or risk of harm to the patients of the facility. (7-1-93)

**08. Removal of Drugs From Emergency Kit.** Drugs shall be removed from emergency kits by authorized personnel only pursuant to a valid physician's order, ~~by authorized personnel, or by including a chart order, but such an order shall not be required for~~ the supplying pharmacist to replace expired drugs in the kit with current dated drugs. (7-1-93)(    )

**09. Notifying Pharmacist When Kit Is Opened.** Whenever an emergency kit is opened, the supplying pharmacist shall be notified within a reasonable time, and the pharmacist or pharmacist designee shall restock the kit within a reasonable time so as to prevent risk of harm to patients. (7-1-97)(    )

**10. Expiration Dates.** Upon the occurrence of any expiration date, the supplying pharmacist shall replace expired drugs with current dated drugs. (7-1-93)

**11. Policies and Procedures.** The supplying pharmacist shall, in conjunction with the committee responsible for pharmaceutical services of the institutional facility develop and implement written policies and procedures to insure compliance with the provisions of Section 253 of these rules. (7-1-93)



**12. Noninstitutional Facility Home Health Nurses.** An Idaho licensed pharmacy may supply certain limited emergency drug kits for state licensed or Medicare certified home health agencies. (7-1-97)

**a.** All Subsections of Section 253 of these rules shall apply to home health agency emergency kits except as modified in this Subsection 253.12 of these rules. (7-1-97)

**b.** Home health agency emergency kit drugs may only contain such drugs as specifically approved by rule of the Board. Such drugs are limited to the following: (7-1-97)

i. Epinephrine injection. (7-1-97)

ii. Diphenhydramine injection. (7-1-97)

iii. Corticosteroid injection. (7-1-97)

iv. Narcotic antagonist. (7-1-97)

v. Sterile water. (7-1-97)

vi. Sterile saline solution for injection. (7-1-97)

vii. Heparin flush. (7-1-97)

**c.** Storage. Home health agency emergency kits shall be stored in locked areas, suitable to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs within that period. (7-1-97)

i. Provided, however, that nurses licensed by the Idaho Board of Nursing and employed by such state licensed or Medicare certified home health agencies may carry such home health agency emergency kits on their person while on duty and in the course and scope of their employment for the home health agency. When not actually on duty and within the course and scope of their employment, the nurses must return the home health agency emergency kits to the storage area identified in Paragraph 253.12.c. of these rules (7-1-97)

**d.** The legend drugs included in the home health agency emergency kit shall remain the property of, and under the responsibility of, the Idaho licensed supplying pharmacy. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**255. DRUG DISTRIBUTION AND CONTROL.**

**01. Purpose and Mission.** The primary purpose and mission of an institutional pharmacy shall be to provide properly prepared drugs for the patients of the facility in minimum time and with maximum accuracy, safety and professionalism under written procedures established by the Director for the distribution of pharmaceutical materials so as to achieve this goal. (7-1-93)

**02. Responsibility of Director.** The Director shall be responsible for the safe and efficient distribution of, control of and accountability for drugs. The other professional staff of the institutional facility shall cooperate with the Director in meeting this responsibility and in ordering, administering and accounting for pharmaceutical materials so as to achieve this purpose. (7-1-93)

**03. Minimum Responsibilities of Director.** The Director shall be responsible for, at a minimum, the following: (7-1-93)

**a.** Preparation and sterilization of parenteral medications manufactured within the institutional

- facility. (7-1-93)
- b.** A mixture of parenteral products, including education and training of nursing personnel concerning incompatibility and provision of proper incompatibility information when the admixture of parenteral products is not accomplished within the institutional pharmacy. (7-1-93)
  - c.** Manufacture of drugs, if applicable. (7-1-93)
  - d.** Establishment of specifications for procurement of all materials, including drugs, chemicals and biologicals, subject to approval of the appropriate committee of the institutional facility. (7-1-93)
  - e.** Participation in development of a formulary or drug list for the facility. (7-1-93)
  - f.** Dispensing of all drugs within the facility only upon receipt of an original or a direct copy of a physician's order, including a chart order. (~~7-1-93~~)( )
  - g.** Filling and labeling all containers from which drugs are to be administered. (7-1-93)
  - h.** Maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and inpatient-care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the institutional facility. (7-1-93)
  - i.** Records of all transactions of the pharmacy as may be required by applicable law, rule or regulation to maintain accurate control over and accountability for all pharmaceutical materials. (7-1-93)
  - j.** Participation in those aspects of the institutional facility's patient care evaluation program which relate to pharmaceutical utilization and effectiveness. (7-1-93)
  - k.** Fullest cooperation with teaching and research programs in the institutional facility. (7-1-93)
  - l.** Implementation of the policies and decisions of the appropriate committee of the institutional facility. (7-1-93)
  - m.** Meeting all inspection and other requirements of the Idaho Pharmacy Act and these rules. (7-1-93)
- 04. Dispensing and Labeling of Drugs for Use Inside or Outside a Facility.** (7-1-93)
- a.** For use inside the facility all drugs dispensed by the pharmacy intended for use within the facility shall be dispensed in appropriate containers and adequately labeled according to current acceptable professional standards. (7-1-93)
  - b.** For use outside the facility all drugs dispensed to patients about to be discharged or to whom it is certain will carry the item dispensed outside of the facility shall be labeled with the following information: (7-1-93)
    - i.** Name, address and telephone number of the institutional pharmacy. (7-1-93)
    - ii.** Date and identifying serial number. (7-1-93)
    - iii.** Full name of patient. (7-1-93)
    - iv.** Name of drug, strength, and number of units. (7-1-93)
    - v.** Directions for use to the patient. (7-1-93)
    - vi.** Name of physician prescribing. (7-1-93)

- vii. Initials of pharmacist dispensing. (7-1-93)
- viii. Required precautionary information regarding controlled substances. (7-1-93)
- ix. Such other and further accessory cautionary information as may be required or desirable for proper use and absolute safety to the patient. (7-1-93)

c. Whenever any drugs are added to parenteral admixtures, whether within or outside the direct and personal supervision of a registered pharmacist, such admixtures shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, date and time of addition, and name of person so adding. (7-1-93)

**05. Discontinued and Outdated Drugs.** The Director shall develop and implement policies and procedures to insure that discontinued and outdated drugs and containers with worn, illegible, or missing labels are returned to the pharmacy for proper disposition, or that the Director or his designee make proper disposition or dispose of such drugs at the storage site. (7-1-93)

**06. Physician's Orders.** Drugs may be dispersed from the institutional pharmacy only upon written orders or direct copies thereof from authorized physicians, including chart orders. (7-1-93)(    )

**07. Authorization of Physicians.** The appropriate committee of the institutional facility shall, from time to time as appropriate, designate those physicians who are authorized to issue orders to the pharmacy. (7-1-93)

**08. Use of Abbreviations and Chemical Symbols.** Orders employing abbreviations and chemical symbols shall be utilized and filled only if such abbreviations and symbols appear on a published list of accepted abbreviations developed by the appropriate committee of the institutional facility. (7-1-93)

**09. Drug Orders for Inpatient Use.** Orders for drugs for use by inpatients shall, at a minimum, contain the patient name and room number, drug name, strength, directions for use, date and physician's signature or that of his authorized representative information required of a chart order by Paragraph 252.01.f of these rules. (7-1-93)(    )

**10. Drug Orders for Outpatient Uses.** Orders for drugs for use by outpatients shall at a minimum, contain all of the items required by the preceding rule, and in addition, the quantity, physician's address and DEA identification number, if applicable, and patient's address, if applicable. (7-1-93)

**11. Proofs of Use.** Proofs of use of such controlled substances and other drugs as may be specified by the appropriate committee of the institutional facility shall be submitted to the Director, on forms provided by the Director, together with any and all unused portion of such drug. The forms shall specify, at a minimum, name of drug, dose, name of ordering physician, name of patient, date and time of administration to patient, and name of individual administering. (7-1-93)

**12. Drug Recall Procedure.** The Director shall develop and implement a recall procedure that can be readily activated to assure the pharmacy staff and the Director that all drugs included on the recall are returned to the pharmacy for proper disposition. (7-1-93)

**13. Reporting Suspected Adverse Drug Reactions.** Any and all suspected adverse drug reactions shall be reported in writing and orally immediately to the ordering physician, to the pharmacy and to the appropriate committee of the institutional facility. Entry on the patient's record shall also be made. The Director may at his discretion, make further reports of such suspected reactions to the Hospital Reporting Program of the U. S. Food and Drug Administration, to the manufacturer and to the United States Pharmacopoeia. (7-1-93)

**14. Records and Reports.** The Director shall maintain and submit, as appropriate, such records and reports as are required to insure patient health, safety and welfare, and at a minimum the following: (7-1-93)

- a. Proofs of use. (7-1-93)

- b. Reports of suspected adverse drug reactions. (7-1-93)
- c. Inventories of emergency kits. (7-1-93)
- d. Inventories of the pharmacy. (7-1-93)
- e. Annual controlled substances inventories. (7-1-93)
- f. Alcohol reports. (7-1-93)
- g. Such other and further records and reports as may be required by law and these rules. (7-1-93)

**256. ADMINISTRATION OF DRUGS.**

**01. Administration of Drugs.** Drugs shall be administered at an institutional facility only upon the orders, including chart orders, of those members of the medical staff who have been granted clinical privileges or who are authorized members of the house staff and by authorized licensed facility personnel in accordance with policies and procedures specified by the appropriate committee of the facility under applicable law and rules and by usual and customary standards of good medical practice. (~~7-1-93~~)(      )

**02. Self-Administration of Drugs by Patients.** Self-administration of drugs by patients shall be permitted only when specifically authorized by the treating or ordering physician, provided however, the patient has been educated and trained in the proper manner of self-administration and there is no risk of harm to the patient. (7-1-93)

**257. DRUGS FROM OUTSIDE SOURCES.**

**01. Outside Pharmacies.** Whenever drugs or pharmaceutical services are obtained from outside of the institutional facility arrangements shall be made to insure that such outside pharmacist provides his services with sufficient professionalism, quality and availability to adequately protect the safety of the patients and to properly serve the needs of the facility. Such arrangements shall be made in writing and shall, at a minimum, specify that: (7-1-93)

- a. The outside pharmacist is to act in the capacity of a part-time Director and therefore, subject to these rules. (7-1-93)
- b. The pharmacist shall provide on-call service at all times. (7-1-93)
- c. Adequate storage facilities for drugs will be provided. (7-1-93)
- d. All prescription drugs in oral solid dosage form supplied to a licensed skilled nursing care facility, whether from an outside source or in-house pharmacy, shall be limited to no more than an eight (8) day supply except where USP indicates the drug shall be dispensed in the original container. Up to a thirty-four (34) day supply will be allowed if provided in "Unit Dose," as defined in Subsection 156.05 of these rules. (3-20-04)
- e. All drugs in liquid form will be supplied in amounts not to exceed sixteen (16) ounces or an amount not to exceed a thirty-four (34) day supply. (3-20-04)
- f. All drugs housed in long term care facilities will be labeled according to Section 159 of these rules. (8-4-94)
- g. Automatic refilling of medications is prohibited, except where Unit Dose is used in a daily delivery system. Any continuation of medications must be reordered by the licensed skilled nursing care facility pursuant to a current physician's order. (7-01-94)
- h. All drugs supplied shall be labeled so as to insure that recalls can be effected and that proper control and supervision of such drugs may be exercised. (7-1-93)

**02. Centralized Prescription Processing or Filling for Immediate Need.** An outside pharmacy which provides prescription processing or filling services for an Institutional Facility which does not have an Institutional Pharmacy may outsource, pursuant to a contract, prescription processing or filling services to another pharmacy, and the other pharmacy may perform the prescription processing or filing services outsourced to it, provided that all of the following conditions are met: ( )

**a.** The outsourcing of prescription processing or filling services shall be only for the limited purpose of assuring that drugs or devices are attainable to meet the immediate needs of patients and residents of the Institutional Facility or when the pharmacy outsourcing those services cannot provide services for the Institutional Facility on an ongoing basis. ( )

**b.** The outsourcing pharmacy has obtained approval from the Institutional Facility to outsource centralized prescription processing or filling services for its inpatients and residents. ( )

**c.** The outsourcing pharmacy provides a valid Chart Order to the pharmacy it has contracted with for the centralized prescription processing or filling services. ( )

**d.** The contract between the outsourcing pharmacy and the pharmacy with which it has contracted for centralized prescription processing or filling services is in writing. ( )

**023. Patient's Own Drugs.** (7-1-93)

**a.** Whenever patients bring drugs into an institutional facility such drugs shall not be administered unless they can be precisely identified; administration shall be pursuant to a physician's order, including chart order, only. (7-1-93)( )

**b.** If such drugs are not to be administered, then the Director shall, according to procedures specified by him in writing, have them turned in to the pharmacy which shall package and seal them and return them to an adult member of the patient's immediate family or store and return them to the patient upon discharge. (7-1-93)

## **IDAPA 27 - BOARD OF PHARMACY**

### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

#### **DOCKET NO. 27-0101-0809 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 Idaho Legislature in 2007 enacted the Idaho Wholesale Drug Distribution Act, Sections 54-1751 through 54-1759, Idaho Code, which went into effect on July 1, 2007. Pursuant to Sections 54-1753(2)(g), Idaho Code, each applicant for licensing by the Board as a wholesale distributor of prescription drugs must submit certain information to the Board regarding the applicant's designated representative, including the fingerprints of that person. Pursuant to Section 54-1753(5), Idaho Code, the Board is required to submit the designated representative's fingerprints for a statewide criminal records check and for forwarding to the Federal Bureau of Investigation for a national criminal records check. The existing wholesale distributor licensing fee of \$100 is insufficient to cover the costs charged to the Board by law enforcement agencies to conduct such criminal background checks, so an increase in the license fee is needed to cover those costs. The current \$100 licensing fee has been in effect since December 17, 1994.

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

The proposed rulemaking amends IDAPA 27.01.01.404.07 to increase the annual license fee for wholesale distributors from \$100 to \$130.

**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 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 13th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720, Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0809**

**404. DUE JUNE 30, ANNUALLY -- TABLE.**

<b>01. Pharmacist License.</b>	(12-7-94)
<b>a.</b> Active: ninety dollars (\$90).	(3-13-02)
<b>b.</b> Inactive: fifty dollars (\$50).	(3-13-02)
<b>02. Pharmacy.</b>	(6-1-94)
<b>a.</b> Pharmacy License: one hundred dollars (\$100).	(12-7-94)
<b>b.</b> Parenteral Admixture License: one hundred dollars (\$100).	(12-7-94)
<b>03. Out-of-State Mail Service.</b>	(7-1-93)
<b>a.</b> Pharmacy, initial license: five hundred dollars (\$500).	(12-7-94)
<b>b.</b> Renewal license: two hundred fifty dollars (\$250).	(12-7-94)
<b>04. Clinics and Nursing Homes.</b> Thirty-five dollars (\$35).	(3-13-02)
<b>05. Non-Pharmacy.</b>	(11-1-93)
<b>a.</b> "A": sixty dollars (\$60).	(3-13-02)
<b>b.</b> "B": twenty-five dollars (\$25).	(3-13-02)
<b>c.</b> "V" (Vending machines): ten dollars (\$10).	(3-13-02)
<b>d.</b> "DME": fifty dollars (\$50).	(7-1-98)
<b>06. Hospitals Without Pharmacy.</b> Thirty-five dollars (\$35).	(3-13-02)
<b>07. Wholesaler (Distributor).</b> One hundred <u>thirty</u> dollars (\$1 <u>0</u> 30). <del>(12-7-94)</del> ( )	
<b>08. Controlled Substance for Wholesalers and Distributors.</b> One hundred dollars (\$100).	(3-13-02)
<b>09. Researcher, Analytical Lab.</b> Forty dollars (\$40).	(3-13-02)
<b>10. Retail Veterinary Drug Outlet - Retail or Retail/Wholesale.</b> One hundred dollars (\$100).	(3-13-02)
<b>11. Veterinary Drug Technician.</b> Thirty-five dollars (\$35).	(12-7-94)
<b>12. Pharmacy Technician.</b> Thirty-five dollars (\$35).	(3-13-02)

## **IDAPA 27 - BOARD OF PHARMACY**

### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

**DOCKET NO. 27-0101-0810**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Existing rules require that each pharmacy designate a pharmacist-in-charge who is responsible for the management of that pharmacy. The Board believes that it is in the interests of public health, safety, and welfare to require that a pharmacist-in-charge of a pharmacy work a substantial part of his or her working time at the pharmacy of which they are the pharmacist-in-charge, so it proposes amending its rule accordingly. The proposed rulemaking amends rule to require that a pharmacy's pharmacist-in-charge work at that pharmacy a certain amount of time during a work week and/or work month.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 13th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho 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. 27-0101-0810**



**156. PHARMACIES.**

**01. Change of Ownership or Location.** In case of change of ownership or location of a pharmacy, the original registration becomes void and must be returned with a new pharmacy application. (7-1-93)

**02. Annual ~~Employee Report of Pharmacy Employer.~~** Annually, on the date of renewal of registration, the ~~pharmacy employer~~ pharmacist-in-charge must notify the Board of the ~~registered pharmacist-manager~~ pharmacist-in-charge of the pharmacy, ~~and each registered licensed employee-pharmacist,~~ and each ~~extern/intern student pharmacist~~ training in the pharmacy, on the place provided on the application. ~~However, Any change in pharmacist, pharmacy technician, or extern/intern student pharmacist employment must shall be reported by the pharmacist-in-charge to the Board within five ten (510) days of the change.~~ (7-1-93)(    )

**03. Responsible Reporting Change in Pharmacist-in-Charge Manager.** ~~A non registered proprietor of a pharmacy shall place in charge of such pharmacy a pharmacist licensed in the state of Idaho who shall be known as "responsible pharmacist manager" and the non registered proprietor~~ The pharmacist-in-charge shall immediately report any change in the pharmacist-in-charge of the pharmacy to the state Board ~~the name of the pharmacist manager immediately.~~ (7-1-93)(    )

**04. Qualifications and Responsibility of the Pharmacist-In-Charge Manager.** ~~Responsible The pharmacist-in-charge managers of pharmacies owned by non registered proprietors are shall be responsible for the management of, such stores so far as they are affected by the pharmacy laws. Every part of the establishment coming under the regulation of the pharmacy laws and shall be under the full and complete control of, such responsible pharmacist manager every part of the drug outlet and its operations coming under the regulation of the pharmacy laws. No pharmacist shall be designated as the pharmacist-in-charge of a pharmacy and no pharmacist shall function as the pharmacist-in-charge of a pharmacy unless the person so designated and so functioning spends a substantial part of his working time each month working in the pharmacy of which he has been designated the pharmacist-in-charge.~~ (7-1-93)(    )

**05. Return of Drugs or Other Items.** In the interest of public health, drugs, medicines, sickroom supplies, devices and items of personal hygiene shall not be accepted for return by any pharmacist or pharmacy after such drugs, medicines, sickroom supplies, devices and items of personal hygiene have been taken from the premises where sold, distributed or dispensed, except that medications for in-patients of residential or assisted living facilities, licensed skilled nursing care facilities, and hospitals may be returned to the dispensing pharmacy for credit provided the medications are liquid medications that have been supplied in manufacturer sealed containers and remain unopened, or the medications are in unopened "Unit Dose" packaging. In addition, the conditions set forth in Paragraph 156.05.b. of these rules must be satisfied: (3-20-04)

**a.** Unit Dose is defined as medications packaged in individually sealed doses with tamper-evident packaging (for example, single unit of use, blister packaging, unused injectable vials and ampules). (3-20-04)

**b.** The following conditions must be satisfied: (3-20-04)

**i.** The medications must be returned with tamper-evident packaging intact and with no evidence of tampering. (3-20-04)

**ii.** In the professional judgment of the pharmacist, the medications meet all federal and state standards for product integrity. (4-5-00)

**iii.** Policies and procedures are followed for the appropriate storage and handling of medications at the facility and for the transfer, receipt, and security of medications returned to the dispensing pharmacy. (4-5-00)

**iv.** A system is in place to track restocking and reuse to allow medications to be recalled if required. (4-5-00)

**v.** No controlled substance may be returned except those delivered by Unit Dose on a daily delivery system. (4-5-00)

vi. If the drug is repackaged by the pharmacy, each repackage container must be labeled in accordance with the following (for purpose of this rule, any change from the original manufacturer's packaging prior to delivery of the medication to the hospital or the facility shall be considered repackaging): (3-20-04)

(1) Name and strength of the medication; (3-20-04)

(2) A suitable expiration date which shall not be later than the expiration date on the original manufacturer's container, or one (1) year from the date the drug is repackaged (If a medication that was repackaged and delivered to the hospital or facility is thereafter returned to the pharmacy and subsequently repackaged again, the expiration date hereunder shall not be later than the expiration date used when the medication was initially repackaged.); (3-20-04)

(3) The date the medication was repackaged; (3-20-04)

(4) The manufacturer's lot number, expiration date, and identity; and (3-20-04)

(5) The identity of the pharmacist responsible for the repackaging. (3-20-04)

c. If the information required under Subparagraphs 156.05.b.vi.(4) and 156.05.b.vi.(5) of these rules is maintained in the internal records of the pharmacy, those requirements may be omitted from the labeling. The labeling requirements of Subparagraph 156.05.b.vi. of these rules shall apply in addition to the labeling requirements under Section 159 of these rules. (3-20-04)

d. Medications that have been outside the custody and control of the hospital or facility for any reason, are not eligible for return. In order to be considered as having been in the custody and control of the hospital or facility, the medications must have been delivered by the dispensing pharmacy directly to the hospital or facility or to an agent thereof who is authorized and qualified to accept delivery, and the medications must then be held by the hospital or facility in an area suitable for storing medications and not accessible to any patients. Once a medication has passed from the hospital or facility storage area to the patient or to the patient's designee for any reason, the medication is no longer eligible for return. (3-20-04)

e. Medications otherwise eligible for return under this rule by virtue of their packaging but that have become ineligible for return for any reason must be marked as follows: (3-20-04)

i. Such medications that are released for self-administration by the patient, or for administration outside the hospital or facility premises or that are otherwise released to be taken outside the custody and control of the hospital or facility, shall first be clearly marked and identified "Not Eligible For Return" provided however, the foregoing requirement for marking shall not apply to the daily dose of medication released to a patient on the day such dose is to be administered provided the hospital or facility does not allow any such medication to be returned to the same medication storage area as medications eligible for return. (3-20-04)

ii. Such medications that are received by the hospital or facility from the patient or the patient's representative, and not directly from the dispensing pharmacy, and that are to be stored in the same storage area as medications which are eligible for return, shall first be clearly marked and identified "Not Eligible For Return." (3-20-04)

iii. In the event medications otherwise eligible for return under this rule by virtue of their packaging are discovered to be ineligible for return because they have been outside the custody and control of the hospital or facility, or for any other reason, such medications shall be clearly marked and identified "Not Eligible For Return" immediately upon discovery if they are to remain stored in the same storage area as medications that are eligible for return. (3-20-04)

f. Each pharmacy and the pharmacist-in-charge shall be responsible for consulting with each hospital or facility from which the pharmacy will accept returns under Section 156 of these rules to ensure that the hospital or facility has an employee who is trained and knowledgeable in the proper storage, use, and administration of medications at the hospital or facility, and to ensure that the hospital or facility has in place and enforces written

protocols that will ensure compliance with the conditions necessary to allow returns. The pharmacist-in-charge must review and approve the protocols. The pharmacy must keep a copy of the protocols, as well as the written approval thereof, on file in the pharmacy and produce the same for Board inspectors upon request. (3-20-04)

**g.** Each pharmacy and the pharmacist-in-charge that will be accepting returns under Section 156 of these rules shall establish written protocols for the pharmacy that will ensure compliance with Section 156 of these rules for all returns. The pharmacist-in-charge must review and approve the protocols. The pharmacy must keep a copy of the protocols, as well as the written approval thereof, on file in the pharmacy and produce the same for Board inspectors upon request. (3-20-04)

**06. Damaged Drugs.** To sell, offer for sale, barter or give away any drugs damaged by fire or water or by any other means that might affect the potency of the drug is prohibited without first obtaining the written approval of the Board. (7-1-93)

**07. Dangerous Drugs.** Legend, controlled substances, or other limited sale items must be stored in accordance with United States Pharmacopoeia/National Formulary requirements in the prescription area (where prescriptions are compounded, dispensed or filled) and in a manner as to limit access to licensed pharmacists or authorized personnel of that area only. Failure to comply with this requirement shall be prima facie evidence of unprofessional conduct. (7-1-93)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-0811

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Based on input that the Board has received from various constituents and constituent groups, the Board believes it is in the best interest of the public health, safety, and welfare to consider changes in the rules for pharmacy technicians to require minimum age, education, and other requirements for registration by the Board as pharmacy technician; to require certification of pharmacy technicians; to clarify who may work within the area that constitutes a "pharmacy," to increase the permissible ratio of pharmacists to pharmacy technicians in any practice setting, and to address other matters related to the technician ratio. The proposed rulemaking amends IDAPA 27.01.01.251 and its subparagraphs to specify the conditions for registration as a pharmacy technician, including, but not limited to, minimum age and education requirements; to require certification of pharmacy technicians; to designate certification entities acceptable to the Board; to provide time frames for a persons currently uncertified but registered as a pharmacy technician to meet certification requirements; to provide a "grandfathering" mechanism for some registered but uncertified pharmacy technicians to retain their registrations, under certain circumstances, without having to become certified; to clarify that all person working in a pharmacy "behind the counter," i.e., within the area of the "pharmacy" must be either a licensed pharmacist, a student pharmacist, or a registered pharmacy technician; to increase the permissible pharmacist to pharmacy technicians ratio in any practice setting from 3 to 1 to 6 to 1; to provide for how student pharmacists affect and pharmacist's lunch break or other breaks affects the ratio; to protect a pharmacist-in-charge from being coerced or otherwise compelled by the pharmacy employer to utilize a pharmacist to pharmacy technician greater than 3 to 1 in the pharmacy where the practice setting is such that a ratio greater than 3 to 1 would pose an unreasonable risk of harm to the public health, safety, and welfare; and to impose grounds for administrative discipline and sanctions against the pharmacy registration of a pharmacy employer who has coerced or otherwise compelled a pharmacist-in-charge to utilize a pharmacist to pharmacy technician ratio that posed an unreasonable risk of harm to the public health, safety, and welfare.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 15th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho 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. 27-0111-0811**

**251. PHARMACY TECHNICIANS.**

**01. Definitions.**

**a.** Pharmacy Technician. Means an individual, ~~who is registered with the Board and who is employed or otherwise authorized by a pharmacy registered with the Board to~~ may, under the supervision of a licensed pharmacist, assist in the pharmacy and perform routine such functions, that do not require the use of a licensed pharmacist's professional judgment, in connection with the preparing, compounding, distribution or dispensing of medications at such pharmacy, and who has been adequately trained therefor according to the written standards of such pharmacy. Such written standards shall be available to the Board and its designated personnel for inspection or approval, or both as are routine, do not require the professional judgment of a licensed pharmacist, and are within the individual's training. (5-3-03)( )

**b.** Pharmacy Technician in Training. Means an individual who registers with the Board subsequent to June 30, 2009, as a pharmacy technician in training and whose registration expires automatically one (1) year from the date of registration, but who may, under the supervision of a licensed pharmacist, assist in the pharmacy and perform any of the duties of a registered pharmacy technician during the one (1)-year period of registration. ( )

**02. Responsibility of Pharmacy and Pharmacist-in-Charge -- Assignment of Functions.**

(4-5-00)( )

**a.** The pharmacy and the pharmacist-in-charge are each responsible for all aspects of the sale at retail and the dispensing of medications, drugs, devices, and other materials at the pharmacy, including the preparing, compounding, distribution or dispensing of medications. No pharmacy or pharmacist-in-charge ~~may allow shall assignment~~ to, or permit performance by, any individual person, other than a registered pharmacy technician, a registered pharmacy technician in training, registered student pharmacist extern/intern, or a licensed pharmacist, of any functions connected to the preparing, compounding, distribution or dispensing of medications at the pharmacy. No pharmacy or pharmacist-in-charge shall permit any person other than a licensed pharmacist, registered student pharmacist, registered pharmacy technician, or registered pharmacy technician in training to work in the secured area of the pharmacy where medications are prepared, compounded, distributed, dispensed, or stored. (5-3-03)( )

**b.** The pharmacy or the pharmacist-in-charge may assign to, or allow performance by, a registered pharmacy technician or registered pharmacy technician in training only those functions connected with the preparing, compounding, distribution or dispensing of medications, which meet all of the following criteria: (5-3-03)( )

- i. The function is routine; (4-5-00)
- ii. The function is one for which the pharmacy technician or pharmacy technician in training is

adequately trained and supervised; and (4-5-00)(\_\_\_\_)

iii. The function does not require the use of a licensed pharmacist's professional judgment. (4-5-00)

c. Only a registered pharmacist may do any of the following (which, without limiting the scope of the term "professional judgment," is a non-exclusive list of actions requiring a licensed pharmacist's professional judgment): (4-5-00)

i. Receive a new prescription order verbally from a prescriber or other person authorized by law. (4-5-00)

ii. Perform evaluations and interpretations of a prescription and any needed clarifications prior to filling. (4-5-00)

iii. Consult with the prescriber concerning any necessary clarification regarding a patient and his prescription. (4-5-00)

iv. Interpret any clinical data in a patient's medication record system (for example, drug usage, refill frequency, drug interactions, etc.) (7-1-93)

v. Perform professional consultation with any prescriber, nurse or other health care professional. (7-1-93)

vi. Supervise the packaging of drugs and check the completed procedure and product. (7-1-93)

vii. Issue the new prescription to the patient or his agent with consultation. (7-1-93)

viii. Supervise the activities of pharmacy technicians and pharmacy technicians in training to insure that all such activities are performed completely, safely and without risk or harm to patients. (4-5-00)(\_\_\_\_)

d. A violation of the rules on pharmacy technicians and pharmacy technicians in training by a pharmacist or a pharmacy is unprofessional conduct, and is grounds for revocation or suspension of the pharmacist's license or the pharmacy registration, or both, issued under Sections 54-1722, 54-1723, 54-1724 or 54-1729, Idaho Code, or other appropriate disciplinary action. (4-5-00)(\_\_\_\_)

**03. Supervision.** Where a pharmacy technician or pharmacy technician in training performs one (1) or more functions in connection with the preparing, compounding, distribution or dispensing of medications, the pharmacy technician or pharmacy technician in training shall be under the supervision of a licensed pharmacist who, in addition to the pharmacy and the pharmacist-in-charge, shall be responsible for all aspects of the filled prescription including, but not limited to, the following: (4-5-00)(\_\_\_\_)

a. Verifying drug selection, strength, dosage form and labeling against the prescription and the contents of stock container. (7-1-93)

b. Verifying selection of the proper prescription container. (7-1-93)

**04. ~~Pharmacy Technician~~ Ratio.** The ratio of pharmacists to student pharmacists, pharmacy technicians and pharmacy technicians in training in total shall ~~be not less than~~ exceed one (1) pharmacist for every ~~three six (36)~~ student pharmacists, pharmacy technicians and pharmacy technicians in training in total in any practice setting; provided, however, that no pharmacy or pharmacist-in-charge shall operate the pharmacy or allow operation of the pharmacy with a ratio, nor shall any pharmacy require a pharmacist in charge to operate the pharmacy or allow operation of the pharmacy with a ratio, which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare. (4-6-05)(\_\_\_\_)

**05. Responsibility of ~~Pharmacy~~ Technicians.** (4-5-00)(\_\_\_\_)

a. Pharmacy technicians and pharmacy technicians in training shall perform all functions properly assigned to them with all necessary care. No pharmacy technician or pharmacy technician in training shall accept assignment of, or perform, any functions connected with the preparing, compounding, distribution or dispensing of medications unless such pharmacy technician or pharmacy technician in training is employed or otherwise authorized by the assigning pharmacy and such function meets all of the criteria set forth in Paragraph 251.02.b. of these rules. (5-3-03)(\_\_\_\_)

b. The Board may initiate proceedings against pharmacy technicians or pharmacy technicians in training who perform such tasks or functions connected with the preparing, compounding, distribution or dispensing of medications: (4-5-00)(\_\_\_\_)

- i. That are not routine functions; (4-5-00)
- ii. That the pharmacy technician or pharmacy technician in training is not adequately trained and supervised for; or (4-5-00)(\_\_\_\_)
- iii. That require the use of a licensed pharmacist's professional judgment. Such persons may be charged by the appropriate authorities with practicing pharmacy without a license in violation of Section 54-1726, Idaho Code. (4-5-00)

c. The Board may initiate proceedings against pharmacy technicians who perform such tasks or functions connected with the preparing, compounding, distribution or dispensing of medications in a negligent or improper manner or otherwise violate the rules on pharmacy technicians. Such violations shall be grounds for revocation or suspension of the pharmacy technician's registration, or other appropriate disciplinary action. (4-5-00)

d. Pharmacy technicians in training are subject to discipline by the Board under Paragraph 251.05.c of these rules to the same extent and in the same manner as pharmacy technicians. The provisions of Subsection 251.08 of these rules apply to disciplinary proceedings against a pharmacy technician in training. (\_\_\_\_)

**06. Identification of Pharmacy Technicians and Pharmacy Technicians in Training.** (7-1-99)(\_\_\_\_)

a. All pharmacy technicians and pharmacy technicians in training working as such in community pharmacies must be identified by a name badge designating that person as a pharmacy technician or pharmacy technician in training, as applicable. The name badge must measure no less than one (1) inch by three (3) inches and must contain the individual's printed name directly above the title of pharmacy technician or pharmacy technician in training, as applicable. The identification badge must be clearly visible at all times. Pharmacy technicians and pharmacy technicians in training working in an institutional setting may be exempt from the above requirement only if the institution requires a specific badge of identification to be worn by the pharmacy technician and pharmacy technician in training. (4-5-00)(\_\_\_\_)

b. All pharmacy technicians and pharmacy technicians in training must identify themselves as a pharmacy technician or pharmacy technician in training, as applicable, on any phone calls initiated or received by them while performing pharmacy functions. (7-1-99)(\_\_\_\_)

**07. Registration of Pharmacy Technician and Pharmacy Technician in Training, Certification, and Exceptions.** (4-5-00)(\_\_\_\_)

a. Annual Renewal of Pharmacy Technician Registration. All pharmacy technicians shall register annually with the Board. ~~The Board will develop an appropriate annual registration notice and annual registration form to be mailed to all registered pharmacy technicians prior to June 1 of each year. The notice will state,~~ shall meet all the requirements for registration as a pharmacy technician, shall submit the annual renewal application in the form prescribed by the Board, and shall pay the annual pharmacy technician registration renewal fee specified by the Board. (4-5-00)(\_\_\_\_)

b. Initial Registration of Pharmacy Technician. ~~Before~~ No person shall commencing duties at a pharmacy as a pharmacy technician ~~(including previously registered pharmacy technicians who are changing~~

~~pharmacies), an individual must register with the Board, pay the registration fee, and have received a certificate of registration from the Board, provided however, an individual who has not previously had his registration as a pharmacy technician revoked or suspended may commence performing duties as a pharmacy technician immediately upon the completion and mailing of the registration form and applicable fee to the Board. The initial registration period shall be from the date of initial registration to the next annual registration date. unless registered by the Board as a pharmacy technician. To be registered as a pharmacy technician, a person must satisfy all of the following:~~

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

- ~~i. For registration prior to July 1, 2009, a person must: ( )~~
  - ~~(1) Be at least eighteen (18) years of age, unless a waiver is granted by the Board's executive director; ( )~~
  - ~~(2) Be a high school graduate or the recipient of a high school equivalency diploma, unless a waiver is granted by the Board's executive director; ( )~~
  - ~~(3) Be of good moral character and temperate habits; ( )~~
  - ~~(4) Have submitted a written application in the form prescribed by the Board; and ( )~~
  - ~~(5) Have paid the registration fee specified by the Board. ( )~~
- ~~ii. For registration subsequent to June 30, 2009, unless excepted by these rules, a person must: ( )~~
  - ~~(1) Be at least eighteen (18) years of age, unless a waiver is granted by the Board's executive director; ( )~~
  - ~~(2) Be a high school graduate or the recipient of a high school equivalency diploma, unless a waiver is granted by the Board's executive director; ( )~~
  - ~~(3) Be of good moral character and temperate habits; ( )~~
  - ~~(4) Have submitted a written application in the form prescribed by the Board; ( )~~
  - ~~(5) Have obtained and maintain certification as a pharmacy technician by the Pharmacy Technician Certification Board (PTCB), the Institute for Certification of Pharmacy Technicians (ICPT), or such other certifying organization as may be approved by the Board; and ( )~~
  - ~~(6) Have paid the registration fee specified by the Board. ( )~~
- ~~iii. A person who is registered with the Board as a pharmacy technician as of June 30, 2009, may make a one time election at the first time for renewal subsequent to July 30, 2009 to register with the Board as a pharmacy technician in training rather than to renew registration as a pharmacy technician; but a person making such election shall be subject to all of the provisions in Paragraph 251.07.c. of these rules. ( )~~
- ~~c. Registration of Pharmacy Technician in Training. Subsequent to June 30, 2009, a person may be registered by the Board as a pharmacy technician in training, provided that the person satisfies all the requirements for registration as a pharmacy technician under Subparagraph 251.07.b.i. of these rules and pays the registration fee specified by the Board for pharmacy technicians. Upon registration, a pharmacy technician in training may perform, under the supervision of a licensed pharmacist, any of the duties that these rules allow a registered pharmacy technician to perform. The registration of a pharmacy technician in training shall expire one (1) year from the date of registration and shall not be renewable. Subsequent to expiration of a pharmacy technician in training registration, a person must satisfy all the requirements of Subparagraph 251.07.b.ii. of these rules in order to be registered by the Board as a pharmacy technician. ( )~~
- ~~d. Ineligibility for Registration. No pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes shall be eligible to be registered by the Board as a pharmacy technician or~~



pharmacy technician in training. ( )

**e.** Certification Requirement. As of July 1, 2009, unless excepted by these rules, no person shall be registered by the Board as a pharmacy technician, nor shall any person have their pharmacy technician registration renewed by the Board, unless that person has obtained, and maintains, certification as a pharmacy technician by the Pharmacy Technician Certification Board (PTCB), the Institute for the Certification of Pharmacy Technicians (ICPT), or such other certifying organization as may be approved by the Board. ( )

**f.** Exception to Certification Requirement. No person who has registered with the Board as a pharmacy technician as of June 30, 2009 shall be required to obtain and maintain certification as a pharmacy technician in order to maintain or renew their registration as a pharmacy technician subsequent to June 30, 2009, so long as the person remains continuously employed as a pharmacy technician by the pharmacy in whose employment the person was employed as a pharmacy technician as of June 30, 2009. However, if the person, subsequent to June 30, 2009, ceases to be employed as a pharmacy technician by the pharmacy by whom the person was employed as of June 30, 2009, then the person's registration as a pharmacy technician shall automatically terminate as of the date of the person's termination of employment as a pharmacy technician by that pharmacy and the person must then satisfy all the requirements of Subparagraph 251.07.b.ii. of these rules in order to be registered by the Board as a pharmacy technician. ( )

**eg.** Contents of Registration Form. The annual registration form and the initial registration form for pharmacy technicians and the registration form for pharmacy technicians in training shall be prepared by the Board, and shall require such information regarding the individual ~~and the employing or authorizing pharmacy~~ as the Board may reasonably require. ~~In addition, registration shall include the statement of the pharmacy owner (or an authorized agent of the pharmacy owner), and of the pharmacist in charge that either:~~ (5-3-03)( )

~~i. The individual has been adequately trained by the pharmacist in charge, or by the pharmacy, to perform those routine functions in connection with the preparing, compounding, distribution or dispensing of medications as are, or will be, assigned to such individual; (4-5-00)~~

~~ii. The pharmacist in charge or the pharmacy owner has verified that such individual possesses adequate training to perform those routine functions in connection with the preparing, compounding, distribution or dispensing of medications as are, or will be, assigned to such individual; or (4-5-00)~~

~~iii. Such individual will be adequately so trained prior to the assignment of any routine functions in connection with the preparing, compounding, distribution or dispensing of medications. (4-5-00)~~

**08. Discipline and Appeal.** Any proceedings by the Board against any pharmacy technician shall comply in all respects with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (4-5-00)

# IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

## 31.01.01 - RULES OF PROCEDURE OF THE IDAHO PUBLIC UTILITIES COMMISSION

### DOCKET NO. 31-0101-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 61-205, 61-401, 61-404, and 61-601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The Commission is proposing several changes to its Rules of Procedure.

1. The Commission is proposing to amend Rules 12, 61, 63, and 229 to increase the use of electronic filing for discovery-related documents and documents requiring immediate action by the Commission.
2. To reduce printing costs and save resources, the Commission proposes in Rule 62 and 231 to allow printing on both sides of a page.
3. Rule 114 codifies the information that competitive local exchange carriers must file in their applications to provide local exchange service in Idaho. The requirements set out in Rule 114 were previously contained in the Commission's Procedural Order No. 26665.
4. The Commission proposes to move two customer notice rules (IDAPA 31.21.02.102 and 105) to the Rules of Procedures as Rules 125 and 260, respectively.
5. The Commission proposes to amend its Rules 202 and 204 to allow an applicant to file reply comments in cases processed under Modified Procedure.
6. The Commission proposes to shorten the time to answer discovery requests in Rule 228 from twenty-eight (28) days to twenty-one (21) days.
7. The Commission proposes to delineate two types of formal hearings in Rule 241: technical hearings and customer hearings.
8. The Commission also proposes to amend Rules 67, 233, and 267 to require that trade secrets and other documents exempt from public inspection be printed on yellow paper for easy identification.
9. The Commission is proposing several other amendments to its rules to improve readability; eliminate ambiguities; correct citations and cross-references; and to make other housekeeping changes (e-mail addresses and zip codes).

**FEE SUMMARY:** There are no fees associated with this proposed rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on the state general fund in excess of ten thousand dollars (\$10,000) during the fiscal year. The increased use of electronic filing and printing on both sides of a page will allow utilities and other persons to reduce printing costs and save resources.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, formal negotiated rulemaking was not conducted but utilities and other parties were invited to suggest changes to the Commission's Rules of Procedure. In

addition, many of the proposed changes are non-substantive in nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 22, 2008. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 21st day of August, 2008.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID-83720-0074  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington  
Boise, Idaho 83702-5918

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-0101-0801**

**012. OFFICE -- OFFICE HOURS -- FAX NUMBER -- MAILING, ELECTRONIC AND STREET ADDRESSES -- DROP BOX (RULE 12).**

The principal office of the Commission is in Boise, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission's telephone number is (208) 334-0300. The hearing or speech impaired may reach the Commission through the Idaho Telecommunications Relay Service by dialing 711. The Commission has no drop box for filing documents after the close of business. (3-16-04)( )

**01. Fax Number, Mailing and Street Addresses.** The Commission's FAX number is (208) 334-3762. The Commission's mailing address is: Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074. The street address of the Commission is: 472 West Washington, Boise, Idaho 83702-598318. Except as noted in Subsection 012.03, of this rule, All documents filed in all proceedings must be filed with the Commission at one (1) of these addresses. (4-5-00)( )

**02. ~~Electronic Address~~ Internet Homepage.** The Commission's electronic address for its Internet homepage is [www.puc.idaho.gov](http://www.puc.idaho.gov). (4-5-00)( )

**03. Electronic Address.** The Commission's electronic address for filing authorized documents per Subsections 061.02 through 061.04 is: [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. COMMISSION SECRETARY -- COMMUNICATIONS WITH COMMISSION -- TIMELY FILING (RULE 14).**

**01. The Commission Secretary.** The Commission Secretary is the custodian of all public files of the Commission and is responsible for service of all orders and notices of the Commission and of all complaints filed with the Commission. Unless otherwise directed by order, the Commission Secretary issues all official notices of the Commission. All written communications and documents that are intended to be part of an official Commission record (other than a hearing record) must be filed with the Commission Secretary. (\_\_\_\_)

**02. Timely Filing.** Unless otherwise provided by statutes, these rules, order or notice, documents are considered filed when received by the Commission Secretary, not when mailed or otherwise transmitted. (\_\_\_\_)

**03. Case Information.** Information concerning proceedings before the Commission or the status of any matter before the Commission is available from the Commission Secretary or the Commission's Internet homepage. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**054. FORMAL COMPLAINTS -- DEFINED -- ~~FORM AND CONTENTS AND PROCESS~~ (RULE 54).**  
All pleadings charging utilities or other person(s) with acts or omissions under law administered by the Commission are called "formal complaints." Formal complaints must be in writing and: (7-1-93)(\_\_\_\_)

**01. ~~Be in Writing~~ Name the Respondent.** State the name of the utility or person complained against (the respondent). (7-1-93)(\_\_\_\_)

**02. ~~Fully State the Acts Facts.~~** Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions of the utility or person against whom the complaint is filed and the dates when they the acts or omissions occurred. (7-1-93)(\_\_\_\_)

**03. ~~Refer to Statutes, Rules, Orders or Other Controlling Law Involved~~ Applicable Provisions.** Refer to the specific provision of statute, rule, order, notice, tariff or other controlling law that the utility or person has violated. (7-1-93)(\_\_\_\_)

**04. ~~Pray for~~ State the Relief Desired.** State what action or outcome should be taken to resolve the complaint. (7-1-93)(\_\_\_\_)

**05. ~~Name the Respondent~~ Process.** State the name of the person complained against (the respondent). The utility, carrier or other person against whom the formal complaint is directed may be served by the complainant. The Commission encourages the use of informal proceeding (see Rules 21 through 26) to resolve or settle formal complaints. The Commission shall determine how a formal complaint should be processed, e.g., issuance of a summons, open an investigation, informal procedure with Staff. The Commission Secretary will may serve a copy of the formal complaint upon the utility or person to which the formal complaint is directed. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**061. FILING DOCUMENTS WITH THE COMMISSION -- NUMBER OF COPIES -- DISCOVERY -- FACSIMILE TRANSMISSION (FAX) AND ELECTRONIC FILING (RULE 61).**  
The following numbers of documents ~~must~~ shall be filed with the Commission Secretary: (7-1-93)(\_\_\_\_)

**01. Printed Filings.** When filing printed material: (4-5-00)

**a.** In utilities cases (other than those cases specified in Subsections 061.01.b. and 061.01.c. below of this rule): (3-16-04)(\_\_\_\_)

i. Pleadings (applications, petitions, complaints, motions, answers and consent agreements)--an original and seven (7) copies. (7-1-93)

ii. Briefs, proposed orders, statements of position, and exceptions under Rule 312--eight (8) copies. (4-5-00)

iii. Prepared testimony and exhibits--nine (9) copies (one (1) copy designated as reporter's copy) plus ~~computer disk~~ CD-ROM as required by Rule 231.05. (7-1-93)( )

~~iv. Discovery related documents (notice of deposition, production requests, written interrogatories, requests for admission, answers to discovery, explanations in lieu of discovery under Rule 225 and objections to discovery) three (3) copies except as requested pursuant to Rule 229. (7-1-93)~~

b. Security issuance cases: (4-5-00)

i. Pleadings--an original and four (4) copies. (7-1-93)

ii. Other documents except for discovery-related documents--~~five~~ three (53) copies. (7-1-93)( )

~~iii. Discovery related documents three (3) copies. (7-1-93)~~

c. Telecommunication interconnection agreements: (3-16-04)

i. Pleadings--an original. (3-16-04)

ii. All other documents--two (2) copies. (3-16-04)

**02. Filing Discovery.** Discovery-related documents (notice of taking deposition, production requests, written interrogatories, requests for admission, answers to discovery, explanations in lieu of discovery under Rule 225, and objections to discovery) shall be filed in either printed or electronic format. ( )

a. If printed filing -- three (3) copies to the Commission Secretary. ( )

b. If electronic filing -- the discovery document(s) shall be submitted to the Commission Secretary as attachments to an e-mail or placed on a CD-ROM and the CD-ROM is filed with the Secretary. The electronic discovery documents shall be in a computer searchable form of Adobe Acrobat in portable document format (PDF) without password protection. The transmitting e-mail or CD-ROM shall be labeled with the case number, case name, and the name of the person and the party submitting the discovery. ( )

**023. FAX and Electronic Filings.** Pleadings (including supporting affidavits, memoranda, etc.) not exceeding ten (10) pages in length, notice of taking depositions, notices of withdrawal of party or of withdrawal of representative, stipulations, and documents requiring urgent emergency or immediate action by the Commission may be filed with the Commission Secretary as an attachment to an e-mail or by facsimile transmission (FAX). The attached electronic document shall be in a computer searchable form of Adobe Acrobat (PDF) without password protection. Whenever any such document is filed by electronic mail or by FAX, ~~originals~~ the required number of printed documents per Subsection 061.01 must be delivered to the Commission by overnight mail on the next working day. The use of electronic mail or FAX is prohibited to file prepared testimony and exhibits, ~~requests for or answers to~~ discovery-related documents (other than notices of taking deposition), or any other documents except as authorized by this paragraph. (7-1-93)( )

**034. Reducing the Number or Changing the Form of Copies Filing.** The Commission Secretary is authorized to reduce the number of required copies or allow electronic copies to be filed in lieu of a printed original or copies. (3-16-04)( )

**062. FORM OF DOCUMENTS (RULE 62).**

**01. Information to be Listed.** All documents listed in Rule 61 submitted by a party and intended to be part of the record must: (7-1-93)

**a.** Be submitted on white eight and one-half inch by eleven inch (8 1/2" by 11") paper copied on either one (1) side ~~only~~ or both sides (duplexed); (7-1-93)( )

**b.** State the case caption, case number and title of the document; (7-1-93)

**c.** Include on the upper left corner of the first page: (3-16-04)

**i.** The name(s); (3-16-04)

**ii.** Mailing, street and e-mail address(es); and (3-16-04)

**iii.** Telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (3-16-04)

**d.** Have at least one-inch (1") left and top margins. (7-1-93)

**02. Example.** These documents complying with this rule will be in the following form:

- Name of Representative (State Bar No. if applicable)
- Mailing Address of Representative
- Street Address of Representative (if different)
- Telephone Number of Representative
- FAX Number of Representative (if there is one)
- E-mail address (if available)
- Attorney/Representative (for Name of Party)

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION§

(Title of Proceeding)

)  
)  
)

CASE NO. ABC-X-XX-XX

TITLE OF DOCUMENT

(3-16-04)( )

**03. Identification of Parties.** Every document filed under this rule must identify the party filing it in its title. The party must be identified by both the party's designation as a party (e.g., intervenor) and the party's name. For example, the Intervenor ABC Company would title its motion to strike as "Motion to Strike of Intervenor ABC Company." A short title of the document must appear at the bottom left corner of each page of the document. For example, the short title of the motion above could be: "ABC's Motion to Strike." (7-1-93)

**063. SERVICE ON PARTIES AND OTHER PERSONS (RULE 63).**

**01. Service in General.** All documents referred to in Rule 61 (except as noted below) must be served upon the representatives of every party of record concurrently with filing with the Commission Secretary. When a document has been filed with the Commission Secretary by FAX or electronic mail, it must be served upon all other parties with FAX facilities or by FAX electronic mail, respectively, and upon the remaining parties For parties without electronic capability, service shall be made by overnight mail, hand delivery, or the next best available service if these services are not available. ~~The Commission may direct that service be accomplished by electronic mail.~~ The Commission may direct that some or all of these documents be served on interested or affected persons who are not parties. The Commission Secretary's notice of parties (and revisions to it) will list all persons whom the parties must serve and their representatives as of the date of the notice or its revision. (3-16-04)( )

**02. Service by Electronic Mail.** The Commission may direct or the parties may agree that service among parties be accomplished by electronic mail. ( )

**03. Service of Discovery.** The service of discovery documents on parties shall be accomplished by electronic mail (as attachments to e-mail). For parties without electronic mail capability, service shall be made by overnight mail, hand delivery, or the next best available service if these services are not available. See Rule 229. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**067. INFORMATION EXEMPT FROM PUBLIC REVIEW -- DEFINITIONS -- FORM -- PROCEDURES (RULE 67).**

**01. Definitions.** (4-5-00)

**a.** “Trade secrets” filed with the Commission are exempt from public inspection, examination, and copying pursuant to Section 9-340D, Idaho Code. Trade secrets means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that: (4-5-00)

i. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (4-5-00)

ii. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.(4-5-00)

**b.** “Confidential information” means information, documents, or records filed with the Commission that are specifically exempt from public inspection, examination and copying pursuant to Sections 9-340A through 9-340F, Idaho Code. (4-5-00)

**02. Form.** In addition to the requirements of Rule 62 (except Subsection 062.01.a.), information that is alleged to be trade secrets, confidential or otherwise exempt from public disclosure shall be served upon the Commission and other parties who have entered into a protective agreement pursuant to Subsection 067.04 in either printed or electronic format. (4-5-00)

**a.** If in printed form, the page(s) containing the trade secret or confidential information shall be reproduced on ~~any colored~~ yellow paper ~~other than white~~. Each page shall be marked as “TRADE SECRETS” or “CONFIDENTIAL.” See Rule 61 for the number of printed copies. (4-5-00)( )

**b.** If in electronic form, the trade secret or confidential information shall be reproduced separately on a ~~DOS formatted three and one half (3.5”) inch (one point forty four (1.44) megabyte diskette)~~ CD-ROM or other electronic storage format approved by the Commission Secretary; and not included with other material electronically filed. Each ~~diskette~~ CD-ROM or other storage device containing trade secret or confidential information shall be clearly identified with the case caption, case number, title of document and marked as “TRADE SECRETS” or “CONFIDENTIAL.” (3-16-04)( )

**03. Procedure.** Whenever a party believes that information contained in pleadings or other documents are trade secrets, confidential or otherwise exempt from public disclosure, the attorney of such party designated by Rule 41 must state in writing that the information is protected by law from public inspection, examination or copying, citing the specific grounds and legal authority for that assertion. Documents containing trade secrets or confidential information shall be separated from documents not containing trade secrets or confidential information. Trade secrets or confidential information contained in documents will be removed and replaced with a page marked: “This page allegedly contains trade secrets or confidential material and is separately filed.” All materials for which no assertion of protection from public inspection, examination and copying is made will be placed in files available for public

inspection. Trade secrets, confidential information and other records exempt from public inspection shall be separately stored in a secured location with limited access and safeguarded from unauthorized disclosure. (4-5-00)

**04. Protective Agreements.** In proceedings before the Commission involving trade secrets or other confidential information, parties may enter into protective agreements to facilitate and safeguard the exchange of necessary information. Protective agreements may include procedures for copying, exchanging, serving, safeguarding, or challenging the characterization of trade secrets or confidential information. The Commission shall not be a party and will not be bound by the terms of a protective agreement. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**RULES 111 THROUGH 120**

**APPLICATIONS FOR CERTIFICATES OF CONVENIENCE AND NECESSITY AND**  
**INTERCONNECTION AGREEMENTS**

**(BREAK IN CONTINUITY OF SECTIONS)**

**114. APPLICATION FOR NEW COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC) – FORM AND CONTENT (RULE 114).**

The Commission issues Certificates of Public Convenience and Necessity to competitive local exchange carriers (CLECs) seeking to provide local exchange services in Idaho. The Commission uses the certification process to register and review applications to provide local telecommunications services. See Commission Order No. 26665 issued November 7, 1996. Each CLEC application shall include the following information: ( )

**01. Name, Address and Form of Business.** ( )

**a. If the applicant is the sole proprietor, provide the name and business address of the applicant and the business name of the sole proprietorship.** ( )

**b. If the applicant is a partnership, provide a list of the names and business addresses of all the partners, and the business name of the partnership.** ( )

**c. If the applicant is a corporation, provide:** ( )

**i. A short statement of the character of public service in which it is engaged;** ( )

**ii. The name of the state in which it is incorporated;** ( )

**iii. Its principal business address and its principal address within Idaho;** ( )

**iv. A certified copy of its articles of incorporation;** ( )

**v. The names and addresses of the officers and directors of applicant;** ( )

**vi. The names and addresses of subsidiaries owned or controlled by applicant;** ( )

**vii. If not incorporated in Idaho, a certificate of good standing issued by the applicable secretary of state, and the name and address of registered agent for service in Idaho; and** ( )



viii. The name and address of any corporation, association, or similar organization holding a five percent (5%) or greater ownership or a managerial interest in the applicant, and indicate the amount and character of the ownership interest. Include a copy of any management agreement with the application. ( )

**02. Services and Territory.** The application shall include: ( )

**a.** A written description of customer classes and customer services that the applicant proposes to offer to the public. The application shall indicate the date on which the applicant proposes to begin construction or anticipates it will begin to provide service in Idaho. ( )

**b.** A description sufficient for determining whether service is to be offered in a particular location and the names of incumbent local exchange corporations (ILECs) with whom the proposed utility is likely to compete. The application shall include a description of the intended manner of service, e.g., resold services or facilities-based services; and a general description of the property owned or controlled by applicant. ( )

**c.** A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. If the service area is identical to an incumbent LEC's service area, then applicant may refer to the incumbent's service area. ( )

**03. Financial Information.** ( )

**a.** The application shall provide the current detailed balance sheets, including a detailed income and profit and loss statements of applicant reflecting current and prior year balance for the twelve (12) months ending as of the date of the balance sheet, or if not readily available, for the period since the close of the preceding calendar year. If a balance sheet and income statement are not available, the applicant shall submit financial data sufficient to establish it possesses adequate financial resources to provide the proposed services. ( )

**b.** The application shall include the latest annual report, if any. ( )

**04. Tariffs and Price Lists.** The application shall include proposed initial tariffs or price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service. Initial tariffs and price lists filings shall be in an electronic form as well as paper. The tariffs and price lists in electronic format will be in computer searchable Adobe Acrobat (PDF), or submitted on a CD-ROM or other format as prescribed by the Commission Secretary. ( )

**05. Tariff and Customer Contact.** The application shall include the name, address, and telephone number for those persons responsible for tariff and price list questions, as well as customer complaints and inquiries. The application shall state the toll-free telephone number for customer inquiries and complaints. ( )

**06. Interconnection Agreements.** The application shall state whether the applicant has initiated interconnection negotiations and, if so, when and with whom. Include copies of any interconnection contracts which have been completed for the provision of telecommunication services. ( )

**07. Compliance with Commission Rules.** The application shall contain a written statement that the applicant has reviewed all of the Commission's rules and agrees to comply with them, or include a request for waiver of those rules believed to be inapplicable. ( )

**08. Conservation of Telephone Numbers.** The application shall contain a written statement acknowledging that non-paging telecommunications carriers with telephone numbering resources in Idaho shall be subject to numbering conservation measures including mandatory one thousand (1,000) block pooling. See Commission Order No. 30425. All CLECs shall evaluate their numbering resources and donate to the numbering resource pool unused one thousand (1,000) number blocks and one thousand (1,000) number blocks that have fewer than ten percent (10%) of the telephone numbers assigned. Applicable carriers shall also file the necessary utilization reports with NeuStar and biennially report their number resource utilization/forecast (NRUF) data at the one thousand (1,000) block level for each rate center within their service territory. The Federal Communications Commission has appointed NeuStar to manage the assignment and conservation of telephone area codes and telephone numbers in North America. ( )

1145. -- 120. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

122. NOTICE OF INTENT TO FILE A GENERAL RATE CASE (RULE 122).

**01. Which Utilities Must File Notice.** Utilities with annual gross revenues from retail customers in the State of Idaho exceeding three million dollars (\$3,000,000) must file with the Commission a “notice of intent to file a general rate case” at least sixty (60) days before filing a general rate case. If the general rate case described in the notice is not filed within one-hundred twenty (120) days after filing of the notice of intent to file a general rate case, by operation of this rule a notice of intent to file a general rate case will be considered withdrawn unless it is supplemented with a written statement that the utility still intends to file a general rate case of the kind described in its notice of intent to file a general rate case. (7-1-93)

**02. Exceptions for Trackers, ~~Etc~~ or Annual Cost Adjustments.** This rule applies only to general rate increases. Examples of cases outside the scope of this rule include (but are not limited to) fuel cost adjustments (e.g., PGA), power cost adjustment (PCA), commodity or purchased power tracker rate increases, emergency or other short-notice increases caused by disaster or weather-related or other conditions unexpectedly increasing a utility’s expenses, rate increases designed to recover governmentally-imposed increases in costs of doing business, such as changes in tax laws or ordinances, or other increases designed to recover increased expenses arising on short notice and beyond the utility’s control. (4-5-00)( )

(BREAK IN CONTINUITY OF SECTIONS)

125. NOTICES TO CUSTOMERS OF PROPOSED CHANGES IN RATES (RULE 125).

**01. Customer Notice of a Change in Rates.** If a utility is requesting a rate increase, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the utility’s need for additional revenue and the dollar amount requested. The notice shall give the proposed overall percentage change from current rates as well as the proposed percentage increase in revenue for each major customer class. The customer notice shall make it clear that the application is a proposal, subject to public review and a Commission decision. It shall also inform customers that a copy of the utility’s application is available for public review at the offices of both the Commission and the utility, and on the Commission’s homepage. ( )

**02. Timing of Notice for Trackers or Annual Cost Adjustments.** Tracker adjustments occasioned by federal action may be brought to the attention of customers in compliance with this rule after approval by the Commission. All other tracker or annual cost adjustment cases remain subject to the requirements of advance notice contained in this rule. ( )

**03. Distribution of Customer Notices.** The customer notices referred to in Subsection 125.01 may be mailed to customers as bill stuffers over the course of a billing cycle or may be contained in additional comment pages to the customer’s monthly bill. If additional comment pages are used, the information required by this rule is to be clearly identified, easily understood, and pertain only to the proposed rate change. ( )

**04. Press Release.** In instances covered by Subsection 125.01, the utility shall also send a press release containing, at minimum, the same information presented in the customer notices to all newspapers, radio, and television stations listed on the Commission’s news organization list for that utility. The press releases shall be mailed or delivered simultaneously with filing of the application. ( )

**05. Filing of a Press Release and Customer Notice.** A copy of the press release and customer notice shall be filed with the application. ( )

**06. Purposes and Effects of This Rule.** The purposes of Subsections 125.01 through 125.05 of this rule are to encourage wide dissemination to customers of information concerning proposed rate changes for utility services. It is not a purpose of these subsections to create due process or other procedural rights in customers by expanding, contracting, or otherwise modifying the notice and due process rights of customers under the Public Utilities Law and the Commission's Rules of Procedure, IDAPA 31.01.01. Accordingly, Subsections 125.01 through 125.05 of this rule create no individual procedural rights in any customer for notice that would give rise to a due process or other procedural claim cognizable by the Commission, but failure to comply with Subsections 125.01 through 125.05 of this rule can be grounds for returning an application for incompleteness. ( )

**~~135~~26. APPLICATION TO APPROVE INTERCONNECTION AGREEMENTS (RULE ~~135~~26).**

**01. Uncontested Agreements.** A ~~utility~~ telephone corporation may file an application for the Commission to approve voluntarily negotiated, adopted or amended interconnection agreements pursuant to Section 252 of the federal Telecommunications Act of 1996. The Commission acts on adopted or negotiated interconnection agreements and uncontested amendments to previously approved agreements with the assistance of an ex parte recommendation of the Commission Staff. (~~3-16-04~~)( )

**02. Contested Agreements.** Petitions to arbitrate, mediate or otherwise resolve interconnection disputes between or among telecommunication carriers shall be processed under Rule 53. (3-16-04)

**~~125~~7. PUBLIC WORKSHOPS ON APPLICATIONS TO INCREASE RATES (RULE ~~125~~7).**

**01. Public Workshop.** When a public utility files an application to increase any rate, fare, toll, rental or charge regarding any classification or service, the Commission will determine if the staff should conduct a public workshop. The purpose of any workshop is for the staff to dispense information concerning the utility's application and to receive written or oral comments from the public prior to the staff filing testimony or comments in the case. (3-16-04)

**02. Notice and Location of Workshop.** Notice of the public workshop shall be disseminated a minimum of seven (7) days prior to the workshop to newspapers of general circulation and radio and television stations in the affected area. The Commission shall determine the location for the workshop within the area served by the public utility. The notice shall also be posted on the Commission's website. (3-16-04)

**03. Exemptions.** The requirements of Subsection ~~125~~7.01 shall not apply to applications regarding uniform statewide surcharges under Sections 56-904, 62-610 and 62-610F, Idaho Code, or to utility tariff advices. (~~3-16-04~~)( )

**~~126~~8. -- 130. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**132. NUMBER OF TARIFF COPIES FILED (RULE 132).**

The Commission encourages public utilities to file their tariff schedules via electronic mail. (3-16-04)

**01. Electronic Tariffs.** For electronically filed tariffs, each utility shall submit its tariff schedules prepared in searchable Adobe Acrobat in portable document format (PDF) as an attachment to an e-mail message sent to the Commission Secretary at: secretary@puc.idaho.gov. Electronic tariff schedules may also be submitted as PDF documents on appropriately formatted ~~three and one half (3.5) inch diskette, zip disk, or~~ CD-ROM or other electronic storage format approved by the Commission Secretary. (~~3-16-04~~)( )

**02. Printed Tariffs.** To file printed tariffs, each utility shall file an original and two (2) copies of their tariff schedules with the Commission Secretary. (3-16-04)

**03. Approval.** The Commission will stamp its approval in the space provided on each copy of an approved tariff, placing the original in its files and returning one (1) copy to the public utility. (3-16-04)

**133. TARIFFS SUBMITTED PURSUANT TO ORDER (RULE 133).**

**01. Order May Require Submission of Tariffs.** When the Commission directs or authorizes by order that certain tariffs be filed, the order may require the tariff submissions to the Commission to be accompanied by appropriate explanatory documents, summaries, workpapers, or similar material. When the Commission authorizes a utility to file new tariffs pursuant to order in a general rate case, the Commission may require the utility to file a complete set of tariffs containing both pages with changed rates and charges and those without. (7-1-93)

**02. Staff Review of Tariffs Filed Pursuant to Order.** When a utility files tariffs with the Commission pursuant to an order of the Commission in a proceeding in which other persons are party, the responsibility for reviewing the tariff submission to determine whether it complies with the Commission's order is upon the Commission Staff, which shall promptly report to the Commission whether the tariffs do comply. The review of tariffs filed pursuant to order is an ex parte, ministerial responsibility of the Commission Staff. Tariffs may be approved in the minutes of the Commission's decision meetings or by minute entry after Staff review without further order. ~~After approval, the utility must promptly serve the tariffs on all parties.~~ (3-16-04)(\_\_\_\_)

**03. Motions With Regard to Tariffs Submitted Pursuant to Order.** If the Commission has approved tariffs, parties or persons contending that approved tariffs are inconsistent with the Commission's orders may file appropriate motions asking that approval be reviewed. (7-1-93)

**134. TARIFF ADVICES (RULE 134).**

**01. Tariff Advices Authorized.** Public utilities may file tariffs adding new or modifying existing services, providing for new or modified rules, or otherwise making minor changes to existing schedules by tariff advice. The tariff advice must include a letter of transmittal from the utility listing all tariff pages changed or added by the tariff advice and stating briefly the reason for filing the tariff advice. If existing tariffs are changed, the advice must contain two (2) copies of each changed page: one (1) showing all the changes with appropriate symbols for deletions, additions, etc., and one (1) showing the pages after the changes as they will appear in the proposed new tariffs. (7-1-93)

**02. Filing of Tariff Advice.** No tariff advice can be effective unless notice is given to the Commission and the public pursuant to Sections 61-307, 61-622 or 61-623, Idaho Code. If the tariff advice proposes an effective date fewer than thirty (30) days after it is filed, the effective date of the tariff is delayed until thirty (30) days after the tariff advice is filed by operation of Sections 61-307, 61-622 or 61-623, Idaho Code, unless the Commission by order approves an earlier effective date for good cause shown. In the absence of an order approving or suspending the tariff advice, the tariff advice not suspended or approved goes into effect thirty (30) days after filing or on the proposed effective date, whichever is later. If no effective date is proposed for the tariff advice, the tariff advice does not go into effect until approved by order or minute entry. If a tariff advice is suspended, the Commission will open a formal proceeding and treat the tariff advice as an application. (7-1-93)

**03. Ex Parte Action.** Ordinarily, the Commission acts upon tariff advices with the assistance of ~~an~~ written ex parte recommendation of the Commission Staff. ~~Every recommendation of the Commission Staff is required to specifically state whether it is appropriate to act upon the advice without notice of application being generally distributed to the public.~~ The Commission acts upon tariff advices at its open meetings. (7-1-93)(\_\_\_\_)

**Section 135 has been renumbered to Section 126.**

**136~~5~~ -- 140. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. NOTICE OF MODIFIED PROCEDURE (RULE 202).**

**01. Notice of Modified Procedure.** When the Commission finds that it may not be in the public interest to hold a hearing in a matter, notice of modified procedure will be issued. It will: (7-1-93)

**a.** Describe the issues presented in the proceeding, (7-1-93)

**b.** Summarize the moving party's justification for the proposed changes and its position, (7-1-93)

**c.** State that the Commission finds that it may be in the public interest not to hold a hearing in the proceeding and will not do so unless it receives written protests or comments opposing the use of modified procedure and stating reasons why modified procedure should not be used, and (7-1-93)

**d.** Establish the deadline for filing written protests or comments, ~~with the Commission~~ and a reply by the moving party. (7-1-93)( )

**02. Distribution of Notice.** Copies of the notice of modified procedure will be provided to all interested persons, including newspapers, municipalities, counties, and chambers of commerce located within the territorial scope of the application, petition or complaint whose readers, citizens or members may be affected by the proceedings and to all parties. Unless otherwise provided by the notice of modified procedure, all interested persons will have at least twenty-one (21) days from the date of the notice to file a written protest or comment. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. ACTION BY COMMISSION (RULE 204).**

If no protests, supports or comments are received within the deadline, the Commission may consider the matter and enter its order without a hearing. If protests, supports, ~~or~~ comments or a reply are filed within the deadlines, the Commission will consider them and may set the matter for hearing or may decide the matter and issue its order on the basis of the written positions before it. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 225).**

**01. When Requests May Be Used.** Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, Idaho Rule of Civil Procedure, rule of the Commission, order or notice, except: (7-1-93)

**a.** Production requests or written interrogatories should not be used to obtain statements of opinion or policy not previously written or published and may be objected to on that ground; and (7-1-93)

**b.** Requests for admission concerning a matter of opinion or policy or the application of law, order or rule to fact may be denied generally and the reasons for denial required to be discovered by deposition rather than by request for admission, but a request for admission on any matter of opinion or policy or application of law to fact on an uncontested matter must be answered. (7-1-93)

**02. Form of Requests.** The caption of a production request or written interrogatory and of a request for admission must identify the party making the request or interrogatory, the party to whom the request or interrogatory is directed, and the number of the request or interrogatory to that party. Separate questions within a production request or written interrogatory or within a request for admission must be numbered consecutively within the request

or interrogatory and consecutively with earlier production requests or written interrogatories and requests for admission, respectively, from the same party submitting the questions to the same party answering them. For example, if the last question of the Third Production Request of the Commission Staff to XYZ Electric Company is numbered 33, the first question of the Fourth Production Request of the Commission Staff to XYZ Electric Company must be numbered 34. But, if the Staff's next production request is its first to intervenor ABC Company, that request must begin with question one (1) to that intervenor. (7-1-93)

**03. Time for Objection and Answer.** Unless otherwise provided by order, notice, or these rules, or pursuant to agreement with or acquiescence of the answering party, parties have at minimum fourteen (14) days to object or explain why a question cannot be answered according to this rule and twenty-eight ~~one~~ (28) days to answer. (7-1-93)( )

**04. Numbers of Requests.** The number of production requests or written interrogatories and of requests for admission and individual questions or subparts in them may be limited by order, notice or rule of the Commission, but are not limited by the provisions of the Idaho Rules of Civil Procedure. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**229. FILING AND SERVICE OF DISCOVERY AND RELATED DOCUMENTS (RULE 229).**

~~Three (3) legible copies of~~ Notices of deposition, production requests or written interrogatories, requests for admission, answers to production requests or written interrogatories, answers to requests for admission, explanations in lieu of answers under Rule 228.01, and objections to discovery ~~must~~ shall be filed with the Commission Secretary and copies served on all parties according to Rules 61, 62, 63, and 64, ~~except that the Staff by letter to the parties may request that additional copies be filed.~~ (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**231. PREPARED TESTIMONY AND EXHIBITS (RULE 231).**

**01. Prepared Testimony May Be Required.** Order, notice or rule may require a party or parties to submit prepared testimony and exhibits to be presented at hearing. (7-1-93)

**02. Format for Prepared Testimony.** (7-1-93)

**a.** Prepared testimony and exhibits must be accompanied by a cover sheet showing the case caption and case title, the person testifying, the party for whom the testimony is offered, and the nature of the testimony (direct, rebuttal, etc.). (7-1-93)

**b.** The first page of prepared testimony should contain testimony only (i.e., it should begin with the first question to the witness and not repeat the information on the cover page). (7-1-93)

**c.** Prepared testimony must be submitted on white eight and one-half by eleven inch (8-1/2" x 11") paper, be double-spaced (except for quoted material and tables or other collections of numerical data), and contain no more than ten (10) characters per inch and no more than twenty-five (25) lines of double-spaced testimony per page. Each page may be printed on the front and back (duplexed). (7-1-93)( )

**d.** Each line of prepared testimony must be numbered at the left margin (except single spaced quotations or tables of numerical data, which may be numbered at the left margin as though they were double spaced). Each page of testimony must have a one and one-half (1-1/2) inch left margin that will allow the page to be bound on its left side without obscuring the printed material. Indentations for paragraphing and for "Q" and "A" must be seven (7) spaces. (7-1-93)

e. Each page of prepared testimony must be numbered at the lower right corner and must be blank in the center of the bottom margin to allow the reporter to insert transcript page numbers there. Each page of prepared testimony must have at least a one-inch (1") top and bottom margin. (7-1-93)

f. Each page of prepared testimony must contain the witness's surname followed by the designation "Di" (signifying direct testimony) or "Di-Reb" (signifying direct testimony on rebuttal) and the name of the party sponsoring the testimony printed in the lower right margin. For example, the marginal notation on page 5 of the testimony of the witness Lynn Accountant of ABC Company would be:

5	or	Accountant, Di 5
Accountant, Di		ABC Company
ABC Company		

(7-1-93)

**03. References to Exhibits.** All references to exhibits in prepared testimony must refer to the exhibits by their number as assigned by the Commission Secretary. Exhibits accompanying prepared testimony must be consecutively numbered from the first exhibit number assigned to the party by the Commission Secretary if the party has not previously identified exhibits, or from the highest exhibit number previously identified by that party. Exhibits must be filed on eight and one-half by eleven inch (8-1/2" x 11") paper unless it is impractical to make them that size. Exhibits accompanying prepared testimony must comply with Rule 267. (7-1-93)

**04. Number of Copies -- Filing and Service.** Unless otherwise provided by order, notice or agreement of the parties, nine (9) legible copies of prepared testimony and exhibits must be filed with the Commission Secretary and copies filed on all parties pursuant to Rules 61, 62, 63 and 64 at least fourteen (14) days before the hearing at which they will be presented. The original, if there is an original, or one (1) of the copies, if there is not, must be specifically designated as the reporter's copy by cover sheet, attached note or otherwise, and be included with the copies filed with the Commission Secretary. In special circumstances, notice or order may provide that the reporter's copy of prepared testimony and exhibits be served directly on the reporter rather than the Commission Secretary. (7-1-93)

**05. Computer-Readable Searchable Copies of Testimony.** In addition to the paper copies of prepared testimony, the Commission Secretary may also require or the parties may agree that some or all of the prepared testimony to be submitted to the Secretary, or parties and the reporter in computer searchable disks CD-ROM without password protection. The CD-ROM shall be in standard ASCII format, Adobe Acrobat (PDF), or other searchable format agreed upon by the reporter and the parties. Each CD-ROM shall be labeled with the Commission's case number, case name, the name of each witness and the sponsoring party. (4-5-00)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**233. ASSERTIONS THAT DISCOVERED MATERIAL IS PROTECTED FROM PUBLIC INSPECTIONS -- PROCEDURES (RULE 233).**

**01. Assertion of Protection.** Whenever any party to a request for discovery believes that material otherwise discoverable is protected by statute or rule of law from inspection, examination or copying by the general public, the attorney for the party asserting the material is protected by law from inspection, examination or copying must state that the answer or some portion of it is protected, citing the specific statute or other legal authority for that position. The attorney's assertion constitutes a representation that the attorney is familiar with the material claimed not to be available for public inspection, examination and copying and in good faith believes there is a basis in law for that claim. (4-5-00)

**02. Procedures.** When an answer contains material, some of which is protected by law from public inspection, examination, and copying and some of which is not, the protected material must be reproduced on ~~any~~ colored yellow paper ~~other than white~~ and separated from material available for public review. Each page of the

material exempt from public review must be marked "Trade Secrets" or "Confidential." All material exempt from public review shall be filed with the Commission Secretary and served on all parties under seal pursuant to Rule 229. Material exempt from public review shall be separately stored in a secure location with limited access and safeguarded from unauthorized disclosure. All material for which no assertion of protection against public inspection, examination and copying is made will be placed in files available for public inspection. (4-5-00)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**241. NOTICE OF HEARING (RULE 241).**

**01. Timing of Notice.** Notice of the place, date and hour of hearing will be served at least fourteen (14) days, or in the case of formal complaints, twenty-one (21) days, before the time set for hearing, unless the Commission finds by order that the public necessity requires the hearing to be held earlier. (7-1-93)

**02. Contents of Notice.** Notices must comply with Rule 242's requirements. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number, and the name of the hearing officer who will conduct the hearing if the case will not be heard by one (1) or more Commissioners. If no document previously issued by the Commission has listed the legal authority of the Commission to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (7-1-93)

**03. Locations of Hearing.** Hearings may be held in Boise, Idaho, or at other places designated by notice or order. (7-1-93)

**04. Types of Formal Hearings.** The Commission generally conducts two (2) types of formal public hearings. ( )

**a.** A technical hearing is a public hearing where parties present witnesses and their prepared testimony and exhibits. ( )

**b.** A customer hearing is a public hearing for customers, public officials, and other persons not related to parties in the case to provide testimony. Unless otherwise ordered by the presiding officer, parties are prohibited from presenting evidence at the customer hearing. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**244. CONDUCT AT HEARINGS (RULE 244).**

All persons attending a hearing must conduct themselves in a respectful and courteous manner. Persons disrupting the hearing shall be asked to leave by the presiding officer. See Rule 47 and Section 18-6409(1), Idaho Code. Smoking is not permitted at hearings. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**260. ~~(RESERVED)~~ SUMMARY OF POSITION(S) AND TESTIMONY (RULE 260).**

Each utility shall make available to the public at all Commission hearings a brief written summary of the utility's position(s) and testimony filed in the case under consideration except when the Commission has determined that a summary is not necessary. If the utility is requesting a rate increase, its summary shall address the utility's need for additional revenue, the total dollar amount requested, and the proposed percentage increase or decrease in rates for each major customer class. The Commission Staff and intervenors shall also provide a brief summary of their



recommendations and the testimony filed in the case under consideration. These summaries and presentations are provided solely for the convenience of the public and will not be allowed as evidence or form the basis for cross-examination of any witness. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**267. EXHIBITS (RULE 267).**

**01. Exhibit Numbers.** Exhibit numbers are assigned to the parties before hearing according to Rule 230. (7-1-93)

**02. Form of Exhibits.** Public exhibits offered at hearing must ordinarily be typed or printed on eight and one-half by eleven inch (8 1/2" x 11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. Exhibits that are trade secrets, confidential information or otherwise exempt from public review shall be printed on ~~any colored~~ yellow paper ~~other than white~~. A copy of each documentary exhibit must be furnished to each party present, to the reporter, and to each Commissioner or hearing examiner, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. (4-5-00)( )

**03. Timely Filing of Exhibits.** Exhibits offered as part of a party's direct case (except exhibits offered on redirect examination) must be timely filed. Exhibits filed pursuant to any order, notice or rule requiring their filing before hearing are timely filed. Otherwise, exhibits must be distributed or made available to all parties long enough before their introduction into evidence to allow the parties a reasonable opportunity to review them and to prepare to examine their substance, except those exhibits that update exhibits previously timely filed may be filed so long as fair opportunity is afforded other parties to examine the sponsoring witnesses about the updated material. (7-1-93)

**04. Objection -- Admission.** Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. (7-1-93)

**05. Labeling of Exhibits.** All exhibits accompanying prepared testimony, exhibits introduced during direct examination of a party's witnesses, and, to the extent practicable, all other exhibits introduced at hearing must label the exhibit number, case number, party and witness sponsoring the exhibit, and any subdivisions within the exhibit, such as separate schedules or charts. Examples of labeling required by this rule are:

Exhibit No. 101	Exhibit No. 507
Case No. XXX-X-XX-XX	Case No. XXX-X-XX-XX
P. Engineer, Staff L.Accountant, ABC Company	
Schedule 1, p. 1 of 3	

Exhibits prepared for the proceeding must contain this labelling on each page of the exhibit. Exhibits reproducing previously existing documents may contain a cover page with this labelling, but need not be labelled on each page. (7-1-93)

**06. Sources for Exhibits.** Exhibits prepared from data in workpapers, answers to discovery, periodicals, reports or other documentable sources of information must contain a statement of sources. Examples of the statements of sources required by this rule are: (7-1-93)

P. Engineer, Workpapers -- Answer of XYZ Utility  
to First Tab A, pages 1 - 47 Production Request of ABC  
Company, Question 13

Moody's Public Utility -- XYZ Utility,

FERC Form 1 (1993)  
Manual p. 402a 1993 Vol. 1, p. 606

Exhibits especially prepared for introduction into evidence in a proceeding (i.e., exhibits not otherwise prepared or in existence) should be descriptively titled to show their contents and purpose. (7-1-93)

**07. Certain Exhibits Require Presiding Officer's Approval.** Neither motion pictures, slides, opaque projections, video tapes, audio tapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without prior approval of the presiding officer. Writing, sketching and drawing on blackboards or other similar surfaces by witnesses presenting testimony do not constitute an exhibit or evidence in the proceeding unless the writing, sketching or drawing is reproduced, photographed, or otherwise preserved for the record. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**272. PROCEDURES FOR ACTIVE SETTLEMENTS (RULE 272).**

Settlements in formal proceedings in which one (1) or more parties negotiate an agreement differing from positions of one (1) or more of the parties previously on record with the Commission are called active settlements. Any party other than the Commission Staff may enter into an active settlement with any party other than the Commission Staff without prior notification to the Commission or other parties. The Commission Staff, however, is precluded from entering into an active settlement without first notifying all other parties and the Commission that it intends to begin or has begun settlement negotiations. The Commission Staff must give all other parties an opportunity to participate in or be apprised of the course of the settlement negotiations before a final settlement agreement is reached. Settlement negotiations are confidential, unless all participants to the negotiation agree to the contrary. ~~(7-1-93)~~ ( )

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0101-0801**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 075:** Idaho Code section 63-3024 establishes the tax rates for individuals, trusts and estates and requires adjusting the income tax brackets annually for the effects of inflation. The adjusted income tax brackets are published in Income Tax Rule 075. The rule is being amended to add a table for the calendar year 2008 income tax brackets and rates and to remove all but five years of historical data.

**Rule 108:** Income Tax Rule 108 is being amended consistent with House Bill 549, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022 to limit the addition to taxable income required for out-of-state rollovers from an Idaho college savings account to the amount contributed to the Idaho account by the account owner in the last 12 months.

**Rules 120 and 125:** Income Tax Rules 120 and 125 are being amended consistent with House Bill 615, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022O to conform to the bonus depreciation provisions in the Internal Revenue Code (IRC) for property acquired in 2008. Subsection 120.06 is being amended to clarify that the adjustments required in the subsection don't apply to property acquired after 2007. A reference to Rule 193 is being added to Rule 120. Rule 125, which addresses the bonus depreciation adjustments, is being amended to clarify that the rule relates to bonus depreciation adjustments required for property acquired before 2008.

**Rule 128:** Income Tax Rule 128 is being amended to remove information in the rule that is addressed in Rule 291 and to add references to other rules.

**Rule 130:** Income Tax Rule 130 is being amended to clarify who qualifies for the deduction allowed by Idaho Code section 63-3022A for civil service retirement benefits received. The deduction is allowed to individuals who received civil service retirement paid by the U.S. Government under the Civil Service Retirement System. Individuals who receive retirement paid under the Federal Employee's Retirement System do not qualify for this deduction, so the distinction between the two groups needs to be clarified.

**Rules 171 and 173:** Income Tax Rules 171 and 173 are being amended consistent with House Bill 563, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022H to eliminate the requirement that a member of a pass-through entity hold his interest in the income of the entity for the same time as the holding period of the property qualifying for the deduction. Rule 171 is being amended to remove all information relating to the interest in income limitation, including references to Rule 173.02. Additional information is being added to Rule 171 to address tacked-on holding periods with regard to property received in exchange for a shareholder's stock or a partner's partnership interest. Subsection 173.02 addresses the interest in income of a pass-through entity limitation and is being deleted.

**Rule 193 & 194:** Income Tax Rule 193 is being amended to address Medicare Part D and the fact that it qualifies for the Idaho deduction for health insurance costs. The examples of the limitations when costs are otherwise deducted or accounted for are being deleted in Rule 193 and included in a new Rule 194 to reduce the length of Rule 193.

**Rule 200:** Income Tax Rule 200 addresses net operating losses (NOLs) of corporations. Idaho Code section 63-3021 specifically defines an NOL for Idaho income tax purposes. Idaho Code section 63-3022 allows the deduction for an Idaho NOL. Neither Idaho Code section 63-3021 nor section 63-3022 addresses the treatment of an Idaho NOL when a corporation is involved in an acquisition or merger nor does it incorporate the IRC sections (381 and 382) that provide special rules and limitations in these situations. Because Subsection 200.02 imposes limitations on the NOLs of merged corporations not specifically addressed in the statute, the rule is being amended to remove Subsection 02.

**Rule 254:** Income Tax Rule 254 is being amended consistent with House Bill 615, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022O to conform to the bonus depreciation provisions in the IRC for property acquired in 2008. Subsection 254.18 is being amended to clarify that the adjustments required in the subsection don't apply to property acquired after 2007. A reference to Rule 193 is being added to Rule 254.

**Rule 266:** Income Tax Rule 266 is being amended to address two issues with regard to the sourcing of income from intangible property. Subsection 03 is being added to address the sourcing of the payment of penalties. Subsection 05 is being added to address when the sourcing determination is made for income received from the sale of intangible personal property.

**Rule 273:** New Income Tax Rule 273 is being promulgated to provide that unemployment compensation is Idaho source income to the extent the benefits are received for employment in Idaho. The rule provides that for employment in Idaho and one or more other states, the unemployment compensation sourced to Idaho is computed using the proration of Idaho wages to total wages that was used in computing the unemployment compensation benefits.

**Rule 290:** Income Tax Rule 290 is being amended to clarify that an individual who has income from more than one pass-through entity, but no other income, can make an election for each pass-through entity to pay the tax on his income from the pass-through entity. Examples of when the election can or can't be made are being added. Also added is the exclusion from making the election provided in Idaho Code section 63-3022L for individuals who receive income from a corporation that reports less than fifty percent of its taxable income to Idaho.

**Rule 550:** Income Tax Rule 550 is being amended to conform more closely to language included in Multistate Tax Commission (MTC) Regulation IV.17., Sales Factor: Sales Other Than Sales of Tangible Personal Property. The MTC modified Regulation IV.17., in August 2007 to address the income producing activity and costs of performance related to the rendering of personal services by an agent or independent contractor acting on behalf of the taxpayer.

**Rules 700 and 701:** Income Tax Rules 700 and 701 are being amended consistent with House Bill 564, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3029 to clarify that the credit for income taxes paid to another state is allowed to a qualifying part-year resident when he is residing in Idaho even though he may be domiciled in another state. The example in Paragraph 701.02.c is being modified accordingly.

**Rule 710:** Income Tax Rule 710 is being amended consistent with House Bill 615, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3029B to exclude from the definition of qualified investment for purposes of the investment tax credit, the cost of property for which a deduction for bonus first-year depreciation is claimed. This applies to property acquired after 2007. Dated information relating to taxable years beginning prior to January 1, 1995, is being removed from Subsections 710.02 and 710.03.

**Rules 770 and 771:** Income Tax Rule 770 is being amended and Income Tax Rule 771 is being promulgated consistent with House Bill 588, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3024A to change the amounts of and qualifications for claiming the grocery credit. Changes to Rule 770 clarify the rule relates to the grocery credit for taxable years beginning prior to 2008. New Rule 771 addresses the grocery credit for taxable years beginning after 2007.

**Rule 785:** Income Tax Rule 785 provides for the calculation of credits when earned by pass-through entities. The rule specifies that a credit passes through to a partner based on that partner's distributive share of partnership profits. Many Idaho credit statutes provide that the state tax commission may promulgate rules prescribing, in the case of partnerships, a method of attributing the credit to the partners in proportion to their share of the income from the partnership. Some credit statutes are silent with regard to pass-through entities. Because an ownership agreement may include special allocations with regard to credits, which confuses the issue, the rule is being amended to clarify that

the credit passes through to a partner or owner without regard to any special allocations contained in the ownership agreement. Information is being added to address pass-through entities that pay tax including how income tax credits may be applied to that tax and how unused credits are treated.

**Rule 799:** House Bill 661, which was passed by the 2008 Idaho Legislature, repealed the Idaho Corporate Headquarters Incentive Act of 2005. Income Tax Rule 799 lists the corporate headquarters credits in the priority order of credits. Since no one has qualified for the incentives, Rule 799 is being amended to remove these credits from this rule.

**Rule 800:** Income Tax Rule 800 is being amended to address requirements to provide W-2 and 1099 information by taxpayers who file electronic returns. Rule 800 was modified last year to require taxpayers to attach appropriate Forms W-2 and 1099 to verify the amount of Idaho income tax withheld. This was confusing as to what electronic filers must do. Information being added instructs electronic filers to include the W-2 and 1099 information in the electronic record transmitted.

**Rule 830:** Income Tax Rule 830 identifies the due date for filing information returns. Idaho Code section 63-3037 provides that information returns will correspond to the requirements of the IRC. Under the IRC, the due date for filing information returns on paper or through magnetic media is the last day of February, but the due date for returns filed electronically is extended one month to March 31. To conform to the federal due dates, Rule 830 is being amended to change the due date for returns filed electronically to the last day of March.

**Rules 855:** Income Tax Rule 855 is being amended consistent with House Bill 343, which was passed by the 2008 Idaho Legislature. The bill modified Idaho Code section 63-3083 to clarify that the permanent building fund tax is required to be paid by an entity required to file a return under Idaho Code section 63-3030 unless all of the income or loss is distributed or otherwise reportable as a part of the taxable income of another taxpayer and the entity does not have any Idaho taxable income. A subsection is being added to address entities that pay the tax for individuals who make the election under Idaho Code section 63-3022L. It provides that no adjustment or proration of the permanent building fund tax is allowed when an individual has more than one pass-through entity paying tax on his income from the pass-through entity.

**Rule 872:** Income Tax Rule 872 is being amended consistent with House Bill 344, which was passed by the 2008 Idaho Legislature. The bill modified Idaho Code section 63-3035 to change the due date for the reconciliation returns from the last day of January to the last day of February. The thresholds for remitting income tax withholding on a quarterly basis are being increased from \$600 to \$750 per calendar quarter. The annual thresholds are being increased from \$50 monthly or \$600 annually to \$750 annually.

**Rule 874:** Income Tax Rule 874 is being amended to remove obsolete references to “magnetic media” or “other machine readable form” and replace them with “electronic filing” with regard to employers with fifty or more Idaho employees who are required to file the W-2s electronically for federal purposes. Information related to services performed within and without Idaho is being modified so that state wages are determined using Income Tax Rule 270.

**Rules 920, 921, 922, 923, 924, 925, and 926:** House Bill 661, passed by the 2008 Idaho Legislature, repealed the Idaho Corporate Headquarters Incentive Act of 2005. Since no one qualified for the incentives, Rules 920 through 926 are being repealed.

**Rules 930, 931, 932, 933, 934, 935, 936:** Rules 930 through 936 address the Idaho Small Employer Incentive Act of 2005 as originally enacted in 2005. This Act was modified in 2006 and is addressed in Income Tax Rules 940 through 946. Since no one qualified under the original Act, Rules 930 through 936 are being repealed. Rules 940 through 946 remain as the only rules relating to the Idaho Small Employer Incentive Act of 2005, which should result in less confusion to taxpayers.

**Rule 941:** House Bill 661, passed by the 2008 Idaho Legislature, repealed the Idaho Corporate Headquarters Incentive Act of 2005. Subsection 941.01 addresses the coordination of the Idaho Small Employer Incentive Act of 2005 with the Corporate Headquarters Incentive Act. Since no one qualified under the Corporate Headquarters Incentive Act, Subsection 941.01 is being deleted.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

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 October 22, 2008.

DATED this 20th day of August, 2008.

Janice Boyd  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., 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. 35-0101-0801**

**075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).**

Section 63-3024, Idaho Code.

(3-20-04)

**01. In General.** The tax rates applied to the Idaho taxable income of an individual, trust or estate, ~~beginning with calendar year 1987, for the latest five (5) years~~ are identified in Subsection 075.03 of this rule. ~~For taxable years beginning after December 31, 1999, the~~ Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. ~~(4-6-05)(\_\_\_\_)~~

**02. Tax Computation.**

(5-3-03)

**a.** The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

**b.** The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

**c.** For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2). (5-3-03)

**03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets.**

(3-20-04)

a- For taxable years beginning in 1987 through 1999:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,000.00	\$0.00	+ 2% of taxable income
\$1,000.00	\$2,000.00	\$20.00	+ 4% of the amount over \$1,000.00
\$2,000.00	\$3,000.00	\$60.00	+ 4.5% of the amount over \$2,000.00
\$3,000.00	\$4,000.00	\$105.00	+ 5.5% of the amount over \$3,000.00
\$4,000.00	\$5,000.00	\$160.00	+ 6.5% of the amount over \$4,000.00
\$5,000.00	\$7,500.00	\$225.00	+ 7.5% of the amount over \$5,000.00
\$7,500.00	\$20,000.00	\$412.50	+ 7.8% of the amount over \$7,500.00
\$20,000.00 or more		\$1,387.50	+ 8.2% of the amount over \$20,000.00

(3-20-04)

b- For taxable years beginning in 2000:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,022.00	\$0.00	+ 1.9% of taxable income
\$1,022.00	\$2,044.00	\$19.42	+ 3.9% of the amount over \$1,022.00
\$2,044.00	\$3,066.00	\$59.28	+ 4.4% of the amount over \$2,044.00
\$3,066.00	\$4,088.00	\$104.25	+ 5.4% of the amount over \$3,066.00
\$4,088.00	\$5,110.00	\$159.44	+ 6.4% of the amount over \$4,088.00
\$5,110.00	\$7,666.00	\$224.85	+ 7.4% of the amount over \$5,110.00
\$7,666.00	\$20,442.00	\$413.99	+ 7.7% of the amount over \$7,666.00
\$20,442.00 or more		\$1,397.74	+ 8.1% of the amount over \$20,442.00

(3-20-04)

e- For taxable years beginning in 2001:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,056.00	\$0.00	+ 1.6% of taxable income
\$1,056.00	\$2,113.00	\$16.90	+ 3.6% of the amount over \$1,056.00
\$2,113.00	\$3,169.00	\$54.93	+ 4.1% of the amount over \$2,113.00
\$3,169.00	\$4,226.00	\$98.25	+ 5.1% of the amount over \$3,169.00
\$4,226.00	\$5,282.00	\$152.13	+ 6.1% of the amount over \$4,226.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$5,282.00	\$7,923.00	\$216.57	+ 7.1% of the amount over \$5,282.00
\$7,923.00	\$21,129.00	\$404.09	+ 7.4% of the amount over \$7,923.00
\$21,129.00 or more		\$1,381.30	+ 7.8% of the amount over \$21,129.00

(3-20-04)

d. For taxable years beginning in 2002:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,087.00	\$0.00	+ 1.6% of taxable income
\$1,087.00	\$2,173.00	\$17.38	+ 3.6% of the amount over \$1,087.00
\$2,173.00	\$3,260.00	\$56.50	+ 4.1% of the amount over \$2,173.00
\$3,260.00	\$4,346.00	\$101.04	+ 5.1% of the amount over \$3,260.00
\$4,346.00	\$5,433.00	\$156.46	+ 6.1% of the amount over \$4,346.00
\$5,433.00	\$8,149.00	\$222.73	+ 7.1% of the amount over \$5,433.00
\$8,149.00	\$21,730.00	\$415.59	+ 7.4% of the amount over \$8,149.00
\$21,730.00 or more		\$1,420.60	+ 7.8% of the amount over \$21,730.00

(3-20-04)

e. For taxable years beginning in 2003:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,104.00	\$0	+ 1.6% of taxable income
\$1,104.00	\$2,207.00	\$17.66	+ 3.6% of the amount over \$1,104.00
\$2,207.00	\$3,311.00	\$57.39	+ 4.1% of the amount over \$2,207.00
\$3,311.00	\$4,415.00	\$102.64	+ 5.1% of the amount over \$3,311.00
\$4,415.00	\$5,518.00	\$158.93	+ 6.1% of the amount over \$4,415.00
\$5,518.00	\$8,278.00	\$226.25	+ 7.1% of the amount over \$5,518.00
\$8,278.00	\$22,074.00	\$422.16	+ 7.4% of the amount over \$8,278.00
\$22,074.00 or more		\$1,443.06	+ 7.8% of the amount over \$22,074.00

(3-20-04)

fa. For taxable years beginning in 2004:



IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,129.00	\$0 ±	1.6% of taxable income
\$1,129.00	\$2,258.00	\$18.06 ±	3.6% of the amount over \$1,129.00
\$2,258.00	\$3,387.00	\$58.70 ±	4.1% of the amount over \$2,258.00
\$3,387.00	\$4,515.00	\$104.98 ±	5.1% of the amount over \$3,387.00
\$4,515.00	\$5,644.00	\$162.55 ±	6.1% of the amount over \$4,515.00
\$5,644.00	\$8,466.00	\$231.41 ±	7.1% of the amount over \$5,644.00
\$8,466.00	\$22,577.00	\$431.78 ±	7.4% of the amount over \$8,466.00
\$22,577.00 or more		\$1,475.95 ±	7.8% of the amount over \$22,577.00

(4-6-05)

**g.b.** For taxable years beginning in 2005:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,159.00	\$0 ±	1.6% of taxable income
\$1,159.00	\$2,318.00	\$18.54 ±	3.6% of the amount over \$1,159.00
\$2,318.00	\$3,477.00	\$60.26 ±	4.1% of the amount over \$2,318.00
\$3,477.00	\$4,636.00	\$107.78 ±	5.1% of the amount over \$3,477.00
\$4,636.00	\$5,794.00	\$166.89 ±	6.1% of the amount over \$4,636.00
\$5,794.00	\$8,692.00	\$237.53 ±	7.1% of the amount over \$5,794.00
\$8,692.00	\$23,178.00	\$443.29 ±	7.4% of the amount over \$8,692.00
\$23,178.00 or more		\$1,515.25 ±	7.8% of the amount over \$23,178.00

(4-11-06)

**h.c.** For taxable years beginning in 2006, as calculated on June 7, 2006:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,198.00	\$0 ±	1.6% of taxable income
\$1,198.00	\$2,396.00	\$19.17 ±	3.6% of the amount over \$1,198.00
\$2,396.00	\$3,594.00	\$62.30 ±	4.1% of the amount over \$2,396.00
\$3,594.00	\$4,793.00	\$111.43 ±	5.1% of the amount over \$3,594.00
\$4,793.00	\$5,991.00	\$172.53 ±	6.1% of the amount over \$4,793.00
\$5,991.00	\$8,986.00	\$245.62 ±	7.1% of the amount over \$5,991.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
\$8,986.00	\$23,963.00	\$458.30	± 7.4% of the amount over \$8,986.00
\$23,963.00 or more		\$1,566.59	± 7.8% of the amount over \$23,963.00

(3-30-07)

d. For taxable years beginning in 2007, as calculated on May 17, 2007:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,237.00	\$0	± 1.6% of taxable income
\$1,237.00	\$2,474.00	\$19.79	± 3.6% of the amount over \$1,237.00
\$2,474.00	\$3,710.00	\$64.31	± 4.1% of the amount over \$2,474.00
\$3,710.00	\$4,947.00	\$115.02	± 5.1% of the amount over \$3,710.00
\$4,947.00	\$6,184.00	\$178.10	± 6.1% of the amount over \$4,947.00
\$6,184.00	\$9,276.00	\$253.55	± 7.1% of the amount over \$6,184.00
\$9,276.00	\$24,736.00	\$473.08	± 7.4% of the amount over \$9,276.00
\$24,736.00 or more		\$1,617.13	± 7.8% of the amount over \$24,736.00

(4-2-08)

e. For taxable years beginning in 2008, as calculated on March 12, 2008:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1.00	\$1,272.00	\$0	± 1.6% of taxable income
\$1,272.00	\$2,544.00	\$20.35	± 3.6% of the amount over \$1,272.00
\$2,544.00	\$3,816.00	\$66.15	± 4.1% of the amount over \$2,544.00
\$3,816.00	\$5,088.00	\$118.30	± 5.1% of the amount over \$3,816.00
\$5,088.00	\$6,360.00	\$183.17	± 6.1% of the amount over \$5,088.00
\$6,360.00	\$9,540.00	\$260.77	± 7.1% of the amount over \$6,360.00
\$9,540.00	\$25,441.00	\$486.55	± 7.4% of the amount over \$9,540.00
\$25,441.00 or more		\$1,663.19	± 7.8% of the amount over \$25,441.00

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).**

Section 63-3022, Idaho Code. (3-20-97)

**01. Lump Sum Distributions.** As provided in Section 63-3022(k), Idaho Code, add the taxable amount of a lump sum distribution excluded from taxable income. (3-30-01)

**02. Withdrawals from an Idaho Medical Savings Account.** As provided in Section 63-3022K, Idaho Code, add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. (7-1-98)

**03. Withdrawals from an Idaho College Savings Program.** (4-2-08)

**a.** As provided in Section 63-3022(o), Idaho Code, an account owner shall add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)

**b.** As provided in Section 63-3022(p), Idaho Code, an account owner shall add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007 to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, only the amounts contributed by the account owner to the Idaho college savings program within twelve (12) months from the date of the transfer shall be added to taxable income. ~~(4-2-08)~~(\_\_\_\_)

**04. Certain Expenses of Eligible Educators.** As provided in Section 63-3022O, Idaho Code, an eligible educator as defined in Section 62, Internal Revenue Code, shall add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. (3-20-04)

**05. State and Local Sales Tax.** As provided in Section 63-3022(j), Idaho Code, add the amount of state and local general sales taxes deducted as an itemized deduction. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).**

Section 63-3022, Idaho Code. (3-20-97)

**01. State and Local Income Tax Refunds.** Subtract from taxable income state and local income tax refunds included in taxable income, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)

**02. Idaho Net Operating Loss.** As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 of these rules. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (7-1-99)

**03. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

**a.** Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

**b.** Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of

the prize is included in income. (4-5-00)

**04. Donated Technological Equipment.** As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market value of technological equipment donated to qualifying institutions. (4-5-00)

**05. Long-Term Care Insurance.** As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty percent (50%) of the amount of the premiums paid during the taxable year. See Rule 193 of these rules.

~~(4-6-05)~~( )

**06. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007.

~~(3-20-04)~~( )

**a.** Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes. (3-20-04)

**b.** Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed. (3-20-04)

**i.** If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (3-20-04)

**ii.** If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (3-20-04)

**iii.** If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (3-20-04)

**iv.** If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

**07. Income Restored Under Federal Claim of Right.** As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer shall be allowed a deduction in determining Idaho taxable

income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction shall be allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. ADJUSTMENTS TO TAXABLE INCOME -- BONUS DEPRECIATION ON PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE DECEMBER 31, 2007 (RULE 125).**

Section 63-3022O, Idaho Code. (4-2-08)

**01. In General.** For taxable years beginning on and after January 1, 2001, Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, shall be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer shall be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed.

(4-2-08)( )

**02. Depreciation.** (4-2-08)

**a.** If a taxpayer makes the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, in the subsequent taxable years the taxpayer shall be entitled to the Idaho subtractions for the additional depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation claimed for federal income tax purposes. (4-2-08)

**b.** If a taxpayer fails to make the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, the taxpayer shall not be entitled to claim the Idaho subtractions for additional depreciation in subsequent taxable years. In such instances, claiming an Idaho subtraction for additional depreciation when the first year Idaho addition was not claimed constitutes computing depreciation with regard to Section 168(k), Internal Revenue Code, which is specifically prohibited in Section 63-3022O(1), Idaho Code. For example, the Idaho addition is required for a taxable year when the bonus depreciation is claimed even though the taxpayer may be limited in claiming a passive loss from a pass-through entity in which the bonus depreciation arose. If the bonus depreciation is not added back in that taxable year, the Idaho subtractions are not allowed in the subsequent taxable years. (4-2-08)

**c.** The Idaho adjustments shall be required in all taxable years in which the taxpayer has an Idaho filing requirement or is a member of a combined group of corporations in which at least one member has an Idaho filing requirement. If the taxpayer is not required to file an Idaho income tax return for one (1) or more years in which depreciation may be claimed, the taxpayer shall claim the Idaho adjustment in the taxable years in which an Idaho return is filed if all such taxable years are treated consistently. (4-2-08)

**d.** Example. A corporation transacted business in California and Oregon during taxable year 2003. In 2004, the taxpayer began transacting business in Idaho and was required to file an Idaho corporation income tax return for that year. On the federal return filed for 2003, the taxpayer claimed bonus depreciation for assets placed in service that year. Because the taxpayer was not required to file an Idaho corporation income tax return for 2003, there was no Idaho bonus depreciation addition required of the taxpayer. In 2004, the second year of depreciation for the assets placed in service in 2003, the taxpayer was required for Idaho income tax purposes to compute depreciation on the assets as if bonus depreciation had not been claimed. The difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes for 2004 would be allowed to the taxpayer as an Idaho subtraction since the taxpayer was required to file an Idaho corporation income tax return for that year. Assuming the taxpayer files an Idaho corporation income tax return for the remaining years when depreciation on the assets is allowed, the taxpayer will be allowed the Idaho subtraction in those years for the difference in the Idaho and federal depreciation amounts. If the corporation transacted business in Idaho during 2003 only, the return filed for that year

should reflect the Idaho addition for the difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes, even though the subtractions will not apply in subsequent years. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**128. IDAHO ADJUSTMENTS -- PASS-THROUGH ENTITIES (RULE 128).**

**01. In General.** An adjustment to a partnership, S corporation, estate or trust allowed or required by Idaho statute generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. (3-20-97)

**a. Partnerships.** An adjustment passes through to a partner based on that partner's distributive share of partnership profits. (3-20-97)

**b. S Corporations.** An adjustment passes through to a shareholder based on that shareholder's pro rata share of income or loss. (3-20-97)

**c. Estates and Trusts.** An adjustment passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. (3-20-97)

**02. Limitations.** Deductions claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. (3-20-97)

**03. Different Taxable Year Ends.** If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the adjustment shall be claimed in the same taxable year that income or loss from that entity is reported for federal income tax purposes. (3-20-97)

**04. Information Provided by a Pass-Through Entity.** The pass-through entity shall prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each adjustment. Copies of these schedules shall be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the adjustment is allowed or required. (3-20-97)

**05. Pass-Through Entities That Pay Tax.** Generally, a pass-through entity shall report the same Idaho adjustments as those allowed to the individual partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. However, ~~a pass through entity is not allowed a deduction for an Idaho net operating loss, a capital loss pursuant to Section 1212, Internal Revenue Code, an Idaho capital gains deduction, or any other adjustment that is not specifically allowed by statute or rule to an entity such as the one paying the tax~~ certain deductions that may be allowed to the individual if reporting and paying the tax shall not be allowed to the pass-through entity. (4-5-00)( )

**a.** See Rule 291 of these rules for information on computing the taxable income on which a pass-through entity shall be subject to tax. ( )

**b.** See Subsection 173.01 of these rules for the disallowance of an Idaho capital gains deduction to a pass-through entity paying the tax for an electing owner or beneficiary. ( )

**129. (RESERVED).**

**130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).**  
Section 63-3022A, Idaho Code. (3-20-97)

**01. Qualified Benefits.** Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

**a.** ~~Civil service~~ Retirement annuities paid ~~by the United States Government~~ to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System by the United States Government. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal Employees Retirement System do not qualify for the deduction. (3-20-97)( )

**b.** Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

**c.** Retirement benefits paid as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967, or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (4-6-05)

**d.** Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

**02. Unremarried Widow.** An unremarried widow of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow. (4-6-05)

**a.** Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. (4-6-05)

**b.** Example. Assume the same facts as stated in Paragraph 130.02.a, of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. (4-6-05)

**c.** Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. (4-6-05)

**03. Married Individuals Filing Separate Returns.** Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

**04. Publication of Maximum Deduction.** The maximum deduction that may be subtracted when computing Idaho taxable income shall be published each year in the instructions for preparing Idaho individual income tax returns. (3-20-97)

**05. Disabled Individual.** For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code. This includes: (4-6-05)

**a.** An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of

Management and Budget pursuant to Title 5, United States Code; or (4-6-05)

**b.** A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).** (3-20-97)  
Section 63-3022H, Idaho Code.

**01. Timber.** As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

**a.** Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

**b.** Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

**02. Holding Periods.** (3-20-97)

**a.** In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow ~~the definitions provided by Sections 1223 and 735, Internal Revenue Code. See Rule 173 of these rules for the determination of the required holding period for an interest in income of an S corporation or partnership.~~ (3-30-07)(\_\_\_\_)

**b.** Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. Nonqualifying property includes: (7-1-98)

**i.** Real or tangible personal property not having an Idaho situs at the time of the exchange; and (7-1-98)

**ii.** Tangible personal property not used by a revenue-producing enterprise. (7-1-98)

**iii.** Intangible property. (\_\_\_\_)

**c.** Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)

**d.** Examples of nonqualifying property. (7-1-98)

**i.** A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ten (10) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction.



(3-30-07)

ii. Assume the same facts as in the example in Subsection 171.02.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (3-30-07)

**03. Holding Periods of S Corporation and Partnership Property.** (7-1-98)

a. Property Distributed by an S Corporation to a Shareholder or by a Partnership to a Partner. The holding period of property received in a distribution from an S corporation or partnership generally includes the holding period of the S corporation's or partnership's holding period, limited to the length of time the shareholder or partner held his interest in the income of the S corporation or partnership. See Subsection 173.02 of these rules. However, the holding period of property received in exchange for a shareholder's stock or a partner's partnership interest does not include the holding period of the stock or partnership interest given up since the stock and partnership interest are nonqualifying property. (3-20-97)(\_\_\_\_)

b. Property Contributed by a Shareholder to an S Corporation or by a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period and the shareholder or partner held his interest in the S corporation or partnership for the required holding period. (3-30-07)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).**  
Section 63-3022H, Idaho Code. (3-20-97)

**01. In General.** (3-20-97)

a. Qualified property held by an S corporation or partnership may be eligible for the Idaho capital gains deduction. The deduction is claimed on the return of an individual shareholder or individual partner. (3-20-97)

b. Partnerships and S corporations electing to pay the tax for an individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (4-5-00)

**~~02. Interest in Income of a Pass-Through Entity Limitation.~~** (3-30-07)

~~a. An individual may claim an Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation or partnership only to the extent that he held his interest in income of the S corporation or partnership for the required holding period. A shareholder's interest in income of the S corporation is his pro rata share of the income or loss. A partner's interest in income of the partnership is his distributive share of partnership profits.~~ (3-30-07)

~~b. Example. A shareholder in an S corporation had a twenty five percent (25%) interest in income in 2003. On January 10, 2005, the shareholder's interest in income increased to fifty percent (50%). In September 2005, the S corporation recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property held since 2003. Fifty percent (50%) of the gain, or ten thousand dollars (\$10,000) flows to the shareholder for the year of the sale to be reported on his individual income tax return based on his fifty percent (50%) interest in income. The shareholder did not hold his fifty percent (50%) interest in income for twelve (12) months, the required holding~~

*period. Therefore, his capital gains from qualified property is limited to his qualifying interest in income of twenty-five percent (25%) of the total gain, or five thousand dollars (\$5,000). If the shareholder had no other qualifying capital gains or losses, his capital gains deduction is three thousand dollars (\$3,000) computed as follows: (\$20,000 total gain X 25% qualifying interest X 60% = \$3,000 Idaho capital gains deduction.) (3-30-07)*

*e. The required holding period for an individual's interest in income is the time specified in Section 63-3022H(3), Idaho Code, for the property on which an Idaho capital gains deduction is being claimed. Different types of property have different time periods specified. For example, real property must be held twelve (12) months, but timber must be held twenty-four (24) months. As a result, if a partnership has gain from the sale of Idaho land, a partner must have held his interest in income for twelve (12) months. If a partnership has gain from the sale of Idaho timber, a partner must have held his interest in income for twenty-four (24) months. If a partnership has gain from both Idaho land and Idaho timber, a partner must meet both time requirements in order to claim the capital gains deduction on the gains from both types of property. If a partner holds his interest in income for only one (1) of the time periods required, the partner may claim the capital gains deduction only on the gain from that property. For example, if the partner held his interest in income for only eighteen (18) months, he would be entitled to claim a capital gains deduction only on the gain from the sale of the Idaho land, not on the gain from the sale of the Idaho timber. (3-30-07)*

*d. Tacked-on holding periods included in the holding period of an individual's partnership interest or an individual's S corporation stock, shall not apply in determining whether an interest in income has been held for the required time. (3-30-07)*

**032. Gross Income Limitations.** To qualify for the Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one-half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. (3-30-07)

**043. Multistate Entities.** A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

**054. Examples.** (3-20-97)

**a.** XYZ Farms, a multistate partnership, sold three (3) parcels of farmland: one (1) in Idaho purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar (\$40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar (\$30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar (\$20,000) loss, for a net gain of fifty thousand dollars (\$50,000). The income and loss from the sale of the farmland is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of six thousand dollars (\$6,000), computed as follows: (\$40,000 Idaho gain X 75% apportionment factor = \$30,000 gain apportioned to Idaho X 1/3 interest = \$10,000 attributable to each partner X 60% = \$6,000 capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or eight thousand dollars (\$8,000). After 2001, the capital gains deduction returns to sixty percent (60%) or six thousand dollars (\$6,000). (3-30-07)

**b.** Assume the same facts as in Paragraph 173.054.a., of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return. (3-30-07)(\_\_\_\_\_)

**c.** Assume the same facts as in Paragraph 173.054.a., of this rule, except that the Oregon property was sold at a ninety thousand dollar (\$90,000) loss, resulting in capital gain net loss from the partnership. If a partner had

other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.054.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. (3-30-07)(\_\_\_\_)

**d.** Assume the same facts as in Paragraph 173.054.a., of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar (\$40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000), computed as follows: (\$40,000 gain allocated to Idaho X 1/3 = \$13,333 partner's share X 60% = \$8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667). (3-30-07)(\_\_\_\_)

**e.** An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.054.a., of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000) computed as follows: (\$40,000 Idaho gain X 1/3 interest X 60% = \$8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667). Idaho gain X 1/3 interest X 80% = \$10,667). (3-30-07)(\_\_\_\_)

**f.** Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**193. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE (RULE 193).** (3-20-04)  
Sections 63-3022P and 63-3022Q, Idaho Code.

**01. In General.** The amounts paid by an individual taxpayer for health insurance and long-term care insurance that are not otherwise deducted or accounted for are allowed as deductions from taxable income. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction allowed for the long-term care insurance premiums was limited to fifty percent (50%) of the amount paid during the taxable year. (4-6-05)

**02. Costs Deducted or Accounted For.** Deductions are not allowed for health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for. See Rule 194 of these rules for examples of the limitations when costs are otherwise deducted or accounted for. Health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for include amounts: (4-6-05)(\_\_\_\_)

- a.** Paid out of an Idaho medical savings account; (5-3-03)
- b.** Paid through a cafeteria plan or other salary-reduction arrangement when these costs are paid out of pretax income; or (4-6-05)
- c.** Deducted as business expenses. (5-3-03)

**03. Social Security Medicare Part A.** (5-3-03)

**a.** The payroll tax paid for Medicare A is not considered a medical expense under Section 213, Internal Revenue Code and, therefore, does not qualify for the Idaho deduction for health insurance costs. This applies to individuals who are covered by Social Security or are government employees who paid Medicare tax. (5-3-03)

b. The amount of premiums a taxpayer pays to voluntarily enroll in Medicare A is deductible under Section 213, Internal Revenue Code, and qualifies for the Idaho deduction for health insurance costs. This applies to individuals who are not covered under Social Security or who were not government employees who paid Medicare tax. (5-3-03)

**04. Social Security Medicare Part B.** Amounts paid for Medicare B, which is a supplemental medical insurance, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. (5-3-03)

**05. Social Security Medicare Part D.** Amounts paid for Medicare D, which is a voluntary prescription drug insurance program for individuals with Medicare A or B, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. ( )

**056. Medical Payments Coverage and Personal Injury Protection of Automobile Insurance.** The portion of automobile insurance that covers medical payments coverage or personal injury protection does not qualify for the Idaho deduction for health insurance costs because the insurance coverage is not restricted to the taxpayer, the taxpayer's spouse, or the dependents of the taxpayer. This insurance provides protection to the driver and passengers of the policyholder's car or other injured parties. (5-3-03)

~~**06. Examples of Limitations When Costs Are Otherwise Deducted or Accounted For.** If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the seven and one-half percent (7.5%) adjusted gross income limitation, the amount that is deducted as an itemized deduction shall first apply to health insurance costs, next to long term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the seven and one-half percent (7.5%) adjusted gross income limitation, the full amount of health insurance costs and premiums paid for long term care insurance (fifty percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations shall not be less than zero (0). (4-6-05)~~

~~**a.** Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to zero (0): (3-20-04)~~

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long term insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% of federal adjusted gross income	\$0
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
<b>HEALTH INSURANCE</b>		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>		

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$6,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$4,000
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$0

(4-6-05)

~~b. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to three thousand dollars (\$3,000):~~ (3-20-04)

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$3,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$13,000
<b>HEALTH INSURANCE</b>	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$3,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$3,000
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$1,000

(4-6-05)

~~e. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to six thousand dollars (\$6,000):~~ (3-20-04)

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
1. Health insurance expenses claimed on federal Schedule A	\$10,000

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
2.	Long-term insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% of federal adjusted gross income	\$6,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
<b>HEALTH INSURANCE</b>		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>		
11.	Total amount paid for long-term care insurance	\$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14.	Long-term care insurance deducted elsewhere on the federal return	\$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000

d. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to fourteen thousand dollars (\$14,000): (3-20-04)

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% of federal adjusted gross income	\$14,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$2,000
<b>HEALTH INSURANCE</b>		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$2,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$8,000
<b>LONG-TERM CARE INSURANCE</b>		
11.	Total amount paid for long-term care insurance	\$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
13. <i>Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)</i>	\$0
14. <i>Long-term care insurance deducted elsewhere on the federal return</i>	\$50
15. <i>Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)</i>	\$4,000

(4-6-05)

**194. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE -- EXAMPLES OF LIMITATIONS (RULE 194).**

Sections 63-3022P and 63-3022Q, Idaho Code.

( )

**01. Examples of Limitations When Costs are Otherwise Deducted or Accounted For.** If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the seven and one-half percent (7.5%) adjusted gross income limitation, the amount that is deducted as an itemized deduction shall first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the seven and one-half percent (7.5%) adjusted gross income limitation, the full amount of health insurance costs and premiums paid for long-term care insurance (fifty-percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations shall not be less than zero (0).

( )

**02. Example with Seven and One-Half Percent (7.5%) of Federal Adjusted Gross Income Equal to Zero (0).**

( )

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$0
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
<b>HEALTH INSURANCE</b>	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$6,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$4,000

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
<b>14.</b> Long-term care insurance deducted elsewhere on the federal return	\$50
<b>15.</b> Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$0

( )

**03. Example with Seven and One-Half Percent (7.5%) of Federal Adjusted Gross Income Equal to Three Thousand Dollars (\$3,000).**

( )

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
<b>1.</b> Health insurance expenses claimed on federal Schedule A	\$10,000
<b>2.</b> Long-term care insurance expenses claimed on federal Schedule A	\$4,000
<b>3.</b> Other medical expenses claimed on federal Schedule A	\$2,000
<b>4.</b> Total medical expenses claimed on federal Schedule A	\$16,000
<b>5.</b> 7.5% of federal adjusted gross income	\$3,000
<b>6.</b> Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$13,000
<b>HEALTH INSURANCE</b>	
<b>7.</b> Total amount paid for health insurance	\$10,100
<b>8.</b> Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
<b>9.</b> Health insurance expenses deducted elsewhere on the federal return	\$100
<b>10.</b> Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>	
<b>11.</b> Total amount paid for long-term care insurance	\$4,050
<b>12.</b> Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$3,000
<b>13.</b> Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$3,000
<b>14.</b> Long-term care insurance deducted elsewhere on the federal return	\$50
<b>15.</b> Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$1,000

( )

**04. Example with Seven and One-Half Percent (7.5%) of Federal Adjusted Gross Income Equal to Six Thousand Dollars (\$6,000).**

( )

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
<b>1.</b> Health insurance expenses claimed on federal Schedule A	\$10,000
<b>2.</b> Long-term care insurance expenses claimed on federal Schedule A	\$4,000
<b>3.</b> Other medical expenses claimed on federal Schedule A	\$2,000
<b>4.</b> Total medical expenses claimed on federal Schedule A	\$16,000



<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
<b>5.</b>	7.5% of federal adjusted gross income	\$6,000
<b>6.</b>	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
<b>HEALTH INSURANCE</b>		
<b>7.</b>	Total amount paid for health insurance	\$10,100
<b>8.</b>	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
<b>9.</b>	Health insurance expenses deducted elsewhere on the federal return	\$100
<b>10.</b>	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>		
<b>11.</b>	Total amount paid for long-term care insurance	\$4,050
<b>12.</b>	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
<b>13.</b>	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
<b>14.</b>	Long-term care insurance deducted elsewhere on the federal return	\$50
<b>15.</b>	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000

( )

**05. Example with Seven and One-Half Percent (7.5%) of Federal Adjusted Gross Income Equal to Fourteen Thousand Dollars (\$14,000).**

( )

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
<b>1.</b>	Health insurance expenses claimed on federal Schedule A	\$10,000
<b>2.</b>	Long-term care insurance expenses claimed on federal Schedule A	\$4,000
<b>3.</b>	Other medical expenses claimed on federal Schedule A	\$2,000
<b>4.</b>	Total medical expenses claimed on federal Schedule A	\$16,000
<b>5.</b>	7.5% of federal adjusted gross income	\$14,000
<b>6.</b>	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$2,000
<b>HEALTH INSURANCE</b>		
<b>7.</b>	Total amount paid for health insurance	\$10,100
<b>8.</b>	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$2,000
<b>9.</b>	Health insurance expenses deducted elsewhere on the federal return	\$100
<b>10.</b>	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$8,000
<b>LONG-TERM CARE INSURANCE</b>		
<b>11.</b>	Total amount paid for long-term care insurance	\$4,050
<b>12.</b>	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
<b>13.</b> <u>Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)</u>	\$0
<b>14.</b> <u>Long-term care insurance deducted elsewhere on the federal return</u>	\$50
<b>15.</b> <u>Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)</u>	\$4,000

( )

1945. -- 199. (RESERVED).

**200. NET OPERATING LOSS -- CORPORATIONS (RULE 200).**

Section 63-3021, Idaho Code.

(3-20-97)

~~01.~~ Unitary Taxpayers. Each corporation included in a unitary group must determine its respective share of the Idaho apportioned net operating loss incurred by the unitary group for the taxable year. A corporation's share of the net operating loss is computed using its Idaho apportionment factor for the year of the loss. The corporation must add or subtract its nonbusiness income or loss allocated to Idaho to its share of the apportioned loss. (3-20-97)

~~02. Net Operating Losses That Survive a Merger. Subject to the provisions of Sections 381 and 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation will survive a merger. (3-20-97)~~

~~a. Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity of business requirements. (3-20-97)~~

~~b. If the pre-merger corporation conducted multistate operations, the Section 382, Internal Revenue Code, loss limitation is limited further by the pre-merger loss corporation's Idaho apportionment factor for the last taxable year preceding the date of the merger. (3-20-97)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (RULE 254).**

Section 63-3026A(6), Idaho Code.

(3-20-97)

**01. Net Operating Loss Carryover.** Subtract the net operating loss carryover allowed by Section 63-3022(c), Idaho Code, to the extent the loss was incurred while residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. (5-3-03)

**02. State and Local Income Tax Refunds.** Subtract state and local income tax refunds included in Idaho total income. (3-15-02)

**03. Income Not Taxable by Idaho.** Subtract income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States, if that income is included in Idaho total income and has not been previously subtracted. Income not taxable by Idaho includes: (3-15-02)

**a.** Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

**b.** Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets

purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

**c.** Certain income earned by American Indians. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxable on income derived within the reservation. See Rule 033 of these rules. (5-3-03)

**d.** Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. (7-1-99)

**04. Military Pay.** Subtract qualified military pay included in Idaho total income earned for military service performed outside Idaho. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. (3-15-02)

**05. Social Security and Railroad Retirement Benefits.** Subtract social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules. (3-15-02)

**06. Household and Dependent Care Expenses.** Subtract the allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, calculate a percentage by dividing Idaho earned income by total earned income. Multiply the qualified expenses by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (3-20-97)

**07. Insulation and Alternative Energy Device Expenses.** Subtract expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code. (3-20-97)

**08. Deduction for Dependents Sixty-Five or Older or with Developmental Disabilities.** Subtract one thousand dollars (\$1,000) for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (3-20-97)

**09. Adoption Expenses.** Subtract the allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code. To determine the allowable portion, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022I, Idaho Code, by the percentage. (3-15-02)

**10. Capital Gains Deduction.** Subtract the Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code. (3-20-97)

**11. Idaho Medical Savings Account.** (7-1-98)

**a.** Subtract contributions to an Idaho medical savings account that meet the requirements of Section 63-3022K, Idaho Code. (7-1-98)

**b.** Subtract interest earned on an Idaho medical savings account to the extent included in Idaho total income. (3-15-02)

**12. Technological Equipment Donation.** Subtract donations of technological equipment allowed by

Section 63-3022J, Idaho Code. See Rule 180 of these rules. (3-20-97)

**13. Worker's Compensation Insurance.** As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-30-01)

**14. Idaho College Savings Program.** Subtract the contributions to a college savings program that meet the requirements of Section 63-3022(n), Idaho Code. (3-15-02)

**15. Retirement Benefits.** As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. To determine the allowable portion of the deduction for certain retirement benefits, calculate a percentage by dividing the qualified retirement benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. Multiply the deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, by the percentage. (3-30-01)

**16. Health Insurance Costs.** Subtract the allowable portion of the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care as defined in Section 63-3022P, Idaho Code, for the taxpayer, spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion of the amounts paid for medical care insurance, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022P, Idaho Code, by the percentage. See Rule 193 of these rules. (5-3-03)

**17. Long-Term Care Insurance.** As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022Q, Idaho Code, by the percentage. See Rule 193 of these rules. ~~(5-3-03)~~(\_\_\_\_)

**18. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007. ~~(3-20-04)~~(\_\_\_\_)

**a.** Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes. (3-20-04)

**b.** Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed. (3-20-04)

**i.** If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (3-20-04)

**ii.** If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (3-20-04)

**iii.** If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (3-20-04)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**266. INCOME FROM INTANGIBLE PROPERTY (RULE 266).**

Section 63-3026A(3), Idaho Code.

(7-1-99)

**01. In General.** Gross income from intangible property generally is sourced to the state of the owner's domicile. The following are exceptions to this rule. (4-11-06)

**a.** If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (7-1-99)

**b.** Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. (7-1-99)

**c.** Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. (7-1-99)

**d.** Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. (4-11-06)

**02. Interest Income Earned on a Bank Account.**

(7-1-99)

**a.** Personal Bank Accounts. Interest income earned on a personal bank account is sourced to the owner's state of domicile. A personal bank account is an account that is not used in connection with a business. (7-1-99)

**b.** Business Bank Accounts. If the business is a sole proprietorship, see Rule 265 of these rules. If the business is an S corporation or partnership, see Rule 263 of these rules. (7-1-99)

**03. Payment of Penalties.** Payment of penalties shall be sourced to Idaho the same as interest income. This includes penalties arising from the prepayment or late payment of an installment contract. If the installment contract is for the sale of Idaho property, any penalties paid shall be Idaho source income. ( )

**034. Covenant Not to Compete.** Income from a covenant not to compete is sourced to the owner's state of domicile unless the covenant was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a. of this rule. (4-11-06)

**05. Timing of Sourcing Determination for Intangible Personal Property.** The source of gains and losses from the sale or other disposition of intangible personal property is determined at the time of the sale or disposition of the property. For example, if an Idaho resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, gain attributable to any installment payment receipts relating to that sale will be sourced to Idaho even though the individual is a nonresident when a payment is received. If the intangible personal property was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a., of this rule, at the time of the sale, any subsequent installment payments shall be Idaho source income. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**273. IDAHO COMPENSATION -- UNEMPLOYMENT COMPENSATION (RULE 273).** ( )  
Section 63-3026A(3), Idaho Code.

**01. In General.** If an individual receives unemployment compensation benefits that are related to work performed in Idaho, all or part of the unemployment compensation benefits are Idaho source income, even though the unemployment compensation benefits may relate to services performed in Idaho in an earlier taxable year. If the unemployment compensation benefits are received for employment in Idaho and in one or more other states, the portion of the unemployment compensation benefits that constitutes Idaho source income shall be determined by multiplying the unemployment compensation benefits received by the proration of Idaho wages to total wages used in computing the unemployment compensation benefits. ( )

**02. Example.** John, a nonresident of Idaho, worked in Idaho and Oregon during 2007, earning forty-five thousand dollars (\$45,000), of which fifteen thousand dollars (\$15,000) was for personal services provided in Idaho. On January 1, 2008, John was laid off by his employer. During 2008, he received unemployment compensation benefits totaling twelve thousand dollars (\$12,000) from the state of Oregon. These benefits were based on his total wages of forty-five thousand dollars (\$45,000) received during 2007. Because part of the unemployment compensation benefits received by John in 2008 related to his work in Idaho, John has Idaho source income from the unemployment compensation benefits. To determine the amount of Idaho source income John received, he must compute the percentage of Idaho wages to total wages that was used to compute the unemployment compensation benefits and apply that percentage to the amount of unemployment compensation benefits he received. This computation must be made even though John did not perform personal services in Idaho in 2008, the year the unemployment compensation benefits were received. The unemployment compensation taxable to Idaho is four thousand dollars (\$4,000) computed as follows: (\$15,000 Idaho wages divided by total wages of \$45,000 = 1/3 X unemployment compensation received of \$12,000 = \$4,000 of Idaho source income). ( )

**273.—274. (RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

**290. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES -- ELECTION (RULE 290).** (3-30-07)  
Section 63-3022L, Idaho Code.

**01. Election Provided in Section 63-3022L, Idaho Code.** (3-30-01)

**a.** The election to have ~~the~~ a qualifying entity pay the tax as provided in Section 63-3022L, Idaho Code, is available only to an individual who is an officer, director, shareholder, partner, member, or beneficiary. If the individual has Idaho taxable income in addition to income described in Section 63-3022L, Idaho Code, the election is not available. (~~3-30-01~~)( )

**b.** The election is not available to corporations, partnerships or electing small business trusts, or to any

other person who is not an individual. (3-30-01)

c. Permission from the Tax Commission to make the election is not required. (3-30-01)

d. The election is made by the individual. No statement or form is required. If the election is made, the entity shall report and pay the tax on the individual's Idaho taxable income. The individual's Idaho taxable income is described in Rule 291 of these rules. (3-30-07)

e. An individual may not make the election for his income received from a corporation other than an S corporation if the corporation reports less than fifty percent (50%) of its taxable income to Idaho. ( )

**02. Failure to Make Election.** If the individual fails to make the election to have the entity pay the tax, and does not report and pay the tax on the income described in Rule 291 of these rules on an Idaho individual income tax return when such return is required, the entity shall be required to pay the tax on such income. (3-30-07)

**03. Multiple Pass-Through Entities.** An individual may make the election even though he is an officer, director, shareholder, partner, member, or beneficiary in more than one (1) qualifying entity provided that all his income is subject to the election in Section 63-3022L(2), Idaho Code. ( )

**04. Examples.** ( )

a. An individual is a partner in Partnership A and Partnership B. He has no other Idaho taxable income. The individual may make the election for both partnerships. ( )

b. An individual is a partner in Partnership A and a shareholder of S Corporation B. He has no other Idaho taxable income. The individual may make the election for both entities. ( )

c. An individual is a partner in Partnership A and a director of Corporation B, which has an Idaho apportionment factor of twelve percent (12%) and no nonbusiness income reported to Idaho. The individual received compensation from Corporation B for his work as a director. Because the provisions of Section 63-3022L, Idaho Code, do not apply to a corporation with less than fifty percent (50%) of its income taxable to Idaho, the individual has Idaho taxable income not subject to Section 63-3022L, Idaho Code. As a result, the individual may not make the election for either Partnership A or Corporation B. ( )

d. An individual is a partner in Partnership A and received rental income from a house he owned in Idaho. Because the individual has Idaho taxable income not subject to Section 63-3022L, Idaho Code, the individual may not make the election for Partnership A. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. SALES FACTOR -- SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 550).**

Section 63-3027(r), Idaho Code. (3-20-97)

**01. In General.** Section 63-3027(r), Idaho Code, provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government. Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. (3-20-97)

**02. Income Producing Activity.** The term income producing activity applies to each separate item of income and means the transactions and activity *directly* engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of *obtaining gains or profit* producing that item of income. The activity *generally*

~~does not~~ includes transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. ~~However, income producing activity shall include transactions and activities performed on behalf of a taxpayer when the taxpayer sells its product exclusively through independent contractors, when the independent contractors can only work for the taxpayer, or when excluding the transactions and activities of the independent contractors would lead to an unreasonable result.~~ ( )

**a.** Income producing activity includes the following: (4-11-06)( )

~~a.i.~~ The rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the use of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service; (3-20-97)( )

~~b.ii.~~ The sale, rental, leasing, licensing or other use of real property; (3-20-97)

~~c.iii.~~ The rental, leasing, licensing or other use of tangible personal property; and (3-20-97)( )

~~d.iv.~~ The sale, licensing or other use of intangible personal property; ~~and~~ (3-20-97)( )

~~e.h.~~ The mere holding of intangible personal property is not, by itself, an income producing activity. (3-20-97)

**03. Costs of Performance.** Costs of performance are the direct costs determined ~~according to~~ in a manner consistent with generally accepted accounting principles and according to accepted conditions or practices of the taxpayer's trade or business to perform the income producing activity that gives rise to the particular item of income. ~~Only the direct costs paid by the taxpayer shall be considered.~~ Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property that give rise to the particular item of income. (4-11-06)( )

**04. Application.** In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: (3-20-97)

**a.** The income producing activity is performed wholly in Idaho; or (3-20-97)

**b.** The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. (3-20-97)

**05. Special Rules.** The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: (3-20-97)

**a.** Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. (3-20-97)

**b.** Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho shall be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. (3-20-97)

**c.** Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows: ((ten (10) bulldozers x fifty (50) days) / (ten (10) bulldozers x three hundred sixty five (365) days)) x total receipts = receipts attributable to Idaho. (3-20-97)

**d.** Gross receipts for the performance of personal services are attributable to Idaho to the extent the services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs



of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. (3-20-97)

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. (3-20-97)

f. Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars (\$9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars (\$3,000):  $(200 \text{ man hours} / 600 \text{ man hours}) \times \$9,000$ . (3-20-97)

**06. Services on Behalf of the Taxpayer.** An income producing activity performed on behalf of a taxpayer by an agent or independent contractor is attributed to Idaho if such income producing activity is in Idaho. ( )

a. Such income producing activity is in Idaho; ( )

i. When the taxpayer can reasonably determine at the time of filing that the income producing activity is actually performed in Idaho by the agent or independent contractor. However, if the activity occurs in more than one state, the location where the income producing activity is actually performed shall be deemed to be not reasonably determinable at the time of filing under Subparagraph 550.06.a.i. of this rule. ( )

ii. If the taxpayer cannot reasonably determine at the time of filing where the income producing activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract. ( )

iii. If it cannot be determined where the income producing activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract; or ( )

iv. If it cannot be determined where the income producing activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with such performance, when the domicile of the taxpayer's customer is in this state. If the taxpayer's customer is not an individual, "domicile" means commercial domicile. ( )

b. If the location of the income producing activity by an agent or independent contractor, or the portion of the payment associated with such performance, cannot be determined under Subparagraphs 550.06.a.i. through 550.06.a.iii. of this rule, or the taxpayer's customer's domicile cannot be determined under Subparagraph 550.06.a.iv. of this rule, or, although determinable, such income producing activity is in a state in which the taxpayer is not taxable, such income producing activity shall be disregarded. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- IN GENERAL (RULE 700).**

Section 63-3029, Idaho Code. (3-30-07)

**01. Taxpayers Entitled to the Credit.** The credit for taxes paid to another state shall be allowed only to qualifying individuals. ( )

**a.** The credit is allowed to resident individuals who are domiciled in Idaho at the time the income was earned in another state. ~~as~~ ( )

**b.** The credit is allowed to part-year resident individuals who were domiciled or residing in Idaho at the time the income was earned in another state. ( )

**c.** Income earned in another state shall be determined under Section 63-3026A, Idaho Code, and related rules. *An individual who is not domiciled in Idaho but who qualifies as a resident in accordance with Section 63-3013(b), Idaho Code, does not qualify for this credit.* (4-2-08)( )

**02. Taxes Eligible for the Credit.** The credit for taxes paid to another state is allowed for the amount of income tax imposed by another state on a qualifying individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member or beneficiary. For taxes paid to another state by a pass-through entity, the credit is allowed to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state. (3-30-07)( )

**03. Taxes Not Eligible for the Credit.** Any tax or portion thereof imposed on capital stock, retained earnings, stock values, or a basis other than income is not eligible for the credit. (7-1-98)

**04. Credit Calculated on a State-by-State Basis.** The credit and credit limitations shall be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. (7-1-98)

**05. Income Tax Payable to Another State.** The income tax payable to another state shall be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. (3-30-07)

**06. Limitations.** The credit for taxes paid to another state shall be limited as follows: (3-30-07)

**a.** The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, or trust. (3-30-07)

**b.** If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit shall reduce the income tax paid by the pass-through entity. For example, an individual domiciled in Idaho is required to pay tax in another state due to his interest in an S corporation operating in that state. In addition to the individual's tax paid to the other state, the S corporation is required to pay an income tax to that state, of which four hundred dollars (\$400) is attributable to the Idaho resident. The individual's income tax to the other state totals three hundred dollars (\$300), but he is entitled to a three-hundred sixty dollar (\$360) refundable corporate tax credit due to his share of the tax paid by the pass-through entity, resulting in a net refund of sixty dollars (\$60). In computing the tax actually paid to the other state, the tax paid by the pass-through entity must be reduced by the net refund received by the individual (\$400 - \$60 = \$340). The credit for tax paid to the other state is limited to three hundred forty dollars (\$340). (3-30-07)

**c.** The credit may not exceed the proportion of the tax otherwise due to Idaho that the amount of the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. For example, if the adjusted gross income derived in another state is twelve thousand dollars (\$12,000) after taking into account the Idaho additions and subtractions required by the Idaho Income Tax Act, and the individual's total adjusted gross income similarly modified equals fifty thousand dollars (\$50,000), the credit cannot exceed twenty-four percent (24%) of the tax paid to Idaho ( $\$12,000/\$50,000 = 24\% \times$  tax paid to Idaho). (3-30-07)

**07. Rounding.** For taxable years beginning in or after 2007, the proration calculated under Section 63-3029, Idaho Code, shall be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ( $\$10,000/\$15,000 = .66666 = .6667 = 66.67\%$ ). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ( $\$10,000/\$30,000 = .33333 = .3333 = 33.33\%$ ). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). (4-2-08)

**701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- PART-YEAR RESIDENTS (RULE 701).**  
Section 63-3029, Idaho Code. (3-30-07)

**01. Income Subject to Tax by Both States.** For purposes of the credit for income taxes paid to another state, income subject to tax by both states shall mean the total amount of income a taxpayer receives from sources outside of Idaho during the portion of the year he is domiciled or residing in Idaho. Both the source state and Idaho must impose an income tax on this income. Income received during the portion of the year the taxpayer was not domiciled or residing in Idaho does not qualify. (~~3-30-07~~)(\_\_\_\_)

**02. Examples.** The following examples assume the taxpayer earned only wage income. (3-30-07)

**a.** Taxpayer A was domiciled in California and worked in that state from January through June. In July he moved to Idaho and changed his domicile from California to Idaho. He worked in Idaho the rest of the year. California will tax only the wages earned in California and Idaho will tax only the wages earned in Idaho. Because no income is subject to tax by both states, no credit for income taxes paid another state is allowed. (3-30-07)

**b.** Taxpayer B was domiciled in Oregon from January through June. On July 1 he moved to Idaho and changed his domicile from Oregon to Idaho. He resided in Idaho the rest of the year. He worked in Oregon for the same employer the entire year. Oregon will tax all the wages earned during the year since they were earned in Oregon. Idaho will tax only the wages he earned in Oregon while residing in Idaho. As a result, only one-half (6 months / 12 months = 1/2) of his wages qualify for credit purposes as being subject to tax by both Idaho and Oregon. (3-30-07)

**c.** Taxpayer C was domiciled in California. He resided and worked in California from January through June. On July 1 he moved to Idaho, but did not change his domicile to Idaho as he intended to return to his home in California once his job assignment in Idaho was completed. California will tax all his wages income earned during the year since he is domiciled in California. Idaho will tax only the wages income he earned in Idaho while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California on his Idaho wages because he is not domiciled in Idaho this income is not earned in another state. If Taxpayer C received other income while residing in Idaho that is taxed by Idaho but sourced to another state, such as gains on the sale of stock, he may be entitled to a credit for taxes paid on this income. (~~3-30-07~~)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. IDAHO INVESTMENT TAX CREDIT -- IN GENERAL (RULE 710).**  
Section 63-3029B, Idaho Code. (3-20-97)

**01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 717~~9~~ of these rules. (~~3-20-97~~)(\_\_\_\_)

**02. Limitations.** The investment tax credit allowable in any taxable year shall be limited by the following: (3-20-97)

**a.** Tax liability. (3-30-01)

i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. (3-30-01)

~~iii. For taxable years beginning prior to January 1, 1995, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)~~

b. Credit for qualifying new employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-30-01)

c. Unitary taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-01)

d. Nonrefundable credits. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. (3-15-02)

**03. Carryovers.** (3-20-97)

~~a. Carryovers of investment tax credit for property acquired prior to January 1, 1995, may not include property acquired as replacement for reasons other than technical obsolescence. (3-20-97)~~

~~b. Investment tax credit earned on investments made before January 1, 1990, but not claimed against tax in the year earned is eligible for a five (5) year carryover. (3-30-01)~~

ea. Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. (3-30-01)

eb. For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended. (3-30-01)

ec. Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. (3-30-01)

**04. Motor Vehicle.** Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. (3-20-97)

**05. Expensed Property.** The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-30-01)

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment for property acquired after 2007. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**770. GROCERY CREDIT -- TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 2008 (RULE 770).**  
Section 63-3024A, Idaho Code. (3-20-97)

**01. Residents Required to File.** (3-20-97)

**a.** A resident may claim a credit of twenty dollars (\$20) for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. (3-15-02)

**b.** A resident age sixty-five (65) or older may claim a credit of thirty-five dollars (\$35) for each personal exemption described in Paragraph 770.01.a., of this rule that represents an individual age sixty-five (65) or over. (4-6-05)

**c.** A resident who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (3-20-97)

**02. Residents Not Required to File.** A resident who is not required to file an Idaho income tax return may be eligible for the credit. If eligible, the individual shall file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 each year. No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions. The following resident individuals are eligible for the credit: (3-20-97)

**a.** Individuals age sixty-two (62) or older; (3-20-97)

**b.** Disabled veterans; and (3-20-97)

**c.** Blind individuals. (3-20-97)

**03. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (3-20-97)

**04. Members of the Armed Forces.** A member of the United States Armed Forces who is required to file an Idaho income tax return and who is: (3-20-97)

**a.** Domiciled in Idaho is entitled to this credit; (3-20-97)

**b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (4-6-05)

**05. Spouse or Dependents of Armed Forces Members.** A spouse or dependent of a nonresident military person stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (3-20-97)

**06. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (3-20-97)

**771. GROCERY CREDIT -- TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).**  
Section 63-3024A, Idaho Code. ( )

**01. Residents.** ( )

**a.** A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. Such credit shall be allowed as follows:

<b>TAX YEAR</b>	<b>IDAHO TAXABLE INCOME \$1,000 OR LESS</b>	<b>IDAHO TAXABLE INCOME MORE THAN \$1,000</b>
<b>2008</b>	<b>\$50</b>	<b>\$30</b>

( )

**b.** A resident age sixty-five (65) or older may claim an additional credit of twenty dollars (\$20) for each personal exemption described in Paragraph 771.01.a., of this rule, who is age sixty-five (65) or older. ( )

**02. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. ( )

**03. Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: ( )

**a.** Received assistance under the federal food stamp program; ( )

**b.** Was incarcerated; or ( )

**c.** Resided illegally in the United States. ( )

**04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. ( )

**05. Members of the Armed Forces.** A member of the United States Armed Forces who is: ( )

**a.** Domiciled in Idaho is entitled to this credit; ( )

**b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. ( )

**06. Spouse or Dependents of Members of the Armed Forces.** A spouse or dependent of a nonresident member of the Armed Forces stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. ( )

**07. Claiming the Credit.** ( )

**a.** An individual who is required to file an Idaho individual income tax return shall claim the credit on his return. If the credit exceeds his tax liability, the resident shall receive a refund. ( )

**b.** An individual who is not required to file an Idaho income tax return shall file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. ( )

**c.** No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. ( )

**08. Donating the Credit.** Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The

election shall be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. ( )

~~774.~~ -- 774. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**785. CREDITS -- PASS-THROUGH ENTITIES (RULE 785).**

**01. In General.** A credit earned by a partnership, S corporation, estate, or trust generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. (3-20-97)

**a.** Partnerships. A credit passes through to a partner based on that partner's distributive share of partnership profits. (3-20-97)

**b.** S Corporations. A credit passes through to a shareholder based on that shareholder's pro rata share of income or loss. (3-20-97)

**c.** Estates and Trusts. A credit passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. (3-20-97)

**d.** Idaho credits may not pass through to partners or owners based on special allocations. ( )

**02. Limitations.** (3-20-97)

**a.** In General. Credits claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. (3-20-97)

**b.** Example. Partnership XYZ has three (3) individual partners who each are entitled to a one-third (1/3) share of the partnership profits. The partnership contributed three thousand dollars (\$3,000) to an educational institution. The contribution qualifies for the credit provided by Section 63-3029A, Idaho Code. One-third (1/3) of the contribution, one thousand dollars (\$1,000), passes through to Partner X who files a joint return. He is allowed a credit of fifty percent (50%) of the amount contributed, but is limited to the lesser of two hundred dollars (\$200) or twenty percent (20%) of his total income tax liability. (3-15-02)

**c.** Example. Assume the same facts as in Subsection 785.02.b., except Partner X also contributed two hundred dollars (\$200) to a qualifying educational institution. Partner X is treated as contributing one thousand two hundred dollars (\$1,200), to a qualifying educational institution. Since fifty percent (50%) of his contributions, six hundred dollars (\$600) exceeds the limitation, the credit is limited to the lesser of two hundred dollars (\$200) or twenty percent (20%) of his total income tax liability. The credit is not increased because part of the contribution was from Partner X as an individual and part from the partnership. (3-15-02)

**03. Carryovers.** Carryovers of credit are allowed to the partner, shareholder, or beneficiary to the extent provided by statute or rule. (3-20-97)

**04. Different Taxable Year Ends.** If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the credit is available in the same taxable year that income or loss from that entity is reported. (3-20-97)

**05. Information Provided by a Pass-Through Entity.** The pass-through entity shall prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each credit earned and any recapture that is required. Copies of these schedules shall be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the credit is earned and to each return on which the credit is claimed. (3-20-97)

**06. Pass-Through Entities That Pay Tax.** (3-30-01)

**a.** ~~A pass-through entity may apply and may recapture credits that generally pass through to the partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. If a pass-through entity is paying the tax for an electing partner, shareholder, or beneficiary under Section 63-3022L, Idaho Code, the entity may apply any credits attributable to that individual that were earned during the taxable year against the tax computed for that individual. Unused credits from taxable years in which a partner, shareholder, or beneficiary did not make the election may not be applied against the tax by the pass-through entity. Tax due from the recapture of credits shall be reported by the entity for each electing individual. For example, Idaho investment tax credit earned during the taxable year that would have passed through to the owner or beneficiary ~~could~~ may be claimed by the pass-through entity subject to the applicable limitations. Limitations based on the tax liability apply to each owner's or beneficiary's tax liability being paid by the pass-through entity.~~ (3-30-01)(\_\_\_\_)

**b.** The partner, shareholder or beneficiary is responsible for the recapture or recomputation of credits passed through to the partner, shareholder, or beneficiary. (3-30-01)

**c.** Carryovers that exist after a pass-through entity offsets the tax with credit available to that partner, shareholder or beneficiary, remain a carryover of the partner, shareholder or beneficiary. Unused credits from taxable years in which a partner, shareholder, or beneficiary did not make the election may not be carried over by the pass-through entity. (3-30-01)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799).**  
Section 63-3029P, Idaho Code. (5-3-03)

**01. Tax Liability.** Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

**02. Nonrefundable Credits.** A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

**a.** Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

**b.** For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; (5-3-03)

**c.** Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)

**d.** Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)

**e.** Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)

**f.** Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)

**g.** Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)

**h.** Credit for qualifying new employees as authorized by Sections 63-3029E and 63-3029F, Idaho Code; (3-15-02)



- i. Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)
  - j. Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)
  - k. Incentive investment tax credit as authorized by Section 63-3029J, Idaho Code. (3-15-02)
  - ~~l. Corporate headquarters investment tax credit as authorized by Section 63-2903, Idaho Code. (4-11-06)~~
  - ~~m. Corporate headquarters real property improvement tax credit as authorized by Section 63-2904, Idaho Code. (4-11-06)~~
  - ~~n. Corporate headquarters new jobs tax credit as authorized by Section 63-2905, Idaho Code. (4-11-06)~~
  - ~~o. Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. (4-11-06)~~
  - ~~p. Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. (4-11-06)~~
  - ~~q. Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. (4-11-06)~~
  - ~~r. Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. (3-30-07)~~
  - ~~s. Biofuel infrastructure investment tax credit as authorized by Section 63-3029M, Idaho Code. (4-2-08)~~
  - 03. Adjustments to Credits.** (4-11-06)
    - a. Adjustments to the amount of a credit earned shall be determined pursuant to the law applicable to the taxable year in which the credit was earned. (4-11-06)
    - b. Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit shall also apply to any taxable years to which the credit was carried over. (4-11-06)
    - c. If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned shall not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. (4-11-06)
- 800. VALID INCOME TAX RETURNS (RULE 800).** (3-20-97)  
Section 63-3030, Idaho Code.
- 01. Requirements of a Valid Income Tax Return.** In addition to the requirements set forth in IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 150, an income tax return shall meet the requirements set forth in this rule. Those that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income tax return is considered to have filed no return. (3-15-02)
  - 02. Copy of Federal Return Required.** A taxpayer shall include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments. (4-2-08)
  - 03. Verification of Idaho Income Tax Withheld.** A taxpayer who files an Idaho individual income tax return that is submitted on paper and reports Idaho income tax withheld shall attach appropriate Forms W-2 and 1099

and other information forms that verify the amount of the Idaho income tax withheld and claimed on the Idaho income tax return. Returns filed electronically shall include the W-2 and 1099 information in the electronic record transmitted. (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**830. INFORMATION RETURNS (RULE 830).**

Section 63-3037, Idaho Code. (3-20-97)

**01. In General.** Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

**a.** Form 1098, Mortgage Interest Statement, if the property was located in Idaho. (4-5-00)

**b.** Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. (4-5-00)

**c.** Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)

**d.** Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)

**e.** Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)

**f.** Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)

**g.** Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)

**h.** Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

**02. Submitting Returns.** Information returns shall be submitted to the Tax Commission through magnetic media, electronic filing, or on federal Form 1099. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-30-07)

**03. Due Date of Information Returns.** Information returns shall be made on a calendar year basis. The due date for information returns submitted through magnetic media or on paper is the last day of February; following the close of the calendar year. The due date for information returns submitted through electronic filing is March 31 following the close of the calendar year. (3-20-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**855. PERMANENT BUILDING FUND TAX (RULE 855).**

Sections 63-3082 through 63-3087, Idaho Code. (3-20-97)

**01. In General.** The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

**02. Pass-Through Entities.** The permanent building fund tax does not apply to partnerships, estates,

trusts or S corporations if all the income or loss of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. If an election is made under Section 63-3022L, Idaho Code, the entity shall pay the tax for each individual partner, member, shareholder, or beneficiary making the election. A partnership, estate, trust or S corporation that has Idaho taxable income or loss shall pay the permanent building fund tax. For information on when an entity is required to pay the permanent building fund tax for an individual who makes the election under Section 63-3022L, Idaho Code, see Subsection 855.06 of this rule. (3-30-01)(\_\_\_\_)

**03. Corporations Included in a Group Return.** The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. (3-30-07)

**04. Inactive or Nameholder Corporations.** An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax shall pay the permanent building fund tax. (3-20-97)

**05. Taxpayers Protected Under Public Law 86-272.** The permanent building fund tax shall not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. (3-30-07)

**06. Entities That Pay the Tax for Individuals Making the Election Under Section 63-3022L, Idaho Code.** When an individual officer, director, shareholder, partner, member, or beneficiary makes the election under Section 63-3022L, Idaho Code, to have the corporation, partnership, trust, or estate pay his Idaho income tax on income from the entity, the entity shall pay the permanent building fund tax for each qualifying individual making the election. If an individual is making the election for more than one (1) entity for a taxable year, each entity shall be required to pay the permanent building fund tax for the individual. Proration of the permanent building fund tax is not allowed for an individual who has made multiple elections for a taxable year. (\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).** Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

**01. Payment of State Income Tax Withheld.** (4-6-05)

**a.** In General. An employer shall remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe ~~six~~ seven hundred fifty dollars (\$~~607~~750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than ~~fifty dollars (\$50) monthly or six~~ seven hundred fifty dollars (\$~~607~~750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. (3-30-07)(\_\_\_\_)

**b. Split-Monthly Filers.** (4-6-05)

**i.** An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period. (4-6-05)

**ii.** Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(4-6-05)

**c.** Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of January. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (4-11-06)

**02. Filing of Annual Reconciliation Returns.** (4-6-05)

**a.** In General. ~~Beginning January 1, 2004, a~~An employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return shall: ~~(4-6-05)~~(\_\_\_\_)

- i. Report payroll paid during the preceding calendar year; and (4-6-05)
- ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

**b.** Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of ~~January~~ February. The Tax Commission may require a shorter filing period and due date. ~~(4-6-05)~~(\_\_\_\_)

**c.** Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date. (4-6-05)

**03. Extension of Time to Pay or File Returns.** The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

**a.** The employer shall file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-6-05)

**b.** The employer shall file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request shall be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (4-6-05)

**04. Valid Returns.** All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).**

Sections 63-3035 and 63-3036, Idaho Code.

(4-6-05)

**01. Form and Information Required.** Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (4-6-05)

**02. Furnishing Forms W-2 to Employees.** The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-6-05)

**03. Filing Forms W-2 With the Tax Commission.** (3-30-07)

**a.** On or before the last day of February, each employer shall file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. (3-30-07)

**b.** W-2s filed electronically shall be filed with the Tax Commission on or before March 31. (3-30-07)

**04. Corrected Forms W-2.** If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. (4-6-05)

**05. Employers With Fifty or More Idaho Employees.** Each employer with fifty (50) or more Idaho employees who is required to file ~~returns on magnetic media or other machine-readable form~~ W-2s electronically by Section 6011, Internal Revenue Code, shall file ~~in a similar manner or~~ through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the ~~magnetic media or machine-readable form~~ electronic filing shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file ~~on magnetic media~~ electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. ~~(3-30-07)(\_\_\_\_)~~

**06. Services Performed Within and Without Idaho.** If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. ~~Wages may be allocated to Idaho based on workdays, hours, mileage or commissions.~~ (4-6-05)(\_\_\_\_)

**07. Extension of Time to File Form W-2.** The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

**a.** The employer shall file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

**b.** The employer shall file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~901. 919. (RESERVED).~~

~~920. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — DEFINITIONS (RULE 920). Title 63, Chapter 29, Idaho Code. For purposes of administering the Idaho Corporate Headquarters Incentive Act of 2005 and Rules 920 through 926 of these rules, the following definitions apply: (4-11-06)~~

~~01. Buildings and Structural Components. Buildings and structural components shall mean buildings~~

~~and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508.~~ (4-11-06)

~~02. **Corporate Headquarters Investment Tax Credit.** Corporate headquarters investment tax credit shall mean the additional income tax credit allowed by Section 63-2903, Idaho Code.~~ (4-11-06)

~~03. **Corporate Headquarters New Jobs Tax Credit.** Corporate headquarters new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-2905, Idaho Code.~~ (4-11-06)

~~04. **Corporate Headquarters Tax Incentive Criteria.** Corporate headquarters tax incentive criteria shall mean the tax incentive criteria defined in Section 63-2902(2)(j), Idaho Code. See Rule 922 of these rules for more information.~~ (4-11-06)

~~05. **Corporate Headquarters Tax Incentives.** Corporate headquarters tax incentives shall mean the tax incentives allowed by Title 63, Chapter 29, Idaho Code.~~ (4-11-06)

~~06. **Corporate Headquarters Real Property Improvement Tax Credit.** Corporate headquarters real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-2904, Idaho Code.~~ (4-11-06)

~~07. **Investment in New Plant.** Investment in new plant shall mean investment in headquarters or administrative facilities:~~ (4-11-06)

~~a. That is constructed or erected by the taxpayer, or~~ (4-11-06)

~~b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant.~~ (4-11-06)

~~c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings.~~ (4-11-06)

~~08. **Majority of the Company's Services.** A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-2902(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded.~~ (4-11-06)

~~09. **Making Capital Investments.** The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations.~~ (4-11-06)

~~10. **National Headquarters or Administrative Facilities.** A national headquarters is that office or location of a multistate business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the national headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all regional offices, operating facilities or any other offices of the business enterprise. The national headquarters is subordinate only to the ownership of the organization or its representatives.~~ (4-11-06)

~~11. **New Employee.** A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee.~~ (4-11-06)

- ~~12. **Project Period.** The project period is a period of time that begins and ends as follows: (4-11-06)~~
- ~~a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: (4-11-06)~~
- ~~i. The date of a physical change to the project site, or (4-11-06)~~
- ~~ii. The date new employees begin providing personal services at the project site. (4-11-06)~~
- ~~b. The project period shall end at the earlier of: (4-11-06)~~
- ~~i. The conclusion of the project, or (4-11-06)~~
- ~~ii. December 31, 2009. (4-11-06)~~
- ~~13. **Project Site.** The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. (4-11-06)~~
- ~~14. **Regional Headquarters or Administrative Facilities.** A regional headquarters is one (1) of several management offices or facilities of a multistate business that is responsible for planning, directing and controlling a majority of the business operations within a subdivided area of the United States. A regional headquarters performs a function that is separate from the management of operational facilities within the region. A regional headquarters performs functions similar to the national headquarters, but within a more limited area. It has final authority over all matters within its region and is subordinate only to the national headquarters. (4-11-06)~~
- ~~921. **IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — IN GENERAL (RULE 921).**  
Sections 63-4401 and 63-2906, Idaho Code. (4-11-06)~~
- ~~01. **Coordination with Idaho Small Employer Incentive Act of 2005.** A taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under the corporate headquarters incentive act of 2005, shall not be allowed any of the tax incentives provided by the small employer incentive act of 2005. (4-11-06)~~
- ~~02. **Pass-Through Entities.** The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass through entities paying tax, and the application of limitations on pass-through credits. (4-11-06)~~
- ~~03. **Reorganizations, Mergers and Liquidations.** The corporate headquarters investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho corporate headquarters investment tax credits and real property improvement tax credits. See Rule 926 of these rules for information related to the recapture required by an acquiring corporation. (4-11-06)~~
- ~~04. **Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. (4-11-06)~~
- ~~05. **Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the corporate headquarters investment tax credit, real property improvement tax credit, and new jobs tax credit it earns, but does not use, with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of~~

~~the unitary group reduces the carryforward. (4-11-06)~~

~~922. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 CORPORATE HEADQUARTERS TAX INCENTIVE CRITERIA (RULE 922). Section 63-2902, Idaho Code. (4-11-06)~~

~~01. In General. The corporate headquarters tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for corporate headquarters tax incentives. To meet the corporate headquarters tax incentive criteria, a taxpayer shall satisfy the following requirements at the project site, during the project period: (4-11-06)~~

~~a. Making capital investment in new headquarters or administrative facilities totaling fifty million dollars (\$50,000,000) or more; (4-11-06)~~

~~b. Increasing employment by at least five hundred (500) new employees who meet the requirements of Section 63-2902(2)(j)(ii)(1), Idaho Code, and (4-11-06)~~

~~c. Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by five hundred (500) new employees has been reached. (4-11-06)~~

~~02. Certification. A taxpayer shall certify that he has met, or will meet, the corporate headquarters tax incentive criteria before he can claim any of the corporate headquarters tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the corporate headquarters tax incentives: (4-11-06)~~

~~a. A description of the qualifying project; (4-11-06)~~

~~b. The estimated or actual start date of the project; (4-11-06)~~

~~c. The estimated or actual end date of the project; (4-11-06)~~

~~d. The location of the project site or sites; (4-11-06)~~

~~e. Information as to whether the project site is the location of the company's national or regional headquarters; (4-11-06)~~

~~f. The estimated or actual percent of the company's administrative services handled at the project site; (4-11-06)~~

~~g. The estimated or actual number of new administrative jobs created during the project period; and (4-11-06)~~

~~h. The estimated or actual cost of capital investment in new administrative facilities for each year in the project period. (4-11-06)~~

~~03. Copy of Certification Form Required. A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a corporate headquarters income tax incentive is claimed or carried over. (4-11-06)~~

~~923. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 CORPORATE HEADQUARTERS INVESTMENT TAX CREDIT (RULE 923). Sections 63-2903 and 63-2906, Idaho Code. (4-11-06)~~

~~01. Credit Allowed. (4-11-06)~~

~~a. The corporate headquarters investment tax credit allowed by Section 63-2903, Idaho Code, may be~~



~~earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. (4-11-06)~~

~~**b.** The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (4-11-06)~~

~~**02.** **Taxpayers Entitled to the Credit.** The corporate headquarters investment tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. (4-11-06)~~

~~**03.** **Qualified Investments.** (4-11-06)~~

~~**a.** Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments. (4-11-06)~~

~~**b.** Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify. (4-11-06)~~

~~**04.** **Limitations.** The corporate headquarters investment tax credit allowable in any taxable year shall be limited as follows: (4-11-06)~~

~~**a.** The corporate headquarters investment tax credit claimed during a taxable year may not exceed the lesser of: (4-11-06)~~

~~**i.** Five million dollars (\$5,000,000); or (4-11-06)~~

~~**ii.** One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (4-11-06)~~

~~**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (4-11-06)~~

~~**05.** **Carryovers.** The carryover period for the corporate headquarters investment tax credit is fourteen (14) years. (4-11-06)~~

~~**06.** **Coordination with Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who is eligible to claim the corporate headquarters investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the corporate headquarters investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. (4-11-06)~~

~~**924. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — CORPORATE HEADQUARTERS REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 924).** Sections 63-2904 and 63-2906, Idaho Code. (4-11-06)~~

~~**01.** **Credit Allowed.** (4-11-06)~~

~~**a.** The corporate headquarters real property improvement tax credit allowed by Section 63-2904, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005, and before December 31,~~

~~2009.~~

~~(4-11-06)~~

~~**b.** The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the corporate headquarters real property improvement tax credit.~~

~~(4-11-06)~~

~~**02. Taxpayers Entitled to the Credit.** The corporate headquarters real property improvement tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria.~~

~~(4-11-06)~~

~~**03. Buildings and Structural Components of Buildings.**~~

~~(4-11-06)~~

~~**a.** To qualify for the corporate headquarters real property improvement tax credit, buildings and structural components of buildings must meet the following requirements:~~

~~(4-11-06)~~

~~**i.** The buildings and structural components of buildings must be new as defined in Subsection 920.07 of these rules.~~

~~(4-11-06)~~

~~**ii.** The buildings and structural components of buildings must be placed in service at the project site.~~

~~(4-11-06)~~

~~**iii.** The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail, wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the corporate headquarters real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity.~~

~~(4-11-06)~~

~~**b.** Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the corporate headquarters real property improvement tax credit.~~

~~(4-11-06)~~

~~**04. Limitations.** The corporate headquarters real property improvement tax credit allowable in any taxable year shall be limited as follows:~~

~~(4-11-06)~~

~~**a.** The corporate headquarters real property improvement tax credit claimed during a taxable year may not exceed the lesser of:~~

~~(4-11-06)~~

~~**i.** Five hundred thousand dollars (\$500,000); or~~

~~(4-11-06)~~

~~**ii.** One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits.~~

~~(4-11-06)~~

~~**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.~~

~~(4-11-06)~~

~~**05. Carryovers.** The carryover period for the corporate headquarters real property improvement tax credit is fourteen (14) years.~~

~~(4-11-06)~~

~~**925. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — CORPORATE HEADQUARTERS NEW JOBS TAX CREDIT (RULE 925).**~~

~~Sections 63-2905 and 63-2906, Idaho Code.~~

~~(4-11-06)~~

- ~~01. Credit Allowed. (4-11-06)~~
- ~~a. The corporate headquarters new jobs tax credit allowed by Section 63-2905, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. (4-11-06)~~
- ~~b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the corporate headquarters new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. (4-11-06)~~
- ~~c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. (4-11-06)~~
- ~~02. Taxpayers Entitled to the Credit. The corporate headquarters new jobs tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. (4-11-06)~~
- ~~03. Calculating Number of Employees. (4-11-06)~~
- ~~a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-2902(c) and 63-2905, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (4-11-06)~~
- ~~i. The employee must have worked primarily within the project site for the taxpayer. (4-11-06)~~
- ~~ii. The employee must have received earnings at a rate of more than twenty four dollars and four cents (\$24.04) per hour worked. (4-11-06)~~
- ~~iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. (4-11-06)~~
- ~~iv. The employee must have been subject to Idaho income tax withholding. (4-11-06)~~
- ~~v. The employee must have been covered for Idaho unemployment insurance purposes. (4-11-06)~~
- ~~vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. (4-11-06)~~
- ~~vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (4-11-06)~~
- ~~b. Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (4-11-06)~~
- ~~c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (4-11-06)~~
- ~~04. Calculating the Number of New Employees. (4-11-06)~~
- ~~a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (4-11-06)~~
- ~~i. The number of employees for the prior taxable year; or (4-11-06)~~

~~ii. The average of the number of employees for the three (3) prior taxable years. (4-11-06)~~

~~b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 925.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 925.04.a.i., and 925.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. (4-11-06)~~

~~e. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (4-11-06)~~

~~05. **Computing the Credit Earned.** The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. (4-11-06)~~

~~a. If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). (4-11-06)~~

~~b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). (4-11-06)~~

~~e. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). (4-11-06)~~

~~d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). (4-11-06)~~

~~06. **Limitations.** The corporate headquarters new jobs tax credit allowable in any taxable year shall be limited as follows: (4-11-06)~~

~~a. The corporate headquarters new jobs tax credit claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (4-11-06)~~

~~b. **Unitary Taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (4-11-06)~~

~~07. **Carryovers.** The carryover period for the corporate headquarters new jobs tax credit is ten (10) years. (4-11-06)~~

~~08. **Coordination with Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who has new employees who are eligible for the corporate headquarters new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the corporate headquarters new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. (4-11-06)~~

~~926. **IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — RECAPTURE (RULE 926).** Section 63-2907, Idaho Code. (4-11-06)~~

~~01. **Failure to Meet Tax Incentive Criteria.** If a taxpayer fails to meet the corporate headquarters tax incentive criteria, the full amount of the corporate headquarters investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. (4-11-06)~~

~~02. **Year Deficiency Occurs.** Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below five hundred (500). (4-11-06)~~

~~03. **Early Disposition of Investment in New Plant.** (4-11-06)~~

~~a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)~~

~~b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: (4-11-06)~~

~~i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; (4-11-06)~~

~~ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; (4-11-06)~~

~~iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; (4-11-06)~~

~~iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; (4-11-06)~~

~~v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. (4-11-06)~~

~~04. **Failure to Maintain Increased Employment.** (4-11-06)~~

~~a. If the increased level of employment of five hundred (500) new employees is not maintained for the entire recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)~~

~~b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: (4-11-06)~~

~~i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; (4-11-06)~~

~~ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; (4-11-06)~~

~~iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used; (4-11-06)~~

~~iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; (4-11-06)~~

~~v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. (4-11-06)~~

~~e. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. (4-11-06)~~

~~05. **Reorganizations, Mergers and Liquidations.** (4-11-06)~~

~~a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. (4-11-06)~~

~~b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. (4-11-06)~~

~~927.—929. (RESERVED).~~

~~930. **IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — DEFINITIONS (RULE 930).** Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005 and Rules 930 through 936 of these rules, the following definitions apply: (4-11-06)~~

~~01. **Buildings and Structural Components.** Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. (4-11-06)~~

~~02. **Headquarters or Administrative Facilities.** A headquarters is that office or location of a business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all other offices or operating facilities of the business enterprise. (4-11-06)~~

~~03. **Investment in New Plant.** Investment in new plant shall mean investment in headquarters or administrative facilities: (4-11-06)~~

~~a. That is constructed or erected by the taxpayer, or (4-11-06)~~

~~b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. (4-11-06)~~

~~c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. (4-11-06)~~

~~04. **Majority of the Company's Services.** A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-4402(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded. (4-11-06)~~

~~05. **Making Capital Investments.** The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. (4-11-06)~~

~~06. **New Employee.** A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous~~

~~position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. (4-11-06)~~

- ~~07. **Project Period.** The project period is a period of time that begins and ends as follows: (4-11-06)~~
- ~~a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: (4-11-06)~~
- ~~i. The date of a physical change to the project site, or (4-11-06)~~
- ~~ii. The date new employees begin providing personal services at the project site. (4-11-06)~~
- ~~b. The project period shall end at the earlier of: (4-11-06)~~
- ~~i. The conclusion of the project, or (4-11-06)~~
- ~~ii. December 31, 2009. (4-11-06)~~
- ~~08. **Project Site.** The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. (4-11-06)~~
- ~~09. **Small Employer Investment Tax Credit.** Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. (4-11-06)~~
- ~~10. **Small Employer New Jobs Tax Credit.** Small employer new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. (4-11-06)~~
- ~~11. **Small Employer Real Property Improvement Tax Credit.** Small employer real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-4404, Idaho Code. (4-11-06)~~
- ~~12. **Small Employer Tax Incentive Criteria.** Small employer tax incentive criteria shall mean the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 932 of these rules for more information. (4-11-06)~~
- ~~13. **Small Employer Tax Incentives.** Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. (4-11-06)~~
- ~~931. **IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — IN GENERAL (RULE 931).** Sections 63-4401 and 63-4406, Idaho Code. (4-11-06)~~
- ~~01. **Coordination with Idaho Corporate Headquarters Incentive Act of 2005.** The tax incentives provided by the small employer incentive act of 2005 shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code. (4-11-06)~~
- ~~02. **Pass Through Entities.** The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. (4-11-06)~~
- ~~03. **Reorganizations, Mergers and Liquidations.** The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the~~

~~distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 936 of these rules for information related to the recapture required by an acquiring corporation.~~ (4-11-06)

~~**04. Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity.~~ (4-11-06)

~~**05. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns, but does not use, with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward.~~ (4-11-06)

~~**932. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 932).**  
Section 63-4402, Idaho Code.~~ (4-11-06)

~~**01. In General.** The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period:~~ (4-11-06)

~~**a.** Making capital investment in new headquarters or administrative facilities totaling five hundred thousand dollars (\$500,000) or more, and~~ (4-11-06)

~~**b.** Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code.~~ (4-11-06)

~~**c.** Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by ten (10) new employees has been reached.~~ (4-11-06)

~~**d.** Increasing employment by at least one (1) new employee for each fifty thousand dollars (\$50,000) of investment in new headquarters or administrative facilities. For example, if a taxpayer invests four million dollars (\$4,000,000) in new administrative facilities, he must have increased employment by eighty (80) new employees to meet the small employer tax incentive criteria.~~ (4-11-06)

~~**02. Certification.** A taxpayer shall certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives:~~ (4-11-06)

~~**a.** A description of the qualifying project;~~ (4-11-06)

~~**b.** The estimated or actual start date of the project;~~ (4-11-06)

~~**c.** The estimated or actual end date of the project;~~ (4-11-06)

~~**d.** The location of the project site or sites;~~ (4-11-06)

~~**e.** Information as to whether the project site is the location of the company's national or regional headquarters;~~ (4-11-06)

~~**f.** The estimated or actual percent of the company's administrative services handled at the project site;~~ (4-11-06)



- ~~g-~~ *The estimated or actual number of new administrative jobs created during the project period; and* (4-11-06)
- ~~h-~~ *The estimated or actual cost of capital investment in new administrative facilities for each year in the project period.* (4-11-06)
- ~~03-~~ ***Copy of Certification Form Required.*** *A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over.* (4-11-06)
- 933. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 933).**  
*Sections 63-4403 and 63-4406, Idaho Code.* (4-11-06)
- ~~01-~~ ***Credit Allowed.*** (4-11-06)
- ~~a-~~ *The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005, and before December 31, 2009.* (4-11-06)
- ~~b-~~ *The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code.* (4-11-06)
- ~~02-~~ ***Taxpayers Entitled to the Credit.*** *The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria.* (4-11-06)
- ~~03-~~ ***Qualified Investments.*** (4-11-06)
- ~~a-~~ *Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments.* (4-11-06)
- ~~b-~~ *Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify.* (4-11-06)
- ~~04-~~ ***Limitations.*** *The small employer investment tax credit allowable in any taxable year shall be limited as follows:* (4-11-06)
- ~~a-~~ *The small employer investment tax credit claimed during a taxable year may not exceed the lesser of:* (4-11-06)
- ~~i-~~ *One million two hundred fifty thousand dollars (\$1,250,000); or* (4-11-06)
- ~~ii-~~ *Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits.* (4-11-06)
- ~~b-~~ *Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.* (4-11-06)
- ~~05-~~ ***Carryovers.*** *The carryover period for the small employer investment tax credit is fourteen (14) years.* (4-11-06)

~~06. Coordination with Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year.~~ (4-11-06)

~~934. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 934).~~

~~Sections 63-4404 and 63-4406, Idaho Code.~~ (4-11-06)

~~01. Credit Allowed.~~ (4-11-06)

~~a. The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009.~~ (4-11-06)

~~b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit.~~ (4-11-06)

~~02. Taxpayers Entitled to the Credit. The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria.~~ (4-11-06)

~~03. Buildings and Structural Components of Buildings.~~ (4-11-06)

~~a. To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements:~~ (4-11-06)

~~i. The buildings and structural components of buildings must be new as defined in Subsection 930.03 of these rules.~~ (4-11-06)

~~ii. The buildings and structural components of buildings must be placed in service at the project site.~~ (4-11-06)

~~iii. The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail, wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the small employer real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity.~~ (4-11-06)

~~b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the small employer real property improvement tax credit.~~ (4-11-06)

~~04. Limitations. The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows:~~ (4-11-06)

~~a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of:~~ (4-11-06)

~~i. One hundred twenty five thousand dollars (\$125,000); or~~ (4-11-06)

~~ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (4-11-06)~~

~~b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (4-11-06)~~

~~05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years. (4-11-06)~~

~~**935. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 935).**~~

~~Sections 63-4405 and 63-4406, Idaho Code. (4-11-06)~~

~~**01. Credit Allowed. (4-11-06)**~~

~~a. The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. (4-11-06)~~

~~b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. (4-11-06)~~

~~c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. (4-11-06)~~

~~**02. Taxpayers Entitled to the Credit.** The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. (4-11-06)~~

~~**03. Calculating Number of Employees. (4-11-06)**~~

~~a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(c) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (4-11-06)~~

~~i. The employee must have worked primarily within the project site for the taxpayer. (4-11-06)~~

~~ii. The employee must have received earnings at a rate of more than twenty four dollars and four cents (\$24.04) per hour worked. (4-11-06)~~

~~iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. (4-11-06)~~

~~iv. The employee must have been subject to Idaho income tax withholding. (4-11-06)~~

~~v. The employee must have been covered for Idaho unemployment insurance purposes. (4-11-06)~~

~~vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. (4-11-06)~~

~~vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less~~

~~than nine (9) months during the taxable year does not qualify. (4-11-06)~~

~~**b.** Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (4-11-06)~~

~~**c.** Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (4-11-06)~~

~~**04. Calculating the Number of New Employees. (4-11-06)**~~

~~**a.** The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (4-11-06)~~

~~**i.** The number of employees for the prior taxable year; or (4-11-06)~~

~~**ii.** The average of the number of employees for the three (3) prior taxable years. (4-11-06)~~

~~**b.** The requirements as to who qualifies for the calculation of number of employees in Paragraph 935.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 935.04.a.i., and 935.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. (4-11-06)~~

~~**c.** The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (4-11-06)~~

~~**05. Computing the Credit Earned. The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. (4-11-06)**~~

~~**a.** If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). (4-11-06)~~

~~**b.** If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). (4-11-06)~~

~~**c.** If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). (4-11-06)~~

~~**d.** If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). (4-11-06)~~

~~**06. Limitations. The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: (4-11-06)**~~

~~**a.** The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (4-11-06)~~

~~*b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (4-11-06)*~~

~~*07. Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. (4-11-06)*~~

~~*08. Coordination with Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. (4-11-06)*~~

~~**936. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — RECAPTURE (RULE 936).**  
*Section 63-4407, Idaho Code. (4-11-06)*~~

~~*01. Failure to Meet Tax Incentive Criteria. If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. (4-11-06)*~~

~~*02. Year Deficiency Occurs. Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below the level of new employees required by Section 63-4402(2)(j), Idaho Code. (4-11-06)*~~

~~*03. Early Disposition of Investment in New Plant. (4-11-06)*~~

~~*a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)*~~

~~*b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within:*~~

~~*i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; (4-11-06)*~~

~~*ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; (4-11-06)*~~

~~*iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; (4-11-06)*~~

~~*iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; (4-11-06)*~~

~~*v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. (4-11-06)*~~

~~*04. Failure to Maintain Increased Employment. (4-11-06)*~~

~~*a. If the required increased level of employment is not maintained for the entire recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)*~~

~~*b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: (4-11-06)*~~

- ~~i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; (4-11-06)~~
- ~~ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; (4-11-06)~~
- ~~iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used; (4-11-06)~~
- ~~iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; (4-11-06)~~
- ~~v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. (4-11-06)~~
- ~~e. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. (4-11-06)~~

~~05. Reorganizations, Mergers and Liquidations. (4-11-06)~~

~~a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. (4-11-06)~~

~~b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. (4-11-06)~~

~~93701. -- 939. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

**941. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- IN GENERAL (RULE 941).**

Sections 63-4401 and 63-4406, Idaho Code. (3-30-07)

~~01. Coordination with Idaho Corporate Headquarters Incentive Act of 2005. The tax incentives provided by the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code. (3-30-07)~~

**021. Pass-Through Entities.** The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-30-07)

**032. Reorganizations, Mergers and Liquidations.** The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including a mere change in the form of conducting the trade or business and transactions to which Section 381(a), Internal Revenue Code, applies shall not cause recapture to occur so long as the property is retained in such trade or business as qualified investment in new plant and the taxpayer retains a substantial interest in such trade or business. To the extent that provisions of the Internal Revenue Code allow an

acquiring taxpayer to succeed to and take into account unused investment credits of the distributor or transferor taxpayer, such provisions shall apply to the acquiring taxpayer with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 946 of these rules for information related to the recapture required by an acquiring taxpayer. (3-30-07)

**043. Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. (3-30-07)

**054. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-30-07)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-3624, 63-3635 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 014:** Amend Sales Tax Rule 014 to state that contractors or retailers should not charge sales tax to the homeowner for installed real property improvements. The rule would also state that the tax is imposed when the contractor purchases items he installs into real property. Idaho Code § 63-3609 states that contractors improving real property are the consumers of the materials they install and must pay sales or use tax on all their purchases of materials. The contractors do not charge sales tax to the owner of the building, for whom they are working. Many contractors and retailers are charging sales tax on sales of installed, built-in appliances, carpet, fences, and other real property improvements.

**Rule 024:** Amend Rule 024 to conform to the statute. Recently enacted H.B. 2008 exempts from sales tax separately stated charges for personal property tax on leased equipment, if certain conditions apply. Sales Tax Rule 024 currently states that such charges are taxable.

**Rule 044:** Idaho Code § 63-3613 does not provide a definition of "trade-in." The proposed amendment would require a "trade-in" to be a single transaction and that the sales documents must describe both the property traded-in and the property purchased.

**Rule 067:** Amend Sales Tax Rule 067 to state that, in most cases store fixtures are to be considered personal property. Also, add a subsection stating that cable that must be removed from buildings when abandoned is personal property. It is not always clear whether store fixtures are improvements to realty or personal property for sales tax purposes. Idaho Code § 55-308 states that such fixtures are generally personal property if the owner is a tenant or lessor of the building. It is not practical to treat lessors and owners differently. Also, the Commission believes that data cable that must be removed if abandoned is personal property as a matter of law.

**Rule 079:** Amend Rule 079 to conform to the current law. In 2008 the legislature amended the manufacturing exemption, Idaho Code § 63-3622D, to include a business that processes fuel to be used for energy, even if the business does not own or sell the fuel that it processes. Sales Tax Rule 079 currently states that businesses must sell the products they produce. The only exceptions are custom farmers and contract miners.

**Rule 100:** Amend Rule 100 to state that a purchase must be made under the prescription or work order of one of the specifically named types of practitioners. Idaho Code § 63-3622N, as recently amended, states that purchases must be made under the prescription of a licensed practitioner. The definition of "practitioner" includes "any person licensed by the state under title 54, Idaho Code, to prescribe, administer or distribute items identified in subsection (2)(a) of this section." Many of the items can be purchased without a prescription. The statute could be interpreted to mean that a prescription from any licensed professional would qualify. All occupational licenses are granted under Title 54, including professions that have nothing to do with health care, such as engineers, attorneys, and accountants.

**Rule 101:** Amend the rule to state that the use of the fleet will become taxable on the day after the end of registration period for which the mileage requirement is not met. This is a technical correction only and is not meant to be substantive. Idaho Code § 63-3622R provides an exemption from sales tax for I.R.P fleets if the fleet's out of state



mileage is greater than 10% of the total fleet mileage. Sales Tax Rule 101 states that tax is due at the end of any registration period for which the out of state mileage is less than 10%. This is not actually the date when the tax is due.

**Rule 105:** Amend rule 105 to state that the Tax Commission can allow retailers that report less than \$12,000 per year in taxable sales to file annually. Also, the rule should be amended to raise the threshold amount for quarterly and semiannual filers from \$600 per reporting period to \$750. Most retailers in Idaho file monthly sales tax returns; however, many retailers are remitting little or no sales tax. Idaho Code § 63-3623(h) allows the Tax Commission to allow filing periods other than monthly.

**Rule 107:** Amend Rule 107 to comport with the new statute. Recently enacted H.B. 602 changed the definition of "ATV" in Idaho Code 63-3622R. Rule 107 uses the old definition of ATV.

**Rule 130:** Delete the requirement for a social security number from the rule. Sales Tax Rule 130 states that Sales Tax Form ST-124 requires a participating retailer to provide a social security number. The form no longer requires this.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted at (208) 334-7544.

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 October 22, 2008.

DATED this 20th day of August, 2008.

Jim Husted Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., 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. 35-0102-0801**

**014. CONTRACTORS/RETAILERS (RULE 014).**

**01. In General.** This rule shows how Idaho sales and use tax applies to contractors who are also retailers. The general principles in Rule 012 of these rules also apply to contractor/retailers and should be reviewed along with this rule. (3-15-02)

**02. Contractor/Retailer.** In many cases, a contractor is also a retailer. For instance, mechanical contractors may operate retail plumbing shops. In this case, the contractor must have a sales tax permit and report sales made directly to customers, just like any other retailer. Also, he is a consumer when performing contracts to

improve real property. Such a contractor might make separate purchases of material to be used on a specific job. He probably would do so with major items such as boilers, furnaces, and similar items. He also may remove necessary materials, probably small items such as joints, pipes, and tools, from his general inventory. (7-1-93)

**03. Record Keeping Procedure.** For convenience, the contractor-retailer may choose to follow any consistent procedure that can apply to his particular operation. (7-1-93)

**a.** For instance, if the majority of a contractor-retailer's business is performing contracts to improve real property, he may wish to pay tax on all his purchases, keep a record of all his normal retail sales and then regularly apply for credit against the sales and use tax due the state for tax paid on purchase. (7-1-93)

**b.** If the majority of the contractor/retailer's business is retail sales, he may wish to make all his purchases without paying tax by giving his suppliers a resale certificate, keeping a record of his withdrawals from stock for use on contracts and paying a use tax to the state on these materials. (7-1-93)

**c.** If the contractor does major jobs, he may want to use separate accounting procedures, and make his purchases for stock without paying tax by issuing a resale certificate, but pay tax on his major job material purchases. See Rule 128 of these rules. (3-15-02)

**04. Inventory Withdrawals.** When any withdrawal is made from nontaxed inventory, the use tax is due to the state when the material is delivered to the job site, regardless of when it is actually used in performing a contract. (7-1-93)

**05. Tangible Personal Property vs. Improvements to Real Property.** Built-in appliances and related items become fixtures to realty when installed in residential buildings. Such built-in appliances include dishwashers, microwave ovens, stove tops, refrigerators, stove hoods, central vacuum systems, waste disposal units, trash compactors, water softeners, water purification systems, and garage door openers. Some appliances retain the character of personal property such as microwave ovens that are not built-in, freestanding stoves, refrigerators, washers, and dryers. Other rules may apply to commercial, industrial, and other non-residential buildings. See Rule 067 of these rules. ( )

**056. Sales with Agreement to Install.** A regular over-the-counter sale of a complete unit with an agreement to install it is not a contract to improve real property if the item does not become affixed to realty. This applies to sales of stoves, refrigerators, washing machines, dryers, and other electrical appliances. In this case, a tax is collected from the buyer by the seller on the retail sales price of the item. If the installation charges are properly separated, tax is due only on the cost of the unit. (7-1-93)( )

**067. Sales of Both Tangible Personal Property and Improvements to Real Property.** If a contract includes both retail sales of personal property and improvements to real property, the contractor-retailer must collect sales tax on the retail portion of the contract. Also, if he does not pay sales tax to his vendor, he must pay use tax on the materials used to perform the real property portion of the contract. (7-1-93)

**a.** Example: A cabinet builder contracts to build and install kitchen cabinets and build a portable, freestanding china hutch. In the case of the cabinets, he is a contractor and must pay tax on his material costs. In the case of the china hutch, he is a retailer and must charge his customer sales tax on the full price of the hutch, including labor. (7-1-93)

**b.** Example: A cabinet builder is hired by Contractor X to fabricate and deliver cabinets to the job site. Contractor X will do the installation. In this case, the cabinet builder is a retailer and must charge sales tax to Contractor X on the full sales price, including labor. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (RULE 024).**

**01. In General.** The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. (7-1-93)

**02. Bare Equipment Rental.** A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who mainly rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a reasonable rental value for the period during which he used his own equipment. (3-15-02)

**03. Fully Operated Equipment Rentals.** (7-1-93)

**a.** A fully operated equipment rental, equipment with operator, is a service rather than a retail sale of tangible personal property. No sales tax is due on a fully operated equipment rental. (7-1-93)

**b.** A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies it along with operators who are his own employees, and the property supplied is of no value to the customer without the owner's employees. (7-1-93)

**c.** The owner or supplier of the equipment or property used in a fully operated equipment rental is the consumer of the equipment or property, and is subject to sales or use tax when he buys or uses the equipment in Idaho. Special rules apply to transient equipment used for short periods in Idaho. See Rule 073 of these rules. (7-1-99)

**d.** If the equipment or property has value to the customer without the owner's or supplier's employees, then the lease or rental of the equipment or property is a distinct transaction. It is subject to sales or use tax and its price must be stated separately from the price of the service provided by the employees of the owner or supplier. (7-1-93)

**e.** Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the rental company's employee, so the leasing company is not required to charge sales tax on the lease of the crane. (7-1-93)

**f.** Example: Pick-Up Industries provides a three (3) cubic yard trash container to a customer. Pick-Up also provides trash hauling service to empty the container. Since the container is used to store trash between collections, its transfer to a customer is a lease subject to sales tax. (7-1-93)

**04. Mixed Use of Rental Equipment.** (7-1-93)

**a.** If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, he is the consumer of the equipment while it is used by his employees to perform his service contract. Accordingly, he must pay use tax on the reasonable rental value of the equipment for that period of time unless he paid tax when he bought the equipment. (7-1-93)

**b.** If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he must charge and remit Idaho sales tax on the rental of the bare equipment. The tax applies even though the equipment owner's purchase of the property was also subject to sales or use tax. In this case, the owner purchased the equipment for a purpose other than the resale or re-rental of that property in the regular course of business. (7-1-93)

**05. Operator Required to Be Paid by Customer.** In some cases, an equipment owner supplies equipment along with an operator but a union contract or a state or federal law requires the customer to pay the operator. If all other indications of an employee-employer relationship, such as the right to hire and fire, immediate direction and control, etc., remain with the equipment owner, the owner is viewed as supplying a service and no sales

tax applies to the service fee. However, the fact that the transaction is a fully operated equipment rental must be clearly stated on the face of the invoice or other billing document. The State Tax Commission may, whenever it deems appropriate, examine the facts on a case-by-case basis to determine if a true employer-employee relationship exists between the equipment owner and the operator. (7-1-99)

**06. Maintenance of Rental Equipment.** If the owner who rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. (7-1-93)

**07. Rentals to Exempt Entities.** The rental or lease of equipment invoiced directly to an entity exempt from sales tax, such as the state of Idaho or one (1) of its political subdivisions, is not subject to sales tax. However, if the rental or lease is to an individual or organization performing a contract for, or working for an exempt entity, the rental is taxable. (7-1-93)

**08. Exempt Equipment Rentals.** Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter must furnish the owner with a properly completed and signed exemption certificate. See Rule 128 of these rules. (3-15-02)

**09. Rental Payments Applied to Future Sales.** Rentals to be applied toward a future sale or purchase are taxable. (7-1-93)

**10. Personal Property Tax.** ~~Separately stated personal property tax must be included in the rental price subject to tax. For example, some industries rent or lease tangible personal property for a certain monthly, or other period, rental charge, plus a separately stated amount determined by the owner lessor's personal property tax liability on the equipment. Even though the amount of property tax is separately stated from the basic rental charge, it must be included in the total rental price subject to tax.~~ A lessor may require reimbursement from the lessee for the personal property tax the lessor must pay on leased equipment. A charge for personal property tax will be exempt from sales tax if the lease is for a term of one year or longer; if the property tax is billed as a separate line item; and if the charge is no more than the property tax actually paid by the lessor. (7-1-93)(\_\_\_\_)

**11. Out-of-State Rental/Lease.** Rental or lease payments on equipment used outside Idaho are not subject to Idaho sales tax. Rental or lease payments on equipment used in Idaho are taxable. If the equipment is delivered in Idaho, even though it will be used outside the state, then the rental or lease payment for the first month, or other period, is subject to Idaho tax. (7-1-93)

**12. Lease-Purchase and Lease with Option to Purchase.** (7-1-93)

**a.** Lease-purchase agreements include transfers which are called leases by the parties but are really installment, conditional, or similar sales. Where ownership passes to the transferee at the end of the stated terms of the lease contract with no additional consideration from the transferee, or where the additional consideration does not represent the fair market value of the property, the transaction is a sale and tax on the entire sales price is collected on the date the property is delivered. (7-1-93)

**b.** Lease with option to purchase agreements include transfers in which the personal property owner, lessor, transfers possession, dominion, control or use of the property to another for consideration over a stated term and the owner, lessor, keeps the property at the end of the term unless the lessee exercises an option to buy the property. The owner/lessor must collect sales tax from the lessee at the time the rental is charged. If the lessee exercises the option to buy, the lessor/owner must collect sales tax from the lessee/buyer on the full remaining purchase price, the residual, when the option is exercised. (7-1-93)

**13. Cross-References.** (7-1-93)

**a.** See Rule 025 of these rules on real property rental. (7-1-99)

**b.** See Rule 037 of these rules on aircraft and flying services. (7-1-99)

- c. See Rule 038 of these rules on flying clubs. (7-1-99)
- d. See Rule 044 of these rules on trade-in for rental or lease property. (7-1-99)
- e. See Rule 049 of these rules on warranties and service agreements. (7-1-99)
- f. See Rule 073 of these rules on transient equipment. (7-1-99)
- g. See Rule 106 of these rules on motor vehicles. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**044. TRADE-INS, TRADE-DOWNS AND BARTER (RULE 044).**

**01. Trade-Ins.** A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (7-1-93)

**02. Trade-In Allowance.** When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500). To qualify for the trade-in allowance, the property traded in must be consideration delivered by the buyer to the seller. The sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction. (3-30-01)( )

**03. Disallowed Trade-In Deductions.** Trade-in deductions are not allowed on transactions between individuals because the trade-in property does not become a part of an inventory held for resale. (3-30-01)

**a.** Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties must pay tax on the fair market value of the vehicle received in the barter. (7-1-93)

**b.** Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000). (7-1-93)

**04. Insurance Settlements.** An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident. His insurance company determines the damage exceeds the value of the car and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (3-30-01)

**05. Core Charges.** Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are subject to sales tax. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed. (7-1-93)

**06. Trade-In for Rental/Lease Property.** When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the

value of the trade-in property has been depleted and the lessor actually begins charging for the lease or rental. The methods of applying the trade-in value to the lease are: (7-1-93)

**a.** The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments. (7-1-93)

**b.** The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up. (7-1-93)

**c.** A combination of the two (2) methods, above. (7-1-93)

**d.** Example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000). (3-30-01)

**i.** Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment. (3-30-01)

**ii.** Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments. (3-30-01)

**iii.** Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly. (3-30-01)

**07. Rental/Lease Property Traded-In.** When a person disposes of tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given for the amount of the residual buyout paid by the retailer. However, if the residual buyout amount which the lessee would pay to purchase the property is less than the amount that would be allowed by the retailer as a trade-in if the lessee had actually owned the vehicle, then the sales price subject to tax may be reduced by the difference between the total trade-in amount and residual buyout. (3-30-01)

**a.** Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee actually owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the sales price subject to sales tax. (3-30-01)

**b.** Example: A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case, the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000). (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**067. REAL PROPERTY (RULE 067).**

**01. Improvements or Fixtures.** Improvements or fixtures to real property include: (7-1-93)

**a.** Property which is physically attached to the land or other improvements affixed to the land in such

a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. (7-1-93)

**b.** Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. (7-1-93)

**c.** Property which increases the market value or productivity on a relatively permanent basis. (7-1-93)

**02. Three Factor Test.** A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)

**a.** Annexation to the realty, either actual or constructive. (7-1-93)

**b.** Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)

**c.** Intention to make the article a permanent addition to the realty. (7-1-93)

**03. Example 1:** The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention must be determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. (7-1-93)

**04. Example 2:** The three (3) factor test would not be met in Subsection 067.03, ~~Example 1~~ of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. ~~(7-1-93)~~( )

**05. Personal Property Incidental to the Sale of Real Property.** This rule does not affect the provisions of Section 63-3609(c), Idaho Code. (7-1-93)

**06. Store Fixtures.** Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term "store fixtures" includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: ( )

**a.** It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or ( )

**b.** It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. ( )

**07. Abandoned Cable.** The National Electrical Code requires the removal of certain abandoned fiber optic and communication cable. Such cable therefore is not intended to become a permanent part of a building. If a contractor installs such cable, he is installing personal property. In this case he must separately state the charges for the cable and collect sales tax on that amount. Raceways and other materials that are intended to permanently remain in place are fixtures to realty. Contractors installing both personal property and improvements to realty must account for each separately as required by Section 63-3610(e), Idaho Code. ( )

(BREAK IN CONTINUITY OF SECTIONS)

079. PRODUCTION EXEMPTION (RULE 079).

**01. In General.** ~~The Sales Tax Act~~ Idaho Code Section 63-3622D, known as the production exemption, provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (7-1-93)( )

**a.** A manufacturing, processing, or fabrication operation primarily devoted to producing tangible personal property ~~for resale~~ that it will sell and is intended to be ultimately sold at retail. (6-23-94)( )

**b.** The following types of businesses may also qualify for the exemption, even though they perform services and do not actually sell tangible personal property: ( )

**bi.** The business of custom farming or operating a farm or ranch for profit. (7-1-93)

**eii.** The business of contract mining or operating a mine for profit. (6-23-94)

**iii.** Businesses devoted to processing tangible personal property for use as fuel for the production of energy. ( )

**02. Qualifying Businesses.** The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail. (7-1-93)

**a.** For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

**b.** The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail. (7-1-93)

**c.** To qualify for the production exemption, a business must sell the products it produces or processes. The only exceptions are businesses primarily devoted to processing fuel to be used for the production of energy; custom farming; and contract mining. ( )

**03. Exempt Purchases.** As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following tangible personal property are exempt, except as limited by other subsections of this rule: (4-11-06)

**a.** Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)

**b.** Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)

**c.** Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)

**d.** Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)



- e.** Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)
- f.** Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)
- g.** Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)
- h.** Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)
- i.** Equipment used primarily to fabricate production equipment. (7-1-93)
- 04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)
- 05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)

  - a.** Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)
  - b.** Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)
  - c.** A hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)
  - d.** Office equipment and supplies. (7-1-93)
  - e.** Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)
  - f.** Equipment and supplies used in selling and distribution activities. (7-1-93)
  - g.** Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)
  - h.** Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)
  - i.** Transportation equipment and supplies. (7-1-93)
  - j.** Aircraft of any type and supplies. (7-1-93)
  - k.** Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)
  - l.** Other incidental items not directly used in production. (7-1-93)
  - m.** Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)

**n.** Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATV's), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

**o.** Parts to repair recreation-related vehicles. (7-1-93)

**p.** Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

**06. Real Property.** The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. (7-1-93)

**07. Change in Primary Use of Property.** If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

**08. Transportation Activities.** Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

**a.** Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

**b.** Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

**c.** Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

**09. Exemption Certificate.** To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

**10. Special Rules.** Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PRESCRIPTIONS (RULE 100).**

**01. In General.** Sales tax does not apply to sales of drugs, oxygen, orthopedic appliances, orthodontic appliances, dental prostheses including crowns, bridges, inlays, overlays, prosthetic devices, durable medical

equipment, and certain other medical equipment and supplies specifically named in Section 63-3622N, Idaho Code, when: (7-1-99)

**a.** Purchased by a practitioner to be administered or distributed to his patients if such practitioner is licensed by the state under Title 54, Idaho Code, to administer or distribute such items, or when; (7-1-93)

**b.** Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state ~~under Title 54, Idaho Code, to prescribe such items~~ to practice one of the following professions: physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter. Items purchased under the prescription or work order of a person who is not a health care practitioner specifically named in Section 63-3622N(3), Idaho Code, will not qualify for the exemption. (7-1-93)( )

**c.** Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. (7-1-93)

**d.** Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies. (7-1-93)

**02. Seller Must Document Exempt Sale.** The seller must keep the written prescription or work order on file to document the exemption. Sales made without a prescription or work order are subject to tax. The seller must be able to identify sales which are exempt under prescription from sales which are taxable. (7-1-93)

**a.** Refills of prescriptions on file with a seller are exempt from tax. (7-1-93)

**b.** Some drugs may be lawfully sold without a prescription. When sold over the counter without a prescription, the drugs are subject to sales tax. When sold under a prescription, the drugs are exempt from tax. (7-1-93)

**03. Purchases by Practitioners.** A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Rule 128 of these rules. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (3-15-02)

**04. Purchases by Nursing Homes and For Profit Hospitals.** The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit. Tax must be paid on all purchases, with two (2) exceptions. The institution may purchase medical items exempted by Section 63-3622N, Idaho Code, if: (7-1-93)

**a.** The purchase is made on behalf of a patient under a prescription or work order from a practitioner licensed to prescribe such items; or (7-1-93)

**b.** The purchased items can only be administered by a practitioner licensed to administer such items. (7-1-93)

**c.** An exemption certificate must be completed and provided to the vendor of the exempted items. See Rule 128 of these rules. (3-15-02)

**05. Sale of Eyeglasses, Removable Contact Lenses, and Other Products by Optometrists, Oculists, and Ophthalmologists.** The sale of eyeglasses, removable contact lenses and other related products, such as carrying cases, sunglasses, and cleaning solutions by optometrists, oculists, or ophthalmologists is subject to the sales tax, regardless of whether any of these items are prescribed or fitted to the eyes of the purchaser. (6-23-94)

**a.** Amounts charged for professional services in examining the patient and prescribing and dispensing the ophthalmic appliance are not subject to tax providing these services are not agreed to be performed as a part of the

sale and are separately stated on the billing to the patient. (7-1-93)

**b.** Separately stated charges for professional services may not be used to reduce the stated sales price of the property below its actual cost. (7-1-93)

**06. Dental and Orthodontic Appliances.** The sale or purchase of dentures, partial plates, dental bridgework, orthodontic appliances, and related parts for such items by a dentist, denturist, orthodontist or other practitioner is not a taxable sale. (7-1-99)

~~**07. Fillings.** The practitioner is the consumer of the material used to produce fillings he provides to his patients and must pay tax when he purchases such material. (7-1-99)~~

**101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).**

**01. In General.** An exemption is provided from the sales and use tax for motor vehicles and trailers sold or leased to commercial or private carriers to be substantially used in interstate commerce. Commercial or private carriers shall include the business of transportation of persons or commodities owned by the carrier or another, but shall not include farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code. (3-30-07)

**02. Motor Vehicles.** An exemption is provided from the sales and use tax for motor vehicles sold or leased to a purchaser who will: (7-1-93)

**a.** Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; (4-6-05)

**b.** Register the vehicle under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

**c.** Operate the vehicle in a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any registration period under the international registration plan. (4-6-05)

**03. Trailers.** An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

**a.** Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

**b.** The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any registration period under the International Registration Plan or other similar plan. (3-30-07)

**04. Title or Base Plate.** The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

**05. Documentation.** Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

**06. Repair Parts and Supplies.** The exemption does not apply to parts, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. Purchases of glider kits as defined by Section 49-123, Idaho Code, will qualify if they are assembled into glider kit vehicles that will be immediately registered under the International Registration Plan or other similar plan. (3-30-07)

**07. Failure To Meet Interstate Mileage Requirement.** ~~Use tax will become due~~ The use of a fleet of

trucks and trailers, purchased exempt under the IRP exemption provided by Section 63-3622R, Idaho Code, will become taxable at the end of any registration period for which the out of state mileage is less than ten percent (10%) of the total fleet mileage. ~~Tax will be due on the value of the trucks and trailers on the twentieth day of the month following the end of the registration period.~~ (3-30-07)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS (RULE 105).**

**01. Time and Imposition of Tax. (7-1-93)**

**a.** Sales Tax. Sales tax is imposed, computed and collected at the time of sale, without regard to the provisions of any contract relating to the time or method of payment. In the case of installment sales, sales on account, or other credit sales, the seller shall report as a taxable sale the entire sales price for the month in which the sale is made. No part of the sales tax may be deferred until the time the retailer actually collects payment from the buyer. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. Lease or rental payments are taxable during the month or other period for which the property is leased or rented. (7-1-93)

**b.** Use Tax. Use tax is determined at the time of the use, storage or other consumption of tangible personal property in Idaho. The tax is reported and payable in accordance with the provisions of this rule. Persons making purchases subject to use tax should apply for a use tax permit number from the Tax Commission. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

**c.** Taxable Sales Create State Revenue. The sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules. (7-1-93)

**02. Returns. (7-1-93)**

**a.** Monthly Filing Generally Required. All retailers and persons subject to use tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all sales and use tax due from the first through the last day of the preceding calendar month. (7-1-93)

**b.** Request to File Quarterly or Semiannually. Retailers or persons who owe ~~at~~ seven hundred-fifty dollars (~~\$600~~ 750) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semiannually instead of monthly. (~~4-6-05~~)(\_\_\_\_)

**c.** Request to File Annually. Retailers or persons who have seasonal activities, such as Christmas tree sales or repeating fair booths, may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (7-1-93)

**d.** Variable Filing. If the Tax Commission finds it necessary or convenient for the administration of the Sales Tax Act, it may assign an account to a taxpayer with a variable filing requirement. In such a case the taxpayer would not be required to file returns at regular intervals. The Tax Commission may also create one-time filing only accounts for taxpayers who are making a single payment of sales or use tax. (4-6-05)

**e.** Change in Filing Frequency. If the Tax Commission finds it necessary or convenient for the efficient administration of the Sales Tax Act, it may require taxpayers reporting taxable sales of less than twelve thousand dollars (\$12,000) per year to file annually. (\_\_\_\_)

**ef.** Final Report. Whenever a taxpayer who is required to file returns under the Sales Tax Act or these rules stops doing business, he must mark cancel on the last return he files. This return ends the taxable year for sales or use tax purposes and constitutes the taxpayer's final report of sales or use tax activities or liabilities. The taxpayer must enclose his seller's permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Idaho Sales Tax Act and these rules. (7-1-93)

**03. Valid Return.** A tax return or other document required to be filed in accordance with Section 63-3623, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return is considered to have filed no return. A taxpayer's failure to properly file in a timely manner may result in penalties imposed by Section 63-3634, Idaho Code, and related rules. (7-1-93)

**a.** The sales and use tax return form must be completed and, if required, copies of all pertinent supporting documentation must be attached. The results of required supporting documentation must be carried forward to applicable lines on the sales or use tax return form. (7-1-93)

**b.** All sales and use tax returns or other documents filed by the taxpayer must include his sales or use tax permit number and federal taxpayer identification number in the spaces provided. (7-1-93)

**c.** A sales or use tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (7-1-93)

**d.** Perfect accuracy is not required of a valid return, although each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; the tax liability must be calculated and have sufficient supporting information, if required, to demonstrate how the result was reached; and it must show an honest and genuine effort to satisfy the requirements of the law. (7-1-93)

**04. Perpetual Extensions of Time to File Revoked.** Any previously granted permanent or perpetual extension of time to file any sales or use tax returns is hereby revoked. Any person who has used such an extension in the past may avoid a penalty for late filing by filing a timely extension of time return estimating the tax liability, as provided by Subsection 105.05 of this rule. (7-1-93)

**05. Use of Estimates Extension of Time Returns.** (7-1-93)

**a.** The Commission may, for good cause, grant authority for a taxpayer to file for an extension of time by filing an estimated return. When filing the Extension of Time estimated return, the taxpayer must attach a written request which sets forth the reason for estimating. The Commission will review each request to determine if there is good cause for filing an Extension of Time estimated return. If the Commission determines that the request should be denied, the taxpayer will be notified in writing and a penalty, as provided by Section 63-3046, Idaho Code, will apply to any delinquent tax due when the original return is filed. (7-1-93)

**b.** If the return for any period is filed on an estimated basis, the estimated return must be filed timely and the estimate must be reconciled to actual figures by filing an original return within one (1) month of the due date. Any additional tax due as a result of reconciliation must be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return. (4-6-05)

**c.** The estimated tax remitted must be at least ninety percent (90%) of the total sales and use tax due for the period or one hundred percent (100%) of the total sales and use tax due for the same month of the prior year. If the estimated tax paid is less than these requirements, a five percent (5%) penalty may be applied to the remaining tax due, as provided by Section 63-3046(a), Idaho Code. (7-1-93)

**d.** Taxpayers wishing to file an Extension of Time estimated return must obtain the required forms from the Commission. (7-1-93)

**06. Forms Required.** (7-1-93)

**a.** Separate Payments. The original return will be completed with the amount of total sales, nontaxable sales, taxable sales, items subject to use tax, and tax due inserted in the blanks. Payment must accompany the return. If the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment and the reports and checks should be sent separately to the Commission. A complete sales and use tax return will be filed by each retailer or person subject to use tax. This return will be on a form prepared and mailed to the taxpayer by the Commission. If the original is lost or destroyed, a substitute form will be supplied upon request. (7-1-93)

**b.** Retailers Must Report Own Use and Nontaxed Transactions. All retailers must report any sales or purchases on which no sales or use tax was collected or paid. Goods sold or produced and consumed by the retailer, items withdrawn from stock for personal use or employee use, stock removed and used for gift or promotional purposes, or any combination of such uses are subject to tax. (7-1-93)

**c.** Reporting Adjustments. Any adjustments for additional tax due or credits claimed should be made on the next return due after the adjustments are discovered. These adjustments are to be shown on the line designated for adjustments on the return form and must be accompanied by an explanation and any documents that support the claimed adjustment. (7-1-93)

**07. Payment of Tax.** (7-1-93)

**a.** Payment to Accompany Return. The return filed in accordance with this rule must be accompanied by a remittance of the total amount due as shown on the return. Checks or other negotiable instruments should be made payable to the Idaho State Tax Commission. (7-1-93)

**b.** Payment of One Hundred Thousand Dollars (\$100,000) or Greater. All taxes due to the state must be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars (\$100,000) or greater, in accordance with rules promulgated by the Idaho State Board of Examiners, which is incorporated by reference to these rules. (7-1-93)

**c.** Remittance of Collections Required--Bracket Exception. Retailers are required to remit all taxes collected from purchasers, except any difference that may result from use of the bracket system described in Rule 068 of these rules. Any taxes erroneously collected in excess of those properly due should be refunded to the purchaser by the retailer. If the retailer either cannot or does not make the refund during the period for which the return is due, then the retailer must report the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the purchaser from whom they were collected, the retailer may claim a credit or refund of sales taxes in accordance with Rule 117 of these rules. Under no circumstances may a retailer retain any amount collected as sales or use tax which is greater than the retained amount authorized under the bracket system by Rule 068 of these rules. (3-20-04)

**08. Filing Dates--General Rule.** The filing date for all sales or use tax returns is the twentieth day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these rules. This is the filing due date for all regular monthly, quarterly, semiannual, and annual accounts. If the twentieth is a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday or legal holiday. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).**

**01. In General.** This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and

leases of motor vehicles. (3-6-00)

**02. Gifts of Motor Vehicles.** When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

**a.** No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

**b.** The recipient assumes no indebtedness. (7-1-93)

**c.** The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

**d.** The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

**i.** A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

**ii.** The back of the title may be marked as a gift and signed by the donor. (2-18-02)

**03. Nonresidents.** (3-30-07)

**a.** A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

**b.** For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-30-07)

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects and privately owned motor vehicles, if he acquired them while he resided in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (2-18-02)

**a.** If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

**b.** Exclusion from the tax applies only to motor vehicles owned by an individual. A privately owned motor vehicle is one which is owned by, and titled to, a private individual or individuals. (3-6-00)

**05. Military Personnel.** Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being



stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)

**06. Tax Paid to Another State.** When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

**a.** If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

**b.** Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the five hundred dollars (\$500) tax due Idaho. The assessor will collect two hundred dollars (\$200) tax. (4-2-08)

**c.** Example: A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho. (4-2-08)

**d.** Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

**e.** A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

**f.** Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

**g.** Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

**07. Sales to Family Members.** The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

**a.** The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

**b.** This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

**c.** Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption

applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

**08. Sales to American Indians.** An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

**09. Bulk Sale Transfers.** A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

**10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.** (5-3-03)

**a.** Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

**b.** To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

**c.** This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

**d.** For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under ~~eight nine~~ hundred ~~fifty~~ (850 900) pounds, ~~forty eight~~ fifty (48 50) inches or less in width, having a wheel base of sixty-one (61) inches or less, and traveling on low pressure tires of ~~less than~~ ten (10) psi, or less, has handlebar steering and a seat designed to be straddled by the operator. (~~3-20-04~~)(\_\_\_\_)

**e.** For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

**f.** For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either "trailer" or "utility trailer" found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term "trailer" includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

**g.** To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily

for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

**11. Motor Vehicles and Trailers Used in Interstate Commerce.** The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

**12. Related Party Transfers and Sales.** Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. PROMOTER SPONSORED EVENTS (RULE 130).**

**01. Promoter's Responsibility.** Promoters at promoter sponsored events, as defined in Section 63-3620C, Idaho Code, shall obtain a completed copy of a Form ST-124 from each participant at the event. The promoter shall forward a copy of the completed Form ST-124 to the State Tax Commission within ten (10) days following the beginning of the event. The promoter shall also maintain a copy in its file. (3-30-01)

**02. Period of Time for Which a Form ST-124 Is Valid.** If the Form ST-124 is not used to issue a temporary seller's permit, a Form ST-124 completed by a participant shall be valid until the following June 30, unless the participant information changes. The promoter need only obtain a Form ST-124 from each participant at the first show in which the participant participates after July 1 of any given year. The promoter shall forward to the State Tax Commission the names, address, tax identification number and phone number, if known, of participants who do not complete a new Form ST-124 as described in Subsection 130.03. (3-30-01)

**03. Participant's Failure to Provide a Form ST-124 to the Promoter.** If a participant does not provide the completed Form ST-124 to the promoter, the promoter will provide to the State Tax Commission within ten (10) days following the beginning of the event, a list of participants who have failed to provide a completed Form ST-124. (3-30-01)

**04. Examples.** (3-30-01)

**a.** The promoter sponsors events on July 16, September 22, and December 18, of year one (1), and March 4, and July 30 of year two (2). Participant A attends and makes sales at all events. The promoter will need to obtain a copy of the Form ST-124 from Participant A for the July 16, year one (1) event and the July 30, year two (2) event. For the other events, the promoter will only need to include Participant A in the list of participants who did not complete a Form ST-124 and forward this list to the State Tax Commission. (3-30-01)

**b.** Participant B attends the July 16, event and completes a Form ST-124 stating it will not be selling any items of tangible personal property. Participant B also attends the September 22, event but in this event it will be selling tangible personal property. The promoter will need to obtain a new Form ST-124 and forward it to the State Tax Commission. (3-30-01)

**05. Use of the Form ST-124.** The Form ST-124 must be used every time a promoter issues a temporary seller's permit. A promoter must use the Form ST-124 to issue temporary permits even to those participants who have attended events during the preceding year. The promoter will provide the participant with the Form ST-124 who will upon completing the form, return it to the promoter. The promoter will retain a copy of the Form ST-124 and provide

a copy to the State Tax Commission. The Form ST-124 shall include the following: (3-30-01)

**a.** The name of the promoter sponsoring the event, the name of the event, the event location, and the dates of the event. (3-30-01)

**b.** The name, address, and phone number of participant in the event. (3-30-01)

**c.** The participant's federal employer identification number *or social security number.* (3-30-01)( )

**d.** Either: (3-30-01)

i. The participant's seller's permit number; or (3-30-01)

ii. A statement that an Idaho sales tax permit will be obtained before the date of the event; or (3-30-01)

iii. A statement from the participant that no taxable retail sales will be made at this event. (3-30-01)

**g.** Other information the State Tax Commission may deem necessary. (3-30-01)

**06. Temporary Seller's Permit Issued by Promoter.** Before a promoter may claim the income tax credit provided for by Section 63-3620C, Idaho Code, the promoter must forward a completed Form ST-124 to the State Tax Commission for each temporary seller's permit the promoter assigns, along with the documentation for the permit. (3-30-01)

**07. Promoter's Sales Tax Liability.** The promoter shall not be held responsible for collecting sales tax on sales made by participants other than sales made by the promoter himself. (3-30-01)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0802

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULES

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2008.

**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 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

**Rule 317:** New Legislation (HB 470) changes the allocation of the occupancy tax revenue among taxing districts and urban renewal allocation areas. Payments to districts and revenue allocation areas need to be made for 2008 occupancies. Rule 317 adds the instruction to allocate the occupancy tax revenue to the funds listed in HB 470 based on the rate computed by using the full equalized value.

**Rule 509:** New legislation (HB599A, HB550, HB562) provide for property tax exemptions expressed in Sections 63-602KK, 63-602NN and 63-4502. These exemptions need to be known for future fiscal analysis. These exemptions need to be reported on the county abstracts. The abstracts are due by July 28, 2008. Rule 509 amends to include the above exemptions in the list of those exemptions that must be reported to the tax commission.

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

In compliance with deadlines in amendments to governing law.

**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 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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7544.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August 2008.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
PO Box 36, Boise, ID 83722-0410  
(208) 334-7544

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0802

**317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).**

Section 63-317, Idaho Code. (5-3-03)

**01. Property Subject to Occupancy Tax.** Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (4-6-05)

**02. Value Prorated Monthly.** The value for occupancy tax purposes shall be prorated at least monthly. (3-23-94)

**03. Notice of Appraisal.** When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

**04. Examples for Calculation of Value Less Homestead Exemption (HO).** The following examples show the procedure for the calculation of the taxable value subject to the occupancy tax less the homestead exemption (HO): (3-30-07)

**a.** Example for prorated market value exceeding maximum amount of the homestead exemption, as prescribed in statute for tax year 2006. For years after 2006, the maximum amount of the homestead exemption is subject to modification by the Housing Price Index.

Full Market Value of Home: \$300,000
Prorated Market Value for 11 Month Occupancy: $\$300,000 \times 11/12 = \$275,000$
Taxable Value: $\$275,000 - \$75,000 \text{ (HO)} = \$200,000$

(3-30-07)

**b.** Example for prorated market value resulting in less than the maximum amount of the homestead exemption.

Full Market Value of Home: \$120,000
Prorated Market Value for 3 Month Occupancy: $\$120,000 \times 3/12 = \$30,000$
Taxable Value: $\$30,000 - \$15,000 \text{ (HO)} = \$15,000$

(3-30-07)

**05. Market Value.** The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget. (3-30-07)

**06. Allocation to Urban Renewal Agencies.** Occupancy tax revenue shall be ~~allocated~~ distributed to ~~any applicable~~ urban renewal agencies in the same manner as property taxes. The portion of the occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules must be distributed to the taxing districts levying property taxes for those funds and, therefore, must not be distributed to the urban renewal agency. (~~3-30-07~~)(1-1-08)T

**07. Property Qualifying for the Homestead Exemption on Occupancy Value.** When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**509. CITY, COUNTY, AND SCHOOL DISTRICT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES (RULE 509).** Sections 63-105A and 63-509, Idaho Code. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**02. Appropriate County and Boise 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 Boise School District abstracts, required under Rule 315 of these rules, for the portion of the Boise School District located within Ada County and Boise County. (4-2-08)

**03. Indicate Increment and Exemption Values.** 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, 63-602GG, 63-602HH, 63-602II, 63-602KK, 63-602NN, 63-4502, 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. (~~3-30-07~~)(1-1-08)T

**04. Submittal of Corrections to Erroneous Abstracts or Related Documents.** When completing the procedures set forth in Section 63-810, Idaho Code, boards of county commissioners should submit the corrections to the taxable values submitted on the abstracts or related documents under provisions of Section 63-509, Idaho Code,

and this rule, no later than when they submit the corrected levies under Section 63-810, Idaho Code. (4-2-08)

**05. 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. For information relating to notification of corrections to erroneous levies, see Sections 63-809 and 63-810, Idaho Code, and Rule 809 of these rules. (4-2-08)



**IDAPA 35 - STATE TAX COMMISSION**

**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-0803**

**NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 63-105A, Idaho Code.

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

**Rule 804** is being amended to explain how to calculate the tax rate for certain funds identified in HB 470 and to delete obsolete items. New legislation (HB470) amends I.C. 50-2908 to require that the equalized assessed value be used in computing the tax rate for certain funds located within revenue allocation areas and established after January 1, 2008. Rule 804 needs to be amended to identify these funds and to explain how the tax rate is to be calculated for these funds and how the tax rate is to be calculated for all other funds.

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

In compliance 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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Alan Dornfest at (208) 334-7544.

DATED this 20th day of August, 2008.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
PO Box 36  
Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0803**

**804. TAX LEVY -- CERTIFICATION -- URBAN RENEWAL DISTRICTS (RULE 804).**  
Section 50-2908, 63-803, and 63-811, Idaho Code. ~~(4-2-08)~~(1-1-08)T

**01. Definitions.** (4-5-00)

**a.** "Urban renewal district." An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. (4-5-00)

**b.** “Revenue allocation area (RAA).” A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are to be determined. Revenue allocation areas (RAAs) are not taxing districts. (4-5-00)

**c.** “Current base value.” The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. (4-5-00)

**d.** “Initial base value.” The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. (4-5-00)

**e.** “Increment value.” The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel’s current base value, provided such difference is a positive value. (4-5-00)

**02. Establishing and Adjusting Base and Increment Values.** (4-5-00)

**a.** Establishing initial base value. If a parcel’s legal description has changed prior to computing initial base year value, the value that best reflects the prior year’s taxable value of the parcel’s current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll. (4-5-00)

**b.** Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel’s initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000). (4-5-00)

**i.** Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar (\$1,000) decrease in value in Category 21 and a one thousand dollar (\$1,000) increase in Category 42 value. There is no change in the base value for the parcel. (4-5-00)

**ii.** Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars (\$3,000) decrease in value in Category 21 and a one thousand dollars (\$1,000) increase in Category 42 value. The base value decreases two thousand dollars (\$2,000) to ninety-eight thousand dollars (\$98,000). (4-5-00)

**iii.** Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars (\$98,000), the value of the parcel increases by five thousand dollars (\$5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars (\$98,000). (4-5-00)

**c.** Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel’s legal description. This adjustment shall be calculated as described in the following subsections. (4-5-00)

**i.** When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. (4-5-00)

ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (4-5-00)

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii. (4-5-00)

**d.** Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections. (4-5-00)

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established. (4-5-00)

ii. Partially exempt parcels. When a partially exempt parcel within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that if this parcel had not been actively devoted to agriculture at that time, the taxable value would have been fifteen hundred dollars (\$1500). After five (5) years, this parcel is no longer used for farming, loses its partial exemption, and becomes reclassified as industrial land with a value of ten thousand dollars (\$10,000). The base value within the RAA would be adjusted upwards by one thousand dollars (\$1,000), the difference between fifteen hundred dollars (\$1500) and five hundred (\$500). (4-5-00)

iii. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the original value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars (\$20,000). Three (3) years later, an improvement valued at one hundred thousand dollars (\$100,000) was added. The land at this later date had a value of thirty thousand dollars (\$30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by twenty thousand dollars (\$20,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by twenty thousand dollars (\$20,000). (4-5-00)

**e.** Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (4-5-00)

i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (4-5-00)

ii. For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA. (4-5-00)

iii. For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

**f.** Adjustments to increment values. Decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two

thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). (4-5-00)

**g.** Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. (4-5-00)

**03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts.** Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (1-1-08)T

**a.** For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, ~~the property tax levy for any taxing district or unit which includes all or part of an RAA in an urban renewal district shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the taxing district or unit fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000).~~ (4-5-00)(1-1-08)T

**b.** For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). (1-1-08)T

**04. Modification of an Urban Renewal Plan.** When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)

**a.** Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for the consolidated RAA. (4-5-00)

**b.** Modification by annexation. (1-1-08)T

**i.** If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (4-5-00)(1-1-08)T

**05. Criteria for Determining Whether Levies for Funds are to be Computed Using Base Value or Market Value for Assessment Purposes.** Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (1-1-08)T

**a.** Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (1-1-08)T

**b.** Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e. of this rule; (1-1-08)T

**c.** Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e. of this rule; (1-1-08)T

**d.** Voter approved school or charter school district supplemental maintenance and operation levies passed after December 31, 2007, for up to two (2) years; or (1-1-08)T

**e.** Levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007. (1-1-08)T

**056. Cross Reference.** The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. (4-2-08)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0804

#### 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 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:** Update the dates of guides and standards used as reference. The changes to this rule update references to appropriate and current editions of guides and professional standards used to determine values of certain property and to measure assessment level and uniformity.

**Rule 114:** Amend Rule 114 to increase the layers of value data to report for properties receiving the homeowner's exemption. The homeowner's exemption amount has substantially increased. In order to collect needed value information under Subsection 63-105A(2) for statistical analysis by tax commission administrators and legislators upon request, Rule 114 needs to be expanded.

**Rules 125 and 126:** To shorten the rule by putting the certification programs in separate rules and to clarify the description and functions of the Tax Commissions Program of Education. Delete the Appraiser Certification Program which is then written in Rule 126 and clarify the duties of the education director and the examination committee.

**Rule 128:** New rule establishing the requirements and procedures for the Cadastral Certification Program as required by HB 419 which amends Idaho Code section 63-105A(17).

**Rules 218 & 219:** New rule establishes the requirements and procedures for the Cadastral Certification Program. Rule 218 was divided into two rules: Rule 218 covering the Assessors' plat book maintenance and new Rule 219 explaining the parcel numbering system. Rule 219 will provide additional, needed definitions and will provide that a form of the parent parcel number may be maintained upon a split of the parcel.

**Rule 225:** Provides a definition for countywide taxing district and stipulates that a copy of the resolution creating a countywide taxing district will suffice as documents to be filed with the county assessor, county recorder and State Tax Commission. Also, provides that the boundaries of the area added to a revenue allocation area be assigned a unique tax code area number as required by HB 470A.

**Rule 302:** Provides that the list required to be filed by Idaho Code section 63-302 will serve as the taxpayer's application for exemption and requires the form to be filed in order to be eligible for the exemption. The implementation of HB 599A requires a taxpayers' application for the personal property exemption which will also serve as a basis for the state's payment of the personal property replacement monies to the counties.

**Rule 313:** Newly passed HB599A provides for an exemption of up to \$100,000 for personal property including transient personal property (63-313). This amendment to Rule 313 clarifies the allocation of the exemption between or among counties for transient personal property and allows the taxpayer to choose the tax code area for which the exemption will apply.

**Rule 314:** Deletes the reference to a non-existent example in Rule 217.

**Rule 508:** A new rule to require that the value of property exempt by Section 63-602KK, Idaho Code be reported by taxing district. HB 599A, Idaho Code section 63-602KK exempts up to \$100,000 of personal property from

taxation. In order to compute the tax levies, the exempt amount within each taxing district must be reported.

**Rule 626:** New rule to explain that the personal property exemption will become effective with the first tax year (Jan. 1) after state fiscal year revenues have increase by more than 5% over the previous fiscal year as provided in HB 599A, Idaho Code section 63-602KK.

**Rule 631:** New rule clarifying that the exemption provided for in HB550, Idaho Code section 63-602NN does not include land.

**Rule 802:** Rule 802 is being amended to explain how to value new construction and to explain that the taxable portion of the property would be included on the New Construction Roll as provided in HB 550, Idaho Code section 63-602NN(4) and HB 562, Idaho Code section 63-4502.

**Rule 803:** 1) New legislation (HB599A) in IC § 63-3638(12) provides replacement funds to be paid to counties for personal property exempt by IC 63-602KK. These funds should not be subtracted from the “funds to be levied” on the L-2 form in the process of computing property tax levies. Current Rule 803(06) directs all property tax replacement funds listed in 63-3638 to be subtracted. Rule 803 needs amending to exclude IC §63-602KK funds from being subtracted. 2) New legislation (HB691) in section IC § 31-808(11) stipulates that the money received from the interest being trust fund is to be subtracted in computing the levy for the indigent fund. Rule 803(6) needs amended to include these monies as monies to be subtracted. Rule 806 is being amended to exclude the subtraction of the amount of the exemption determined in 63-602KK and to include the amount of the monies received from the interest being trust pursuant to 31-808(11)

**Rule 804:** Rule 804 is being amended to explain how to calculate the tax rate for certain funds identified in HB 470 and to delete obsolete items. New legislation (HB470) amends I.C. 50-2908 to require that the equalized assessed value be used in computing the tax rate for certain funds located within revenue allocation areas and established after January 1, 2008. Rule 804 needs to be amended to identify these funds and to explain how the tax rate is to be calculated for these funds and how the tax rate is to be calculated for all other funds.

**Rule 806:** To clarify the property tax budget and levy information that county clerks are to include in the notice of election required by Idaho Code section 63-802(C) in order to form a new taxing district.

**Rule 902:** Rule 902 is amended to require that the amount to be paid by the state and the amount of the tax to be paid by the taxpayer be shown on the property tax notice as provided in HB 599A, Idaho Code section 63-602KK.

**Rule 966:** To explain the calculations of deferred taxes for lands that change use and land that change ownership as provided in Idaho Code section 63-1706.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7544.

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 October 22, 2008.

DATED this 20th day of August 2008.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
PO Box 36, Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0804**

**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 the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (~~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~~ 2007 by the International Association of Assessing Officers. This document can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> which was last accessed and verified on July 8, 2008. (~~5-3-03~~)( )

**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2007~~8~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-2-08~~)( )

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2007~~8~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-2-08~~)( )

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 2007~~8~~ and the first quarter in 200~~8~~9 by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. (~~4-2-08~~)( )

**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. (3-30-07)

**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. (3-30-07)

**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 in market value. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**h.** Total quantity and total market value of all properties more than one hundred seventy-five thousand dollars (\$175,000) but less than or equal to two hundred thousand dollars (\$200,000). 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) but less than or equal to two hundred thousand dollars (\$200,000) in market value. (~~3-30-07~~)( )

**i.** Total quantity and total market value of all properties more than two hundred thousand dollars (\$200,000) but less than or equal to two hundred twenty-five thousand dollars (\$225,000). 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 two hundred thousand dollars (\$200,000) but less than or equal to two hundred twenty-five thousand dollars (\$225,000) in market value. ( )

**j.** Total quantity and total market value of all properties more than two hundred twenty-five thousand dollars (\$225,000) but less than or equal to two hundred fifty thousand dollars (\$250,000). 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 two hundred twenty-five thousand dollars (\$225,000) in market value but less than or equal to two hundred fifty thousand dollars (\$250,000) in market value. ( )

**k.** Total quantity and total market value of all properties more than two hundred fifty thousand dollars (\$250,000). 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 two hundred fifty thousand dollars (\$250,000) 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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

**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. (3-30-07)

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. (3-30-07)

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. (3-30-07)

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. (3-30-07)

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. (3-30-07)

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. (3-30-07)

03. **Cross Reference.** For the descriptions of secondary categories, see Rules 510, 511, and 512 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. PROGRAM OF EDUCATION (RULE 125).**

Section 63-105A(17), Idaho Code.

(3-15-02)

01. **Administration.** The program of education ~~program shall be~~ is the responsibility of the State Tax Commission (Commission) ~~through its education director. The program of education shall be administered by the Commission's education director (education director). The assessors' education committee and the Commission's education director shall set the curriculum of classes for the annual education program. This curriculum shall include classes important to providing training to appraise property for assessment purposes.~~ (1-1-98)( )

02. **Education and Certification Requirements.** ~~An applicant for certification must have passed Commission Course No. 1, IAAO Course No. 102, or equivalent courses, and must have a minimum of twelve (12) months experience appraising for tax assessment purposes in Idaho or equivalent property tax appraisal experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience.~~ **Appraisal School and Other Courses.** An appraisal school shall be held at least once each year. The school shall offer courses for training the Commission's employees, county commissioners, and assessment personnel. The Idaho Association of County Assessors Education Committee and the education director shall approve the curriculum for the annual appraisal school. Other courses may be developed and offered as approved by the education director. (3-15-02)

~~a. Equivalency for Course No. 1 and No. 102 shall be established by the Commission and approved by the examination committee. (3-15-02)~~

~~b. Beginning January 1, 1998 and on or before each January 1 thereafter, to maintain certification each "certified property tax appraiser," who became certified on or before December 31, 1995, shall have completed thirty two (32) hours of appraisal education during the previous two (2) years as described in Subsection 125.02.d. of this rule. Beginning January 1, 1998, to maintain certification each "certified property tax appraiser," who became certified during the two (2) year period prior to each January, shall have completed sixteen (16) hours of appraisal education during the calendar year following the year of certification. By January 1 of each year thereafter, said "certified property tax appraiser" shall have completed thirty two (32) hours of appraisal education during the previous two (2) years as described in Subsection 125.02.d. (3-30-01)~~

~~e. The examination committee shall decide which classes meet the requirements for maintaining certification and the hours of appraisal education awarded for each. For Commission administered classes, the Commission's staff will monitor attendance and hours of appraisal education to be awarded to each "certified property tax appraiser" in attendance. For these classes, the education director shall provide certificates of attendance showing the number of hours of appraisal education to be awarded. For those not administered by the Commission, the "certified property tax appraiser" has the responsibility to report education hours completed. The report shall be on a form provided by the Commission and shall be submitted to the education director. To receive education hours for any classes not administered by the Commission, a copy of a record verifying attendance must be submitted with the report of education hours completed. (1-1-98)~~

~~d. The Commission shall maintain records to show the number of hours completed during the current year and the previous two (2) years. By June and November each year, the education director shall send an appraisal certification status report to each county assessor. This report will list each "certified property tax appraiser" who is known to be employed by or under contract with said assessor and show the number of hours of appraisal education completed during the previous and current years. (1-1-98)~~

~~e. For Commission developed classes in which a test is given, the education director will notify the appropriate county assessor of the grades achieved on the test. (1-1-98)~~

~~f. When any "certified property tax appraiser" fails to meet the continuing education requirements, the examination committee shall place this person on six (6) month probation. When any "certified property tax appraiser" fails to meet the continuing education requirements within the probationary period, this person shall forfeit certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. (3-15-02)~~

~~g. For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant for recertification must satisfactorily complete a written examination approved by the committee. The committee shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification. (3-15-02)~~

~~h. The county shall reimburse its employees' expenses for registration, tuition, fees, texts, travel, food, and lodging required to comply with these rules. (1-1-98)~~

~~i. Each person, except the county assessor, members of the county board of equalization and State Tax Commissioners, making decisions regarding final values for assessment purposes shall be a "certified property tax appraiser." For each county assessor's employee, that county assessor shall ensure compliance with this provision. For each Commission employee the appropriate Commission supervisor shall ensure compliance with this provision. (3-15-02)~~

**03. Application For Certification Record Keeping and Reporting of Attendance, Grades, and Credit Hours.** The education director shall maintain student attendance records, records of education hours earned,

status of certification, and grades. (3-15-02)( )

a. ~~After any applicant has completed the requirements provided in Subsection 125.02, the county assessor (for the county assessor's employee) or appropriate Commission supervisor (for the Commission employee) shall submit the completed "application for state certification" form to the education director. The Commission shall prescribe the "application for state certification" form and shall distribute a copy of said form to each county assessor. The "application for state certification" form shall list the name and address of the applicant, identify the employer of the applicant, list the courses completed, be signed by the applicant, and be dated with the submission date of the application. On the "application for state certification" form the county assessor or Commission supervisor, as applicable, shall certify the completion of the minimum experience requirement. The education director and course instructors will monitor attendance and hours of education to be awarded to each student attending the Commission administered classes. A certificate of completion showing the number of education hours to be awarded will be issued by the education director for the Commission administered classes. In order to receive credit for classes not administered by the Commission, the student shall provide a certificate of completion showing the number of education hours completed, a course description, and the dates attended.~~ (3-15-02)( )

b. ~~The education director shall ensure that information on the certification process and the "application for state certification" form are available to students attending the Commission Course No. 1 and Commission sponsored IAAO Course No. 102. The education director shall maintain records to show the number of education hours completed during the current year and the previous two (2) years. By June and November of each year, the education director shall send a certification status report to each county assessor or applicable supervisor. This report will list each certified property tax appraiser who is known to be employed by or under contract with said assessor and show the number of hours of education completed during the previous year and current calendar year.~~ (3-15-02)( )

c. ~~If a test is given for Commission developed courses, the education director will notify the appropriate county assessor or applicable supervisor of the grade achieved on the test.~~ ( )

**04. Examination Committee -- Establishment and Procedures.** The examination committee shall be composed of three (3) assessors, one (1) member of the Idaho Association of Assessment Personnel, and the ~~Commission's~~ education director. The ~~Commission~~ education director shall appoint the members of the committee. The committee will operate by majority rule. (3-15-02)( )

a. ~~Terms. The term of the Commission's education director shall be continuous. The other members shall serve four (4) year terms. The education director shall maintain records of dates of appointments.~~(7-1-93)( )

b. ~~If any member fails to serve the full-appointed term, the Commission education director shall appoint another person member for the remainder of the term. The appointee shall be from the same category group as the one who failed to serve member not completing the term.~~ (3-15-02)( )

c. ~~The committee education director shall elect a chairman each year chair the committee.~~ (7-1-93)( )

d. ~~Any applicant may appeal to a review board any complaints concerning any rulings, matters involving examination structure, grading, or grievances concerning with the committee to a review board. No board member may be an assessor of the applicant's county or a member of the examination committee. The review board shall consist of the following four (4) persons:~~ ( )

i. ~~The president of the Idaho Assessors' Association of County Assessors;~~ ( )

ii. ~~A person appointed by the president of the Idaho Assessors' Association of County Assessors;~~ ( )

iii. ~~A person appointed by the examination committee; and~~ ( )

iv. ~~A person appointed by the Commission education director. No board member may be an assessor of the applicant's county or a member of the examination committee.~~ (1-1-98)( )

e. The applicant may request, in writing to the Commission's education director, permission to take the examination for Commission Course No. 1. The director shall set the time and place for the examination. The committee shall decide which courses meet the requirements for obtaining and maintaining certification and the hours of appraisal education awarded for each course. (7-1-93)( )

~~05. **Incentives For Certification.** The legislature and Commission recommend that counties offer pay incentives to encourage employees to obtain prompt certification. These pay incentives should include at least three (3) parts: state certification; successful completion of additional professional appraisal courses or seminars; and designation from a recognized professional appraisal organization. **Cross Reference.** See Rule 126 of these rules for the description of the certified property tax appraiser program and Rule 128 of these rules for the cadastral certification program.~~ (1-1-98)( )

**126. PROPERTY TAX APPRAISER CERTIFICATION PROGRAM (RULE 126).**  
Section 63-105A, Idaho Code. ( )

**01. Application for Certification.** The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. ( )

**a.** After the applicant has completed the requirements of Subsection 126.02 of this rule, the applicant's supervisor shall submit the completed application form to the education director. The application shall list the following: ( )

i. The name and address of the applicant. ( )

ii. The applicant's employer, and ( )

iii. The courses completed. ( )

**b.** The application must be signed and dated by the applicant and by the applicant's supervisor certifying the completion of the minimum experience requirement. ( )

**c.** The education director shall make available information regarding the certification process and the application form to students attending the courses referenced in Subsection 126.02 of this rule. ( )

**02. Certification Requirements.** An applicant for certification must have passed Commission Course No. 1 or the International Association of Assessing Officers' (IAAO) Course 101 and IAAO Course No. 102 or IAAO Course 201 or IAAO Course 300 or equivalent courses, and must have a minimum of twelve (12) months experience appraising for tax assessment purposes in Idaho or equivalent property tax appraisal experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience. ( )

**a.** Upon request to the education director, an applicant may receive credit for Commission Course No. 1 by passing an examination developed for this purpose. The education director shall set the time and place for the examination. ( )

**b.** Equivalent courses may be approved by the education director and the examination committee. ( )

**c.** With the exceptions of the county assessor, the members of the county board of equalization, and the State Tax Commissioners, all persons making decisions regarding final values for assessment purposes shall be certified property tax appraisers. ( )

**03. Maintaining Property Tax Appraisal Certification.** ( )

**a.** To maintain certification each appraiser must complete thirty-two (32) hours of continuing education within two (2) years of the certification date. Thereafter, by January 1 of each year, each appraiser shall have completed thirty two (32) hours of continuing education during the previous two (2) years. ( )

**b.** When any certified property tax appraiser fails to meet the continuing education requirements, the examination committee shall place this person on a six (6) month probation. When any certified property tax appraiser fails to meet the continuing education requirements within this probationary period, the person shall forfeit certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. ( )

**c.** For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant for recertification must satisfactorily complete a written examination approved by the committee. The committee shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification. ( )

**04.** **Cross Reference.** See Section 63-201. (1)(a), Idaho Code for the requirement that only assessors or certified property tax appraisers place value on any assessment roll. See Rule 125 of these rules for the description of the examination committee. ( )

~~1267.~~ ~~129.~~ (RESERVED).

**128.** **CADASTRAL CERTIFICATION PROGRAM (RULE 128).** Section 63-105A, Idaho Code. ( )

**01.** **Application for Certification.** The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. ( )

**a.** After any applicant has completed the requirements provided in Subsection 128.02 of this rule, the applicant's supervisor shall submit the completed application form to the education director. The application shall list the following: ( )

**i.** The name and address of the applicant. ( )

**ii.** The applicant's employer, and ( )

**iii.** The courses completed. ( )

**b.** The application must be signed and dated by the applicant and by the applicant's supervisor certifying the completion of the minimum experience requirement. ( )

**c.** The education director shall make available information regarding the certification process and the application form to students attending the courses mentioned in Subsection 128.02. ( )

**02.** **Certification Requirements.** An applicant for certification must have passed the Commission's Basic Mapping Course and the International Association of Assessing Officers' (IAAO) Course 600 or IAAO Course 601 or both IAAO Courses 650 and 651, or equivalent courses, and must have a minimum of twelve (12) months experience working as a cadastral specialist in Idaho or equivalent cadastral experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience. ( )

**a.** Upon request to the Commission's education director, an applicant may receive credit for the Commission's Basic Mapping Course by passing an examination developed for this purpose. The education director shall set the time and place for the examination. ( )

**b.** Equivalent courses may be established by the Commission and approved by the examination committee. ( )

**03. Maintaining Cadastral Specialist Certification.** ( )

**a.** To maintain certification, each cadastral specialist must complete thirty-two (32) hours of continuing education within two (2) years of the certification date. Thereafter, by January 1 of each year, each cadastral specialist shall have completed thirty-two (32) hours of continuing education during the previous two (2) years. ( )

**b.** When any certified cadastral specialist fails to meet the continuing education requirements, the education committee shall place this person on a six (6) month probation. When any certified cadastral specialist fails to meet the continuing education requirements within this probationary period, the person shall forfeit certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. ( )

**c.** For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant, for recertification, must satisfactorily complete a written examination approved by the committee. The committee shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification. ( )

**04. Cross Reference.** See Rule 125 of these rules for the description of the examination committee. ( )

**129. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**218. ASSESSOR'S PLAT BOOK (RULE 218).**  
Sections 50-1304, 63-209, 63-210, 63-212, 63-219, and 63-307, Idaho Code. (~~3-15-02~~)( )

**01. Plat Maps.** Plat maps for all privately owned land shall be prepared. (7-1-97)

**a.** Permanent plats ~~shall~~ may be drafted on thirty (30) inch by thirty-six (36) inch, 0.003 inch drafting film (minimum thickness). Smaller plat sizes are permitted as long as they clearly depict parcel boundaries and dimensions. (See Sections 50-1304 and 63-209, Idaho Code.) (7-1-97)( )

**b.** Section, aliquot part, subdivision, and parcel boundaries shall be drafted with ink on drafting film and in accordance with the Bureau of Land Management (BLM) "Manual of Instructions for the Survey of the Public Lands of the United States" published by the Government Printing Office, 1973 edition, Technical Bulletin No. 6. (See Section 50-1304, Idaho Code.) (~~3-15-02~~)( )

**c.** Parcel numbers, and all other desired information, shall be drafted with ink. Annotative information shall be added as necessary and, if plotted by computer be of appropriate font style and size to be easily readable. The minimum letter height shall be 1.25 millimeters. (See Section 50-1304, Idaho Code.) (7-1-97)( )

**d.** Section outlines shall be platted according to: (7-1-97)

**i.** Technical descriptions of Bureau of Land Management, formerly the General Land Office (GLO), surveys, (Section 31-2709, Idaho Code); (7-1-97)

**ii.** Descriptions on recorded surveys (Sections 55-1901 through 55-1911, Idaho Code); (7-1-97)

**iii.** Recorded corner perpetuation records (Sections 55-1603 through 55-1612, Idaho Code); (7-1-97)



- iv. Recorded subdivision plats and assessor's plats (Sections 50-1301 through 50-1330, 63-209, and 63-210(2) Idaho Code); (7-1-97)
- v. Deeds or contracts with metes and bounds descriptions (Section 31-2709, Idaho Code); (7-1-97)
- vi. Highway, railroad, and other engineering quality route surveys; (7-1-97)
- vii. Relevant court decisions; and (7-1-97)
- viii. Unrecorded data from registered land surveyors (Section 31-2709, Idaho Code). (7-1-97)
- e. Subdivision of sections shall be platted. ~~(See in accordance with Sections 31-2709 and 63-209, Idaho Code.)~~ (7-1-97)(      )
- 02. Map Scales.** Non-Computer and computer generated maps shall be scaled. (7-1-97)
  - a. Non computer generated plats shall be: (      )
    - i. One (1) township at one (1) inch = fourteen thousand four hundred (14,400) inches (1,200 feet), 1:14,400; (      )
    - ii. ~~Four~~ Four (4) sections at one (1) inch = four thousand eight hundred (4,800) inches (400 feet), 1:4,800; one (1) section at one (1) inch = twenty four hundred (2400) inches (200 feet), 1:2,400; (      )
    - iii. ~~One~~ One (1) quarter section at one (1) inch = twelve hundred (1,200) inches (100 feet), 1:1,200. (7-1-97)(      )
  - b. Mapping done from aerial photographs will have the scale recalculated and shown on the map. (7-1-97)
  - c. Subdivision, townsite, and metes and bounds parcels shall be platted to include the basis of bearing with monuments and their coordinates relative to the "Idaho Coordinate System." ~~(See as described by Sections 31-2709, Idaho Code, Sections 50-1301, 50-1303, and 50-1304, Idaho Code.)~~ (7-1-97)(      )
  - d. Plat titles, subdivision names, and parcel dimensions shall be drafted with ink, or generated by computer at an appropriate scale. The minimum letter height shall be 1.25 millimeters. (7-1-97)
- 03. Property Ownership Records.** Ownership shall be shown on the property ownership records. (7-1-97)
  - a. Ownership notations include the reputed owner of the property or note that the owner is unknown, or list other persons with interests of record. Ownership may be ascertained from numerous recorded sources. ~~(See as described in Sections 63-212 and 63-307, Idaho Code.)~~ (3-30-01)(      )
  - b. Purchasers, agents, guardians, executors, administrators, heirs, and claimants may have their names inserted with the recorded owner's name. ~~(See as explained in Sections 63-212 and 63-307, Idaho Code.)~~ (7-1-97)(      )
- 04. Uniform Parcel Numbering System.** Each parcel shall be assigned a parcel number. (7-1-97)
  - a. ~~The uniform parcel numbering system shall be used for mapping and record keeping. Each parcel's uniform parcel number shall appear on the plat map and on a companion sheet. The assigned parcel number may also be the tax number. (See Sections 63-209 and Section 63-210(1), Idaho Code.)~~ (7-1-97)
  - b. ~~As long as the property boundary does not change, the new owner's name shall be assigned to the same parcel number on the companion sheet. A parcel number that exists at the time a property is divided or added to~~

*shall be canceled and a new number(s) assigned. (7-1-97)*

*e. Properties contiguous under common ownership but split by county line, section line, or tax code area boundary shall require separate parcel numbers. (7-1-97)*

*d. Rural land not subdivided shall have the township descriptor minus the "T" in positions 1, 2, and 3 of the parcel number. (7-1-97)*

*i. Positions 4, 5, and 6 shall be the range descriptor minus the "R." (7-1-97)*

*ii. Positions 7 and 8 shall be the section number. If the section number is less than 10, the section number is in position "8," preceded by a zero in position "7." (7-1-97)*

*iii. Positions 9, 10, 11, and 12 shall be the quarter section numbers. To assign the quarter section number, begin numbering in the northeast quarter (NE1/4) of the northeast quarter (NE1/4) and proceed counterclockwise. Starting in the NE1/4 of the section the numbers used range from zero to two thousand three hundred ninety nine (0 to 2399). Continuing counterclockwise, beginning in the NE1/4 of the northwest quarter (NW1/4), the numbers continue from two thousand four hundred to four thousand seven hundred ninety nine (2400 to 4799), thence, starting in the NE1/4 of the southwest quarter (SW1/4), assign numbers from four thousand eight hundred to seven thousand one hundred ninety nine (4800 to 7199), and beginning in the NE1/4 of the southeast quarter (SE1/4), assign quarter section numbers from seven thousand two hundred to nine thousand nine hundred ninety nine (7200 to 9999). The following quarter section breakdown key shows the sequence for assigning quarter section numbers for land not subdivided.*

**The "Standard Section" Graphic Is Being Deleted**

*Note: The northern quarters of sections 1, 2, 3, 4, 5, and 6 may be government lots and the western quarters of Sections 6, 7, 18, 19, 30 and 31 may be government lots. For the purpose of parcel numbering, these government lots shall be treated as if each was the respective quarter quarter of the section. (3-15-02)*

*iv. The following parcel number example denotes Township 10 North, Range 5 East, Section 4 with the parcel being in the NE (7-1-97)*

*v. The following table is an example of a companion sheet with parcel numbers for land not subdivided.*

Township & Range	Sec.	Parcel No.	Grantor	Grantee	Remarks	Deed Type	Date	Instrument Number
23N11E	29	7985	Public, John	Citizen, Fred	See Parcel #7832	WD	1/10/03	492183
23N11E	29	7990	Citizen, Fred		Split from #7985			
23N11E	29	8000	Citizen, Fred	Voter, Sue	Split from #7985	WD	3/9/99	644809
23N11E	29	8010	Citizen, Fred		Split from #7990			
23N11E	29	8250	Citizen, Fred	Anyone, Jim	Split from #7990	WD	4/9/01	652186

*(3-15-02)*

*e. Land not subdivided inside the city limits shall have a letter in position 1 of the parcel number. Each city letter designator shall be unique. (7-1-97)*

- i. Positions 2, 3, 4, 5, and 6 shall be zeros. (7-1-97)*
- ii. Positions 7 and 8 shall be the section number. Number these positions as required in Subsection 218.04.d. of this rule. (3-30-01)*
- iii. Positions 9, 10, 11, and 12 shall be the quarter section number. Number these positions as required in Subsection 218.04.d. of this rule. (3-30-01)*
- iv. When a metes and bounds parcel inside city limits is being numbered, positions 9, 10, 11, and 12 locate the parcel to the nearest quarter section. (7-1-97)*
- v. If a government lot is within a section, or an extended government lot is an extension of a section, the quarter section numbering shall be assigned as rural land not subdivided. For a government lot within a quarter section, the assigned number shall be a number within the sequence of numbers for the quarter section. For an extended section, the assigned number shall be within the sequence from the extended quarter section. (7-1-97)*
- vi. The following parcel number example denotes a parcel in the NE1/4 of section 29 in the city identified by the letter "A": A 0 0 0 0 0 2 9 2 1 6 3. (7-1-97)*
- f. Subdivided land within the county, but not in a city, shall have the number zero, in position 1 of the parcel number. (7-1-97)*
- i. Positions 2, 3, 4, and 5 shall be the subdivision number. The subdivision number shall not contain alphabetic characters. Each subdivision, whether the original townsite or new subdivision, shall be assigned a four (4) digit number. (7-1-97)*
- ii. Positions 6, 7, and 8 shall be the block number. (7-1-97)*
- iii. Positions 9, 10, and 11 shall be the lot number designated on the subdivision plat or an assigned number if characters on the subdivision plat are not acceptable as a parcel number. (7-1-97)*
- iv. Position 12 shall be a zero (0) if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter, "A." If split a second time, the letter becomes a "B," etceteras. These splits or combinations shall be listed on the companion sheet. (7-1-97)*
- v. The following parcel number example denotes a subdivided parcel not in any city, identified by the number "0," subdivision number 62, block number 200, and lot number 29: 0 0 0 6 2 2 0 0 0 2 9 0. (7-1-97)*
- g. Subdivided land within the cities shall have the city letter in position 1 of the parcel number. Each city letter designator shall be unique. (7-1-97)*
- i. Positions 2, 3, 4, and 5 shall be the subdivision number. The subdivision number shall not contain alphabetic characters. Each subdivision, whether the original townsite or a new subdivision, shall be assigned a four (4) digit number. (7-1-97)*
- ii. Positions 6, 7, and 8 shall be the block number. (7-1-97)*
- iii. Positions 9, 10, and 11 shall be the lot number designated on the subdivision plat. An assigned subdivision plat number may be used if numbers comply with the parcel numbering system. (7-1-97)*
- iv. Position 12 shall be a zero (0) if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter "A." If split a second time, the letter becomes a "B," etceteras. These splits or combinations shall be listed on the companion sheet. (7-1-97)*
- v. When one whole lot and part of another adjoining lot are under common ownership, one parcel number may be assigned. That parcel number shall be written using the whole lot's number and position 12 shall be a*

*letter.* (7-1-97)

*vi. The following parcel number example denotes a parcel in the city identified by the letter "A," in subdivision with number 0062, block number 200, lot number 029, and has been modified once: A 0 0 6 2 2 0 0 0 2 9 A.* (7-1-97)

*vii. The following table is an example of a companion sheet with parcel numbers for subdivided land within a city.*

City No.	Sub. No.	Blk. No.	Lot & Split Number	Grantor	Grantee	Remarks	Deed Type	Date	Instrument Number
A	0054	001	0090	Owner, Sid	Pat Voter		WD	1/11/02	190624
A	0054	001	009A	Voter, Pat		Retaining N1/2 Lot 9			
A	0054	001	009B	Voter, Pat	Public, Joe	S1/2 Lot 9	WD	2/12/09	299486
A	0054	001	009B	Public, Joe	Owns, Tim	S1/2 Lot 9	WD	6/9/01	299009

(3-15-02)

*h. Patented mines and patented mining claims shall have the number "9" in positions 1 and 2 of the parcel number.* (7-1-97)

*i. Positions 3 through 8 shall denote the township and range, as in the land not subdivided format.* (7-1-97)

*ii. Positions 9 through 12 shall be a county assigned sequential account number for individual mines.* (7-1-97)

*iii. The following parcel number example denotes a parcel that is a patented mine in township 10 North, Range 36 East, with county assigned number 58: 9 9 1 0 N 3 6 E 0 0 5 8.* (7-1-97)

*i. Condominiums in a city shall have a letter in position 1 of the parcel number. The city designator shall be a unique letter. For condominiums not in any city, position 1 is a zero.* (7-1-97)

*i. Positions 2, 3, 4, and 5 shall be the condominium number and shall be four numbers. To differentiate between condominiums and subdivisions, numbers 0001 through 8999 are to be used for subdivisions, and numbers 9000 through 9999 for condominiums. Fill positions preceding the number with zeros to occupy all four positions.* (7-1-97)

*ii. Positions 6, 7, and 8 shall be the block or building number. Position 6 may be a "C" to differentiate between a typical block or building number and a condominium common area.* (7-1-97)

*iii. Positions 9, 10, and 11 shall be the lot or unit number designated on the condominium plat or an assigned number. An assigned condominium plat number may be used if numbers comply with the parcel numbering system.* (7-1-97)

*iv. Position 12 shall be a zero (0) if the parcel has not been modified since originally platted. If it has been split once or combined once, then this character becomes an "A." If split a second time, the character becomes a "B," etceteras. These splits or combinations shall be listed on the companion sheet.* (7-1-97)

*v. The following parcel number example denotes a parcel that is in the city identified by the letter "A," with condominium number 9062, block or building number 007, lot or unit number 029, and has not been*

~~modified since originally platted: A 9 0 6 2 0 0 7 0 2 9 0.~~

(7-1-97)

**219. UNIFORM PARCEL NUMBERING SYSTEM (RULE 219).**

Sections 63-209, 63-210, and 63-219, Idaho Code.

( )

**01. Definitions.** The following definitions apply to this rule.

( )

**a.** Parent parcel. A parcel of land in its original state prior to being segregated. The parcel may be described by a metes and bounds description, lot and block, aliquot part, or government lot.

( )

**b.** Child parcel. A parcel of land which has been segregated from the parent parcel. At the time a parent parcel is segregated into one or more parts, the parcels being segregated from the parent parcel shall be known as child parcels. The child parcel may be described by a metes and bounds description, a portion of a lot and block, a portion of an aliquot part, or a portion of a government lot.

( )

**02. Parcel Number Functions.** The uniform parcel numbering system shall be used for mapping and record keeping. Each parcel shall be assigned a parcel number that shall appear on the plat map and on a companion sheet. This assigned parcel number may also be the tax number.

( )

**03. Parcel Number Cancellation or Retention Upon Property Transfers.** As long as the property boundary does not change, the new owner's name shall be assigned to the same parcel number on the companion sheet. A parcel number that exists at the time a property is divided or added to may be canceled and a new number(s) assigned. If the parent parcel number is not canceled, it shall be assigned to the child parcel complying with the directions in this rule relating to assigning parcel numbers based on geographic location.

( )

**04. Property Split by County Line, Section Line, or Tax Code Area Boundary.** Properties contiguous under common ownership but split by county line, section line, or tax code area boundary shall require separate parcel numbers.

( )

**05. Rural Land not Subdivided.** Assign parcel numbers to rural land that is not subdivided as follows:

( )

**a.** Positions 1, 2, and 3 shall be the township descriptor minus the "T."

( )

**b.** Positions 4, 5, and 6 shall be the range descriptor minus the "R."

( )

**c.** Positions 7 and 8 shall be the section number. If the section number is less than ten (10), the section number is in position 8, preceded by a zero ("0") in position 7.

( )

**d.** Positions 9, 10, 11, and 12 shall be the quarter section numbers. To assign the quarter section number, begin numbering in the northeast quarter (NE1/4) of the northeast quarter (NE1/4) and proceed counterclockwise. Starting in the NE1/4 of the section the numbers used range from zero to two thousand three hundred ninety nine (0000 to 2399). Continuing counterclockwise, beginning in the NE1/4 of the northwest quarter (NW1/4), the numbers continue from two thousand four hundred to four thousand seven hundred ninety nine (2400 to 4799), thence, starting in the NE1/4 of the southwest quarter (SW1/4), assign numbers from four thousand eight hundred to seven thousand one hundred ninety nine (4800 to 7199), and beginning in the NE1/4 of the southeast quarter (SE1/4), assign quarter section numbers from seven thousand two hundred to nine thousand nine hundred ninety nine (7200 to 9999). The following quarter section breakdown key shows the sequence for assigning quarter section numbers for land not subdivided.

( )

North 1  
Standard Section

3000	2400	600	0
3599	2999	1199	599
3600	4200	1200	1800
4199	4799	1799	2399
5400	4800	7800	7200
5999	5399	8399	7799
6000	6600	8400	9000
6599	7199	8999	9999

Note: The northern quarters of sections 1, 2, 3, 4, 5, and 6 may be government lots and the western quarters of Sections 6, 7, 18, 19, 30 and 31 may be government lots. For the purpose of parcel numbering, these government lots shall be treated as if each was the respective quarter-quarter of the section. ( )

e. The following parcel number example denotes Township 10 North, Range 5 East, Section 4 with the parcel being in the NE1/4, NE1/4: 10N05E040235. ( )

f. The following table is an example of a companion sheet with parcel numbers for rural land not subdivided.

Township & Range	Sec.	Parcel No.	Grantor	Grantee	Remarks	Deed Type	Date	Instrument Number
23N11E	29	7985	Public, John	Citizen, Fred	See Parcel # 7832	WD	1/10/93	492183
23N11E	29	7990	Citizen, Fred		Split from #7985			
23N11E	29	8000	Citizen, Fred	Voter, Sue	Split from #7985	WD	3/9/99	644809
23N11E	29	8010	Citizen, Fred		Split from #7990			
23N11E	29	8250	Citizen, Fred	Anyone, Jim	Split from #7990	WD	4/9/01	652186

( )

06. **Urban Land not Subdivided.** Assign parcel numbers to urban land that is not subdivided as follows: ( )

a. Position 1 shall be the city letter. Each city shall have a unique letter. ( )

b. Positions 2, 3, 4, 5, and 6 shall each be the number zero ("0"). ( )

c. Positions 7 and 8 shall be the section number. Number these positions as directed in Paragraph 218.04.c. of this rule. ( )

d. Positions 9, 10, 11, and 12 shall be the quarter section number. Number these positions as directed in Paragraph 218.04.d. of this rule. ( )

e. When a metes and bounds parcel inside city limits is being numbered, positions 9, 10, 11, and 12 locate the parcel to the nearest quarter section. ( )

f. If a government lot is within a section, or an extended government lot is an extension of a section, the quarter section numbering shall be assigned as rural land not subdivided. For a government lot within a quarter section, the assigned number shall be a number within the sequence of numbers for the quarter section. For an extended section, the assigned number shall be within the sequence from the extended quarter section. ( )

g. The following parcel number example denotes a parcel in the NE1/4 of section 29 in the city identified by the letter "A": A00000292163. ( )

**07. Subdivided Rural Land.** Assign parcel numbers to subdivided rural land as follows: ( )

a. Position 1 shall be the number zero ("0"). ( )

b. Positions 2, 3, 4, and 5 shall be the subdivision number. The subdivision number shall not contain alphabetic characters. Each subdivision, whether the original townsite or new subdivision, shall be assigned a four (4) digit number. ( )

c. Positions 6, 7, and 8 shall be the block number. ( )

d. Positions 9, 10, and 11 shall be the lot number designated on the subdivision plat or an assigned number if characters on the subdivision plat are not acceptable as a parcel number. ( )

e. Position 12 shall be the number zero ("0") if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter "A." If split a second time, the letter becomes a "B," etceteras. These splits or combinations shall be listed on the companion sheet. ( )

f. The following parcel number example denotes a subdivided parcel not in any city, identified by the number zero ("0"), subdivision number 62, block number 200, and lot number 29: 000622000290. ( )

**08. Subdivided Urban Land.** Assign parcel numbers to subdivided urban land as follows: ( )

a. Position 1 shall be the city letter. Each city shall have a unique letter. ( )

b. Positions 2, 3, 4, and 5 shall be the subdivision number. The subdivision number shall not contain alphabetic characters. Each subdivision, whether the original townsite or a new subdivision, shall be assigned a four (4) digit number. ( )

c. Positions 6, 7, and 8 shall be the block number. ( )

d. Positions 9, 10, and 11 shall be the lot number designated on the subdivision plat. An assigned subdivision plat number may be used if numbers comply with the parcel numbering system. ( )

e. Position 12 shall be the number zero ("0") if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter "A." If split a second time, the letter becomes a "B," etceteras. These splits or combinations shall be listed on the companion sheet. ( )

f. When one (1) whole lot and part of another adjoining lot are under common ownership, one (1) parcel number may be assigned. That parcel number shall be written using the whole lot's number and position 12 shall be a letter. ( )

g. The following parcel number example denotes a parcel in the city identified by the letter "A," in

subdivision with number 0062, block number 200, lot number 029, and has been modified once: A0062200029A. ( )

**h.** The following table is an example of a companion sheet with parcel numbers for subdivided land within a city.

<u>City No.</u>	<u>Sub. No.</u>	<u>Blk. No.</u>	<u>Lot &amp; Split Number</u>	<u>Grantor</u>	<u>Grantee</u>	<u>Remarks</u>	<u>Deed Type</u>	<u>Date</u>	<u>Instrument Number</u>
A	0054	001	0090	Owner, Sid	Pat Voter		WD	1/11/92	190624
A	0054	001	009A	Voter, Pat		Retaining N1/2 Lot 9			
A	0054	001	009B	Voter, Pat	Public, Joe	S1/2 Lot 9	WD	2/12/99	299486
A	0054	001	009B	Public, Joe	Owns, Tim	S1/2 Lot 9	WD	6/9/01	299999

( )

**09. Patented Mines and Patented Mining Claims.** Assign parcel numbers to patented mines and mining claims as follows: ( )

**a.** The number nine (“9”) shall be in positions 1 and 2. ( )

**b.** Positions 3 through 8 shall denote the township and range, as in the land not subdivided format. ( )

**c.** Positions 9 through 12 shall be a county assigned sequential account number for individual mines. ( )

**d.** The following parcel number example denotes a parcel that is a patented mine in township 10 North, Range 36 East, with county assigned number 58: 9910N36E0058. ( )

**10. Condominiums.** Assign parcel numbers to condominiums as follows: ( )

**a.** Condominiums in a city shall have a letter in position 1 of the parcel number. The letter shall be unique for each city. For condominiums not in any city, position 1 is the number zero (“0”). ( )

**b.** Positions 2, 3, 4, and 5 shall be the condominium number and shall be four numbers. To differentiate between condominiums and subdivisions, numbers 0001 through 8999 are to be used for subdivisions, and numbers 9000 through 9999 for condominiums. Fill positions preceding the number with zeros to occupy all four (4) positions (“0000”). ( )

**c.** Positions 6, 7, and 8 shall be the block or building number. Position 6 may be a “C” to differentiate between a typical block or building number and a condominium common area. ( )

**d.** Positions 9, 10, and 11 shall be the lot or unit number designated on the condominium plat or an assigned number. An assigned condominium plat number may be used if numbers comply with the parcel numbering system. ( )

**e.** Position 12 shall be the number zero (“0”) if the parcel has not been modified since originally platted. If it has been split once or combined once, then this character becomes an “A.” If split a second time, the character becomes a “B,” etceteras. These splits or combinations shall be listed on the companion sheet. ( )

**f.** The following parcel number example denotes a parcel that is in the city identified by the letter “A,” with condominium number 9062, block or building number 007, lot or unit number 029, and has not been



modified since originally platted: A90620070290.

( )

~~21920.~~ -- 224. (RESERVED).

**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. (3-30-07)

**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)

i. Countywide taxing district. A countywide taxing district is a taxing district having the same boundaries as one (1) or more counties. ( )

**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. (3-30-07)

**e.** In cases where newly created taxing district boundaries are countywide a copy of the ordinance or order effecting the formation which clearly states that the newly formed district is to be countywide shall fulfill the requirements of documents to be filed in Paragraphs 225.02.a., b. and c., of this rule. ( )

**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. If any area annexed to an existing RAA includes a taxing district with any fund levying prior to January 1, 2008, and continuing to levy but which is not to be used to generate funds to be distributed to an urban renewal agency, the boundaries of the area added to the existing RAA shall constitute a separate 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)**

**231. -- 3031. (RESERVED).**

**302. LIST OF TAXABLE PERSONAL PROPERTY (RULE 302).**

Sections 63-302 and 63-602KK, Idaho Code.

( )

**01. Application for Exemption Required.** The list of personal property required by Section 63-302, Idaho Code, shall serve as the taxpayer's application for the exemption provided by Section 63-602KK, Idaho Code. The following information must be provided by the taxpayer:

( )

**a.** Name of the applicant; and

( )

**b.** An attestation that no other individual or organization has or will apply for the exemption in the county when those other individual(s) or organization(s) would be ineligible under this rule for the 63-602KK exemption. Under Idaho Code section 63-602KK, a taxpayer includes two (2) or more individuals using the property in a common enterprise or a related group of two (2) or more organizations when the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code, as defined in Section 63-3004, Idaho Code.

( )

**02. Designation of Personal Property Eligible for Exemption.** The list of personal property required by Section 63-302, Idaho Code, shall include all taxable personal property including the personal property that may be found to be exempt under the provisions of Section 63-602KK, Idaho Code. The exemption provided by Section 63-602KK, Idaho Code, is not determined until the assessor has determined the market value of the property for assessment purposes and has designated listed items as eligible for this exemption.

( )

**03. Failure to File the List.** The taxpayer must file the list of taxable personal property as required by Section 63-302, Idaho Code. If the list is not filed by the taxpayer, the assessor may list and assess the items to be taxed based on his best judgment and information available to him. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code.

( )

**303. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**313. ASSESSMENT OF TRANSIENT PERSONAL PROPERTY (RULE 313).**

Sections 63-213, ~~and~~ 63-313, and 63-602KK, Idaho Code.

~~(3-20-04)~~( )

**01. Definitions.** The following definitions apply for the assessment of transient personal property.

(5-3-03)

**a.** Home County. Home county is identified in Section 63-313, Idaho Code, as the county selected by the owner of any transient personal property as that county where that transient personal property is usually kept. That county selected by the owner shall be a county in the state of Idaho.

(5-3-03)

**b.** Periods of Thirty (30) Days or More. Periods of thirty (30) days or more mean increments of no less than thirty (30) consecutive, uninterrupted days, during which any transient personal property is located in any one (1) county. For any period of less than thirty (30) days, the property owner shall report the transient personal property as being in the home county, resulting in that transient personal property being assessed in the home county

for the entire year or the entire portion of the year the property has been in taxable status and not been outside the state of Idaho. (5-3-03)

**c.** Prorated Assessment. Prorated assessment means the ratio of the number of days, exceeding twenty-nine (29), to three hundred sixty-five (365) days multiplied by the total market value of the transient personal property. For additional clarification, refer to the following examples. (5-3-03)

**i.** If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. (5-3-03)

**ii.** If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the total market value in the second county and for three hundred six/three hundred sixty-five (306/365) of the total market value in the home county. (5-3-03)

**iii.** If located in a second Idaho county (not the home county) for thirty-one (31) consecutive, uninterrupted days, in a third Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, and in the home county for the remainder of the year, the transient personal property should be assessed for thirty-one/three hundred sixty-five (31/365) of the total market value in the second county, fifty-nine/three hundred sixty-five (59/365) of the total market value in the third county, and two hundred seventy-five/three hundred sixty-five (275/365) of the total market value in the home county. (5-3-03)

**iv.** If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and later in that same county for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. (5-3-03)

**v.** If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, outside the state of Idaho for any thirty-five (35) days and taxed in the other state, and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the value in the second county and for two hundred seventy-one/three hundred sixty-five (271/365) of the total market value in the home county. (5-3-03)

**d.** Transient Personal Property. Transient personal property is defined in Section 63-201, Idaho Code. (5-3-03)

**02. Overassessment Prohibited.** Section 63-213, Idaho Code, prohibits the assessment of any property in any one (1) county for the same period of time that property has been assessed in another county. The sum of the assessments of transient personal property in the home county and each other county where the property has been located shall not exceed the market value of the property. (5-3-03)

**03. Nontaxable Transient Personal Property.** (3-20-04)

**a.** Transient Personal Property in Transit. Under Subsection 63-313(4), Idaho Code, any transient personal property only in transit through the home county or any other county and not remaining in any county for the purpose of use is not subject to property taxation. (3-20-04)

**b.** Sold Transient Personal Property on Which Taxes Have Been Paid. Under Subsection 63-313(4), Idaho Code, any transient personal property, which was sold by the owner in the home county and upon which the full current year's property taxes were paid, is not subject to property taxation for the current year in any other county regardless of whether that property is to be used in or only in transit through any other county. (3-20-04)

**c.** Qualified Investment Exemption. For information and directions relating to the qualified investment exemption, see Rule 988 of these rules. (3-20-04)

**04. Exempt Transient Personal Property.** ( )

**a.** Section 63-602KK, Idaho Code, when applicable provides for exemption of each eligible taxpayer's personal property to the extent of one hundred thousand dollars (\$100,000) within each county. The limit on the exemption shall apply to the sum of the taxpayer's non-transient personal property and transient personal property. Prior to applying the exemption, transient personal property shall be allocated among the counties based on the prorated value as provided in Subsection 63-313(2), Idaho Code. ( )

**b.** In cases where the taxpayer has transient personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. ( )

**314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR (RULE 314).** (3-30-01)  
Sections 63-314 and 63-316, Idaho Code.

**01. Definitions.** (7-1-99)

**a.** Continuing Program of Valuation. "Continuing program of valuation" means the program by which each assessor completes the assessment of all taxable properties each year. (7-1-99)

**b.** Field Inspection. The "field inspection" shall include an observation of the physical attributes of all structures which significantly contribute to the property value, the visible land amenities, and a notation of any other factors which may influence the market value of any improvements. (7-1-99)

**c.** Index. "Index" refers to any annual adjustment or trending factor applied to existing assessed values to reflect current market value. Ratio studies or other market analyses can be used to develop indexes based on property type, location, size, age or other characteristics. (7-1-99)

**d.** Prediction of Market Value. As used in Section 63-314, Idaho Code, "prediction of market value" means an estimate of market value. (7-1-99)

**e.** Category to be Assessed at Current Market Value. The level of assessment of each category will be considered to be current market value unless there is reasonable statistical certainty that the category is not equalized pursuant to Section 63-109, Idaho Code, and Rule 131. (3-30-01)

**02. Plan for Continuing Program of Valuation.** The plan for continuing program of valuation shall include: (7-1-99)

**a.** General Contents. A parcel count by category, the number of parcels to be appraised each year, maps that show each of the market areas, an analysis of staff requirements, a budget analysis that provides adequate funding for labor costs, capital and supply costs, travel and education costs and the method of program evaluation. (3-30-01)

**b.** Market Data Bank. A market data bank including collection, verification and analysis of sales, income and expense data, building cost information, and application of this information to estimate market value. To mail assessment notices by the first Monday in June as required by Section 63-308, Idaho Code, assessors should include income and expense data submitted by property owners by the first Monday in April. Income and expense data for low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code includes actual rents, the monetary benefit of income tax credits, and expenses. (4-2-08)

**c.** Maps. Maps prepared in accordance with Section 63-209, Idaho Code, which identify characteristics of each geographic area. (7-1-99)

**d.** Property Record. A property record for each parcel, complete with the property characteristics necessary for an estimate of the current market value. (7-1-99)

**03. Date Plan Is Submitted.** The plan must be submitted to the State Tax Commission on or before the

first Monday of February in 1997, and every fifth year thereafter. (7-1-99)

**04. Request for Extension.** As provided in Section 63-314, Idaho Code, a county may request an extension to the current five (5) year county valuation plan. (3-30-01)

**a.** Amended Plan. Any request for an extension must include an amended plan incorporating an inventory of the parcels to be appraised during the period of the approved extension. This inventory shall constitute the schedule of required appraisals for the initial year or years of the subsequent five (5) year valuation program. Parcels appraised during the extension will be considered appraised during both the current and subsequent five (5) year plan valuation program periods, maintaining the same five (5) year cycle for all counties. (3-30-01)

**b.** Approval of the Extension and Amended Plan. A county shall be notified of the State Tax Commission's decision regarding the granting of an extension as provided in Section 63-314, Idaho Code, within thirty (30) days of receipt of the written request for the extension when accompanied by an amended plan. (3-30-01)

**c.** Approval of the Amended Plan. The State Tax Commission's approval of any extension shall specify timing and nature of progress reports. (3-30-01)

**d.** Voiding of the Extension. The State Tax Commission can void an extension unilaterally. (3-30-01)

**05. Testing for Current Market Value.** Assessed values shall be tested annually by the State Tax Commission as described in Section 63-109, Idaho Code, and Rule 131 of these rules to determine whether the level of assessment reflects "current market value." (3-30-01)

**06. Cross Reference.** For clarification on tax credits when valuing low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code, see the case of Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). *For an example of the methodology to use to include the value of the income tax credits when valuing low income housing properties receiving tax credits under Section 42 of the Internal Revenue Code, see Paragraph 217.03.c. of these rules.* (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~418. -- 5087.~~ (RESERVED).

**508. NOTIFICATION OF PERSONAL PROPERTY EXEMPT VALUE BY TAXING DISTRICT OR UNIT (RULE 508).**

Sections 63-510 and 63-602KK, Idaho Code. In addition to the requirements of Section 63-510, Idaho Code, for reporting of net taxable value for each taxing district or unit, the value of property exempt pursuant to Section 63-602KK, Idaho Code, shall be reported to the Tax Commission. The value of such exempt property that is included in the increment value within each tax code area in each revenue allocation area shall also be reported. This report shall be submitted by the August and March dates provided under Section 63-510, Idaho Code. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~626.--627.~~ **(RESERVED) PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).**

Sections 63-105(A), 63-302, 63-308, 63-313, and 63-602KK, Idaho Code. ( )

**01. Effective Date.** This exemption shall take effect on January 1 of the following tax year after the state controller certifies to the State Tax Commission that receipts to the General Fund for the fiscal year just ended have exceeded the receipts to the General Fund during the previous fiscal year by five percent (5%) or more. For example, if the state controller certifies that the receipts to the General Fund for the fiscal year ending June 30, 2008,

have exceeded the previous year by five percent (5%) or more, then this exemption would take effect on January 1, 2009. Once this exemption takes effect, it will remain in effect continuously. ( )

**02. Application Required.** ( )

**a.** In order to be eligible for this exemption, the taxpayer must file the list of taxable personal property as required by Section 63-302, Idaho Code, and, if applicable, the list required for transient personal property as required by Section 63-313, Idaho Code. If the applicable list is not filed by the taxpayer, the assessor may list and assess the items to be taxed based on his best judgment and information available. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code. ( )

**b.** Any taxpayer appealing his personal property listed on the property roll to the county board of equalization shall qualify for the exemption provided eligible property is ultimately shown on the list received from the taxpayer. ( )

**03. Taxpayers' Election of Property Location.** In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. ( )

**04. Valuation Assessment Notice.** The valuation assessment notice required by Section 63-308, Idaho Code, must show the gross value, the exempt value, and the net taxable value of the personal property. ( )

**05. Preliminary and Final Personal Property Tax Reduction Lists.** ( )

**a.** The preliminary personal property tax reduction list shall include the following information pertaining to the personal property accounts to receive the exemption: ( )

**i.** The name of the owner, listed in alphabetical order unless the State Tax Commission grants permission for accounts to be listed in an alternate order; ( )

**ii.** The description of the property item(s) subject to exemption or partial exemption; ( )

**iii.** The location(s) of the property item(s) showing the tax code area; and ( )

**iv.** The value of the property item(s). ( )

**b.** This preliminary list shall be compiled by the assessor and shall be certified and sent to the county clerk and the Tax Commission by the fourth Monday in July. The list will be reviewed and, if necessary, corrected by the Tax Commission. The list will only include those taxpayers who have filed the list of taxable personal property as required by Section 63-302, Idaho Code. The owners of transient personal property will not be listed on the preliminary list. ( )

**c.** The final personal property tax reduction list shall include, in addition to the items listed in Paragraph 626.05.a. of this rule, the following information pertaining to the personal property accounts to receive the exemption: ( )

**i.** The tax levy applicable to the personal property; ( )

**ii.** The tax before the exemption; ( )

**iii.** The tax after the exemption; ( )

**iv.** The amount of the exemption; ( )

**v.** The aggregate total of the tax exempted; and ( )



vi. The aggregate total of the tax exempted within each taxing district and each revenue allocation area. ( )

d. This final personal property tax reduction list shall include transient personal property. This final list shall serve as the certification from the county clerk to the Tax Commission as required by Section 63-602KK (3), Idaho Code. The final certified list shall be filed with the Tax Commission not later than the third Monday of November of each year. ( )

**06. Tax Commission's Review and Correction of the Personal Property Tax Reduction Lists.** If an entry on the preliminary or final property tax reduction list is found to be erroneous, the Tax Commission shall disapprove as much of the claim as necessary and so notify the county clerk. ( )

**07. Cross Reference.** For information on the list of personal property that must be filed, see Rule 302 of these rules. For information on transient personal property see Rule 313 of these rules. ( )

**627. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**630. --644. (RESERVED).**

**631. TAX EXEMPTION FOR INVESTMENT IN NEW PLANT AND BUILDING FACILITIES UPON COUNTY COMMISSIONERS' APPROVAL (RULE 631).**  
Section 63-602NN, Idaho Code. ( )

**01. The Investment in Plant.** In order to qualify for this exemption a taxpayer must invest at least three million dollars (\$3,000,000) in new plant and building facilities excluding the investment in land. See Section 63-602NN, Idaho Code. ( )

**02. The Exemption.** The board of county commissioners may exempt all or a portion of the market value of the project for a period of up to five (5) years. Land is not to be included in this exemption. See Section 63-602NN(2), Idaho Code. ( )

**03. Cross Reference.** See Rule 802 of these rules for instructions relating to the valuation of new construction. ( )

**632. -- 644. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**  
Sections 63-802, ~~and~~ 63-301A, 63-602W, and 63-602NN, Idaho Code. (~~3-30-07~~)( )

**01. Definitions.** (4-5-00)

**a. "Change of Land Use Classification."** "Change of land use classification" shall mean any change in land use resulting in a category change and in an increase in taxable land value to be reflected on the current property roll. (3-30-07)

**i.** This increase in value due to change of land use classification shall be reported on the new

construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. (3-30-07)

ii. The increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (3-30-07)

iii. When the land value, had the land remained in its previous use category, is less than the land value for a previous year in which value for the same property was included in the value reported on the new construction roll, the value calculated in Subparagraph 802.01.a.ii. of this Rule shall be reduced by the value included on any previous new construction roll. (3-30-07)

b. "Incremental Value as of December 31, 2006." "Incremental value as of December 31, 2006" means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll in 2006. (4-2-08)

c. "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules. (4-2-08)

**02. New Construction Roll Listing.** "Listing" shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit, and the separate listing must show the year or years of the new construction roll that would have been appropriate for this additional new construction. The taxing district has the burden of proving the new construction was omitted from any new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year's new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (4-2-08)

**03. Manufactured Housing.** "Installation" of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

**04. Partial New Construction Values.** Except as provided in Subsection 802.05 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.05 of this rule, any increase in a nonresidential parcel's taxable value, due to new construction, shall be computed by subtracting the previous year's or years' partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.05 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2004. The improvement was occupied February 2, 2004. Assume the ten thousand dollars (\$10,000) value was on the 2004 new construction roll. Assume that in 2005 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2005 new construction roll is calculated as follows:

2005 Value	\$90,000
2004 Value Already Reported on New Construction Roll	<\$10,000>
2005 New Construction Roll Value (this improvement)	\$80,000

(4-2-08)

**05. Change in Status.**

(4-2-08)

a. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. (7-1-99)( )

b. Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of a revenue allocation area under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the “incremental value as of December 31, 2006,” shall be added to the appropriate year’s new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year’s new construction roll. (4-2-08)

**06. Value of Annexation to Exclude New Construction.** When determining the maximum property tax funded budget that may be certified under Section 63-802, Idaho Code, the annexation value shall include all taxable value within the annexed area except the value of new construction, outside revenue allocation areas. Except for new construction within a revenue allocation area, the value of new construction within the annexed area shall be excluded from the value of the annexed area but included on the new construction roll for the taxing district annexing the area where the property is located, thereby preventing double counting of new construction value within the annexed area. (4-2-08)

**07. Notification of New Construction Roll and Annexation Values.** On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).** Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), and 63-3638(10), Idaho Code. (4-2-08)

**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. (4-2-08)

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) or 63-802(1)(g), 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) or 63-802(1)(g), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
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 Substitute Funds Tax List." Recovered/recaptured property tax substitute funds 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 or other payments during the twelve (12) month period ending June 30 each year under the following sections: ( )

- i.** Section 63-602G(5), Idaho Code; ~~and/or as recapture of property tax under~~ ( )
- ii.** Section 63-3029B(4), Idaho Code; and ( )
- iii.** ~~during the twelve (12) month period ending June 30 each year~~ Section 31-808(11), Idaho Code. (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). (4-2-08)

**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 Certification Requested Documents.** Using the completed L-2 Form, 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 only submit documentation specifically requested by the State Tax Commission. (4-2-08)

**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; (4-2-08)
- 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 substitute funds 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 substitute funds list"; and (~~4-6-05~~)(\_\_\_\_)
- iv. The amount of money transferred from the interest-bearing trust to the county indigent fund under Section 31-808(11), Idaho Code. (\_\_\_\_)
- 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~~, other than Replacement Money Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** With the exception of property tax replacement monies received for property subject to the exemption provided in Section 63-602KK, Idaho Code, property tax replacement monies received pursuant to Section 63-3638, Idaho Code, must be reported on the L-2 Form and separately identified on accompanying worksheets. For all taxing districts, these monies must be subtracted from the "balance to be levied". 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, excluding monies received pursuant to Section 31-808(11), Idaho Code, and the amount actually levied. (4-2-08)(\_\_\_\_)

- a. The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Section 63-3638(10), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Section 63-3638(10), Idaho Code, ~~as amended by the First Extraordinary Session of the Fifty eighth Legislature.~~ (4-2-08)(\_\_\_\_)
- b. 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. (4-2-08)
- c. Except as provided in Paragraph 803.06.d. of this rule, ~~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. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (4-2-08)( )

d. For counties receiving monies described in Section 31-808(11), Idaho Code, the amount of money transferred from the interest-bearing trust to the county indigent fund shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. ( )

~~d.e.~~ Levy limits shall be tested against the amount actually levied. (3-15-02)

**07. Special Provisions for Property Tax Replacement Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** The following procedure is to be used to calculate levy rates and maximum amounts of property tax revenue for taxing districts or units that receive property tax replacement money for property subject to the exemption in Section 63-602KK, Idaho Code. ( )

a. Such property tax replacement money is not to be subtracted from the "balance to be levied" amount certified on the L-2 Form. ( )

b. The otherwise taxable value of the property subject to the exemption provided in Section 63-602KK, Idaho Code, is to be included in the value of the taxing district or unit used to calculate the levy rate. ( )

c. The maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the amount actually levied plus other property tax replacement money as defined in Paragraph 803.4.e. of this rule, excluding any amount transferred as provided in Section 31-808(11), Idaho Code. ( )

**078. 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)

**089. 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)

**0910. 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)

**101. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy.** To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this levy, sum the school district's tort fund for the prior year and the agricultural equipment replacement revenue subtracted from that tort fund, then divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (4-2-08)

**142. Special Provisions for Interim Abatement Districts.** When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined

abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

**123. Cross Reference for School Districts with Tuition Funds.** For any school district certifying a tuition fund levy in 2006 or any year thereafter, see Section 33-1408, Idaho Code, as amended by the First Extraordinary Session of the Fifty-eighth Legislature, for clarification that the amount of property tax revenue for a tuition fund is not subject to the limitations of Section 63-802, Idaho Code. (4-2-08)

**804. TAX LEVY -- CERTIFICATION -- URBAN RENEWAL DISTRICTS (RULE 804).**  
Section 50-2908, 63-803, and 63-811, Idaho Code. (~~4-2-08~~)( )

**01. Definitions.** (4-5-00)

**a.** "Urban renewal district." An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. (4-5-00)

**b.** "Revenue allocation area (RAA)." A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are to be determined. Revenue allocation areas (RAAs) are not taxing districts. (4-5-00)

**c.** "Current base value." The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. (4-5-00)

**d.** "Initial base value." The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. (4-5-00)

**e.** "Increment value." The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel's current base value, provided such difference is a positive value. (4-5-00)

**02. Establishing and Adjusting Base and Increment Values.** (4-5-00)

**a.** Establishing initial base value. If a parcel's legal description has changed prior to computing initial base year value, the value that best reflects the prior year's taxable value of the parcel's current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll. (4-5-00)

**b.** Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel's initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000). (4-5-00)

**i.** Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar (\$1,000) decrease in value in Category 21 and a one thousand dollar (\$1,000) increase in Category 42 value.



There is no change in the base value for the parcel. (4-5-00)

ii. Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars (\$3,000) decrease in value in Category 21 and a one thousand dollars (\$1,000) increase in Category 42 value. The base value decreases two thousand dollars (\$2,000) to ninety-eight thousand dollars (\$98,000). (4-5-00)

iii. Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars (\$98,000), the value of the parcel increases by five thousand dollars (\$5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars (\$98,000). (4-5-00)

c. Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel's legal description. This adjustment shall be calculated as described in the following subsections. (4-5-00)

i. When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. (4-5-00)

ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (4-5-00)

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii. (4-5-00)

d. Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections. (4-5-00)

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established. (4-5-00)

ii. Partially exempt parcels. When a partially exempt parcel within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that if this parcel had not been actively devoted to agriculture at that time, the taxable value would have been fifteen hundred dollars (\$1500). After five (5) years, this parcel is no longer used for farming, loses its partial exemption, and becomes reclassified as industrial land with a value of ten thousand dollars (\$10,000). The base value within the RAA would be adjusted upwards by one thousand dollars (\$1,000), the difference between fifteen hundred dollars (\$1500) and five hundred (\$500). (4-5-00)

iii. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the original value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars (\$20,000). Three (3) years later, an improvement valued at one hundred thousand dollars (\$100,000) was added. The land at this later date had a value of thirty thousand dollars (\$30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by twenty thousand dollars (\$20,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by twenty thousand dollars (\$20,000). (4-5-00)

e. Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (4-5-00)

i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (4-5-00)

ii. For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA. (4-5-00)

iii. For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

f. Adjustments to increment values. Decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). (4-5-00)

g. Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. (4-5-00)

**03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts.** Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: ( )

a. For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, ~~the property tax levy for any taxing district or unit which includes all or part of an RAA in an urban renewal district~~ shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the ~~taxing district or unit fund~~ by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000). (4-5-00)( )

b. For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). ( )

**04. Modification of an Urban Renewal Plan.** When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)

a. Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for the consolidated RAA. (4-5-00)

b. Modification by annexation. ( )

i. If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (4-5-00)( )

ii. For levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. The example below shows the value to be used for setting levies for various funds within an urban renewal district "A" that annexes area "B" within a school district. Area (B) was annexed after December 31, 2007. Therefore, the Area (B) increment was added back to the base for all funds shown except the tort fund. The Area (A) increment value was added back to the base for the bond and override funds which were certified or passed after December 31, 2007.

2009 Value Table	School District (base only)	\$500 Million
	RAA (A) increment	\$ 40 Million
	RAA annex (B) increment	\$ 10 Million

<p>School District Area \$500 M base</p> <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> <p>2008 RAA Annexation (B) \$10 M Increment</p> </div> <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> <p>Pre 2008 RAA (A) Boundaries \$40 M Increment</p> </div>	<u>2009 School Levies</u>	
	Fund	Value for Setting Levies \$ Millions
	Tort	500
	2001 Plant	510
	2008 Bond (Passed and first levied in 2008)	550
	2009 Override	550

( )

**05. Criteria for Determining Whether Levies for Funds are to be Computed Using Base Value or Market Value for Assessment Purposes.** Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. ( )

a. Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; ( )

b. Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; ( )

c. Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; ( )

d. Voter approved school or charter school district supplemental maintenance and operation levies

passed after December 31, 2007, for up to two (2) years; or ( )

**e.** Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007. ( )

**056. Cross Reference.** The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**806. ~~(RESERVED)~~ ELECTION TO CREATE A NEW TAXING DISTRICT -- CLERK'S MAILED NOTICE (RULE 806).**

Section 63-802C, Idaho Code. The sponsors of a new taxing district, including interim abatement districts, shall submit an estimate of the first year's property tax budget to the county clerk sixty (60) days prior to the election. When the estimate of the first year's budget is received, the county clerk shall estimate the levy rate based on the most recent actual or estimated taxable value information available. If the sponsors fail to provide the budget information, the county clerk shall, for taxing districts with funds subject to maximum levy rates, estimate the amount of property taxes to be raised in the proposed district by multiplying the maximum levy rate permitted by law times the most current available estimate of taxable value. Pertaining to the estimate of the first year's levy only, the estimated levy rate, computed based on the information supplied by the sponsors, or the maximum levy rate permitted by law if the information has not been supplied, shall be used to compute the estimated taxes per one hundred thousand dollars (\$100,000) of net taxable value. The maximum levy rate means the sum of every maximum statutory levy rate for any fund subject to such rates for the taxing district type. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**902. PROPERTY TAX NOTICE AND RECEIPTS - DUTY OF TAX COLLECTOR (RULE 902).**

Sections 63-602KK, 63-704, and 63-902, Idaho Code. ( )

**01. Tax Notices with Zero Tax Owed.** 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 or as a result of the property tax exemption provided in Section 63-602KK, Idaho Code. For these taxpayers, the tax notice shall show the amount to be paid on behalf of the taxpayer and zero taxes owed. (3-30-07)( )

**02. Tax Notices Applicable to Taxpayers Eligible for the Exemption Provided by Section 63-602KK, Idaho Code.** The tax notice for taxpayers who receive a reduction in the amount of property tax due must show the gross value of the personal property, the gross tax amount, the amount exempted, the tax amount to be paid by the state, and the net tax due from the taxpayer even if zero (0) tax is owed. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**966. RECAPTURE OF DEFERRED TAXES ON LANDS DESIGNATED UNDER SECTION 63-1706, IDAHO CODE (RULE 966).**

Section 63-1703, Idaho Code. (4-2-08)

**01. Ownership Interest/Deferred Taxes.** Where forestland is held in joint ownership, a transfer of ownership for purposes of recapturing deferred taxes shall occur when any one (1) of the legal entities holding an

ownership interest in the subject property shall convey, transfer, or otherwise dispose of their ownership interest or portion thereof. Any such transfer of ownership shall subject the entire parcel to recapture of deferred taxes, unless the new owner timely redesignates their ownership interest under Section 63-1706, Idaho Code. (7-1-97)

**02. Deferred Tax Responsibility.** Deferred taxes shall be the responsibility of the selling landowner. Deferred taxes shall constitute a lien on the land. (3-30-01)

**03. Change in Use/Deferred Taxes.** ~~For forestlands designated under Section 63-1706, Idaho Code, and subsequently removed from the designation by change in use with no ownership transfer to any use other than designation under Section 63-1705, Idaho Code, shall cause a~~ but subject to recapture of deferred taxes as provided in Section 63-1703, Idaho Code, because of a change in use with no change in ownership, recapture of deferred taxes shall be calculated in the following manner: ~~(4-2-08)(\_\_\_\_)~~

**a.** The difference between the current bare land value for the correct class of land in the forest value zone in which the parcel lies and the current market value for assessment purposes of the property during the current year; (3-30-01)

**b.** Multiplied by the current levy for the tax code area or areas in which the parcel lies; (3-30-01)

**c.** Multiplied by the number of years, including the entire current year, the lands have been subject to designation under Section 63-1706, Idaho Code, not to exceed ten (10) years. Additionally, a credit shall be allowed for any yield tax paid up to the amount of the deferred taxes. (3-30-01)

**04. Transfer of Ownership/Deferred Taxes.** ~~For forestland designated under Section 63-1706, Idaho Code, upon transfer of ownership or removal to designation under Section 63-1705, Idaho Code, shall be subject to a~~ but subject to recapture of deferred taxes as provided in Section 63-1703, Idaho Code, because of a change in ownership or a removal of the designation, recapture of deferred taxes shall be calculated in the following manner: ~~(3-30-01)(\_\_\_\_)~~

**a.** The difference between the current bare land value for the correct class of land in the forest value zone in which the parcel lies and the current productivity value for the correct class of land in the forest value zone in which the parcel lies, for the current year; (3-30-01)

**b.** Multiplied by the current levy for the tax code area or areas in which the parcel lies; (3-30-01)

**c.** Multiplied by the number of years, including the entire current year, which the lands have been subject to designation under Section 63-1706, Idaho Code, not to exceed ten (10) years. Additionally, a credit shall be allowed for any yield tax paid up to the amount of the deferred taxes. (3-30-01)

**05. Investment Lands.** Investment lands are defined as those in secondary categories 1, 2, 3, 4, 5, and 9, as defined in Rule 510 of these rules. (4-2-08)

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0105-0801**  
**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 Section 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 130:** Add annual gaseous fuels permit fees to Paragraph 130.02. Add biodiesel and biodiesel blends to the fuels in Paragraph 130.06. Paragraph 130.02 is being amended to show that the payment of annual gaseous fuels permit fees is also required on the fuel distributor report. Paragraph 130.06 is being amended to show that biodiesel and biodiesel blends are also received by a distributor subject to the fuels tax and transfer fee.

**Rule 135:** Add biodiesel producer to the appropriate sections of this rule. Rule 135 is being amended to add to the definition of a "qualified consumer" a person who produces biodiesel for his own use. The change would allow this type of biodiesel producer to file his report annually instead of monthly.

**Rule 185:** Add new rule that requires the signature of an authorized person on the distributor's application. This is a new rule to implement the requirements in Idaho Code section 63-2427A(4) found in House Bill 249a passed during the 2007 legislative session. This requires that all Idaho Fuel Distributor License Applications be signed by an individual with the authority to give the consent to jurisdiction of Idaho courts on behalf of the applicant.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy Nilson at (208) 334-7544.

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 October 22, 2008.

DATED this 20th day of August, 2008.

Randy Nilson  
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. 35-0105-0801**

**130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).**

**01. Monthly Reports.** Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

- a.** The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)
- b.** The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)
- c.** The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)
  - i.** Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)
  - ii.** Exported; (4-11-06)
  - iii.** Delivered to the Idaho National Guard tax exempt; or (4-11-06)
  - iv.** Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. (4-2-08)
- d.** The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)
- e.** The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f.** The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g.** The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h.** The tax-paid purchases; (7-1-98)
- i.** The net taxable gallons; (7-1-98)
- j.** The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions; (4-2-08)
- k.** The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule

140 of these rules; (4-2-08)

**l.** The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)

**m.** The tax computation; (7-1-98)

**n.** The bad debt amounts, refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (4-2-08)

**o.** The gaseous fuels permit fees; and (4-11-06)

**p.** The net tax due. (4-11-06)

**02. Report Due and Payment Required.** The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (~~7-1-99~~)(\_\_\_\_)

**03. Machine Tabulated Data.** Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

**04. Supplemental Reports.** In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

**05. Timely Reporting.** Any petroleum product shipments that are: (7-1-98)

**a.** Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

**b.** Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

**06. Motor Fuels Receipts.** All gasoline, ~~gasohol~~ ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (~~3-30-01~~)(\_\_\_\_)

**131. -- 134. (RESERVED).**

**135. ALTERNATE REPORTING FOR PERSONS WHO PRODUCE MOTOR FUELS OR IMPORT MOTOR FUELS INTO IDAHO ONLY FOR USE IN THEIR OWN AIRCRAFT, MOTOR VEHICLES, AND EQUIPMENT. (RULE 135-),**

**01. In General.** The state of Idaho imposes an excise tax on all motor fuel and transfer fee on all petroleum and petroleum products, received in Idaho. See Rule 510 of these rules for the definition of petroleum and



petroleum products. Motor fuel imported into Idaho is received at the time the fuel arrives in Idaho by the person who is the owner of the motor fuel when the fuel arrives in Idaho. Motor fuel produced in Idaho is received when it is placed into any tank or other container from which sales or deliveries not involving transportation are made. Motor fuels are also received by a qualified consumer who produces motor fuels when the motor fuels are placed into storage tanks. For example: 55 gallon barrels, above ground tanks, stilt tanks, underground tanks, tank wagons, old delivery trucks, old tanker trucks, slip tanks in pickups, and any other storage tank used to store the motor fuel. The excise tax and transfer fee due on the motor fuel received in Idaho during a month are normally reported on an Idaho Motor Fuels Distributor Report on a monthly basis. (3-30-01)( )

**02. Alternative to Monthly Reporting for Qualified Consumers.** As an alternative to obtaining an Idaho motor fuel distributor license and filing monthly reports, a qualified consumer may file an annual report to remit the motor fuel tax and transfer fee due to the state of Idaho or to receive a refund of excess tax or transfer fee paid. (7-1-99)

**03. Qualifications.** To be a qualified consumer under this rule, a person must: (7-1-99)

a. Use the produced or imported motor fuel only in its own aircraft, motor vehicles, or equipment; and (7-1-99)( )

b. Import ~~less than~~ into Idaho one-hundred thousand (100,000) gallons or less of motor fuel ~~into Idaho~~ in a calendar year, or (7-1-99)( )

c. Produce in Idaho five thousand (5,000) gallons or less of motor fuel in a calendar year. ( )

**04. Documentation of Export.** To claim an export of motor fuel or other petroleum products a qualified consumer must have tax reports or other evidence that will verify that the exported fuel was reported to and any tax due was paid to the jurisdiction into which the fuel was claimed to have been exported. (3-30-01)

**05. Limitations.** (7-1-99)

a. A qualified consumer may not claim an export from Idaho for fuel in the supply tank of a motor vehicle or aircraft. (7-1-99)

b. A licensed Idaho fuel distributor may not file this report. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**181. -- ~~229~~184. (RESERVED).**

**185. AUTHORITY TO GIVE THE CONSENT TO JURISDICTION OF IDAHO COURTS (RULE 185).**

**01. Authorized Signature on Application.** All Idaho Fuel Distributor License Applications must be signed by an individual with the authority to give the consent to jurisdiction of Idaho courts on behalf of the applicant. ( )

**02. Authority to Waive Sovereign Immunity.** If the applicant is a state, local or tribal governmental entity, the application must be accompanied by a separate authorization by the governing authority of the entity waiving sovereign immunity that the entity may otherwise assert against any action to enforce Idaho motor fuels tax laws in state court and setting forth the authority of the individual who signs the application to bind the applicant. ( )

**03. Irrevocable Submission and Waiver of Sovereign Immunity.** The application constitutes an irrevocable submission to the jurisdiction of Idaho state courts, and the waiver of any sovereign immunity that may otherwise be asserted, as to all disputes related to the enforcement of Title 63, Chapter 24 of the Idaho Code. ( )

**186. -- 229. (RESERVED).**

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-2501, and 63-2553, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 022:** Add the words "or distributors" to Rule 022.01.a. Cigarette and tobacco tax Rule 022.01 states that a tobacco distributor may claim a credit for sales to out of state retailers. Sales to out of state distributors (wholesalers) are also exempt.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted at (208) 334-7544.

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 October 22, 2008.

DATED this 20th day of August, 2008.

Jim Husted Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., 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. 35-0110-0801

##### 022. EXEMPTIONS (RULE 022).

**01. Credit for Taxes Paid.** Tobacco distributors may claim a credit for taxes paid on tobacco products

other than cigarettes that are: (7-1-93)

- a. Sold and delivered to retailers or distributors at locations outside the state of Idaho; ~~(5-3-03)~~(\_\_\_\_)
- b. Sold and delivered to the United States Government on U.S. Military reservations located within Idaho; (7-1-93)
- c. Sold and delivered to a purchaser within the boundaries of an Idaho Indian reservation when the purchaser is an enrolled member of an Idaho Indian tribe; a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe; or a business enterprise wholly owned and operated by an Idaho Indian tribe. (7-1-93)

**02. Documentation.** Distributors must maintain adequate records to show the validity of credits claimed under this subsection, including delivery records and invoices. If the distributor is selling to an enrolled member of an Indian tribe he should keep a copy of the purchaser's tribal identification card in his files. If he is selling to a tribally owned entity, he should keep a certificate of tribal ownership or some other form of clear and convincing evidence that the purchaser is a business wholly owned and operated by an Idaho Indian tribe. (4-2-08)

**03. Indian Reservations.** Indian reservation means lands which are: (7-1-93)

- a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; established by formal decision of the Executive Branch of the United States; or (7-1-93)
- b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 022.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (7-1-93)

**04. Non-Indian Enterprises.** Tobacco distributors may not claim a credit for taxes paid on tobacco products sold to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation. (7-1-93)

**05. Non-Indian Retailers.** Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell tobacco products upon which tobacco products tax has not been paid. (7-1-93)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

DOCKET NO. 35-0111-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 23-1323, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 015:** Unclaimed property rule 015 states that an unclaimed property report must meet the requirements of Administration and Enforcement Rule 150, which deals with income tax returns. This is incorrect. An unclaimed property report must meet the requirements of Idaho Code 14-517. Strike the reference to Rule 150.

**Rule 017:** Unclaimed property Rule 017 states that interest is due from the original due date of an unclaimed property report. Idaho Code 14-517 refers to reporting abandoned property and the rule should use parallel language. Strike the words "original due date of the report" and replace them with the words "date that the property should have been reported." This is a technical correction only.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted at (208) 334-7544.

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 October 22, 2008.

DATED this 20th day of August, 2008.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., 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. 35-0111-0801

**015. REPORT OF ABANDONED PROPERTY (RULE 015).**

**01. Incomplete Report.** A report filed with the State Tax Commission must meet the requirements of a valid tax return as set out in ~~Administrative and Enforcement Rule 150~~ Section 14-517, Idaho Code. A report that does not meet the statutory requirements ~~of a valid tax return~~ may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code.

(7-1-98)( )

**02. Voluntary Payments of Unclaimed Property.** A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of fifty dollars (\$50) or less to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code. The administrator will remit the funds to the appropriate state.

(3-20-04)

**03. Underlying Shares and Cumulative Dividends.** The holder must report and remit total cumulative dividends to date, together with the stock certificate or the electronic equivalent of the stock certificate, when the certificate or equivalent is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is more than fifty dollars (\$50).

(4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**017. ADDITIONS AND PENALTIES (RULE 017).**

Penalties and interest may be applied on all delinquent amounts reported or resulting from an audit. These additions and penalties are applicable, even though the delinquent account may be remitted directly from the holder to the owner. Interest is to be computed from the ~~original due date of the report~~ date that the property should have been reported regardless of any extension of time to file granted by the administrator under Section 14-517(4), Idaho Code. A penalty may be imposed if the report is filed after the approved extension date. In the appropriate circumstances, the State Tax Commission may waive penalties imposed.

(7-1-98)( )

## IDAPA 35 - STATE TAX COMMISSION

### 35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 200:** Administration and Enforcement Rule 200 is being amended to add requirements for taxpayers to provide copies of documents when requested by the State Tax Commission for the purpose of verifying the correctness of the tax return. The amendments specify the acceptable formats of the copies and add the penalty under Idaho Code Section 3046(a) as a possible consequence if the taxpayer fails to produce requested records in support of amounts or information shown on an income tax return.

**Rule 310:** Idaho Code section 63-3045 establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. The rule is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2009 to the table that identifies this information by year.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

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 October 22, 2008.

DATED this 20th day of August 2008.

Janice Boyd  
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. 35-0201-0801

**200. EXAMINATION OF BOOKS AND WITNESSES AND DISCOVERY (RULE 200).** (3-20-97)  
Sections 63-3042 and 63-3043, Idaho Code.

**01. Retention of Working Papers.** Each taxpayer shall retain and make available on request all business records and working papers used in the preparation of, or relevant to the correctness of, any tax return subject to examination by the Tax Commission. (3-20-97)

**02. Requirement to Provide Copies of Documents.** ( )

**a.** Definitions for purposes of this rule. ( )

**i.** “Electronic Format” means electronically stored records or electronically created information that is in a format acceptable to the Tax Commission. Examples include ASCII delimited files with file definition, XML, and Excel. ( )

**ii.** “Hard copy” means any documents, records, or other data printed on paper. ( )

**iii.** “Machine-sensible record” means a collection of related information in an electronic format that is intended for use by a computer. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems. ( )

**iv.** “Photocopy” (photocopied) means a copy or reproduction of an original document including books, records, and working papers; to make a photographic reproduction of any document, printed, pictorial, or other medium of information or recordkeeping. ( )

**b.** Books, records, and working papers shall be provided either as a photocopy, an electronic reproduction, or be made available for photocopying, scanning, or other electronic reproduction at a specified time and place for the purpose of verifying the information on the tax return and issues under examination. ( )

**c.** When business records or workpapers are displayed or reproduced on paper, the material must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers. ( )

**d.** Taxpayers who maintain their records in both machine-sensible and hard-copy format shall make their records available to the Tax Commission in machine-sensible record format upon the Tax Commission's request. ( )

**023. Failure to Comply.** In addition to other enforcement provisions provided by statute, failure to produce records supporting amounts or information shown on a return may result in ~~appropriate adjustments by the Tax Commission, including either or both of~~ the following: (3-20-97)( )

**a.** The disallowance of claimed deductions, credits, or exemptions to which the requested information relates; (3-20-97)

**b.** The presumption that the information not provided is prejudicial to the taxpayer's position in regard to the issue or issues to which the requested information relates; (3-20-97)( )

**c.** The imposition of the penalty authorized by Section 63-3046(a), Idaho Code. ( )

**034. Discovery.** The Tax Commission may engage in all forms of discovery permitted by the Idaho

Rules of Civil Procedure by attaching the appropriate discovery request to a summons issued pursuant to Section 63-3042, Idaho Code. Discovery requests may include interrogatories, depositions, and requests for production or inspection. Failure to respond to a discovery request in the manner required by the Idaho Rules of Civil Procedure results in the reissuance of a summons to the taxpayer and the imposition of sanctions permitted by statute or these rules for failure to respond to the summons. (3-20-97)

**045. Cost Reimbursement to a Third-Party.** If the Tax Commission summonses a third-party to produce records, the Tax Commission may reimburse the third-party at a rate not to exceed seventy-five cents (\$.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**310. INTEREST RATES (RULE 310).**

Sections 63-3045 and 63-3073, Idaho Code. (3-20-04)

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
<u>Calendar Year 2009</u>	<u>5% simple interest</u>	<u>Revenue Ruling 2008-46</u>

(4-2-08)( )



# **IDAPA 37 - DEPARTMENT OF WATER RESOURCES**

## **37.03.01 - ADJUDICATION RULES**

### **DOCKET NO. 37-0301-0801**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2008.

**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 42-1414, and 42-1805(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Rule change is necessary to make rules consistent with 2006, 2007 and 2008 legislative amendments to Chapter 14, Title 42, Idaho Code, update outdated citations to Idaho Code, and reduce number of claim forms from two to one.

**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:

Compliance with deadlines in amendments to governing law or federal programs.

**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:

Because the 2008 Legislature lowered the fees for filing a claim in an adjudication, this will result in a negative impact on the fees collected by IDWR's adjudication programs in Section 42-1414, 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:

The rule change itself does not have a fiscal impact because the rule change simply makes the rules consistent with the new fee structure in Section 42-1414, Idaho Code. Because the 2008 Legislature lowered the fees for filing a claim in an adjudication, this will result in a negative impact on the fees collected by IDWR's adjudication programs.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because the primary purpose of rule change is to make the rules consistent with existing Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Don Shaff, Adjudication Bureau Chief, at (208) 287- 4800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2009.

DATED this August 18, 2008.

Donald V. Shaff  
Adjudication Bureau Chief  
Idaho Department of Water Resources  
322 E. Front St.  
PO Box 83720  
Boise, Idaho 83720-0098  
Ph: (208) 287-4800  
Fx: (208) 287-6700

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0301-0801**

~~000. (RESERVED).~~

**000. LEGAL AUTHORITY.**

This Chapter is adopted under the legal authorities of Section 42-1414, and 42-1805(8), Idaho Code. ( )

**001. TITLE AND SCOPE ~~(RULE 1).~~**

~~The purpose of these rules is to implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in Sections 42-1409(2), (4) and (8), 42-1414, and 42-1415, Idaho Code. (7-1-93)~~

**01. Title.** These rules shall be cited as IDAPA 37.03.01, "Adjudication Rules." ( )

**02. Scope.** These rules implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in Sections 41-1409, 42-1414 and 42-1415, Idaho Code. ( )

**002. WRITTEN INTERPRETATIONS.**

The Idaho Department of Water Resources maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the director's office of the Idaho Department of Water Resources, Boise, Idaho. ( )

**003. ADMINISTRATIVE APPEALS.**

Any person aggrieved by any final decision or order of the department shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated herein by reference. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The principal place of business of the Department of Water Resources is located at 322 East Front Street in Boise, Idaho and it is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. The telephone number of the office is (208) 287-4800. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to and in compliance with the provisions of Title 9, Chapter 3, Idaho Code. ( )

~~0027.~~ -- 009. (RESERVED).

010. DEFINITIONS (~~RULE 10~~).

- ~~01.~~ ~~AF.~~ An acre foot (feet). (7-1-93)
- ~~021.~~ **Amendment Fee.** The additional fee payable at the time of filing an amendment to a claim, as provided in Section 42-1409~~14~~(~~42~~), Idaho Code. (7-1-93)(    )
- ~~03.~~ ~~Application.~~ An application to appropriate water, as provided in Sections 42-202 or 42-1503, Idaho Code. (7-1-93)
- ~~042.~~ **Aquaculture.** The use of water for propagation of fish, shell fish, and any other animal or plant product naturally occurring in an underwater environment. (7-1-93)
- ~~053.~~ **Aquaculture Fee.** The variable fee payable for aquaculture use, as provided in Section 42-1414(~~21~~)(~~e~~~~b~~)(~~iii~~), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. (7-1-93)(    )
- ~~06.~~ ~~CFS.~~ Cubic foot (feet) per second. (7-1-93)
- ~~074.~~ **Claim.** A notice of claim to a water right acquired under state law, as provided in Section 42-1409(~~24~~), Idaho Code. (7-1-93)(    )
- ~~085.~~ **Department.** The Idaho Department of Water Resources. (7-1-93)
- ~~096.~~ **Director.** The Director of the Idaho Department of Water Resources. (7-1-93)
- ~~07.~~ **Domestic Use.** Domestic use as defined in Section 42-1401A(4), Idaho Code. (    )
- ~~10.~~ ~~Extended Payment Plan.~~ The installment schedule for payment of fees for filing claims, as provided in Section 42-1414(3), Idaho Code. (7-1-93)
- ~~11.~~ ~~Fire Fighting Purposes.~~ The use of water in times of emergency: to extinguish an existing fire on private or public lands, facilities, or equipment; to prevent an existing fire from spreading to private or public lands, facilities or equipment within the vicinity of and endangered by an existing fire; and by fire fighting personnel engaged in fighting an existing fire. Fire fighting purposes does not include the use of water to prevent a fire from occurring in the future, the use of water for domestic purposes in regularly maintained firefighting stations, or the storage of water for fighting future fires. (7-1-93)
- ~~1208.~~ **Flat Fee.** The per claim fee for filing claims, as provided in Section 42-1414(1)(~~a~~), Idaho Code. (7-1-93)(    )
- ~~1309.~~ **Late Fee.** The additional fee payable for the filing of late claims, as provided in Section 42-1409~~14~~(~~83~~), Idaho Code. (7-1-93)(    )
- ~~14.~~ ~~Long Claim Form.~~ The department's form number 42-1409(2)a, entitled "Notice of Claim to a Water Right Acquired Under State Law." (7-1-93)
- ~~150.~~ **Per Acre Fee.** The variable fee for irrigation use, as provided in Section 42-1414(~~21~~)(~~a~~~~b~~)(~~i~~), Idaho Code, which shall be calculated for each acre and fraction thereof rounded to the next whole acre. (7-1-93)(    )
- ~~161.~~ **Per Cfs Fee.** The variable fee payable for other uses, as provided in Section 42-1414(~~21~~)(~~a~~~~b~~)(~~iii~~), (~~iv~~) and (~~ey~~), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. (7-1-93)(    )

**172.** **Per Kilowatt Fee.** The variable fee payable for power generation use, as provided in Section 42-1414(21)(b)(ii), Idaho Code, which shall be calculated for each kilowatt and fraction thereof. (7-1-93)( )

**18.** **Report.** *The report of the director, as provided in Section 42-1411(1), Idaho Code.* (7-1-93)

**193.** **Short State Law Claim Form.** The department's form *number 42-1409(2)b*, entitled "Notice of Claim to a Water Right Acquired Under State Law *for Domestic and/or Stockwater Purposes as provided in Section 42-1409(4), Idaho Code.*" (7-1-93)( )

**14.** **Stock Watering Use.** Stock watering use as defined in Section 42-1401A(11), Idaho Code. ( )

**2015.** **Total Fee.** The fee payable for filing a claim, which consists of the flat fee plus any applicable variable fee and late fee. (7-1-93)( )

**216.** **Variable Fee.** The fee payable for filing claims in addition to the flat fee, as provided in Section 42-1414(21)(b), Idaho Code. (7-1-93)( )

**2217.** **Water Delivery System.** All structures and equipment used for diversion, storage, transportation, and use of water from the water source to and including each place of use. (7-1-93)

**2318.** **Water Delivery Organization.** An irrigation district, a water utility, a municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization. (7-1-93)

**011.** **ABBREVIATIONS.**

**01.** **AF.** An acre foot (feet). ( )

**02.** **CFS.** Cubic foot (feet) per second. ( )

**03.** **NA.** Not applicable. ( )

**04.** **PIN.** Parcel identification number. ( )

**0142. -- 024.** (RESERVED).

**025.** **GENERAL (RULE 25).**

**01.** **Requirement to Pay.** All persons filing claims to water rights acquired under state law or amendments to claims to water rights acquired under state law shall be required to pay filing fees as set forth by statute and these rules. (7-1-93)

**02.** **Method of Payment.** Fees shall be paid in legal tender of the United States; or by money order, certified check, cashier's check, ~~or~~ personal check, or by electronic payment on-line payable to the department in legal tender of the United States. ~~Credit card payments and~~ two-party checks will not be accepted. (7-1-93)( )

**03.** **Personal Check.** If a personal check in payment of a flat fee, a variable fee, or a late fee, and/or the first payment on an extended payment plan is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the claims covered by the returned check or the rejected debit or credit card will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. *If a personal check in payment of the second through fifth payments on an extended payment plan is returned unpaid to the department, the returned check will be treated as nonpayment pursuant to Rule Subsection 040.05.* (7-1-93)( )

**04.** **Time of Payment.** Flat fees and variable fees shall be payable to the department at the time of

filing a claim, ~~except in the case of extended payment plans otherwise provided for by statute and these rules.~~ Amendment fees shall be payable to the department at the time of filing the amended claim. Late fees shall be payable at the time of filing the late claim. (7-1-93)(\_\_\_\_)

**05. Government Voucher.** Fees payable by government agencies (other than agencies of foreign governments) may be paid when due by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check as provided in *Rule* Subsection 025.03. (7-1-93)(\_\_\_\_)

~~**06. Insufficient Paid Fee.** If a fee paid is later determined by the director to be insufficient, the director will send a notice of balance due by certified mail to the claimant at the most recent address shown by department records, stating the balance due and that the balance will be due within thirty (30) days of the date the notice is mailed. If the balance is not received by the date set forth in the notice, the balance due will be treated as an extended payment plan in default as set forth in *Rule* Subsections 040.05.c. and 040.05.d. A notice of balance due shall not be issued after filing of the director's report for the claim for which the fee was paid, or more than four (4) years after the date the insufficient payment was received by the director, whichever is later. (7-1-93)~~

~~**07. Rejection of Claim.** Claims based upon an application to appropriate water that has not been approved by the department pursuant to Sections 42-204 or 42-1503, Idaho Code, shall not be accepted, and any fees paid shall be returned to the claimant. Claims submitted without the correct filing fee shall be rejected and returned to the claimant. (7-1-93)(\_\_\_\_)~~

~~**08. Fire-Fighting.** A claim is not required to be filed for water used solely for fire fighting purposes. The report will contain general conclusions of law recognizing and protecting the use of water for fire fighting purposes absent a decree, license, or permit for the use of water for fire fighting purposes to extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for domestic purposes in regularly maintained firefighting stations and for the storage of water for fighting future fires. (7-1-93)(\_\_\_\_)~~

~~**09. In-Stream Livestock Use.** A claim is not required to be filed for water used solely for in-stream livestock use as defined by Section 42-113, Idaho Code. The report will contain general conclusions of law stating that: (7-1-93)~~

~~**a.** In the consideration of applications for permits to appropriate water for other purposes, the director shall impose such reasonable conditions as are necessary to protect prior water rights for in-stream livestock use; and (7-1-93)~~

~~**b.** In the administration of water rights, the director shall recognize and protect water rights for in-stream livestock use, according to priority, as the director recognizes and protects water rights for other purposes. (7-1-93)~~

~~**10. Examples.** Examples set forth in these rules are solely for purposes of illustration and do not have the effect of rules. (7-1-93)~~

**026. -- 029. (RESERVED).**

**030. FLAT FEES (RULE 30).**

**01. Small Domestic and Stock Water.** A flat fee of twenty-five dollars (\$25) shall be payable for each claim, ~~where the total amount of water diverted does not exceed thirteen thousand (13,000) gallons per day, that is limited to:~~ for domestic use and/or stock watering use meeting the definition of domestic use and/or stock watering use in Rule 010. (7-1-93)(\_\_\_\_)

~~**a.** Domestic use as defined by Section 42-1401A(5), Idaho Code; (7-1-93)~~

~~**b.** Stock watering use as defined by Section 42-1401A(12), Idaho Code; or (7-1-93)~~

~~e. Domestic use as defined by Section 42-1401A(5), Idaho Code, and stock watering use as defined by Section 42-1401A(12), Idaho Code. (7-1-93)~~

~~d. Domestic use as defined by Section 42-1401A(5), Idaho Code, includes single ownership, multiple-family domestic uses, so long as the total amount of water diverted for all households pursuant to a single water right does not exceed thirteen thousand (13,000) gallons per day. (7-1-93)~~

**02. Exception Other Claims.** A flat fee of fifty dollars (\$50) shall be payable for each claim that does not meet the definition criteria of Rule Subsection 030.01. (7-1-93)(\_\_\_\_)

**031. -- 034. (RESERVED).**

**035. VARIABLE FEES (~~RULE 35~~).**

**01. General.** For each claim not meeting the definition criteria of Rule Subsection 0307.01, there may be a variable fee in addition to the flat fee. (7-1-93)(\_\_\_\_)

**02. Per Acre Fee.** (7-1-93)

**a.** A fee of one dollar (\$1.00) per acre shall be required for claims for irrigation use. (\_\_\_\_)

**æb.** The per acre fee shall only be charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. (7-1-93)

i. Example 1: A claimant submits two (2) claims, one (1) for irrigation of sixty (60) acres, and one (1) for a supplemental water right to irrigate the same sixty (60) acres with a later priority. The total fee for both claims consists of two (2) flat fees of fifty dollars (\$50) each, plus one (1) sixty dollar (\$60) variable fee based upon sixty (60) acres, for a total of one hundred sixty dollars (\$160). (7-1-93)

**bc.** The per acre fee shall be payable by the first person to file a claim for the irrigation of a particular acre. (7-1-93)

i. Example 2: A water delivery organization files a claim for irrigation of lands within the service area of the water delivery organization, and pays the filing fee. An individual files a claim for a supplemental water right for sixty (60) acres of land that is claimed as irrigated acreage by the water delivery organization. The total fee paid directly by the individual is the fifty dollar (\$50) flat fee, the variable per acre fee has already been paid by the water delivery organization. (7-1-93)

**ed.** The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. (7-1-93)(\_\_\_\_)

**03. Per Kilowatt Fee.** (7-1-93)

**a.** A per kilowatt of capacity (manufacturer's nameplate rating) fee of three dollars and fifty cents (\$3.50) per kilowatt, or two hundred fifty thousand dollars (\$250,000.00), which ever is less, shall be required for claims for power use. (\_\_\_\_)

**æb.** The per kilowatt fee shall be determined based upon the total generating capacity of all generators in which the water right claimed is used. (7-1-93)

**bc.** The total per kilowatt fee for all claims filed for a single hydropower facility shall not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. (7-1-93)

i. Example 3: A claimant submits three (3) claims for water used in one (1) power plant. The power plant has four (4) generators, each with a manufacturer's nameplate rating of ninety (90) kilowatt capacity. The total fee for all three (3) claims consists of three (3) flat fees of fifty dollars (\$50) each, plus a variable fee of one thousand two hundred sixty dollars (\$1,260) (4 x 90 x 3.50), for a total of one thousand four hundred ten dollars (\$1,410). (7-1-93)

**04. Per CFS Fee.** (7-1-93)

a. A fee of ten dollars (\$10) per cfs for aquaculture shall be required. A fee of one hundred dollars (\$100) per cfs for all other uses shall be required except for irrigation, power, and domestic and stock watering uses meeting the definition of domestic and stock watering use in Section 010. ( )

~~a~~b. For a claim to water for more than one (1) public purpose, the per cfs fee shall only be charged once per cfs claimed. Public purposes shall include public in-stream flows, ~~public~~ lake level maintenance, wildlife, aesthetic beauty, and recreation. (7-1-93)( )

i. Example 4: A claimant files a claim to ten (10) cfs for a public in-stream flow for wildlife, recreation, and aesthetic purposes. The variable fee is one thousand dollars (\$1,000) and the flat fee is fifty dollars (\$50), for a total fee of one thousand fifty dollars (\$1,050). (7-1-93)

~~b~~c. If there is a seasonal variation in the number of cfs claimed, the per cfs fee shall be based upon the maximum number of cfs claimed for any period during a single calendar year. (7-1-93)

~~e~~d. The per cfs fee shall apply to claims for water quality improvement, recreation, aesthetic purposes, and any other purpose not expressly listed at Section 42-1414(21), Idaho Code, except as otherwise provided by these rules. (7-1-93)( )

**05. Claims Including Storage.** (7-1-93)

a. The variable fee for a claim that includes storage shall be based upon the ultimate use of the water stored. If the claim states purposes other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined as provided in *Rule* Subsection 035.06. (7-1-93)( )

b. ~~Ground water recharge is not an ultimate use and n~~No variable fee shall be payable for water claimed for ground water recharge purposes. (7-1-93)( )

c. For purposes of determining the per cfs fee for amounts of water claimed in af, one (1) cfs equals one and ninety-eight one-hundredths (1.98) af per day of diversion to storage. (7-1-93)

d. No variable fee shall be payable for minimum by-pass flows. (7-1-93)

**06. Multiple Purpose Claims.** If a claimant claims more than one (1) purpose of use on a single claim, the variable fee will be the total of the variable fees payable for each purpose of use. (7-1-93)

a. Example 5: A claimant files a claim for twenty (20) cfs of water, which is first used for power purposes in a plant with a one hundred fifty (150) kilowatt capacity, and is then used for irrigation of one thousand (1,000) acres of land. The variable fee is one thousand dollars (\$1,000) (per acre fee) plus five hundred twenty-five dollars (\$525) (per kilowatt fee), for a total variable fee of one thousand five hundred twenty-five dollars (\$1,525). The total fee is one thousand five hundred seventy-five dollars (\$1,575), consisting of ~~the~~ a variable fee of one thousand five hundred twenty-five dollars (\$1,525) variable fee and the a flat fee of fifty dollars (\$50) flat fee. (7-1-93)( )

b. Example 6: A claimant files a claim for twenty (20) cfs of water, ~~half of which ten (10) cfs~~ is claimed for commercial purposes, ~~half of which ten (10) cfs~~ is claimed for irrigation of five hundred (500) acres. The variable fee is one thousand dollars (\$1,000) (per cfs fee) plus five hundred dollars (\$500) (per acre fee) for a total variable fee of one thousand five hundred dollars (\$1,500). The total fee is one thousand five hundred fifty dollars

(\$1,550), consisting of ~~the a variable fee of~~ one thousand five hundred dollars (\$1,500) ~~variable fee~~ and ~~the a flat fee~~ of fifty dollars (\$50) ~~flat fee~~. (7-1-93)(    )

**07. Exceptions.** No variable fee shall be payable for claims or portions of claims for fire-fighting purposes; if a claim is required under Subsection 025.07 or for domestic use and/or stock watering use meeting the definitions of domestic use and stock watering use in Rule Section 030.01 010. (7-1-93)

**a.** Example 7: A claimant files a claim for five and four one-hundredths (5.04) cfs of water, five (5) cfs of which is claimed for irrigation of two hundred fifty (250) acres, two one-hundredths (.02) cfs of which is claimed for domestic use, two one-hundredths (.02) cfs of which is claimed for stock watering. The variable fee is two hundred fifty dollars (\$250) and the flat fee is fifty dollars (\$50), for a total fee of three hundred dollars (\$300). (7-1-93)

**036. -- 03944. (RESERVED).**

**040. EXTENDED PAYMENT PLANS (RULE 40).**

**01. Eligibility.** ~~A claimant is eligible for an extended payment plan where the total fee for all claims filed by that claimant in a single day at a single claims-taking location equals or exceeds one thousand dollars (\$1,000).~~ (7-1-93)

**02. Payment Schedule.** (7-1-93)

**a.** ~~An extended payment plan shall consist of five (5) annual payments. An extended payment plan is not available for a shorter term or with more frequent payments, but early payments will be accepted as provided in Rule Subsection 040.04.~~ (7-1-93)

**b.** ~~Extended payments shall be made in equal annual payments of principal. The first principal payment shall be due upon filing the claim or claims. The remaining four (4) payments will be due on the first day of the same month during the following four (4) years. Interest will be calculated annually from the day after the due date for the previous principal payment to and including the due date for the next principal payment, and will be due upon the due date for the next principal payment.~~ (7-1-93)

**i.** ~~Example 8: A claimant files claims December 17, 1987, and the total fees are five thousand dollars (\$5,000). One thousand dollars (\$1,000) will be due December 17, 1987. The second payment will be due December 1, 1988, and will be one thousand dollars (\$1,000) plus three hundred eighty two dollars and forty seven cents (\$382.47) (349 days interest on \$4,000), for a total of one thousand three hundred eighty two dollars and forty seven cents (\$1,382.47). The third payment will be due on December 1, 1989, and will be one thousand dollars (\$1,000) plus one (1) year's interest on three thousand dollars (\$3,000), for a total of one thousand three hundred dollars (\$1,300). The fourth payment will be due December 1, 1990 and will be one thousand dollars (\$1,000) plus one (1) year's interest on two thousand dollars (\$2,000), for a total of one thousand two hundred dollars (\$1,200). The fifth payment will be due on December 1, 1991, and will consist on one thousand dollars (\$1,000) plus one (1) year's interest on one thousand dollars (\$1,000), for a total of one thousand one hundred dollars (\$1,100).~~ (7-1-93)

**03. Notice of Payment Due.** ~~At least fourteen (14) days prior to the date an extended payment is due, the director will send a notice of payment due by regular mail to the claimant at the most recent address shown by department records.~~ (7-1-93)

**04. Early Payments.** ~~Early payments will be accepted. When a payment due is received prior to the fourteenth (14th) day before the due date, interest will be recalculated based on the amount of interest accrued daily from the day after receipt of the next previous payment to and including the date the early payment is received. Any overpayment resulting from the recalculation of interest due will be applied to the principal amount due the following year, unless the early payment is the last payment, in which case any overpayment will be refunded to the claimant.~~ (7-1-93)

**05. Late Payments.** (7-1-93)

**a.** ~~When a payment due is not received by the 14th day following the due date, interest will accrue~~



~~daily on the amount due from the day after the due date to and including the date the payment is received at the annual interest rate set forth at Section 42-1414, Idaho Code. When the payment due is received, it will be applied first to interest (including late interest) and then to principal, and the next year's payment will be recalculated accordingly, unless the late payment is the last payment due. If the late payment is the last payment due, the director will send a notice of balance due by regular mail to the claimant at the most recent address shown by department records, stating that the balance will be due within thirty (30) days of the date the notice is mailed. (7-1-93)~~

~~**b.** When a payment due is not received by the 30th day following the due date, the director will send a notice of default by certified mail to the claimant at the most recent address shown by department records. (7-1-93)~~

~~**e.** When a payment due is not received by the 60th day following the due date, and the director has not filed the director's report, the director may reject and return all claims covered by the extended payment plan in default. (7-1-93)~~

~~**d.** When a payment due is not received by the 60th day following the due date, and the director has filed the director's report, the director may:~~

~~**i.** Issue a cease and desist order directing the claimant not to divert any water pursuant to the claims covered by the extended payment plan in default until all amounts due have been received by the department; (7-1-93)~~

~~**ii.** Obtain an injunction from the district court conducting the general adjudication directing the claimant not to divert any water pursuant to the claims covered by the extended payment plan in default until all amounts due have been received by the department; and (7-1-93)~~

~~**iii.** Reject and return the claims covered by the extended payment plan and amend the report to recommend the water right represented by the claims covered by the extended payment plan as unclaimed. (7-1-93)~~

~~**06. Splitting Extended Payment Plans. (7-1-93)**~~

~~**a.** When a single extended payment plan is established that covers more than one (1) claim, the extended payment plan may later be split into two (2) extended payment plans, each of which covers a portion of the claims previously covered by the single extended payment plan. If the claims covered by an extended payment plan created by the split would not have qualified for an extended payment plan at the time the claims were filed, the entire balance for the claims covered by the extended payment plan created by the split will be due at the time the extended payment plan is split. (7-1-93)~~

~~**b.** A single claim may not be split into two (2) extended payment plans unless the water right claimed has been split by conveyance to different owners. If the portion of the claim covered by an extended payment plan created by the split would not have qualified for an extended payment plan at the time the claim was filed, the entire balance of the fee for that portion of the claim will be due at the time the extended payment plan is split. (7-1-93)~~

~~**e.** When a single extended payment plan has been established that covers more than one (1) claim, the claimant may choose to pay the balance on less than all of the claims, leaving the balance on the remaining claims to be paid on the extended payment plan, unless the remaining claims would not have qualified for an extended payment plan at the time of filing. (7-1-93)~~

~~**07. Partial Payments. (7-1-93)**~~

~~**a.** Partial payments (payment of less than the full amount due on an extended payment) will be applied first to interest due and any remainder will be applied to principal. (7-1-93)~~

~~**b.** Partial payments on extended payment plans covering more than one (1) claim will be divided among the claims in proportion to the amount due on each claim, except as provided in Rule Subsections 040.07.e. and 040.07.d. (7-1-93)~~

~~**e.** When a single extended payment plan has been established that covers more than one (1) claim, the~~

~~claimant may choose to make a payment on less than all of the claims, and allow the other claims to be rejected and returned, if the claims on which a payment is made would have qualified for an extended payment plan at the time of filing.~~ (7-1-93)

~~d. When a single extended payment plan has been established that covers more than one (1) claim, the claimant may choose to pay the balance on less than all of the claims, and allow the other claims to be rejected and returned.~~ (7-1-93)

~~041. -- 044. (RESERVED).~~

045. AMENDMENT FEES (~~RULE 45~~).

~~01. Recalculated Fee.~~ When a claimant files an amendment to a claim, the total fee shall be recalculated as if the amended claim were the original claim. If the total fee as recalculated is greater than the total fee paid at the time the claim was filed, the amendment fee shall be the difference between the two (2) amounts. No refund shall be made if the total fee as recalculated is less than the total fee paid at the time the claim was filed. (7-1-93)(\_\_\_\_)

~~02. Determining Eligibility.~~ The amendment fee shall not be included for purposes of determining eligibility for an extended payment plan, and the amendment fee may not be included in an extended payment plan. (7-1-93)

046. -- 049. (RESERVED).

050. LATE FEES (~~RULE 50~~).

01. Late Fee Payable. A late fee shall be payable when a claim is filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Sections 42-140814A(2) and (3), Idaho Code. (7-1-93)(\_\_\_\_)

~~02. Determining Eligibility.~~ The late fee shall not be included for purposes of determining eligibility for an extended payment plan, and the late fee may not be included in an extended payment plan. (7-1-93)

~~03. Waiver.~~ The late fee may be waived by the director for good cause shown. (7-1-93)

051. -- 054. (RESERVED).

055. REFUNDS (~~RULE 55~~).

Fees shall not be refunded or returned except where the fee was miscalculated at the time the claim was filed or as expressly provided in these rules. (7-1-93)

056. -- 059. (RESERVED).

060. SUFFICIENCY OF CLAIMS (~~RULE 60~~).

01. Single Claim. Except for claims based on both state law and federal law, A single claim may describe only one (1) water right. A claim that describes more than one (1) water right will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)(\_\_\_\_)

~~02. Claim Forms.~~ (7-1-93)

~~a. Claims meeting the definition of Rule Subsection 030.01, other than claims to domestic and/or stock watering use that include storage or instream stock watering use, may be filed on the short claim form.~~ (7-1-93)

~~b. Claims not meeting the definition of Rule Subsection 030.01, and claims to domestic and/or stock watering use that include storage or instream stock watering use, shall be filed on the long claim form.~~ (7-1-93)

**032. ~~Short~~ State Law Claim Form -- Minimum Requirements.** Claims filed on the ~~short~~ state law claim form shall contain the following information: (7-1-93)(\_\_\_\_)

a. Name, Address and Phone Number of Claimant. The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. (7-1-93)

b. Date of Priority. The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be ~~claimed~~ stated unless the claim is based upon both state and federal law as provided in Subsection 060.01. If more than one (1) priority date is ~~claimed~~ stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)(\_\_\_\_)

i. Within thirty (30) days, unless an extension by the director or his designee is approved, the claimant shall provide evidence of the priority date to support the water right claimed. If the claimant fails to provide evidence of priority, the form may be rejected and returned with no refund of the fees paid. (\_\_\_\_)

c. Source of Water Supply. The source of water supply shall be stated at item three (3) of the form. (7-1-93)

i. For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as "unnamed stream" or "spring." The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as "ground water." (7-1-93)

ii. Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)

~~d. Location of Point of Diversion. The location of the point of diversion shall be listed at item four (4) of the form. (7-1-93)~~

~~i. The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter Section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), Section number, and county. The location of the point of diversion should be described to the nearest ten (10) acre tract (quarter-quarter-quarter Section) if that description is reasonably available. (7-1-93)~~

~~ii. If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder's office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in the remarks section of the form. (7-1-93)~~

~~iii. Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or decreed right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)~~

~~e. Description of Diversion Works. The diversion works shall be described at item five (5) of the form. (7-1-93)~~

~~i. The description shall include all major components of the water delivery system. The description~~

~~shall also include the depth of wells, the horsepower capacity of pumps, and those dimensions of major components which affect the diversion capacity of the water delivery system. (7-1-93)~~

~~ii. The description shall include the dates and a description of any changes in use or enlargements in use, and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. (7-1-93)~~

~~f. Purpose of Use and Period of Use. Domestic use is listed on the first line of item six (6) of the form. The period of use and the amount of water claimed in cfs for domestic purposes shall be listed on the first line of item six (6). Period of use shall include the month and day of the first and last day of use. (7-1-93)~~

~~i. Stock watering use is listed on the second line of item six (6) of the form. The period of use and the amount of water claimed in cfs for stock watering purposes shall be listed on the second line of item six (6) of the form. Period of use shall include the month and day of the first and last day of use. (7-1-93)~~

~~ii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. (7-1-93)~~

~~g. Amount of Water Claimed. The total amount of water claimed shall be listed in cfs at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. (7-1-93)~~

~~h. Annual Volume of Consumptive Use. The annual volume of consumptive use for domestic and stock watering use is generally deemed de minimus. Annual volume of consumptive use is already stated as de minimus at item eight (8) of the form. (7-1-93)~~

~~i. Description of Uses. The uses of water claimed shall be fully described at item nine (9) of the form. (7-1-93)~~

~~i. For domestic use in homes, the number of households served shall be described. If domestic use for more than one (1) household not in a single ownership is listed, the form will be rejected and returned along with any fees paid, and the claim must be refiled on the long claim form. (7-1-93)~~

~~ii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak numbers of individuals using the facility, and the periods when peak or average rates of usage occur. (7-1-93)~~

~~iii. For stock watering use, the number and type of stock shall be described. (7-1-93)~~

~~j. Place of Use. The place of use for domestic use claimed shall be listed at item ten (10) of the form by entering a "D" in the appropriate boxes for each forty (40) acre tract or government lot on the form. The place of use for stock watering use claimed shall be listed at item ten (10) of the form by entering an "S" in the appropriate boxes for each forty (40) acre tract or government lot on the form. (7-1-93)~~

~~k. County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item eleven (11) of the form. (7-1-93)~~

~~l. Authority to Assert Claim. The claimant shall indicate at item twelve (12) of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall, in the remarks section of the form, describe the claimant's authority to assert the claim, and state the name, address, and phone number of the owner(s) of the place(s) of use. (7-1-93)~~

~~m. Other Water Rights. The claimant shall describe at item thirteen (13) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none." (7-1-93)~~

~~n.~~ *Remarks.* The claimant may submit any additional, relevant information not specifically requested at item fourteen (14) of the form. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form. (7-1-93)

~~o.~~ *Basis of Claim.* The basis of the claim shall be indicated at item fifteen (15) of the form. If a water right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree. (7-1-93)

~~p.~~ *Signature.* All claims must be signed and sworn or affirmed before a notary public or other person authorized by law to administer an oath or affirmation at item sixteen (16) of the form. (7-1-93)

~~i.~~ *Individuals shall sign at the space indicated for individuals. The form must be signed by the person listed as the claimant at item one (1) of the form unless written evidence is submitted with the form to show that the signatory has authority to sign for the claimant. A form listing more than one (1) claimant at item one (1) must be signed by each of the claimants listed at item one (1) unless the names are joined by "or", or "and/or" at item one (1).* (7-1-93)

~~ii.~~ *Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signator's title shall be indicated with the signature.* (7-1-93)

**~~04. Short Claim Form—Insufficient Claims, Waivers.~~** (7-1-93)

~~a.~~ *Claims filed on the short claim form that do not contain the information required by Rule 060.03, and claims that were improperly filed on the short claim form, shall be rejected and returned along with any fees paid.* (7-1-93)

~~b.~~ *The director may waive the minimum information requirements of Rule 060.03 and accept the claim for good cause shown.* (7-1-93)

**~~05. Long Claim Form—Minimum Requirements.~~** *Claims filed on the long claim form shall contain the following information:* (7-1-93)

~~a.~~ *Name, Address and Phone Number of Claimant.* The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. (7-1-93)

~~b.~~ *Date of Priority.* The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be stated. If more than one (1) priority date is stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)

~~e.~~ *Source of Water Supply.* The source of water supply shall be stated at item three (3) of the form. (7-1-93)

~~i.~~ *For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as "unnamed stream" or "spring." The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as "groundwater."* (7-1-93)

~~ii.~~ *Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one*

~~(1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims.~~ (7-1-93)

**d.** Location of Point of Diversion. For claims other than in-stream flows, the location of the point(s) of diversion shall be listed at item four (4) part (a) of the form. For claims to in-stream flows ~~for public purposes~~, the beginning and ending points of the claimed in-stream flow shall be listed at item four (4) part (b) of the form. (7-1-93)( )

i. The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), section number, and county. ~~The location of the point of diversion should be described to the nearest ten (10) acre tract (quarter-quarter-quarter section) if that description is reasonably available.~~ (7-1-93)( )

ii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. ( )

iii. If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder's office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in ~~the~~ item thirteen (13) of the form (remarks section) of the form. (7-1-93)( )

~~iv.~~ iv. A claim to a water right that includes storage shall state the point at which water is impounded (applicable only to ~~in~~-stream reservoirs) or the point at which water is diverted to storage (applicable only to off-stream reservoirs), the point at which water is released from storage into a natural stream channel (applicable only where a natural stream channel is used to convey stored water), and the point at which water is rediverted (applicable only where a natural channel is used to convey stored water). (7-1-93)( )

~~v.~~ Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)

**e.** Description of Diversion Works. The diversion works shall be described at item five (5) of the form. (7-1-93)

i. The description shall include all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. The description shall also include those dimensions of major components which affect the diversion capacity of the water delivery system. The description shall also state whether the ditches are lined and/or covered, the depth of wells, the horsepower capacity of pumps, and whether headgates are automatic or equipped with locks and/or measuring devices. (7-1-93)

ii. The description shall include the dates and a description of any changes in use (including change in point of diversion, place of use, purpose of use, and period of use) or enlargements in use (including an increase in the amount of water diverted, the number of acres irrigated, or additional uses of water), and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. (7-1-93)

iii. Water delivery organizations shall describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. (7-1-93)

**f.** Purpose of Use and Period of Use. Each purpose for which water is claimed, the period of use for each purpose for which water is claimed, and the amount of water claimed for each purpose for which water is claimed shall be listed at item six (6) of the form. Period of use shall include the month and day of the first and last day of use. For example, the period of use for domestic use is often January 1st through December 31st.

(7-1-93)( )

i. The purpose may be described in general terms such as irrigation, industrial, municipal, mining, power generation, fish propagation, domestic, stock watering, etc. (7-1-93)

ii. A claim to a water right which includes storage shall be broken down into component purposes, with the ultimate use(s) of the stored water indicated. The component purposes of a storage right are diversion to storage (not applicable to non-stream reservoirs), storage, diversion from storage (not applicable where the ultimate use is an in-reservoir public purpose). Detention of water in a holding pond that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. The amount of water claimed shall be limited to the active storage capacity of the reservoir unless a past practice of refilling the reservoir during the water year (October 1 to September 30) is shown or the claim is for a licensed or decreed right that includes refill. If a past practice of refilling the reservoir is shown or if the claim is for a licensed or decreed right that includes refill, the total amount of water claimed for the calendar year and the entire period during which diversion to storage or impoundment occurs shall be indicated. (7-1-93)( )

iii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. (7-1-93)

iv. The amount of water diverted shall be listed in cfs, and the amount of water stored shall be listed in af per annum. (7-1-93)

g. Amount of Water Claimed. The total amount of water claimed shall be listed at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. (7-1-93)

~~h.~~ Annual Volume of Consumptive Use. ~~The annual volume of consumptive use shall be listed in af per annum at item eight (8) of the form. The annual volume of consumptive use for in stream uses and for domestic and/or stock watering uses meeting the definition of Rule 030.01 is generally deemed de minimus.~~ (7-1-93)

~~h.~~ Description of Non-Irrigation Uses. Non-irrigation uses shall be fully described at item ~~nine~~ eight (98) of the form. For domestic uses, the number of households served shall be described; for stock watering uses, the type of stock and number of each type of stock shall be described. ~~The claimant shall also state whether the stock watering use is in stream, or whether water is diverted from the source for stock watering, or both.~~ (7-1-93)( )

i. If the claimant's domestic use does not meet the definition of domestic use in Subsection 010.07, the form will be rejected and returned unless the appropriate variable fee is paid. ( )

ii. The claimant shall also state whether the stock watering use is in-stream, or whether water is diverted from the source for stock watering. Both types of stock watering cannot be filed on the same claim form; each type requires a separate claim. ( )

iii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. ( )

~~ten~~ ii. Place of Use. The place of use for each purpose for which water is claimed shall be listed at item ~~nine~~ nine (99) of the form, except that the place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. (7-1-93)( )

i. Except claims for irrigation projects and irrigation districts meeting the criteria described in Subsection 060.i.ii. below, the number of acres irrigated shall be described by entering the appropriate numbers in the appropriate boxes for each forty (40) acre tract or government lot on the form. For other uses, a symbol or letter corresponding to the purpose for which water is claimed shall be placed in the appropriate box for each forty (40) acre

tract or government lot on the form. (7-1-93)( )

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be accompanied by a map showing the boundaries of the project or irrigation district, and shall state the total number of acres irrigated within the boundaries of the project or irrigations district, and for purposes of determining fees, the number of acres irrigated shall be described by forty (40) acre tract or government lot. The project or district shall submit a map of the boundary of the place of use and, when available, a digital boundary defined in Section 42-202(B)(2), Idaho Code. (7-1-93)( )

iii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is used unless no Parcel Number or PIN is recorded for the property at the place of use or the PIN is the same as the PIN shown in item four (4) for the point of diversion. ( )

~~ki.~~ County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item ~~eleven ten~~ (170) of the form. (7-1-93)( )

~~k.~~ Authority to Assert Claim. The claimant shall indicate at item ~~twelve eleven~~ (121) of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall describe in the remarks section of the form the claimant's authority to assert the claim. Unless the claimant is a water delivery organization, the claimant shall also state the name, address, and phone number of the owner(s) of the place of use in ~~the~~ item thirteen (13) (remarks section) of the form. (7-1-93)( )

~~ml.~~ Other Water Rights. The claimant shall describe at item ~~twelve~~ (12) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none." ( )

~~m.~~ Remarks. At item thirteen (13) of the form, ~~any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none."~~ (7-1-93)

~~n.~~ Remarks and Map. The claimant may submit any additional, relevant information not specifically requested at item ~~fourteen~~ (14) of the form. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form. ( )

~~n.~~ Maps. An aerial photograph or USGS quadrangle map shall be included with the claim, unless the claim meets the definition of domestic use and stock watering use as defined in Section 010 or unless the claim is submitted electronically through the department's online claim filing website. The point(s) of diversion, place(s) of use, and the water delivery system shall be ~~sketched on the space provided for a map of the project. Section, township and range numbers shall be indicated. The claimant may submit a separate map or drawing if the claimant so desires~~ identified on the aerial photograph or USGS quadrangle map. (7-1-93)( )

~~o.~~ Basis of Claim. The basis of the claim shall be indicated at item ~~fifteen~~ fourteen (154) of the form. If a water right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree. If the basis of claim is a beneficial use (also known as the constitutional method of appropriation), the claimant shall provide a short description of events or history of the development of the water right. (7-1-93)( )

~~p.~~ Signature. All Each claims must be signed ~~and sworn or affirmed before a notary public or other person authorized by law to administer an oath or affirmation at item sixteen~~ (16) of the form by the claimant at item ~~fifteen~~ (15) of the form, unless the claim is submitted electronically through the department's online claim filing website. Each claimant, through submission of a signed claim or through submission of a claim by means of the department's online claim filing website, solemnly swears or affirms under penalty of perjury that the statements



contained in the notice of claim are true and correct.

(7-1-93)( )

i. *Individuals shall sign at the space indicated for individuals. The form must be signed by the person* For claims submitted through the department's online claim filing website, the form shall be submitted by a person listed as the claimant at item one (1) of the form unless *written evidence is submitted with the form to show that the signatory has authority to sign for the claimant. A form listing more than one (1) claimant at item one (1) must be signed by each of the claimants listed at item one (1) unless the names are joined by "or", or "and/or" at item one* (~~4~~) the person submitting the form has authority to submit the form for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. (7-1-93)( )

ii. For claims that are not submitted by means of the internet, the form must be signed by each of the persons listed as claimants at item one (1) of the form unless the signatory has authority to sign for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signatory's title shall be indicated with the signature. (7-1-93)( )

q. Notice of Appearance. If notices to be sent by the director to the claimant are to be sent to the claimant's attorney, the claimant's attorney shall list the attorney's name and address and sign and date the form at item ~~seventeen~~ sixteen (17~~6~~) of the form. (7-1-93)( )

**063. Long State Law Claim Form -- Insufficient Claims, Waivers.** (7-1-93)( )

a. Claims filed on the *long state law* claim form that do not contain the information required by *Rule Subsection* 060.05~~2~~ shall be rejected and returned along with any fees paid, unless otherwise provided by these rules. (7-1-93)( )

b. The director may waive the minimum information requirements of *Rule Subsection* 060.05~~2~~ and accept the claim for good cause shown. (7-1-93)( )

**074. Further Information.** This Rule 060 sets forth minimum requirements for the filing of claims. The director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claims pursuant to Section 42-1410, Idaho Code. (7-1-93)

**061. -- 064. (RESERVED).**

**065. REJECTED AND RETURNED CLAIMS (~~RULE 65~~).**

**01. Rejected Claims.** Rejected claims shall be returned to the claimant by ordinary mail at the most recent address shown by department records. The rejected claim shall be accompanied by a notice of rejection that states generally the reason(s) for rejection. (7-1-93)

**02. Refiled Claims.** Claims that have been rejected and returned to the claimant may be refiled with the appropriate fees and appropriate information at any time prior to the deadline for filing the original claim. Claims refiled after the deadline for filing the original claim will be subject to the late fee, unless the claim is refiled within thirty (30) days from the date of mailing the rejected claim by the department. (7-1-93)

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.17 - RULES GOVERNING PERMITS FOR MANUFACTURED HOMES, MODULAR BUILDINGS AND OFFICE TRAILERS

DOCKET NO. 39-0317-0801

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2008.

**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 rule-making procedures have been initiated. The action is authorized pursuant to Sections 40-312 and 49-1004, Idaho Code, and Section 49-1010, Idaho Code, which establishes the vehicle sizes allowed for transport.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

This change will allow industry to haul manufactured homes, modular buildings, and office trailers when wind speeds are up to 30 miles per hour. Previously, transport was prohibited when wind speeds exceeded 20 miles per hour. The restriction was established for the safety of the operator and the traveling public. The weight and construction of these structures has improved sufficiently to withstand greater wind speeds while in transit. This change also eliminates the wind-velocity exemption for hauling these structures on a five-axle truck tractor or semi-trailer combination which provides consistency for the industry and compliance personnel.

**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:

This rule change confers a benefit on the industry by relaxing a restriction on hauling. It was initiated at the request of industry and makes the restriction consistent with that of surrounding states.

**FEE SUMMARY:** Pursuant to Section 67-5226, 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: Not applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no fiscal impact on the state general fund.

**NEGOTIATED RULEMAKING:** In compliance with 67-5220, Idaho Code, negotiated rulemaking was not conducted because this change confers a benefit on the regulated industry and is being promulgated at their request.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist at 334-8418.

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 October 22, 2008.

DATED this 22nd day of August, 2008.

Linda L. Emry, Administrative Rules Coordinator  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 West State Street  
P O Box 7129  
Boise ID 83707-1129  
Phone - 208-334-8810  
FAX - 208-332-4107

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0317-0801**

**400. GENERAL PROVISIONS.**

**01. Paneling of Open Sides of Multi-Section Modular Buildings, Manufactured Homes or Office Trailers.** Shall be rigid material, or six (6) mil plastic sheathing (or stronger) backed by a grillwork to prevent billowing and fully enclose open sides of section in transit. (3-23-98)

**02. Interior Loading.** If the manufactured home or office trailer is to transport furnishings or other loose objects they shall be secured in position for safe travel. (8-25-94)

**03. Construction.** Modular buildings shall be constructed in accordance with the Uniform Building Code as applies to design and construction requirements that will affect overall structural strength and roadability. Manufactured homes and offices shall be constructed in accordance with Federal HUD Manufactured Home Construction and Safety Standards. (8-25-94)

**04. Oversize Manufactured Homes or Office Trailers.** Oversize manufactured Homes or Office Trailers must be transported under authority of the rule. IDAPA 39.03.16, "Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads," does not apply to the transport of Manufactured Homes or Office Trailers. (4-5-00)

**05. Manufactured Homes and Office Trailers.** This rule applies only to Manufactured Homes and Office Trailers and does not apply to individual componets utilized in the manufacturing of Manufactured Homes. Permits may be issued to authorize transport of components for Manufactured Homes or Office Trailers under IDAPA 39.03.16, "Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads." (4-5-00)

**06. Signs.** All manufactured homes, modular buildings and office trailers whether hauled or towed shall be required to display an oversize load sign, even if no pilot/escort vehicle is required. The sign shall meet the following dimensions: eighteen (18) inches high by seven (7) feet wide, letter height ten (10) inches, letter type standard series C, stroke width one and five-eighths (1 5/8) inch, black letters on yellow background. (4-5-00)

**07. Warning Flags.** All manufactured homes, modular buildings and office trailers whether hauled or towed shall be required to display flags on all four (4) corners. The flags may be red or fluorescent orange. (3-23-98)

**08. Permits.** Annual permits will allow travel on the following routes at the following dimensions:

Route	Base Width	Overall Width	Height	Overall Length
Red		12' 6"	15' 6"	110'
Black	14'	18'	15' 6"	110'

Route	Base Width	Overall Width	Height	Overall Length
Double Black	16'	18'	15' 6"	110'
<p>**The double black routes are the interstate and 4 lane highways.                      **The routes referred to above are on the Pilot/Escort Vehicle and Travel Time Requirements Map.                      **When exceeding the above maximum dimensions allowed for a route, movement will be allowed only by single trip permit.                      **Manufactured homes, modular buildings and offices exceeding sixteen (16) feet overall width being towed on their own axles on two lane highways, will be required to submit for approval a traffic control plan, that lists at a minimum the following information: date of move, routes of travel, turnouts for traffic relief, and dimensions of load.</p>				

(4-5-00)

**09. Hazardous Travel Conditions Restrictions.** Extreme caution in the operation of vehicle combinations shall be exercised when hazardous conditions exist. The movement by overlegal permit of manufactured homes, modular buildings and office trailers shall be prohibited and otherwise valid permits shall automatically become invalid enroute when travel conditions become hazardous due to ice, snow or frost; when visibility is restricted to less than five hundred (500) feet by fog, dust, smoke or smog or other atmospheric condition; or when wind velocity exceeds ~~twenty thirty~~ (230) miles per hour. ~~The wind velocity limitation shall not apply to manufactured homes, modular buildings or office trailers transported on five (5) axle truck tractor and semi-trailer combinations similar in weight and construction to those used in general trucking operations.~~ (4-5-00)(9-1-08)T

**10. Time of Travel Requirements.** Manufactured homes, modular buildings, and office trailers exceeding ten (10) feet in width, will have daylight travel only. When less than ten (10) feet wide, twenty-four (24) hour travel will be allowed, and must meet the following requirements: (4-5-00)

- a. The lights must be visible from five hundred (500) feet; (4-5-00)
- b. The lights shall be steady burning; (4-5-00)
- c. The color of the lights shall be as follows: (4-5-00)
  - i. Lights visible from the front of the load and the extremities in the middle or near the front of the load shall be amber. (4-5-00)
  - ii. Lights visible from the back of the load and the extremities near the back of the load shall be red. (4-5-00)

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**

**39.03.22 - RULES GOVERNING OVERLEGAL PERMITS FOR  
EXTRA-LENGTH VEHICLE COMBINATIONS**

**DOCKET NO. 39-0322-0801**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2008.

**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 rule-making procedures have been initiated. The action is authorized pursuant to Sections 40-312 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

Changes to this rule provide consistency with changes to statute which clarify that permitted, longer combination vehicles, with multiple axle configurations, such as tandem and tri-axles, may operate with single tires on those multiple axles as long as the 600 pounds per inch of tire width is not exceeded, per Section 49-1002, Idaho Code.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rulemaking provides consistency with statute changes in House Bill 561, 2006, and Senate Bill 1051, 2007.

**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: Not applicable.

**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: Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is necessary for consistency with statute.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

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 October 22, 2008.

DATED this 22nd day of August, 2008.

Linda L. Emry, Administrative Rules Coordinator  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 West State Street  
P O Box 7129, Boise ID 83707-1129  
Phone - 208-334-8810 / FAX - 208-332-4107

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0322-0801**

**200. CONDITIONS AND REQUIREMENTS FOR EXTRA-LENGTH.**

Extra-length vehicle combinations shall be subject to the following conditions, limitations, and requirements:

(10-2-89)

**01. Extra-Length Vehicle Combinations.** Vehicle combinations operating with an overall length in excess of the limits imposed in Section 49-1010, Idaho Code, shall consist of not more than four (4) units, shall not exceed one hundred fifteen (115) feet overall and no such vehicle combination shall include more than three (3) cargo units except that a full truck and full trailer may have an overall length in excess of seventy-five (75) feet but not in excess of eighty-five (85) feet including load overhang. (3-20-04)

**02. Routes for Extra-Length Operations.** Shall be designated in four (4) categories: (9-4-91)

**a.** Routes for combinations not exceeding ninety (90) feet in overall length including load overhang (blue-coded routes). An extra-length combination operating on routes designated for ninety (90) foot combinations shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed five point five zero (5.50) feet on a one hundred sixty-five (165) foot radius when computed by the equation developed by Western Highway Institute (WHI) for computation of maximum vehicular off-track. (3-22-00)

**b.** Routes for combinations of vehicles not exceeding one hundred fifteen (115) feet in overall length including load overhang (red-coded routes). An extra-length combination operating on routes designated for one hundred fifteen (115) foot combinations shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed six point five zero (6.50) feet on a one hundred sixty-five (165) foot radius when computed by the WHI equation referred to above. (3-20-04)

**c.** Interstate system routes and specified interchanges providing access to approved breakdown areas located in close proximity to the Interstate system (black-coded routes). An extra-length combination operating on routes in this category shall be designed and assembled in such a manner that its off-tracking may exceed six point five zero (6.50) feet but shall not exceed eight point seventy-five (8.75) feet when computed by the WHI equation referred to above. Specified interchanges providing access to approved breakdown areas are required to be used by combinations that exceed six point five zero (6.50) feet off-tracking. The specified interchanges will be authorized for either combinations in excess of six point five zero (6.50) feet off-tracking, but not in excess of seven (7) feet off-tracking, or for combinations in excess of seven (7) feet off-tracking but not in excess of eight point seventy-five (8.75) feet off-tracking. (3-22-00)

**d.** Selected state highway routes (green coded routes) for operation of an extra-length combination whereby its maximum off-tracking will not exceed three (3) feet on a one hundred sixty-five (165) foot radius when computed by the WHI equation and its overall length including load overhang does not exceed eighty-five (85) feet. Route approval shall be subject to analysis of pavement condition, bridge capacity, safety considerations, pavement width, curvature, traffic volumes and traffic operations. (8-25-94)

**03. Power Unit.** The power unit of extra-length combinations shall have adequate power and traction to maintain a minimum of fifteen (15) miles per hour under normal operating conditions on any up-grade over which the combination is operated. (10-2-89)

**04. Connecting Devices.** Fifth wheel, drawbar, and other coupling devices shall be as specified by Federal Motor Carrier Safety Regulations, Part 393, which shall be considered to be a part of this rule. (10-2-89)

**05. Weather Restrictions.** Extreme caution in the operation of an extra length vehicle combination shall be exercised when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke adversely affect visibility or traction. Speed shall be reduced when such conditions exist. When conditions become sufficiently dangerous, the company or the operator shall discontinue operations and operations shall not be resumed until the extra length vehicle combination can be safely operated. The state may restrict or prohibit operations during

periods when in the state's judgment traffic, weather, or other safety conditions make such operations unsafe or inadvisable. (8-25-94)

**06. Trailer Weight Sequence.** In any extra-length combination, the respective loading of any trailer shall not be substantially greater than the weight of any trailer located ahead of it in the vehicle combination. (Substantially greater shall be defined as more than four thousand (4,000) pounds heavier.) (10-2-89)

**07. Operating Restrictions.** Operators of all vehicle combinations governed by this rule shall comply with the following operating restrictions: (8-25-94)

**a.** A minimum distance of five hundred (500) feet shall be maintained between combinations of vehicles except when overtaking and passing. (10-2-89)

**b.** Except when passing another vehicle traveling in the same direction, the combination shall be driven so as to remain at all times on the right hand side of the centerline of a two (2) lane, two (2) way highway, or on the right hand side of a lane stripe or marker of a highway of four (4) or more lanes. (1-1-90)

**c.** Be in compliance with all Federal Motor Carrier Safety Regulations. (3-22-00)

**08. Insurance Requirements.** Every combination operated under this rule shall be covered by insurance of not less than five hundred thousand dollars (\$500,000) combined single limit. The permittee or driver of the permitted vehicle combination shall carry in the vehicle evidence of insurance written by an authorized insurer to certify that insurance in this minimum amount is currently in force. (8-25-94)

**09. Tire Limitations.** ~~All~~ Single axles on extra-length vehicle combinations shall be equipped with four (4) tires except on the steering axle, or variable load suspension axles (VLS-lift axles), ~~or axles unless~~ equipped with fifteen (15) inch wide or wider single tires. Multiple axle configurations may be equipped with single tires on each of the axles as long as the pounds-per-inch width of tire does not exceed the limits as listed in Section 49-1002, Idaho Code. (~~3-30-07~~)(8-1-08)T

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**

**39.04.04 - RULES GOVERNING IDAHO AIRPORT AID PROGRAM**

**DOCKET NO. 39-0404-0801**

**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 rule-making procedures. The action is authorized pursuant to Sections 21-105 and 21-111, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

New application provisions for airport maintenance and safety supplies and small projects are based on recommendations from the Legislative Services Office Audit Team Memo, dated October 26, 2007. Language has been reorganized and refined to clarify requirements for the distribution of Idaho Airport Aid Program grant funds.

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

**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 RULE-MAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this action was initiated in response to a Legislative Audit. Changes were for the purpose of clarification for the benefit of the program applicants.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Bill Statham, Aeronautics Program Manager, 334-8784.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 22nd day of August, 2008.

Linda L. Emry  
Administrative Rules Coordinator  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 West State Street  
P O Box 7129  
Boise ID 83707-1129  
Phone - 208-334-8810  
FAX - 208-332-4107



THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0404-0801

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 39.04.04 "Rules Governing Idaho Airport Aid Program." IDAPA 39, Title 04, Chapter 04. ( )

02. Scope. This rule is for the discretionary allocation of ~~the Idaho Airport Aid Program~~ airport development funds by the Idaho Transportation Board. Allocations must meet high priority needs and achieve maximum benefit and use of available funds. ~~All aid projects may be~~ Allocations may require matching financial participation and are reimbursable as approved by the Board subject to restrictions the Board may impose. (+1-90)( )

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 Division of Aeronautics maintains a central office in Boise at 3483 Rickenbacker with a mailing address of P O Box 7129, Boise ID 83707-1129. ( )

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 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 208-334-8775 or by fax at 208-334-8789. ( )

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. ( )

007. -- 099. (RESERVED).

100. AIRPORT SPONSOR ELIGIBILITY.

The Idaho Airport Aid Program is available only to public entities that own or lease and operate a landing facility that is open to the public without use restrictions. Allocation may be made only on facilities that are not under exclusive lease or monopoly control of private individuals or corporations. The Idaho Airport Aid Program consists of grants, small projects, and maintenance and safety supplies. The grants (for scheduled projects) and small projects (for unscheduled or emergency projects) are available to municipal entities such as a city, county, airport authority, political subdivision, or public corporation, hereinafter referred to as the airport sponsor, but not to facilities operated by divisions of the state of Idaho or the Federal government. The maintenance and safety supplies are available to all public entities that own or lease and operate a landing facility that is open to the public without use restrictions. ( )

101. -- 199. (RESERVED).

200. PROJECT ALLOCATION PRIORITIES.

The discretionary allocation programs will be based on six (6) important principles. These principles are: (1-1-90)

**01. Preservation and Acquisition.** Priority will be given to the preservation and acquisition of existing aircraft landing facilities in danger of being lost. (1-1-90)

**02. Aircraft Landing Projects.** Priority will be given to projects at existing aircraft landing facilities where need is demonstrated. Projects must provide benefits associated with aircraft landing facility utilization on a statewide basis. (1-1-90)

**03. Aircraft Landing Development.** Priority will be given to the development of new, additional aircraft landing facilities in areas of greatest need: (1-1-90)

a. Large geographical areas with no "air accessibility." (1-1-90)

b. Additional new sites in urban areas where landing sites are rapidly becoming non-existent. (1-1-90)

c. Recreational area development where land availability is becoming difficult to obtain. (1-1-90)

**04. Aircraft Operations Safety.** Priority will be given to projects involving safety of aircraft operations. (1-1-90)

**05. Federal Funds.** Priority will be given to assuring maximum use and benefit of available federal funds. (1-1-90)

**06. Priority Will Be Given to Projects Which Protect Prior Public Investments.** (1-1-90)

**2300. ALLOCATION PROGRAM CRITERIA, ELIGIBILITY, AND LIMITATIONS.**

The allocation program is designed to provide the greatest and best utilization of limited Idaho ~~Aid to~~ Airport Aid Program Funds. The primary goal of the allocation program is to further the proper development of a statewide system of airports and fair distribution of aviation tax money. This policy requires: ~~(1-2-93)~~( )

**01. Master Plan.** Each city, county, airport authority, political subdivision, or public corporation ~~must,~~ hereinafter referred to as airport sponsor, should have a master plan or an airport or heliport layout plan to be eligible for participation in the allocation program. The plan must be approved by the Division of Aeronautics. ~~(1-2-93)~~( )

**02. Percentages of Cost.** Matching percentages must be determined not to exceed the following guidelines, subject to the approval of the Idaho Transportation Board: (1-1-90)

a. Municipal governments not eligible for Federal funding assistance that are supporting towns with a population of less than one thousand (1,000), which do not have an airport, may receive up to one hundred percent (100%) of the cost for a minimum standard airport to serve towns of less than one thousand (1,000) population which do not have an airport. The ~~community or county~~ airport sponsor shall provide the land required. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. ~~(1-1-90)~~( )

b. Airport sponsors not eligible for Federal funding assistance that are supporting towns with a population of less than one thousand (1,000) may receive up to ninety percent (90%) of the cost for maintenance and upgrade of a minimum standard airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. ( )

b.c. For Airport sponsors not eligible for Federal funding assistance that are supporting towns with a population of less than one thousand up to five thousand (5,000), but more than one thousand (1,000) population, a State financial participation grant of may receive up to seventy-five percent (75%) of project cost may be approved for maintenance and upgrade of a minimum standard airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. ~~(1-1-90)~~( )

d. Airport sponsors not eligible for Federal funding assistance that are supporting towns with a population of more than five thousand (5,000) may receive up to fifty percent (50%) of the cost for maintenance and upgrade of a minimum standard airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. ( )

~~eg.~~ All other projects, whether new or reconstruction of existing facilities Airport sponsors eligible for Federal funding assistance, may be considered for State funding assistance up to fifty percent (50%) ~~state aid for the project. Participation for any project shall be considered at a maximum of half of the sponsor's share if when using Federal aid for the cost of maintenance and upgrade of existing facilities.~~ If no Federal participation, each such project shall be considered on its merit. The amount of State financial aid will be negotiated in each case. (+1-1-90)( )

f. All airport sponsors eligible for funding under IDAPA 39.04.04, "Rules Governing Idaho Airport Aid Program," may apply to participate in the maintenance and safety supplies program. This is part of the discretionary allocation program that provides at no charge or a reduced charge for the following such items: ( )

- i. Runway and taxiway light fixtures, bulbs, and parts; ( )
- ii. Rotating beacon fixtures; ( )
- iii. Windsocks, windsock frames and standards; ( )
- iv. Tie-down chain sets; ( )
- v. Utility light bulbs; and ( )
- vi. Taxiway reflectors. ( )

g. All municipal airport sponsors eligible for funding under IDAPA 39.04.04, may apply to participate in the small projects program which provides grant funding assistance of less than two thousand dollars (\$2,000) for unscheduled or emergency improvements, with approval from the aeronautics administrator, from the current years allocation. ( )

**03. Face Value Contributions.** Labor and equipment contributions by the airport sponsor may be approved at face value in force-account financial evaluation as matching funds. ~~However, allowance~~ The following items will not be ~~made~~ eligible for force-account contribution: (+1-1-90)( )

- a. Land values previously acquired. (1-1-90)
- b. Previous ~~B~~buildings construction or improvements. (+1-1-90)( )
- c. Previous State or FAA grants. (1-1-90)

**04. Public Funds Protection.** In order to protect the investment of public funds, the Idaho Transportation Board may require proof of ownership or lease of all land upon which any project is proposed, and that the airport be zoned to prevent the creation or establishment of structures or objects of natural growth which would constitute hazards or obstructions to aircraft operating to, from, or in the vicinity of the subject airport. (+1-2-93)( )

**05. Applications for Aid.** ( )

a. Each project ~~received~~ submitted for funding consideration from airport sponsors not eligible for Federal funding assistance will be presented in a written application for aid which outlines economic capability and source of funds. The application form will be supplied by the Division of Aeronautics. Eligibility and priority will be determined by an annual revision of a State allocation program for airport improvement. ~~Projects deemed by the~~

~~Board to require special legislative appropriations will be submitted for legislative support and consideration.~~  
(1-1-90)( )

**b.** Each project application submitted for funding consideration from airport sponsors that are eligible for Federal funding assistance will consist of a full and complete copy of the federal application for assistance. ( )

**c.** Each request for participation in the maintenance and safety supplies program or the small projects program must be made through written, telephone, or electronic request. ( )

**d.** Projects deemed by the Board to require special legislative appropriations will be submitted for legislative support and consideration. ( )

**06. Projects Other Than Allocation Plan.** All projects ~~considered~~ other than the annual allocation plan will be individually considered and acted upon at a regular meeting of the Board. All projects will be resolved by eligibility and priorities established by each year's review of the total State need. The availability of funds, or legislative appropriations, shall always be the final determination of grant approvals. Consideration of all factors, including relative needs and priorities involved in an airport construction project will be considered. Attention will be given to effort made at the sponsor's level to assure availability of continuing financing and management support to keep the airport in good repair. (1-1-90)( )

**07. Granted Allocation Items.** Allocations may be granted for the following items: (1-1-90)

**a.** Development of required airport planning, land ownership, airspace, land use compatibility, and land use zoning documents. (1-1-90)( )

**b.** Land acquisition for development and improvement of aircraft landing facilities. (1-1-90)

**c.** Grading and drainage necessary for construction or reconstruction of runways or taxiways. (1-1-90)

**d.** Construction or reconstruction of runways or taxiways. (1-1-90)

**e.** Acquisition of "runway ~~clear~~ protection zones" as defined in current regulations of the Federal Aviation Administration. (1-1-90)( )

**f.** Acquisition of easements through or other interests in airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an aircraft landing facility. (1-1-90)

**g.** Removal of natural obstructions from runway ~~clear~~ protection zones. (1-1-90)( )

**h.** ~~Original~~ Installation or rehabilitation of "segmented circle airport marker systems" as defined in current regulations of the Federal Aviation Administration. (1-1-90)( )

**i.** ~~Original~~ Installation or rehabilitation of runway, taxiway, boundary, or obstruction lights, together with directly related electrical equipment. (1-1-90)( )

**j.** ~~Original~~ Erection or rehabilitation of appropriate security fencing around the perimeter of an aircraft landing facility. (1-1-90)( )

**k.** Grading and drainage necessary to provide for parking of transient general aviation aircraft. (1-1-90)

**l.** Air navigation facilities. (1-1-90)

**m.** Such other capital improvements as may be designated by the Board. (1-1-90)

~~n. Allocation may be made only on publicly owned/public use facilities. Allocations will not be made on airport or heliport facilities under exclusive lease or monopoly control of private individuals or corporations. New building construction of public use facilities such as storage hangars, pilot lounge, rest rooms, etc., that are owned by the airport sponsor. (1-1-90)( )~~

~~08. Eligibility. Only public entities are eligible to participate in the Idaho Airport Aid Program. Any county, as described in Title 31, Chapter 1, Idaho Code, legal subdivisions thereof; cities, villages, or agencies designated in Sections 21-105 and 21-142 (10), Idaho Code, shall be deemed eligible public entities for the purpose of participation in the Idaho Airport Aid Program. (1-2-93)~~

~~2301. -- 999. (RESERVED).~~

# IDAPA 40 - IDAHO COMMISSION ON THE ARTS

## 40.01.01 - RULES OF THE IDAHO COMMISSION ON THE ARTS

DOCKET NO. 40-0101-0801

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2009.

**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 67-5605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 Commission is revising its rules to broaden the eligibility for grants to all groups eligible under the National Endowment for the Arts grants to the Commission and to lessen the administrative burdens on grant applicants and recipients. Revisions to the rules for application and receipt of Commission grants address eligibility, application and recipient duties.

**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:

The grant application process goes into effect on January 1, 2009. In order to assure that constituents are able to apply for available arts grants, it is necessary to promulgate rules clarifying the grant application process.

**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 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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael Faison, Executive Director, (208) 334-2119 x107.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Michael Faison, Executive Director  
Idaho Commission on the Arts  
The Warden's Residence  
2410 Old Penitentiary Rd. N., Boise, ID 83712  
Phone: (208) 334-2119 x107 / Fax: (208) 334-2488

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 40-0101-0801**

**100. DEFINITIONS.**

**01. Applicant.** An individual or organization meeting the criteria set forth in Section 202 of these rules, which has submitted an application for a program offered by the Commission. (4-6-05)

**02. Apprentice.** A student with knowledge of a traditional art who is studying or seeking to study the traditional art under a master and who affirms a commitment to continue practicing the traditional art after the apprenticeship has ended. (4-6-05)

**03. Artist.** An individual who practices the arts as the individual's profession. An individual who practices the arts as a profession and derives a significant portion of the individual's livelihood from performing the arts or engages in frequent or regular exhibitions, performances, publications, or similar public art displays. (4-6-05)

**04. Art.** The product of an artist's work. Art includes, but is not limited to, live performances, manuscripts and writings, folk and traditional arts, videotapes, audiotapes and compact disks, photographs, prints, paintings, sculptures, ceramics, drawings, and installations. (4-6-05)

**05. Arts.** The conscious production or arrangement of sounds, colors, forms, or other elements in a manner that affects the senses. The arts shall include, but are not limited to, the disciplines of literature, performing arts, and visual arts. (4-6-05)

**06. Capital Expenditures.** Costs or expenses for the acquisition of or the modification or improvements to real property or fixtures to real property. (4-6-05)

**07. Commission.** The Idaho Commission on the Arts. (4-6-05)

**08. Matching Contributions.** (4-6-05)

**a.** In-kind Contributions. Services and real or personal property, or the use thereof, donated by organizations or individuals to the applicant. (4-6-05)

**b.** Cash Contributions. Funds raised by the applicant specifically for the subject of the application. (4-6-05)

**09. Discipline.** A grouping of types of arts. The Commission uses the following discipline categories: (4-6-05)

**a.** Literature. Arts disciplines resulting in written art. Literature artists include, but are not limited to, fiction, creative nonfiction, and poetry. (4-6-05)

**b.** Performing Arts. Arts disciplines resulting in live or recorded performances. Artists engaged in the performing arts include, but are not limited to, dancers, musicians, choreographers, actors, playwrights, set and costume designers, composers, and performers. (4-6-05)

**c.** Visual Arts. Arts disciplines resulting in works that are viewed by the public. Visual artists include, but are not limited to, painters, crafters, photographers, printmakers, sculptors, video artists, architects, ceramists, metal smiths, paper, glass and fiber artists, mixed media artists, glass artists, designers, book artists, installation artists, artists working in new technologies, outsider or visionary artists, and folk and traditional arts involving craft. (4-6-05)

**10. Fiscal Year.** The period between July 1 of one (1) calendar year and June 30 of the following calendar year. (4-6-05)

**11. Master.** An individual who has learned traditional art skills informally and has received peer recognition for achieving the highest level of artistry according to community standards. (4-6-05)

**12. Program.** The categories for the award or grant of funds or recognition by the Commission described in Sections 300 through 504~~3~~ of these rules. (~~4-6-05~~)(1-1-09)T

**13. Program Guidelines.** The application and review criteria for a program published by the Commission for each grant or award period. (1-1-09)T

**134. Recipient.** An applicant receiving an award or grant under a Commission program. (4-6-05)

**145. Traditional Art.** The arts practiced by an ethnic or cultural group for multiple generations and based upon the ethnic or cultural group's historical practices. Traditional arts include, but are not limited to, music, song, storytelling, vernacular architecture, crafts, tools and trades, occupational practices, personal experience stories, jokes, rhymes, games and foodways such as food preparation, preservation and presentation. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. FUNDING LIMITATIONS.**

The Commission will not provide funding for the activities, costs, or projects set forth in this Section. (4-6-05)

**01. Excluded Applications.** The Commission will exclude applications for the following from consideration for a grant or award: (4-6-05)

**a.** Establishment of or contributions to an endowment; (4-6-05)

**b.** Fund-raising projects that do not raise funds for the arts; (4-6-05)

**c.** Prizes, scholarships, or free tickets; (4-6-05)

**d.** Projects or programs to generate or attract audiences; (4-6-05)

**e.** The offsetting of personal or organizational debts; (4-6-05)

**f.** Activities that are primarily promotional or created for mass distribution including, but not limited to, duplication of compact disks, creation of portfolios, private gallery announcements, self-published books, flyers, brochures, or Internet sites; (~~4-6-05~~)(1-1-09)T

**g.** Student exhibitions, anthologies, publications, or performances, unless those activities document an arts education grant; (4-6-05)

**h.** Costs associated with any degree or professional certification including, but not limited to, tuition, fees, or teaching materials; (~~4-6-05~~)(1-1-09)T

**i.** Projects or activities already completed or documentation of previously completed projects; (~~4-6-05~~)(1-1-09)T

**j.** Projects that are primarily recreational, therapeutic, vocational, rehabilitative, or religious; (4-6-05)

**k.** Projects restricted to an organization's membership; (4-6-05)

**l.** Costs for recurring activities or consecutive attendance at annual activities that are routinely within an arts organization's budget including, but not limited to, conferences of the National Assembly of State Arts



Agencies, Americans for the Arts, American Folklore Society, or the Western Arts Alliance; ~~(4-6-05)~~(1-1-09)T

**m.** Pageants, festivals, or celebrations unrelated to arts, ethnic, or cultural activities; (4-6-05)

**n.** Journalism; (4-6-05)

**o.** Historical or academic documentary film that does not demonstrate significant artistic emphasis, consideration, and distinction; ~~(4-6-05)~~(1-1-09)T

**p.** Scholarly or academic works; (4-6-05)

**q.** Lobbying expenses or political activities; (4-6-05)

**r.** Hospitality expenses including, but not limited to, food and drink; (4-6-05)

**s.** Capital expenditures for individuals; or (4-6-05)

**t.** Writing intended for youth. (4-6-05)

**202. APPLICANTS.**

**01. Categories of Applicants.** Applicants must fall within one (1) of the following categories: (4-6-05)

**a.** An individual artist or arts administrator meeting the criteria set forth in Subsection 202.02, of this rule, who is submitting an application based solely on the applicant's work. (4-6-05)

**b.** An organization meeting the criteria set forth in Subsection 202.03 of this rule. (4-6-05)

**c.** A collaboration of individual artists where the majority of the artistic effort is that of the primary individual. The application must identify the primary individual as the applicant and the applicant must sign the application, meet the criteria set forth in Subsection 202.02 of this rule, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in this section. (4-6-05)

**02. Requirements for Individuals.** If the applicant is an individual, the applicant must: (4-6-05)

**a.** Be a citizen of the United States or a permanent legal resident or a refugee. (4-6-05)

**b.** Be a resident of the state of Idaho for at least twelve (12) months before the date of the application. (4-6-05)

**c.** Be over the age of eighteen (18) before the date of the application, unless the applicant is an apprentice. ~~(4-6-05)~~(1-1-09)T

**03. Requirements for Organizations.** If the applicant is an organization, the applicant must: (4-6-05)

**a.** Have been operating in the state of Idaho for at least twelve (12) months before the date of the application. (4-6-05)

**b.** Be a school, unit of local, county, tribal, or state government, or an organization determined to be tax exempt by the United States Internal Revenue Service whose primary purpose is the production, presentation, or support of the arts. (4-6-05)

**i.** Organizations that have applied for a tax-exempt status determination and have not received the determination may submit an application through another tax-exempt organization as its designated fiscal agent.

Service as a fiscal agent does not exclude an organization from applying for programs on behalf of the organization serving as a fiscal agent. (4-6-05)

ii. Tax-exempt organizations must have an independent board of directors empowered to formulate policies and be responsible for the governance and administration of the organization, its programs, and its finances. (4-6-05)

c. Compensate artists and arts administrators at no less than the legal minimum wage or in accordance with a written agreement. (4-6-05)

**04. Application and Funding Limits.** An applicant shall submit no more than one (1) application per program each fiscal year. Applicants under the QuickFund\$ programs may submit one (1) QuickFund\$ application per application deadline and shall receive funds under no more than one (1) QuickFund\$ grant each fiscal year. (4-6-05)

### **203. APPLICATIONS.**

**01. Application Forms.** Applications shall include a completed application form in the format provided by the Commission for the applicable program, produced on eight and one-half inch by eleven inch (8½" x 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point. Application forms may include questions requiring narrative answers and a proposed budget. Application forms shall not exceed the page limit for the program specified on the application form. The Commission may decline to consider pages in excess of the page limit. (4-6-05)

**02. Submission.** Applications shall be hand delivered to the Commission or sent to the Commission by the United States mail or other courier or delivery service. The Commission will not accept applications or supporting materials submitted by facsimile transmission or electronically. The Commission will accept applications for a program for a period beginning one (1) month prior to the next application deadline for the program and concluding on the application deadline. (4-6-05)

**03. Ownership and Return of Applications.** Upon submission, applications shall become the property of the Commission. ~~At the request of the applicant, the Commission will return work samples.~~ The return of work samples shall be at the risk and expense of the applicant. The Commission may require pre-payment of packing and shipping costs for the return of work samples. ~~(4-6-05)(1-1-09)T~~

**04. Work Samples and Supporting Materials.** Each application shall include the work samples and supporting materials specified in these rules for the applicable program. (4-6-05)

a. Work samples shall be of work that is no more than five (5) years old. ~~(4-6-05)(1-1-09)T~~

b. Applicants shall not send original work samples or master copies of work samples. (4-6-05)

c. Requirements for work samples are ~~as follows:~~ defined in the program guidelines. ~~(4-6-05)(1-1-09)T~~

i. ~~Slides. Applicants must submit no more than ten (10) two inch by two inch (2" x 2") slides. No more than two (2) detail shots may be included in slide submissions. Slides must be submitted in a plastic sheet, numbered one (1) to ten (10) in order of presentation, and labeled with the applicant's name, title, medium, dimensions, and date of the work. Applicants should place a red dot on the lower front left corner of the slide to indicate the placement of the slide. Applicants must submit a slide list containing the applicant's name, title, medium, dimensions, and date of the work. Applicants may include comments about each slide on the slide list. (4-6-05)~~

ii. ~~Videotapes. Applicants must submit no more than two (2) properly cued videotapes. Unless approved by the Commission in writing, videotapes shall be in VHS format. Each videotape cassette shall be labeled with the applicant's name, title of the work, and the date written, produced, or performed. Videotapes must be accompanied by an information list including the applicant's name, title of the work, the date written, produced, or performed, a description of the work sample, an explanation of what the Commission is seeing, and the applicant's~~

~~responsibilities in the work. (4-6-05)~~

~~iii. **Audiotapes and Compact Disks.** Applicants must submit no more than two (2) properly cued audiotapes or compact disks. If applicable, applicants must indicate the track to be reviewed by the Commission on each compact disk or audiotape. Audiotapes or compact disks must be labeled with the applicant's name, title of the work, and the date of the work. Audiotapes or compact disks must be accompanied by an information list including the applicant's name, title of the work, the date of the work, a description of the work, and the applicant's responsibilities in the work. (4-6-05)~~

~~iv. **Manuscripts.** Manuscripts must specify the completion date of the work. Applicants shall limit fiction and nonfiction work samples to three (3) short works of no more than twenty (20) pages or two (2) excerpts from larger works of not more than twenty (20) pages. Poetry work samples must be no more than fifteen (15) pages. Poems of less than one (1) page in length must be printed one (1) poem to a page. Manuscripts must be produced on eight and one half inch by eleven inch (8½" X 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point. (4-6-05)~~

**05. Resumes.** Resumes shall be no longer than two (2) pages and describe the applicant's professional development as an artist or arts administrator. Resumes must be produced on eight and one-half inch by eleven inch (8½" X 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point. Resumes may contain academic training, publications, honors and awards, locations of exhibitions or performances, or a short personal biography concerning training in a traditional art. (4-6-05)

**06. Artist Statements.** Artist statements shall be no longer than one (1) page and must be produced on eight and one-half inch by eleven inch (8½" x 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point. An artist statement should discuss the purpose of the work and provide the reader with a personal perspective of the artist concerning the work. (4-6-05)

**07. Publication, Performance, and Production Information.** Publication, performance, or production information shall be restricted to the applicant's resume. (4-6-05)

**08. Matching Contributions.** At the request of the Commission, the applicant shall provide documentation of matching contributions for Commission review. Contributions of services must be uncompensated and, if the applicant is an organization, shall not include the services of the applicant's board members. In-kind contributions must be valued at the reasonable rate for the services or property provided to the applicant in the applicant's community. If cash contributions are raised through fund-raising activities or donations from individuals, private foundations, or private companies, the applicant must identify the source of the cash contribution and maintain documentation substantiating the source of the cash contribution. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**206. FINAL REPORTS.**

Recipients must submit a final report to the Commission no later than ~~the earlier of sixty~~ thirty (630) days following completion of the project or the last day of the final fiscal year of the ~~award~~ grant term. ~~(4-6-05)(1-1-09)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. QUICKFUNDS.**

QuickFund\$ provides grants to support new or exemplary arts projects, activities, or professional development for individuals working in all disciplines and for the professional growth of arts administrators. QuickFund\$ grants are available to individuals for professional development and QuickProjects. (4-6-05)

**01. QuickFund\$ -- Professional Development.** QuickFund\$ for professional development provides

reimbursement to artists for gatherings where they will teach or learn from their peers and to arts administrators for attending a conference, seminar, workshop, or other form of career advancement training. The Commission will not accept QuickFund\$ for professional development applications: (4-6-05)

**a.** For the same event or opportunity from more than one (1) member or staff of a single organization with a budget over fifty thousand dollars (\$50,000). (4-6-05)

**b.** For the same event or opportunity from more than two (2) members or staff of a single organization with a budget under fifty thousand dollars (\$50,000). (4-6-05)

**c.** For attendance at the same ~~opportunity or~~ event or opportunity that was the subject of award to the applicant in the prior fiscal year. ~~(4-6-05)~~(1-1-09)T

**d.** From an applicant who has received a QuickFund\$ grant in the same fiscal year. (4-6-05)

**02. QuickFund\$ -- QuickProjects.** QuickProjects provides support for activities that allow an applicant to develop significant and specific projects or new works that will be shared with the public. (4-6-05)

**03. QuickFund\$ -- Evaluation Criteria.** QuickFund\$ grant applications for individuals are evaluated on ~~a point scale with a total of one hundred (100) points~~ criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the feasibility of the project or activity, and the opportunity for artistic growth from the activity or project. ~~(4-6-05)~~

~~**a.** Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. Artistic quality is evaluated as follows:~~ ~~(4-6-05)~~

~~**i.** For artists, evaluation of artistic quality is based upon the skill demonstrated by the work samples submitted by the applicant and whether the project, purpose, or goal of the applicant is a logical extension of the applicant's previous work or aesthetic interest. (4-6-05)~~

~~**ii.** For arts administrators, evaluation of artistic quality is based upon whether the applicant's past work history indicates professional experiences with respected arts organizations or projects, or whether the organization for which the applicant works produces programs of high artistic quality that are appropriate for the organization's stated mission. (4-6-05)~~

~~**b.** Feasibility. A maximum of twenty five (25) points are awarded for feasibility. The evaluation of feasibility is based upon whether the applicant's ability and plan demonstrates that the applicant can realistically accomplish the project or activity and whether the budget is clear and correlates with the applicant's description of the project or activity. (4-6-05)~~

~~**c.** Artistic Growth. A maximum of twenty five (25) points are awarded for artistic growth. The evaluation of artistic growth is based upon whether the opportunity has the potential to significantly affect or enhance the applicant's ability, career, artistic development, technique, or managerial skills. Where appropriate, the evaluation considers whether the opportunity includes the public, such as with an exhibition, performance, reading, or demonstration. (4-6-05)~~

~~**d.** Preferences. The Commission may give preference to applicants who have not previously received funds through a Commission program. (4-6-05)~~(1-1-09)T

**04. QuickFund\$ -- Matching Contributions.** Applicants for a QuickProjects grants must provide cash contributions equaling one-third (1/3) of the requested funds. Applicants for professional development must provide cash contributions equaling the requested funds. (4-6-05)

**05. QuickFund\$ -- Application Requirements.** Applicants for QuickFund\$ for individuals shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. Artist statements are not required for writers or arts administrators. (4-6-05)

**06. QuickFund\$ -- Application Deadlines.** QuickFund\$ applications must be postmarked or hand delivered to the Commission on or before the first Monday of March, June, September, or December. (4-6-05)

**302. FELLOWSHIPS.**

Fellowships recognize the outstanding work and artistic excellence of Idaho artists. Fellowships are intended to reward dedication to a discipline, promote public awareness, and to advance an artist's career. (4-6-05)

**01. Fellowships -- Evaluation Criteria.** Fellowship applications are evaluated on ~~a points scale with a total of one hundred (100) points~~ criteria published in the program guidelines. The review criteria may include, but are not limited to, the applicant's artistic excellence, and the professional history of the applicant. ~~(4-6-05)~~(1-1-09)T

~~**a. Artistic Excellence.** A maximum of eighty five (85) points are awarded for artistic excellence. The evaluation of artistic excellence is based upon the originality, distinguished consistency, and preeminent quality of the applicant's work. If the applicant practices traditional arts, the evaluation is also based upon the quality of the execution of the applicant's work and the applicant's affiliation to community esthetics.~~ (4-6-05)

~~**b. Professional History.** A maximum of fifteen (15) points are awarded for professional history. The evaluation of professional history is based upon the applicant's level of professional recognition and achievement and the applicant's community involvement. If the applicant practices traditional arts, the evaluation is also based upon the artist's commitment to their cultural community's artistic and cultural traditions through continued practice, excellence of work, and teaching.~~ (4-6-05)

**02. Fellowships -- Limitations on Award.** The Commission will not accept applications from recipients receiving a fellowship in the prior fiscal year. The Commission will not award more than three (3) fellowships to an artist. The Commission will not award a literature fellowship to applicants who have previously received a Writer in Residence award from the Commission. (4-6-05)

**03. Fellowships -- Coordination With Writer in Residence Program.** Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. (4-6-05)

**04. Fellowships -- Discipline Rotation.** Fellowship awards are awarded to artists based upon discipline in a three (3) year rotation. Beginning with fiscal year 2005, the rotation cycle is as follows: (4-6-05)

**a.** Year one (1) -- literature; (4-6-05)

**b.** Year two (2) -- craft, design and visual arts; and ~~(4-6-05)~~(1-1-09)T

**c.** Year three (3) -- media and performing arts. ~~(4-6-05)~~(1-1-09)T

**05. Fellowships -- Application Requirements.** The Commission reviews applications for fellowships anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for fellowships shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. (4-6-05)

**06. Fellowships -- Application Deadline.** Fellowship applications must be postmarked or hand delivered to the Commission on or before the last business day of January. (4-6-05)

**303. WRITER IN RESIDENCE.**

The Writer in Residence appointment is the highest recognition of achievements in literature and the largest financial award accorded an Idaho writer by the state of Idaho. (4-6-05)

**01. Writer in Residence -- Recipient Obligations.** Recipients of a Writer in Residence appointment shall give twelve (12) public readings throughout the state of Idaho during the appointment term. Eight (8) public readings shall be in communities with populations of ~~fewer~~ no more than ~~twenty five~~ fifty thousand (250,000) residents. The public readings shall be conducted at regular intervals, approved by the Commission, during the term

of the appointment. In its discretion, the Commission may require the recipient to give up to three (3) additional readings at special public events. ~~(4-6-05)(1-1-09)T~~

**02. Writer in Residence -- Limitations on Award.** The Commission will not recommend applicants with two (2) prior Writer in Residence appointments for subsequent appointment to Writer in Residence. The Commission will not award a Literature Fellowship to applicants who have previously received a Writer in Residence appointment. (4-6-05)

**03. Writer in Residence -- Evaluation Criteria.** Writer in Residence applications are evaluated on ~~a points scale with a total of one hundred (100) points~~ criteria published in the program guidelines. The review criteria may include, but are not limited to, the literary excellence of the applicant, the applicant's past work and contributions to literature and an oral reading by the applicant. ~~(4-6-05)(1-1-09)T~~

~~a. Literary Excellence. A maximum of sixty (60) points are awarded for literary excellence. The evaluation of literary excellence is based upon the originality, distinguished consistency, and preeminent quality of the applicant's work.~~ (4-6-05)

~~b. Past Work and Contributions to Literature. A maximum of twenty (20) points are awarded based upon the quality of the applicant's past work and the applicant's contributions to literature.~~ (4-6-05)

~~c. Effectiveness of Oral Reading. A maximum of twenty (20) points are awarded for the effectiveness of the applicant's oral reading.~~ (4-6-05)

**04. Writer in Residence -- Coordination with Fellowships.** Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. (4-6-05)

**05. Writer in Residence -- Award and Term.** The Commission submits recommended appointments under the Writer in Residence program to the Governor. Appointments to Writer in Residence are made in the sole discretion of the Governor. The term of a Writer in Residence appointment is three (3) years beginning with the date of appointment specified in the announcement of award by the Commission. (4-6-05)

**06. Writer in Residence -- Application Requirements.** The Commission reviews applications for the Writer in Residence program anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for the Writer in Residence program shall submit an application form, a resume, manuscripts, and an audiotape or compact disk of the applicant's oral reading. (4-6-05)

**07. Writer in Residence -- Application Deadline.** Writer in Residence applications must be postmarked or hand delivered to the Commission on or before the last business day of January. (4-6-05)

### **304. TRADITIONAL ARTS APPRENTICESHIPS.**

The Traditional Arts Apprenticeships program supports a learning partnership between a master and an apprentice. (4-6-05)

#### **01. Traditional Arts Apprenticeships - Funding Limitations and Requirements.** (4-6-05)

**a.** The traditional art practiced by the master must represent a shared cultural tradition of the apprentice. (4-6-05)

**b.** ~~If the apprentice is under~~ Applicants younger than eighteen (18) years of age are allowed to apply as apprentices when their artistic traditions are typically ~~the traditional art must traditionally be taught or~~ passed down to persons under eighteen (18) ~~years of age.~~ ~~(4-6-05)(1-1-09)T~~

**c.** A master may train more than one (1) apprentice where the traditional art is traditionally practiced by a group or taught or passed down in a group. (4-6-05)

**d.** A master may reside outside of Idaho if the ethnic or cultural group represented by the traditional art extends beyond Idaho. (4-6-05)

**02. Traditional Arts Apprenticeships -- Evaluation Criteria.** Traditional arts apprenticeship applications are evaluated on ~~a points scale with a total of one hundred (100) points~~ criteria published in the program guidelines. The review criteria may include, but are not limited to, the community recognition accorded to the master, the benefit to the applicant and the public from the apprenticeship, and the feasibility of the applicant's proposal. (4-6-05)

~~**a-** *Quality.* A maximum of fifty (50) points are awarded for quality. The evaluation of quality is based upon the community recognition accorded to the master, the benefit to the applicant from working with the master, and the commitment of the applicant to advancing his skills in the traditional art and to carrying on the traditional art.~~ (4-6-05)

~~**b-** *Community.* A maximum of twenty-five (25) points are awarded for community. The evaluation of community is based upon whether the master and the applicant share the same cultural background, whether the traditional art is significant to the cultural or ethnic community from which it arises and to the broader community, and whether the traditional art's practice is endangered or there are few artists practicing the traditional art.~~ (4-6-05)

~~**e-** *Feasibility.* A maximum of twenty-five (25) points are awarded for feasibility. The evaluation of feasibility is based upon whether the goals for the apprenticeship are clear, whether the applicant has submitted a clear, complete, and appropriate budget, and whether the work plan provides an appropriate time for interaction between the applicant and the master.~~ (4-6-05)

~~**d-** *Preferences.* The Commission may give preference to traditional art forms with few practicing artists.~~ (4-6-05)(1-1-09)T

**03. Traditional Arts Apprenticeships -- Length of Apprenticeships.** The length of an apprenticeship under the traditional arts apprenticeships program shall not exceed ten (10) months. The Commission, in its sole discretion, may grant an extension of the length of an apprenticeship upon receipt of a written request submitted prior to the expiration of the length of the originally awarded apprenticeship. (4-6-05)

**04. Traditional Arts Apprenticeships -- Work Plan.** The master and the applicant shall cooperatively develop a work plan for the apprenticeship. The work plan shall include the meeting schedule, meeting locations, and the materials needed for the apprenticeship. The work plan should consider the availability of seasonal materials and the preparation of materials prior to use. (4-6-05)

**05. Traditional Arts Apprenticeships -- Instructional Fees.** Traditional arts apprenticeships awards shall include payment of an hourly instructional fee at a rate determined by the Commission to the master for the number of instructional hours approved by the Commission. (4-6-05)

**06. Traditional Arts Apprenticeships -- Application Requirements.** Applications for traditional arts apprenticeships award shall submit; an application form; a work plan; two (2) to three (3) letters of support from community members that describe the applicant's artistic contributions to the community and how the applicant's traditional art relates to the master's and the applicant's shared artistic heritage; and work samples appropriate to the applicant; ~~and work samples appropriate to the master.~~ Applicants are also encouraged to submit the master's resume. (4-6-05)(1-1-09)T

**07. Traditional Arts Apprenticeships -- Application Deadlines.** Traditional arts apprenticeship applications must be postmarked or hand delivered to the Commission on or before the ~~first~~ last business day of March January. (4-6-05)(1-1-09)T

**305. -- 399. (RESERVED).**

**400. PROGRAMS SUPPORTING ORGANIZATIONS.**  
The Commission administers the programs for organizations set forth in Sections 401 through 405 of these rules.

(4-6-05)

**01. Organizations -- Significant Changes.** Applicants that experience significant changes in the applicant's staff, programming, or finances following submission of an application and prior to a program award must notify the Commission of the changes in writing. (4-6-05)

**02. Organizations -- General Evaluation Criteria.** The Commission reviews applications materials for support of public programs in the arts provided by organizations using the following general criteria. These general criteria are encompassed within the point totals and specific evaluation criteria of each program. Applicants should include substantiation for each of the criteria in the application. ~~(4-6-05)~~(1-1-09)T

**a.** Community support through fund-raising or other community financial support. (4-6-05)

**b.** Accuracy of the budget submitted with the application materials. ~~(4-6-05)~~(1-1-09)T

**c.** Involvement of Idaho artists and arts organizations. Use of out-of-state resources is permitted if the applicant demonstrates that the resources are not available with Idaho or if their use supplements the resources available locally. (4-6-05)

~~**d.** *The applicant's financial need and access to financial and artistic resources.*~~ ~~(4-6-05)~~

~~**ed.**~~ The applicant's commitment to make the arts accessible to all members of the public. Accessibility includes the ability of persons with special needs, ethnic groups, occupational groups, senior citizens, and young audiences to access the arts. Accessibility also includes consideration of the location and ease of use of facilities, content of the activities, and the planning process. Applicants must include documentation showing that the applicant invited pertinent cultural and community groups to participate in the applicant's planning process. (4-6-05)

~~**fe.**~~ The applicant's commitment to fairly compensating artists. (4-6-05)

~~**gf.**~~ The applicant's use of admission fees, where applicable, to provide financial support for the subject of the application. The Commission encourages the use of admission fees. (4-6-05)

**03. Acquisition or Commission of Works.** Applicants seeking funding for the acquisition of works of art or the commission of new works of art must meet the following criteria. The applicant must: (4-6-05)

**a.** Maintain a permanent exhibition facility that is open to the public. (4-6-05)

**b.** Demonstrate excellent management and security practices. (4-6-05)

**c.** Maintain an ongoing exhibition program or a permanent collection. (4-6-05)

**04. College and University Applicants.** The Commission will accept applications from college and university applicants if the applicant presents and markets its arts activities to the general public and the subject of the application is supplementary to the applicant's regular curriculum. College and university applicants are not eligible for ~~General Operating Support~~ Public Programs in the Arts grants or for Cultural Facilities grants. College and university applicants must provide matching contributions from non-public funds. The Commission will not classify organizations affiliated with a college or university, operating as a separate tax-exempt organization and applying as the separate tax-exempt organization, as a college or university applicant. ~~(4-6-05)~~(1-1-09)T

**401. QUICKFUND\$ FOR ORGANIZATIONS.**

QuickFund\$ grants provide timely assistance to arts organizations for professional advice or training, pilot arts projects, projects essential to the initial growth of an organization, or new programs. The Commission will not award QuickFund\$ grants for arts programs, arts events, or aspects of arts events that occur annually or that exceed the term of the award. QuickFund\$ grants are available to organizations for QuickProjects and training and advice. ~~(4-6-05)~~(1-1-09)T

**01. QuickFund\$ -- QuickProjects.** QuickProjects provides funds for pilot arts projects, projects



essential to the initial growth of an organization, or new programs. (4-6-05)

**02. QuickFund\$ -- Training and Advice.** Training and advice awards provide funds for management consultancies and artistic consultancies. Management consultancies address aspects of the organization's operations such as fund-raising, technology, marketing, public relations, organizational development, audience development, long-range planning, program development, accessibility planning, and board or financial management. Artistic consultancies address aspects of the organization's arts projects such as voice instruction, lighting design, exhibition design, or conservation studies. (4-6-05)

**03. QuickFund\$ -- Evaluation Criteria.** QuickFund\$ grant applications from organizations are evaluated on ~~a point scale with a total of one hundred (100) points~~ criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the access and involvement of the community in the project or activity. ~~Encompassed within the criteria below are~~ The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. (4-6-05)

~~**a.** Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. The evaluation of artistic quality is based upon the programs produced by the applicant and the appropriateness of the applicant's projects to the applicant's mission. (4-6-05)~~

~~**b.** Management. A maximum of twenty-five (25) points are awarded for management. The evaluation of the applicant's management is based upon whether the applicant's resources and the plan for carrying out the subject of the application demonstrate that the applicant can accomplish the project or activity successfully. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget and whether applicants for training and advice awards have clearly identified the purpose and need for the award. (4-6-05)~~

~~**c.** Community Involvement and Access. A maximum of twenty-five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon the appropriateness and breadth of community involvement in the proposed project or activity and the public's access to the project or activity. (4-6-05)~~

~~**d.** Preferences. The Commission may give preference to applicants whose annual operating budget is less than fifty thousand dollars (\$50,000) and to applicants who have not previously received funds from a Commission program. (4-6-05)(1-1-09)T~~

**04. QuickFund\$ -- Matching Contributions.** The applicant must provide matching contributions equaling the requested funds. (4-6-05)

**05. QuickFund\$ -- Application Requirements.** Applicants for QuickFund\$ for organizations shall submit an application form; the resumes of key consultants, artists, or personnel; a list of the current board of directors of the organization with affiliation and contact information; an Internal Revenue Service tax determination letter, if applicable; and work samples reflecting prior projects or as applicable to the project or activity that is the subject of the application. Applicants should also submit no more than five (5) documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. (4-6-05)

**06. QuickFund\$ -- Application Deadlines.** QuickFund\$ applications must be postmarked or hand delivered to the Commission on or before the ~~first~~ second Monday of March, June, September, or December. (4-6-05)(1-1-09)T

#### **402. CULTURAL FACILITIES AND PUBLIC ART GRANTS.**

Cultural Facilities and Public Art Grants encourage local, public, and private support for feasibility studies, renovation or construction of performance, exhibition or artist spaces, purchases of equipment and fixtures for such spaces, and public arts projects. Cultural Facilities and Public Art Grants are awarded for single-phase projects that can be completed in one (1) year and multi-phase projects where all of the individual phases of the project can be completed over a period that does not exceed five (5) years. The award of funding by the Commission does not guarantee funding for more than one (1) phase of a multi-phase project. (4-6-05)(1-1-09)T

- 01. Cultural Facilities and Public Art Grants -- Funding Limitations and Requirements.** ~~(4-6-05)(1-1-09)T~~
- a.** Applicants who have received Cultural Facilities and Public Art Grants for five (5) consecutive fiscal years are ineligible for Cultural Facilities and Public Art Grants for one (1) fiscal year. ~~(4-6-05)(1-1-09)T~~
- b.** College and university applicants are ineligible for Cultural Facilities and Public Art Grants. ~~(4-6-05)(1-1-09)T~~
- c.** The Commission will not award a Cultural Facilities and Public Art Grant for the purchase or maintenance of motorized or non-motorized vehicles. ~~(4-6-05)(1-1-09)T~~
- d.** Construction and renovation using a Cultural Facilities and Public Art Grant must comply with all federal, state, and local laws including laws governing the access of persons with disabilities, facilities on the National Register of Historic Places, and building, zoning, and other codes. ~~(4-6-05)(1-1-09)T~~
- e.** The Commission will not fund construction and renovation using a Cultural Facilities and Public Art Grant unless the primary purpose of the construction or renovation is for the presentation of the arts to the public. ~~(4-6-05)(1-1-09)T~~
- 02. Cultural Facilities and Public Art Grants -- Feasibility Studies.** Applicants for renovation or construction of facilities must submit a feasibility study. The extent of the feasibility study must match the significance of the project. The feasibility study must contain an analysis of the vision and planning for the project. ~~(4-6-05)(1-1-09)T~~
- 03. Cultural Facilities and Public Art Grants -- Evaluation Criteria.** Cultural Facilities and Public Art Grant applications from organizations are evaluated on ~~a point scale with a total of one hundred (100) points criteria published in the program guidelines. The review criteria may include, but are not limited to, the planning for the project and the applicant's management capacity. Encompassed within the criteria below are The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines.~~ ~~(4-6-05)(1-1-09)T~~
- ~~**a.** *Planning. A maximum of fifty (50) points are awarded for planning. The evaluation of planning is based upon evidence of community wide involvement in and need for the project, attention given to maintaining the building's historic integrity, if applicable, the adequacy of the facility to house equipment or fixtures purchased with the funds, and the relevance of equipment or fixtures purchased with the funds to the applicant's mission or programming.* (4-6-05)~~
- ~~**b.** *Management. A maximum of fifty (50) points are awarded for management. The evaluation of management is based upon the community impact or support for the project, and whether the applicant's resources and the plan for carrying out the project demonstrates that the applicant can accomplish the project successfully. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget, whether a multi-phase project is on schedule, and the applicant's ability to address the long-term care and conservation of public art acquired during the project.* (4-6-05)~~
- 04. Cultural Facilities and Public Art Grants -- Matching Contributions.** The applicant must provide cash contributions equaling the requested funds. ~~(4-6-05)(1-1-09)T~~
- 05. Cultural Facilities and Public Art Grants -- Application Requirements.** ~~(4-6-05)(1-1-09)T~~
- a.** Single-phase Projects. Applicants for single-phase Cultural Facilities and Public Art Grants shall submit an application form; the resumes of key consultants, artists, or personnel; a list of the current board of directors of the organization with affiliation and contact information; an Internal Revenue Service tax determination letter, if applicable; three (3) current competitive bids for the project; a feasibility study, if applicable; a timeline for the project; blueprints and design drawings, if applicable; an historic significance report, if applicable; evidence of property or facility ownership or lease of the property or facility if the project involves construction or the installation of equipment or fixtures; and proof of adequate liability and fire insurance for the project. Applicants should also

submit no more than five (5) documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. Applicants are also encouraged to submit a list of in-kind contributions to the project. (4-6-05)(1-1-09)T

b. Multi-phase Projects. Applicants for multi-phase Cultural Facilities and Public Art Grants shall submit the items required of applicants for single-phase Cultural Facilities and Public Art Grants. The feasibility study shall have been completed in the prior three (3) years. In addition, applicants for multi-phase Cultural Facilities and Public Art Grants shall submit a progress report based upon the original project plan containing an explanation of any delays or changes to the plan, and the original specifications for bids with a comparative summary sheet. Applicants for public art projects are not required to submit the original specifications for bids for the project. (4-6-05)(1-1-09)T

**06. Cultural Facilities and Public Art Grants -- Application Deadline.** Cultural Facilities and Public Art Grant applications must be postmarked or hand delivered to the Commission on or before the last business day of January. (4-6-05)(1-1-09)T

**403. ~~GENERAL OPERATING SUPPORT~~ PUBLIC PROGRAMS IN THE ARTS GRANTS.** ~~General Operating Support~~ Public Programs in the Arts Grants are designed to ~~stabilize the financial base~~ support public arts programs of Idaho's established arts organizations; ~~by assisting the organizations in long-range program planning; and aid in expansion of current programs~~ business stabilization. ~~General Operating Support~~ Public Programs in the Arts Grants are awarded as ~~single-year grants or~~ multi-year grants. (4-6-05)(1-1-09)T

**01. ~~General Operating Support Grants~~ Public Programs in the Arts -- Funding Limitations and Requirements.** (4-6-05)(1-1-09)T

a. The primary mission of the applicant must be the production, presentation, or support of the arts. (4-6-05)

b. College and university applicants are ineligible for ~~General Operating Support~~ Public Programs in the Arts Grants. (4-6-05)(1-1-09)T

c. Applicants ~~for a single year grant~~ must have been operating as a tax-exempt organization for thirty-six (36) months prior to the application deadline. ~~Applicants for a multi year grant must have been operating as a tax-exempt organization for sixty (60) months prior to the application deadline.~~ (4-6-05)(1-1-09)T

d. The responsibility for the applicant's operation must rest with a ~~single individual. If the applicant is seeking a multi-year grant, a full-time~~ paid staff person ~~must hold the responsibility.~~ (4-6-05)(1-1-09)T

e. ~~The applicant must employ artists.~~ Applicants ~~for multi-year grants~~ must ~~employ artists on a regular basis and~~ compensate artists according to the prevailing community standard for the artist's discipline. (4-6-05)(1-1-09)T

f. Applicants who have failed to reduce or have increased a budget deficit for three (3) consecutive years must demonstrate that the applicant has ended the applicant's most recent fiscal year with a balanced budget and that the applicant has made a significant effort to reduce the deficit during the applicant's current fiscal year. Applicants with a budget deficit must also provide a deficit-elimination schedule approved by the applicant's governing body and acceptable to the Commission. (4-6-05)

**02. ~~General Operating Support~~ Public Programs in the Arts Grants -- Evaluation Criteria.** ~~General Operating Support~~ Public Programs in the Arts Grant applications are evaluated on ~~a point scale with a total of one hundred (100) points~~ criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the community involvement and access to the proposed use of grant funds. ~~Encompassed within the criteria below are~~ The Commission may include the general criteria set forth in Subsection 400.03 of these rules ~~within the criteria published in the program guidelines.~~ Applicants of similar size and resources are reviewed based upon their gross annual operating budget, staff, longevity, location in a rural or urban county, and the criteria ~~listed below~~ in the program guidelines. (4-6-05)(1-1-09)T

~~a. Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. The evaluation of artistic quality is based upon whether the applicant produces programs of high artistic quality that are appropriate for the organization's stated mission. (4-6-05)~~

~~b. Management. A maximum of twenty-five (25) points are awarded for management. The evaluation of management is based upon whether the applicant's resources and the plan for using the grant and marketing during the term of the grant demonstrates that the applicant can successfully operate during and after the grant period. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget and whether there is an effective means of evaluating the organization's progress following award of a grant. (4-6-05)~~

~~c. Community Involvement and Access. A maximum of twenty-five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon the applicant's knowledge of audience and community needs, the applicant's use of local cooperative planning, the extent to which community needs are met by the applicant's plan for use of grant funds, whether the applicant's plan for use of grant funds includes and benefits new, underserved, or nontraditional constituencies, and whether the applicant provides access to its programs to persons with disabilities. (4-6-05)~~

**03. ~~General Operating Support~~ Public Programs in the Arts Grants -- Matching Contributions.** Applicants must provide matching contributions equal to the ~~requested~~ grant funds. (4-6-05)(1-1-09)T

**04. ~~General Operating Support~~ Public Programs in the Arts Grants -- Discipline Rotation.** Multi-year ~~General Operating Support~~ Public Programs in the Arts Grants are awarded to applicants based upon the discipline primarily supported by the applicant in a three (3) year rotation. Beginning with 2005, the rotation cycle is as follows: (4-6-05)(1-1-09)T

a. Year one (1) - literature; (4-6-05)

b. Year two (2) - craft, design, and visual arts; and (4-6-05)(1-1-09)T

c. Year three (3) - media and performing arts. (4-6-05)(1-1-09)T

**05. ~~General Operating Support~~ Public Programs in the Arts Grants -- Application Requirements.** (4-6-05)(1-1-09)T

a. Initial Application. Applicants for ~~General Operating Support~~ Public Programs in the Arts Grants shall submit an application form; ~~a copy of the applicant's financial statement for the most recent fiscal year of the applicant, with authorizing signatures; the resumes of key consultants and personnel; a list of the current board of directors of the organization with affiliation and contact information; a current two (2) to five (5) year long range plan; an Internal Revenue Service tax determination letter; work samples reflecting prior and on going projects; and a list of potential and confirmed programming events for the applicant's current programming season. Applicants should also submit no more than five (5) documents supporting the application such as brochures or letters from community partners.~~ Upon receipt of the award notification and agreement, applicants shall submit an executed award agreement to accept the grant. (4-6-05)(1-1-09)T

b. Interim Applications. Recipients of multi-year ~~General Operating Support~~ Public Programs in the Arts Grants shall submit an interim application form on or before the last business day in January of the first and second years of the grant. (4-6-05)(1-1-09)T

**06. ~~General Operating Support~~ Public Programs in the Arts Grants -- Application Deadlines.** ~~General Operating Support~~ Public Programs in the Arts Grant applications must be postmarked or hand delivered to the Commission on or before the last business day of January. (4-6-05)(1-1-09)T

**404. PROJECT SUPPORT ENTRY TRACK GRANTS.**

~~Project Support~~ Entry Track Grants ~~encourage a variety of quality arts activities in the state of Idaho by supporting specific arts associated projects. A project may be a single event or activity or a season of events or activities are the~~

entry point for Idaho arts organizations that are eligible for Public Programs in the Arts funding and are new to the Idaho Commission on the Arts programs. Entry Track Grants also support the public programs in the arts delivered by university-based arts organizations. (4-6-05)(1-1-09)T

**01. Project Support Entry Track Grants -- Funding Limitations and Requirements.** (4-6-05)

~~a. Applicants may collaborate with one (1) or more organizations on the event or activity. The applicant must control the use of funding from the Project Support Grant, sign the application, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in Subsection 202.04 of these rules.~~ (4-6-05)

~~b. Current applicants for or recipients of a General Operating Support Public Programs in the Arts Grant are ineligible for an Project Support Entry Track Grant only if the project is not a part of the recipient's normal season and is not included in the budget submitted with the General Operating Support application. The Commission will evaluate the project proposals of current applicants for or recipients of a General Operating Support Grant as provided in the criteria for artistic quality set forth in Paragraph 404.02.a. of these rules. Current recipients of a QuickFund\$ QuickProjects Grant for Organizations are ineligible for an Entry Track Grant.~~ (4-6-05)(1-1-09)T

**02. Project Support Entry Track Grants -- Evaluation Criteria.** Project Support Entry Track Grant applications are evaluated on a point scale with a total of one hundred (100) points criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the access and involvement of the community in the project. Encompassed within the criteria below are The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. (4-6-05)(1-1-09)T

~~a. Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. The evaluation of artistic quality is based upon the artistic merit and rationale for the project, the relationship of the program to the organization's stated mission, and whether an applicant who is a recipient of or has applied for a General Operating Support Grant is proposing a project that is new, risk-taking, serves a non-traditional audience, or is a collaboration between two (2) or more arts organizations or other community development organizations.~~ (4-6-05)

~~b. Management. A maximum of twenty-five (25) points are awarded for management. The evaluation of management is based upon whether the applicant's resources and the plan for using the grant and marketing during the term of the grant demonstrates that the applicant can successfully carry out the project. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget and whether there is an effective means of evaluating the project.~~ (4-6-05)

~~c. Community Involvement and Access. A maximum of twenty-five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon the applicant's use of local cooperative planning, the extent to which community needs are met by the applicant's plan for use of grant funds, whether the applicant's plan for use of grant funds includes and benefits new, underserved, or nontraditional constituencies, and whether the applicant provides access to its programs to persons with disabilities.~~ (4-6-05)

~~d. Preferences. The Commission may give preference to applicants who have not applied for a General Operating Support Grant.~~ (4-6-05)

**03. Project Support Entry Track Grants -- Grant Amounts and Matching Contributions.** The Project Support Grant shall not exceed one half (1/2) of the costs for the event or activity. Applicants Recipients of Entry Track Grants must provide cash contributions equaling the requested funds grant. (4-6-05)(1-1-09)T

**04. Project Support Entry Track Grants -- Application Requirements.** Applicants for Project Support Entry Track Grants shall submit an application form; the resumes of key consultants and personnel; a list of the current board of directors of the organization with affiliation and contact information; an Internal Revenue Service tax determination letter, if applicable; work samples reflecting prior and on-going projects; and a list of potential and confirmed programming events for the applicant's current programming season. Applicants should also

submit no more than five (5) documents supporting the application such as brochures or letters from community partners. Applicants are encouraged to submit a list of in-kind contributions ~~to the project.~~ (4-6-05)(1-1-09)T

**05. ~~Project Support~~ Entry Track Grants -- Application Deadline. ~~Project Support~~ Entry Track Grant applications must be postmarked or hand delivered to the Commission on or before the last business day of January. (4-6-05)(1-1-09)T**

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. SUPPORT FOR ARTS EDUCATION.**

The Commission administers the programs supporting arts education set forth in Sections 501 through 504~~3~~ of these rules. The following programs are available to individuals: Arts in Education ~~Artist Roster~~ Directory of Teaching Artists, QuickFund\$ for professional development for educators, and QuickFund\$ Teacher Incentive Grants. The following programs are available to organizations: QuickProjects for education, ~~Arts Powered Learning Grants, and Creative Alternatives for Youth~~ Arts Education Project Grants. The Commission will not issue an ~~award~~ grant to organizations under a program for individuals or issue an ~~award~~ grant to an individual under a program for organizations. (4-6-05)(1-1-09)T

**501. ARTS IN EDUCATION ~~ARTIST ROSTER~~ DIRECTORY OF TEACHING ARTISTS.**

The Arts in Education ~~Artist Roster~~ Directory of Teaching Artists is an online listing of artists who share their unique art forms in schools and communities. The Arts in Education ~~Artist Roster~~ Directory of Teaching Artists does not provide funding to recipients. Recipients may set fees, schedules, and activities in collaboration with schools. (4-6-05)(1-1-09)T

**01. Arts in Education ~~Artist Roster~~ Directory of Teaching Artists -- Evaluation Criteria. Applicants for the Arts in Education ~~Artist Roster~~ Directory of Teaching Artists are evaluated based upon the applicant's artistic skills, communication skills, and the applicant's proposals for arts in education. (4-6-05)(1-1-09)T**

**02. Arts in Education ~~Artist Roster~~ Directory of Teaching Artists -- Application Requirements. Applicants for the Arts in Education ~~Artist Roster~~ Directory of Teaching Artists shall submit an application form, a resume, an artist statement, work samples appropriate to the applicant's discipline, three (3) letters of recommendation from persons familiar with the applicant's artistic ability and communication skills, and support materials such as letters of acceptance, brochures, articles, workshop information, and resumes of master artists under which the applicant has studied. (4-6-05)(1-1-09)T**

**03. Arts in Education ~~Artist Roster~~ Directory of Teaching Artists -- Application Deadlines. Arts Education ~~Artist Roster~~ Directory of Teaching Artists applications must be postmarked or hand delivered to the Commission on or before the ~~first~~ last business day of June in even numbered years. (4-6-05)(1-1-09)T**

**502. QUICKFUND\$ FOR ARTS EDUCATION.**

QuickFund\$ grants support professional development or short-term projects that enliven or improve arts learning as an integral part of the education of Idaho's youth. QuickFund\$ grants are available for professional development for educators, teacher incentive grants, and QuickProjects for education. (4-6-05)

**01. QuickFund\$ -- Professional Development for Educators. QuickFund\$ for professional development for educators provides support to teachers, educators, and artists ~~on~~ in the Arts in Education ~~Artist Roster~~ Directory of Teaching Artists to attend conferences, seminars, workshops, or summer educational events that provide training in arts curricula, arts teaching, arts assessment, arts integration, or related topics. (4-6-05)(1-1-09)T**

**02. QuickFund\$ -- Teacher Incentive Grants. Teacher incentive grants provide support to teachers for activities that enliven or improve arts learning in the classroom. (4-6-05)**

**03. QuickFund\$ -- QuickProjects for Education. QuickProjects for education provides support for short-term projects that enliven or improve arts learning as an integral part of the education of Idaho's youth.**

(4-6-05)

**04. QuickFund\$ -- Evaluation Criteria.** (4-6-05)

a. Professional Development for Educators and Teacher Incentive Grants. QuickFund\$ applications for professional development for education and teacher incentive grants are available to individuals who are educators or an artist ~~on in~~ the Arts in Education Artist Roster Directory of Teaching Artists. Applications are evaluated on a point scale with a total of one hundred (100) points criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the feasibility of the project and the opportunity for artistic growth from the project. ~~(4-6-05)(1-1-09)T~~

i. ~~Artistic and Individual Quality. A maximum of fifty (50) points are awarded for artistic and individual quality. Artistic and individual quality is evaluated based upon whether the applicant's past work history demonstrates experience working with arts or education projects of high quality, the artistic or educational merit and the rationale of the proposed project or experience, and the relation or application of the proposed activity or event to the vision or the mission of the school or organization where the applicant teaches Idaho youth.~~ (4-6-05)

ii. ~~Feasibility. A maximum of twenty five (25) points are awarded for feasibility. The evaluation of feasibility is based upon whether the applicant's ability and plan demonstrates the applicant can realistically accomplish the activity or event and whether the budget is clear and correlates with the applicant's description of the activity or event.~~ (4-6-05)

iii. ~~Professional and Artistic Growth. A maximum of twenty five (25) points are awarded for professional and artistic growth. The evaluation of artistic growth is based upon whether the opportunity has the potential to significantly affect or enhance the applicant's artistic development, professional skills, or teaching skills. The evaluation also considers whether the applicant demonstrates that the activity or event will improve student learning in the arts.~~ (4-6-05)

b. QuickProjects for Education. QuickFund\$ applications for QuickProjects for education are available to; arts organizations and that do not receive Public Programs in the Arts Grants or Entry Track Grants in the same fiscal year; schools; units of local, county, or tribal government, and organizations determined to be tax-exempt by the Internal Revenue Service that provide arts services for the general public. Applications are evaluated on a point scale with a total of one hundred (100) points criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the management capacity of the applicant, and community involvement and access to the project. (4-6-05)

i. ~~Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. Artistic quality is evaluated based upon the artistic and educational merit and rationale of the project, the relation of the project to the vision or mission of the school or organization where it will be implemented, and whether the artists, consultants, personnel, and presenters carrying out the project are qualified to carry out the project's activities and appropriate for the Idaho youth attending the project.~~ (4-6-05)

ii. ~~Management. A maximum of twenty five (25) points are awarded for management. The evaluation of management is based upon whether the roles and responsibilities of key personnel, community, and school partners, artists, and outside consultants are identified and clearly defined and whether the budget is clear and correlates with the applicant's description of the activity or event.~~ (4-6-05)

iii. ~~Community Involvement and Access. A maximum of twenty five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon whether the plan for the project reflects the community's demographics, including students, teachers, parents, administrators, and other community members. The evaluation is also based upon the applicant's plans to inform and involve the community, including publicity efforts.~~ (4-6-05)

e. ~~Preferences. The Commission may give preference to applicants who have not previously received funds through a Commission program.~~ (4-6-05)(1-1-09)T

**05. QuickFund\$ -- Matching Contributions.** Applicants for a professional development for

educators QuickFund\$ grant must provide matching contributions equaling the requested funds. Applicants for a teacher incentive QuickFund\$ grant must provide matching contributions equaling one-third (1/3) of the requested funds. Applicants for a QuickProjects for education grant must provide matching contributions equaling the requested funds. College and university applicants shall not use in-kind contributions as matching funds. (4-6-05)

**06. QuickFund\$ -- Application Requirements.** (4-6-05)

**a.** Professional Development for Educators and Teacher Incentive Grants. Applicants for professional development for educators or a teacher incentive QuickFund\$ grant shall submit an application form, a resume, work samples appropriate to the applicant, and supporting materials such as letters of acceptance, brochures, articles, or workshop information. (4-6-05)

**b.** QuickProjects for Education. Applicants for a QuickProjects for education grant shall submit an application form; resumes of key consultants, artists, or personnel; work samples reflecting prior projects or activities as applicable to the project or activity that is the subject of the application; and, no more than five (5) documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. Applicants eligible to use in-kind contributions must also submit a list of in-kind contributions used as matching contributions. All applicants are encouraged to submit a list of in-kind contributions to the project. (4-6-05)

**07. QuickFund\$ -- Application Deadlines.** QuickFund\$ applications for arts education must be postmarked or hand delivered to the Commission on or before the ~~first~~ second Monday of March, June, September, or December. ~~(4-6-05)~~(1-1-09)T

**503. ~~ARTSPOWERED LEARNING ARTS EDUCATION PROJECT GRANTS.~~**

~~ArtsPowered Learning Arts Education Project Grants support teaching and learning opportunities for children and youth, Pre-K through grade twelve (12) by supporting artist in residence projects exceeding ten (10) days in length, school touring of performances or arts exhibitions, the development and implementation of programs and activities to improve teacher practice and student learning in and through the arts, and professional consultancies to assist in the alignment between educational goals of schools and the needs of educators with community based arts resources. Applicants may apply for support for a specific project or program designed to: increase access to arts education for students; foster professional development for artists and educators; increase participation of community members in education; or address specific needs of youth through the arts. In-school projects must support the Idaho Humanities Achievement Standards published by the State Board of Education. In-school projects should enhance teacher practice and student learning in and through the arts, and strengthen long-term community partnerships and collaborations to affect systemic change in schools. Arts Education Project Grants also support out-of-school arts education activities for young people. This support is characterized by collaborations between arts organizations and other community organizations, especially social service agencies that nurture the development and creativity of youth.~~ ~~(4-6-05)~~(1-1-09)T

**01. ~~ArtsPowered Learning Arts Education Project Grants -- Evaluation Criteria.~~** ~~ArtsPowered Learning Arts Education Project grant applications are evaluated on a point scale with a total of one hundred (100) points criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic and educational merit of the program or activity, project planning, the management capacity of the applicant, and community involvement and access to the project.~~ ~~(4-6-05)~~(1-1-09)T

~~**a.** Artistic and Educational Quality. A maximum of thirty (30) points are awarded for artistic and educational quality. The evaluation of artistic and educational quality is based upon whether the program or activity is aligned with the Interdisciplinary Humanities achievement standards of the Idaho State Board of Education and reflect the needs of the students; whether the goals and objectives of the program or activity identify specific concepts, processes, and skills that students will master as a result of their participation; whether the artists, consultants, personnel, and presenters are highly qualified to carry out the activities or program and are appropriate for the students; whether the program addresses the applicant's long-term educational goals; and whether the supporting materials, such as handouts, study guides, and compact disks, are of high quality, support the goals of the program or activity, and are appropriate for the students.~~ ~~(4-6-05)~~

~~**b.** Planning, Implementation, and Evaluation. A maximum of thirty (30) points are awarded for planning, implementation, and evaluation. The evaluation of planning, implementation, and evaluation is based upon~~



~~whether the outcomes of the program or activity are clearly defined and based upon the needs of the students; whether the activity or program is appropriate to achieve the desired outcomes; whether the students are involved in the planning, implementation, and evaluation of the activity or program; whether the evaluation methods are aligned with the curricula; whether the evaluation methods measure short-term and long-term results of the program or activity; whether the evaluation findings are incorporated into ongoing planning for the applicant; whether the applicant has used past evaluations to refine its programs or activities; whether the applicant supports the evaluation with adequate documentation; and whether the applicant disseminates the evaluation results to appropriate parties. (4-6-05)~~

~~e. **Management.** A maximum of twenty (20) points are awarded for management. The evaluation of management is based upon whether the applicant has submitted a clear, complete, and appropriate budget; whether there is a broad base of support for the application from public and private sources; and whether the roles and responsibilities of key personnel, community, and school partners, artists, and outside consultants are identified and clearly defined. (4-6-05)~~

~~d. **Access and Community Involvement.** A maximum of twenty (20) points are awarded for access and community involvement. The evaluation of access and community involvement is based upon whether the applicant has shown that it engaged in planning that included a broad-based committee reflective of community demographics including students, teachers, parents, administrators, and community members; whether the program or activity includes plans for publicity efforts to inform and involve the community; and whether the applicant has shown efforts to identify and include underserved populations in the program or activity. (4-6-05)~~

~~02. **ArtsPowered Learning Arts Education Project Grants -- Matching Contributions.** Applicants must provide cash or in-kind matching contributions equaling one-half (1/2) of the requested funds grant. In-kind contributions shall not exceed one-half (1/2) of the required matching contributions. (4-6-05)(1-1-09)T~~

~~03. **ArtsPowered Learning Arts Education Project Grants -- Application Requirements.** Applicants for ArtsPowered Learning Arts Education Project grants shall submit an application; a list of the project or activity's key personnel; a list of planning or advisory committee members that includes the individual's role, professional expertise, and affiliation; resumes of key consultants, artists, or personnel; three (3) to six (6) letters of support from executive directors of organizations, school principals, planning or advisory committee members, or other appropriate supports that demonstrate an understanding of and commitment to the project or activity; up to five (5) pieces of audio, visual, or published materials from the applicant or key partners; curriculum guides, or examples of past student work from the applicant or key partners that will help the Commission understand the artistic and professional quality of the program or activity; and work samples appropriate to of artists, teaching artists, and the arts education programs of the central partners or contractors providing the services in the project. Work samples are not required for artists participating in the program or activity that who are not on in the Arts in Education Artist Roster Directory of Teaching Artists. If the applicant will use in-kind contributions, the applicant must also submit a list of in-kind contributions to the project. (4-6-05)(1-1-09)T~~

~~04. **ArtsPowered Learning Arts Education Project Grants -- Application Deadlines.** ArtsPowered Learning Arts Education Project grant applications must be postmarked or hand delivered to the Commission on or before the first Friday in March last business day in January. (4-6-05)(1-1-09)T~~

**504. CREATIVE ALTERNATIVES FOR YOUTH.**

~~The Creative Alternatives for Youth program supports out-of-school opportunities for young people at risk of not making a successful transition from adolescence to young adulthood. The Creative Alternatives for Youth program encourages meaningful collaborations between arts organizations and other community organizations, especially social service agencies that nurture the development and expression of the creative spirit of youth. (4-6-05)~~

~~01. **Creative Alternatives for Youth -- Evaluation Criteria.** Creative Alternatives for Youth grant applications are evaluated on a point scale with a total of one hundred (100) points. (4-6-05)~~

~~a. **Artistic and Educational Quality.** A maximum of thirty (30) points are awarded for artistic and educational quality. The evaluation of artistic and educational quality is based upon whether the program or activity reflects the needs of the students; whether the goals and objectives of the program or activity identify specific concepts, processes, and skills that students will master as a result of their participation; whether the planned~~

~~activities or program will support the students' intellectual and creative processes, experimentation, and growth; whether the artists, consultants, personnel, and presenters are highly qualified to carry out the activities or program and are appropriate for the students; whether the program addresses the applicant's long-term educational goals; and whether the supporting materials, such as handouts, study guides, and compact disks are of high quality, support the goals of the program or activity, and are appropriate for the students.~~ (4-6-05)

~~**b.** Planning, Implementation, and Evaluation. A maximum of thirty (30) points are awarded for planning, implementation, and evaluation. The evaluation of planning, implementation, and evaluation is based upon whether the applicant has demonstrated a collaborative planning process that includes all partners in the project in the design, implementation, and commitment of resources; whether the outcomes of the program or activity are clearly defined and based upon the needs of the students; whether the activity or program is appropriate to achieve the desired outcomes; whether the students are involved in the planning, implementation, and evaluation of the activity or program; whether the evaluation findings are incorporated into ongoing planning for the applicant; whether the applicant has used past evaluations to refine its programs or activities; whether the applicant supports the evaluation with adequate documentation; and whether the applicant disseminates the evaluation results to appropriate parties.~~ (4-6-05)

~~**c.** Management. A maximum of twenty (20) points are awarded for management. The evaluation of management is based upon whether the applicant has submitted a clear, complete, and appropriate budget; whether there is a broad base of support for the application from public and private sources; whether the project or activity is supported by adequate resources such as funding, materials, equipment, and facilities; and whether the roles and responsibilities of key personnel, community and school partners, artists, and outside consultants are identified and clearly defined.~~ (4-6-05)

~~**d.** Access and Community Involvement. A maximum of twenty (20) points are awarded for access and community involvement. The evaluation of access and community involvement is based upon whether the applicant has shown that it engaged in planning that included a broad based committee reflective of community demographics including students, teachers, parents, administrators, and community members; whether the program or activity includes plans for publicity efforts to inform and involve the community; and whether the applicant has shown efforts to identify and include underserved populations in the program or activity.~~ (4-6-05)

~~**02.** Creative Alternatives for Youth — Matching Contributions. Applicants must provide matching contributions equating one-half (1/2) of the requested funds. In-kind contributions shall not exceed one-half (1/2) of the required matching contributions.~~ (4-6-05)

~~**03.** Creative Alternatives for Youth — Application Requirements. Applicants for Arts Powered Learning grants shall submit an application; a list of the project or activity's key personnel and planning or advisory committee members that includes the individual's role, professional expertise, and affiliation; resumes of key consultants, artists, or personnel; three (3) to six (6) letters of support from executive directors of organizations, school principals, planning or advisory committee members, or other appropriate supports that demonstrate an understanding of and commitment to the project or activity; up to five (5) pieces of audio, visual, or published materials from the applicant or key partners; curriculum guides or examples of past student work that will help the Commission understand the artistic and professional quality of the program or activity; and work samples appropriate to artists participating in the program or activity that are not on the Arts in Education Artist Roster. If the applicant will use in-kind contributions, the applicant must also submit a list of in-kind contributions to the project.~~ (4-6-05)

~~**04.** Creative Alternatives for Youth — Application Deadlines. Creative Alternatives for Youth applications must be postmarked or hand delivered to the Commission on or before the first Friday in March.~~ (4-6-05)

**5054. -- 999. (RESERVED).**

**IDAPA 41 - PUBLIC HEALTH DISTRICTS**

**41.01.01 - RULES OF PUBLIC HEALTH DISTRICT #1**

**DOCKET NO. 41-0101-0801**

**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 39-416, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing concerning this rulemaking will be held as follows:

**FRIDAY - OCTOBER 24, 2008 - 3:30 pm to 5:00 pm**

**PANHANDLE HEALTH DISTRICT 1  
8500 North Atlas Road  
Hayden, Idaho**

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

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

The current rule, IDAPA 41.01.01.100.07.b., requires that the application for a septic system must be accompanied by a building permit. The proposed change would revise septic system application restrictions and allow drainfields to be installed prior to the building of the structure to be served. The permitted and installed drainfield would be valid under the conditions of the permit for five years, provided that the site and its surroundings are not substantially modified.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because extensive informal negotiation with potentially affected parties was conducted prior to rulemaking process.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dale Peck, Panhandle Health District, 8500 N. Atlas Road, Hayden, ID 83835; (208) 415-5210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dale Peck, Panhandle Health District, 8500 North Atlas Road, Hayden, ID 83835 and must be delivered on or before 5:00 p.m., local time, on October 24, 2008.

DATED this 15th day August, 2008.

Jeanne Bock, Director  
Public Health District 1  
8500 North Atlas Road  
Hayden, ID 83835  
Phone: (208) 415-5103  
Fax (208) 415-5101

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 41-0101-0801**

**100. WATER QUALITY CONTROL.**

**01. Sewage and Waste Disposal -- Political Subdivisions.** Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board shall have authority to enforce the provisions of sewage management plan agreements. (7-1-93)

**02. Sewage and Waste Disposal -- Public Sewage Treatment.** All public sewage treatment facilities shall be constructed and operated in accordance with applicable state and federal laws. All public sewage treatment facilities constructed after the effective date of this rule shall be owned, operated, or maintained by a political subdivision of the state of Idaho, as defined in Idaho Code or by such entity as may be deemed acceptable by the Board. All public sewage treatment facilities incorporating subsurface disposal in the design must include two (2) disposal fields, each sized for the design loading and capable of being alternately loaded; in addition, a third acceptable site, large enough to install an additional replacement field, must be available. (7-1-93)

**03. Sewage and Waste Disposal -- Private Sewage Disposal.** No residence, place of business, or other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer. (7-1-93)

**a.** This rule shall not apply to any construction on a street or alley in which there is a public sanitary sewer or to any construction within two-hundred (200) feet of a public sanitary sewer where connection with such sewer is actually made. In such case, the residence, place of business, or other building shall connect to the sewer. (7-1-93)

**b.** The application for a permit to construct sanitary disposal facilities shall include all applicable information as set forth in the Idaho Department of Environmental Quality Rules for Individual and Subsurface Sewage Disposal Systems, and by a fee as set in the fee schedule. (3-27-07)

**c.** No drywells or drainfields deeper than four (4) feet below ground level shall be permitted for the disposal of domestic sewage waste. No sewage holding or retention tanks shall be allowed as a method of sewage disposal for residential purposes unless the operation and maintenance, including pumping of the facility, is conducted by or under the authority of a political subdivision as defined in Idaho Code. (7-1-93)

**d.** No dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents. The sanitary disposal facilities shall not be covered with dirt or otherwise completed until inspected and approved. (7-1-93)

**04. Sewage and Waste Disposal -- Septage Disposal Site.** It shall be unlawful for any person engaged in the business, firm or corporation to clean any septic tank, sewage pit, or other means of sewage disposal, or to operate a septage disposal site within the limits of Panhandle Health District 1 without first having been issued a registration permit by the Health Officer. (7-1-93)

**a.** Application shall be made upon a form provided by the Health Officer and shall be accompanied by a fee as set in the fee schedule. The registration permit shall be issued yearly and shall be revocable for failure to comply with the rules governing sewage disposal. Each permit shall be only for the unexpired portion of the calendar year for which the permit is issued, and at the end of the calendar year all permits shall expire becoming void and of no further effect. (7-1-93)

**b.** Any person engaged in the business of removing and transporting sewage shall comply with all

applicable rules governing removal, transportation, and disposal of sewage or sewage sludge issued by the Idaho State Department of Health and Welfare and with all applicable rules hereinafter adopted. (7-1-93)

**c.** All applications for permits to operate septage land disposal sites must be accompanied by a plan of operations which shall include details relative to application rates and methods, access control, odor control, control of surface water runoff, cropping, and vegetation. All land disposal sites must not be closer than three-hundred (300) feet from a property line, nor closer than one quarter (1/4) mile from a residence at the time the site is established. All disposal sites must provide access for all-weather operation. All land disposal sites established after the effective date of these rules may be required to have an engineering report prepared by a licensed engineer detailing such items as site topography, site boundaries, property boundaries, direction and distance to nearest residence(s), depth, and type of soil strata, depth to ground water, direction of prevailing winds, and such other information as may be deemed necessary by the Health Officer. All required information must be submitted to and approved by the Health Officer prior to the issuance of a permit. (7-1-93)

**05. Sewage and Waste Disposal -- Prohibited Conditions.** (7-1-93)

**a.** Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance. (7-1-93)

**b.** Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to endanger any source or supply of drinking water, or cause damage to any public or private property. (7-1-93)

**c.** Raw or untreated sewage, septage, or industrial waste, or agricultural waste shall not be allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain. (7-1-93)

**06. Sewage and Waste Disposal. Expansion or Replacement of a Structure with Existing Waste Disposal System (Vested Rights).** (3-27-07)

**a.** The square footage of habitable space will be used to determine a vested right for expansion or replacement of a structure with an existing wastewater system. (3-27-07)

**b.** An increase in square footage of habitable space by more than ten percent (10%) when replacing or remodeling an existing structure with an existing wastewater system will require a septic system that meets current standards. (3-27-07)

**c.** An application for a subsurface sewage disposal repair permit is required for all remodeling or replacement of an existing structure served by a sewage disposal system which fails to have both a septic permit and an approved final inspection. The sewage disposal system must be upgraded to current standards if possible. If this is not possible, the sewage disposal system must be upgraded to the best possible system given the constraints of the property. The remodeled or replacement structure will be limited to no more than one hundred ten percent (110%) of the original structure's square footage of habitable space. An alternative system may be required. (3-27-07)

**d.** If a system has ceased to receive wastewater for one year or more, the system is considered abandoned. The abandoned site must be inspected to determine if it is in compliance with current regulations. If system is in compliance with current regulations, it can be used for the current approved habitable space. If system is not in compliance with current regulations, a repair permit will be required, and the system must be upgraded to current standards if possible. If current standards cannot be met, the best possible system given the constraints of the property must be installed. This may require the use of an alternative system. Once the system has been upgraded, it can be connected to. If the upgrade cannot meet current standards, the dwelling will be limited to no more than one hundred ten percent (110%) of the current approved habitable space. (3-27-07)

**07. Sewage and Waste Disposal. Authorization to Connect to an Installed System.** (3-27-07)

a. This applies to connection to an approved drainfield installation that has never received wastewater flows. (3-27-07)

b. Application must be made, and an authorization to connect permit issued, to determine that the site has not been compromised and continues to meet the standards under which the original permit was issued. A fee for such inspection may be set by the Board. ~~From July 1, 2007, and thereafter, no permit shall be issued for a septic system separate from a concurrent request for a permit to establish a specific use and structure to be served by the requested septic system.~~ (3-27-07)( )

**08. Sewage and Waste Disposal -- Septic Permit.** ( )

a. Application for a septic permit shall include the following: ( )

i. Complete application shall include the number of bedrooms to be served by the septic system. ( )

ii. Scale site plan indicating all constraints as identified in the State Subsurface Rule and a building envelope of all proposed structures. ( )

b. A drainfield that is installed, inspected and approved shall be valid to be connected to under the conditions of the original permit for which it was issued, for five (5) years from the date of permit application, provided that the site and its surroundings are not substantially modified. ( )

# IDAPA 46 - BOARD OF VETERINARY MEDICAL EXAMINERS

## 46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-0801

### 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 54-2105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

First, confusion exists among veterinarians and retail veterinary drug outlets on the correct procedure in prescribing and dispensing legend drugs. The proposed rulemaking is part of a collaborative effort with the Board of Pharmacy to amend each Board's respective rules to provide a clear and consistent procedure. Second, problems have been identified in permitting euthanasia agencies to purchase approved drugs from veterinarians and with requiring that euthanasia technicians actually euthanize an animal in order to demonstrate proficiency for certification eligibility. The proposed rulemaking establishes a uniform procedure for the prescribing and dispensing of legal drugs by veterinarians and retail veterinary drug outlets. It requires the use of certain prescription forms and confirmation when oral prescriptions are followed by written prescription orders. The rulemaking also requires that certified euthanasia agencies purchase approved drugs only from a drug wholesaler. Finally, the rulemaking will permit an applicant for euthanasia technician certification to demonstrate efficiency in administering euthanasia drugs through the use of an acceptable alternative method to the existing requirement that an animal actually be destroyed in the demonstration.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking and the need for collaboration with the Board of Pharmacy.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Ewing, Executive Director, (208) 332-8588.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 12th day of August, 2008.

Karen Ewing, Executive Director  
Board of Veterinary Medicine  
2270 Old Penitentiary Rd.  
P. O. Box 7249  
Boise, ID 83707  
Phone: (208) 332-8588  
Fax: (208) 334-2170

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 46-0101-0801**

**154. RECORD KEEPING STANDARDS.**

Every veterinarian shall maintain daily medical records of the animals treated. These records may be computerized and shall be readily retrievable to be inspected, duplicated, or submitted when requested by the Board. All records, including electronic records, shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. In the case of electronic records, the veterinarian shall keep either a duplicate hard-copy record or a back-up unalterable electronic record. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (for example, herd, litter, and flock) treated by a veterinarian.

(3-30-07)

- 01. Medical Records.** Medical records shall include, but not be limited to: (7-1-97)
- a.** Name, address and phone number of the animal's owner or other caretaker. (7-1-97)
  - b.** Name and description, sex (if readily determinable), breed and age of animal; or description of group. (7-1-97)
  - c.** Dates (beginning and ending) of custody of the animal. (7-1-97)
  - d.** A short history of the animal's condition as it pertains to the animal's medical status. (7-1-97)
  - e.** Results and notation of examination, condition, and diagnosis suspected. (4-2-08)
  - f.** All medications, treatments, prescriptions or prophylaxis given, including amount and frequency for both inpatient and outpatient care. (7-1-97)
  - g.** Diagnostic and laboratory tests or techniques utilized, and results of each. (7-1-97)
  - h.** Written anesthesia records. (3-30-07)
- 02. Consent Forms.** Consent forms, signed by the patient's owner or other legal caretaker for each surgical or anesthesia procedure requiring hospitalization or euthanasia, shall be obtained, except in emergency situations, for each animal and shall be maintained on file with the practitioner. (3-30-07)
- 03. Postoperative Instructions.** Postoperative home-care instructions shall be provided in writing and be noted in the medical record. (3-30-07)
- 04. Treatment Records.** Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment the veterinarian personally performed and which treatments and procedures were delegated to a technician or assistant to perform. (3-30-01)
- 05. Ownership of Medical Records.** Medical records are the personal property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, and the patient's owner may receive in a timely manner a copy or summary of the patient's medical record, upon the request of the patient's owner or other caretaker. Veterinarians shall secure a written release to document that request. (3-30-07)
- 06. Diagnostic Image Identification and Ownership.** All diagnostic images shall be labeled in the emulsion film or digitally imprinted to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation. A diagnostic image is the physical property of the hospital or the proprietor of the practice



that prepares it, and it shall be released upon the request of another veterinarian who has the authorization of the owner of the animal to whom it pertains or to the Board. Such diagnostic images shall be returned within a reasonable time to the veterinarian who originally ordered them to be prepared. (4-2-08)

**07. Estimates.** A veterinarian shall make available to each client a written estimate on request. (3-30-07)

**08. Controlled Substances and Prescription or Legend Drugs.** A controlled substance is any substance classified by the federal Food and Drug Administration or the Idaho Board of Pharmacy in Schedules I through V of the state or federal Controlled Substances Act, Title 37, Chapter 27, Idaho Code, or 21 CFR 1308. A prescription or legend drug is any drug that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements: "Caution federal law prohibits dispensing without a prescription"; or "RX Only"; or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation or rule to be dispensed on prescription only, or is restricted to use by practitioners only. A veterinarian shall only dispense or distribute a controlled substance or prescription or legend drug within the context of a valid veterinarian/client/patient relationship as defined by Section 150 of these rules. (3-30-01)

**a.** Records shall be kept that account for all dispensed and distributed controlled substances and prescription or legend drugs. The records shall comply with all federal and state laws. All information required by statute shall be recorded in the patient record along with the initials of the veterinarian who authorized the dispensing or distribution of the controlled substances or prescription or legend drugs. (3-30-01)

**b.** A separate inventory record shall be kept for each controlled substance by name and strength. The record shall include: (7-1-97)

**i.** Records of the receipt, which include all information required by federal law, the date of the receipt, the amount received, the source of receipt, and the invoice number. (7-1-97)

**ii.** Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal law. (7-1-97)

**c.** Records for all dispensed or distributed prescription or legend drugs shall be maintained in the individual patient or herd record and shall include the date the drug was dispensed or distribution was authorized, the amount dispensed or distributed, identification of the person who dispensed or authorized distribution of the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal or state law, regulation or rule. (3-30-01)

**d.** Prescription drug order means a lawful written or verbal order of a veterinarian for a drug. (3-30-01)

**i.** When prescription drug orders are issued by a licensed veterinarian to be distributed to the animal's owner or legal caretaker by a retail veterinary drug outlet, all orders for prescription or legend drugs shall be written on an official numbered three (3) part order form available through the Idaho Department of Agriculture. The veterinarian shall retain the second copy in his medical record and the original and one (1) copy shall be sent to the retail veterinary drug outlet. The retail veterinary drug outlet shall retain the original and attach the copy of the original to the order for delivery to the animal's owner or legal caretaker. (~~3-30-01~~)(\_\_\_\_)

**ii.** Under no circumstances shall a prescription or legend drug be distributed by a retail veterinary drug outlet to an animal's owner or legal caretaker prior to the issuance of either a written or oral prescription drug order from the veterinarian: (3-30-01)

**(1)** When a written prescription drug order from the veterinarian has been issued to a retail veterinary drug outlet, a copy of the veterinarian's original numbered prescription drug order shall be attached to the prescription or legend drugs that are delivered to the animal's owner or legal caretaker. (~~3-30-01~~)(\_\_\_\_)

(2) When a retail veterinary drug outlet receives an oral prescription drug order from the veterinarian, the oral order shall be promptly reduced to writing on a Department of Agriculture unnumbered telephone drug order blank. A copy of ~~the written oral order~~ this completed form shall be attached to the prescription or legend drugs that are delivered to the animal(s)'s owner or legal caretaker. (3-30-01)(    )

(3) When a veterinarian issues an oral prescription drug order to a retail veterinary drug outlet, the oral order shall be followed ~~within seventy-two (72) hours~~ by a written prescription drug order signed by the veterinarian using the official numbered three (3) part order form and procedures required under Subparagraph 154.08.d.i. of these rules. The written order shall be sent promptly by the veterinarian so that it is received by the retail veterinary drug outlet within seventy-two (72) hours. The written confirmation order may be hand-delivered, mailed, faxed, attached to an e-mail, or otherwise properly delivered to the retail veterinary drug outlet. (3-30-01)(    )

e. When prescription or legend drugs are dispensed, the labeling on all containers shall be in compliance with the requirements of Paragraph 153.01.d. of these rules. (3-30-01)

f. When controlled substances are dispensed, all containers shall be properly labeled with: (4-5-00)

i. The clinic's name, address, and phone number; (4-5-00)

ii. The name of the client and patient; (3-30-01)

iii. The drug name and quantity; and (3-30-01)

iv. The directions for use, including dosage and quantity. (3-30-01)

g. All controlled substances shall be stored and dispensed in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. PROCUREMENT AND ADMINISTRATION OF APPROVED DRUGS.**

In order for a certified euthanasia agency to obtain approved drugs for euthanizing animals and a certified euthanasia technician to administer such drugs, the following procedure shall be followed: (3-30-01)

**01. DEA Registration.** A certified euthanasia agency (CEA) shall appoint a person who will be responsible for ordering the approved drugs and who shall submit an application for the agency's registration as a Euthanasia Agency Practitioner-A.S. to the Drug Enforcement Agency (DEA). The CEA shall also designate a certified euthanasia technician (CET) who will be responsible for the security of the agency's approved drugs. (3-30-01)

**02. Controlled Substance Registration.** Each CET employed by the agency shall apply for a controlled substance registration from the Idaho Board of Pharmacy under their individual name and using the CEA's DEA registration number. (3-30-01)

**03. Purchase of Approved Drugs.** After the certified euthanasia agency has received a DEA registration number and the CETs at that agency have received their Idaho Board of Pharmacy controlled substance registrations, the designated individual for the agency may on behalf of the agency purchase approved drugs for storage at the CEA location. Approved drugs shall only be obtained from a drug wholesaler. (3-30-01)(    )

**04. Administration of Approved Drugs.** Certified euthanasia technicians employed by certified euthanasia agencies and registered with the Idaho Board of Pharmacy may perform euthanasia by the administration of approved drugs. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**205. CERTIFIED EUTHANASIA TECHNICIAN.**

**01. Training and Examinations.** The CETF or the Board shall develop training sessions and materials that shall include, but not be limited to, the following topics: (3-30-01)

- a. Euthanasia: (3-30-01)
  - i. The theory and history of euthanasia methods; (3-30-01)
  - ii. Animal anatomy; (3-30-01)
  - iii. Proper animal handling to ease trauma and stress; (3-30-01)
  - iv. Dosages of chemical agents, record keeping and documentation of usage, storage, handling, and disposal of out-dated drugs and their containers, instruments and equipment used in their administration in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations; (3-30-01)
  - v. Proper injection techniques; and (3-30-01)
  - vi. Proper use and handling of approved euthanasia drugs and equipment; (3-30-01)
  - vii. Examination. Following the euthanasia training, a written examination shall be given. Those passing the written examination will be eligible for the practical examination. (3-30-01)

- b. Remote Chemical Capture: (3-30-01)
  - i. An overview of remote chemical capture; (3-30-01)
  - ii. Description and basic mechanism of action of approved drugs; (3-30-01)
  - iii. Laws, regulations and rules governing remote chemical capture; (3-30-01)
  - iv. Post-injection care; (3-30-01)
  - v. Proper use and handling of approved restraint drugs and equipment; (3-30-01)
  - vi. Human safety; (3-30-01)
  - vii. Tactics and strategy; and (3-30-01)
  - viii. Delivery systems and equipment. (3-30-01)

**02. Certification Standards.** Applicants for certification as a CET shall be eighteen (18) years of age or older and demonstrate proficiency in compliance with the following standards. (3-30-01)

- a. ~~Euthanize animals~~ Demonstrate efficiency in venous access in the presence of ~~one (1) or more a~~ CETF or Board members, or a person approved by the Board: (~~3-30-01~~)(      )
  - i. CETs are fully responsible for all actions that take place in the euthanasia area when an animal is brought to the area including, but not limited to, animal handling, use of the proper restraint technique, the proper drug dosage, and drug handling; (3-30-01)

ii. Each animal shall be handled with the least amount of restraint necessary, but human safety shall always be the primary concern; (3-30-01)

iii. CETs shall be able to properly perform intravenous injections on dogs and intraperitoneal injections on both dogs and cats. Intravenous injections on cats shall not be required as part of the certification process, but when performed, shall meet the standards listed in Subparagraph 205.02.a.iii.(1) of these rules. Intracardiac injections on dogs and cats shall not be required as part of the certification process, but when performed, are restricted to the limitations listed in Subparagraph 205.02.a.iii.(3) of these rules. (3-30-01)

(1) Intravenous Injections: The CET shall be able to properly and efficiently insert the needle into an animal's vein in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. IV injections in the cephalic vein shall be used on all dogs over the age of three (3) months unless the animal's physical condition or size makes this type of injection impossible, or the animal's behavior would make this type of injection a serious danger to the CET or handler. A minimum of two (2) people shall be required for any IV injection. One (1) person shall be a CET and one (1) or more people shall be the handler. The handler does not need to be a CET, but the handler should be trained in human safety and animal handling techniques; (3-30-01)

(2) Intraperitoneal Injections: The CET shall be able to efficiently insert the needle into the proper injection site in no more than two (2) attempts on ninety-five percent (95%) of the animals injected by this method. It is recommended that animals injected by this method be held or otherwise restrained by the handler until the animal is unconscious. If an animal cannot be held, it shall be placed into a cage with no other animals. The front of the cage shall be covered with cloth or other material that can keep the cage isolated from the normal activities in the euthanasia area. The animal shall be checked every five (5) minutes until death occurs. Intraperitoneal injections may be administered by a CET without a handler. (3-30-01)

(3) Intracardiac Injections: Intracardiac injection shall be performed only on an anesthetized animal. CETs shall be able to efficiently insert the needle into the heart of an animal in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. Intracardiac injections may be administered by a CET without a handler. (3-30-01)

iv. No other injection procedures are permitted in any type of animal; (3-30-01)

v. Injections: (3-30-01)

(1) On all injections, the CET shall aspirate the syringe to determine if the needle is in the correct site; (3-30-01)

(2) For human safety, the cap shall be kept on the needle until such time as the injection is ready to be made; (3-30-01)

(3) The needle shall be of the size and length appropriate for the specific animal involved; and (3-30-01)

(4) The dosage of any approved drug used shall be no less than the minimum dosage recommended by the drug's manufacturer. (7-1-97)

vi. Oral administration of approved drugs is permitted for any animal that cannot be captured or restrained without serious danger to human safety; (3-30-01)

vii. Demonstrate an understanding of carbon monoxide-induced euthanasia chambers. (3-18-99)

**b.** Demonstrate proper record keeping. A record of all approved drugs received and used by the agency shall be kept. The record shall contain the following information: (3-30-01)

i. A weekly verification of the drug stock on hand, signed by the CET; (3-30-01)

ii. An entry of the date that a new bottle of any approved drug is opened and the volume of the bottle,

- signed by the CET; (3-30-01)
- iii. The species and approximate weight of each animal administered a drug; (3-30-01)
  - iv. The amount of the drug that was administered; (3-30-01)
  - v. The signature of the CET who administered the drug; (3-30-01)
  - vi. A record of the amount of the drug wasted, if any, signed by the CET administering the drug; and (3-30-01)
  - vii. A record of any disposal of expired or unwanted approved drugs, other chemical agent or the containers, instruments and equipment used in their administration, signed by the CET and disposed of in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (3-30-01)
- c.** Demonstrate understanding and concern for the needs of individual animals: (3-18-99)
- i. Once they have collapsed, injected animals shall be lowered to the surface on which they were being held at the time of injection. Injected animals shall not be permitted to drop or otherwise collapse without human support; (3-30-01)
  - ii. All animals shall be handled in a manner that minimizes stress to the animal and maximizes the personal safety of the CET and the handler. Handling includes all aspects of moving an animal from one (1) area to another; (3-30-01)
  - iii. The use of control sticks and other similar devices shall be limited to fractious or potentially dangerous animals; and (3-30-01)
  - iv. Animals shall not be placed in cages or kennels with other breeds or species that are incompatible with the animal in question. Animals shall not be overcrowded in a cage or kennel. (7-1-93)
- d.** Demonstrate ability to verify death. The animal should become unconscious and show terminal signs within thirty (30) seconds after an IV or IC injection, within fifteen (15) minutes after an IP injection, or within sixty (60) minutes after an oral administration. If any animal does not show any of these signs within the designated time periods, the CET shall re-administer the drug. An animal that has received an approved drug orally may be injected with the same or another approved drug after it has become unconscious. Verification is the responsibility of the CET and shall be made by physical examination of the individual animal. One (1) of the following two (2) standards for death shall be met: (4-2-08)
- i. Rigor mortis; or (7-1-93)
  - ii. Complete lack of heartbeat (as checked with a stethoscope), complete lack of respiration, and complete lack of corneal and palpebral reflexes. (4-2-08)
- e.** Demonstrate ability to communicate with handlers during the euthanasia process. (3-18-99)
- 03. Certification.** An individual shall not be certified as a CET until such time as he has demonstrated proficiency in the practical examination that shall be conducted following the successful passing of the written exam. Training courses and written and practical examinations will be given as needed. Certification and renewal training sessions and examinations will be conducted prior to July 1 of each year at a place selected by the CETF or the Board. A law enforcement CET working under the indirect supervision of a licensed veterinarian must provide verification of supervision by the supervising veterinarian on a form provided by the Board office. (4-2-08)
- a.** An individual who has passed the written exam, but has not attended a training session and has not passed the practical examination, may serve as a probationary euthanasia technician under the direct supervision of a currently certified CET until such time as the next training course, practical exam and certification are conducted by a CETF or Board member. (3-30-07)

**b.** An individual who has not passed the written exam may not serve as a euthanasia technician or assistant. (3-30-01)

**c.** An individual who attends a training session and passes the written exam but fails the practical exam may serve on probation until the CETF member re-examines the individual. If the individual fails to pass the practical exam a second time and wishes to apply again, the individual shall attend the next regular training session and written exam. (3-30-01)

**d.** Upon termination from an agency as defined in Section 204 of these rules, a CET shall not perform animal euthanasia until employed by another certified euthanasia agency as defined by Section 54-2103(8), Idaho Code. (3-30-01)

**e.** The agency shall notify the Board office or a CETF member, or both, in writing within thirty (30) days from the date the CET's employment at that agency is terminated. (3-30-01)

**f.** If a CET is employed again within eighteen (18) months of his last certification, the CET or employer, or both, may request reinstatement and renewal of the CET's certification. If the certification has expired past the eighteen (18) months maximum, the CET may euthanize animals under the direct supervision of a currently certified euthanasia technician until such time as a CETF or Board member can administer a written examination and authorize recertification. If a CET has not attended a euthanasia training in the three (3)-year period preceding recertification, the CET may not be recertified and will need to reapply for certification. (3-30-07)

**g.** All certifications expire on July 1 of each year and are effective for no longer than twelve (12) months from the date of certification. (3-30-01)

**04. Certification Renewal.** Certifications may be renewed each year by payment of the annual renewal fee, provided that, every third year following the date of certification, the CET will need to attend a euthanasia training and pay the current training and certification fee prescribed by Section 014 of these rules. (3-30-01)

**05. Duties.** The duties of a CET shall include, but are not limited to: (7-1-97)

**a.** Preparing animals for euthanasia; (7-1-97)

**b.** Accurately recording the dosages for drugs that are administered and amounts for drugs wasted; (3-30-01)

**c.** Ordering supplies; (7-1-93)

**d.** Maintaining the security of all controlled substances and other approved drugs; (3-30-01)

**e.** Directly supervising probationary CET; (7-1-97)

**f.** Reporting to the Board violations or suspicions of a violation of these rules or any abuse of drugs; (3-30-01)

**g.** Humanely euthanizing animals; and (3-30-01)

**h.** Proper and lawful disposal of euthanized animals and expired or unwanted drugs, other chemical agent or the containers, instruments and equipment used in the administration of approved drugs. (3-30-01)

## IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

### 47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

DOCKET NO. 47-0101-0801

#### 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 33-2211 and 33-2303, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 will provide succinct language regarding the service delivery process, update the service delivery manual incorporated by reference, and add language regarding transparency of annual audits for vocational providers.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the non-controversial nature of the changes. Stakeholder groups were contacted and asked for input informally by the Division of Vocational Rehabilitation.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208)332-1582.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tracie Bent  
Planning, Policy and HR Officer  
State Board of Education  
650 West State Street  
PO Box 83720-0037  
Boise, ID 83720-0037  
(208) 332-1582 phone  
(208) 334-2632 FAX

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 47-0101-0801

**002. WRITTEN INTERPRETATIONS.**

Written interpretations to these rules in the form of the explanatory comments accompanying the notice of proposed rulemaking ~~that originally proposed the rules~~ are available from the Idaho Division of Vocational Rehabilitation, 650 W. State Street, Boise, Idaho 83720. Other agency guidance documents, as well as agency policy statements or interpretations not rising to the legal effect of a rule, if any, are available for inspection and replication at the agency Central Office during regular business hours. (4-5-00)( )

**003. ADMINISTRATIVE APPEALS.**

~~This chapter does not provide for appeal of the administrative requirements for agencies.~~ Administrative appeals are governed by Section 100 of these rules in accordance with 34 CFR Part 361.57. (4-5-00)( )

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 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. (3-30-01)

**032. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (3-30-01)

**a.** All federal publications through the Rehabilitation Services Administration; http://www.gpoaccess.gov/index.html. (5-3-03)( )

**b.** Idaho Division of Vocational Rehabilitation Field Services Manual, ~~2003~~—2004~~8~~, available for review at http://www.vr.idaho.gov/. (3-20-04)( )

**c.** Federal State Plan for Vocational Rehabilitation 2003~~8~~ - 2010~~4~~, available for review at http://www.vr.idaho.gov/. (3-20-04)( )

**d.** Workforce Investment Act, Public Law 105-220. (5-3-03)

**e.** Federal Register, Department of Education, 34 CFR Part 361-363. (3-30-01)( )

**f.** The Rehabilitation Act of 1973, as amended~~1998~~. (3-30-01)( )

**023. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the ~~following locations:~~ (3-30-01)

~~a.~~ Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390 or through access to the internet URL addresses outlined in Subsection 004.03 below. (3-30-01)( )

~~b.~~ ~~Regional Offices, Idaho Division of Vocational Rehabilitation, located at:~~ (3-30-01)

~~i.~~ ~~1010 Ironwood Drive, Suite 101, Coeur d'Alene, Idaho 83814, (208) 769-1441.~~ (3-30-01)

~~ii.~~ ~~1118 F. Street, P.O. Box 1164, Lewiston, Idaho 83501, (208) 799-5070.~~ (5-3-03)

~~iii.~~ ~~3350 Americana Terrace, Suite 210, Boise, Idaho 83706, (208) 334-3650.~~ (5-3-03)

~~iv.~~ ~~10200 W. Emerald Street, Suite 101, Boise, Idaho 83704, (208) 327-7411.~~ (3-30-01)

~~v.~~ ~~245 3rd Avenue North, Twin Falls, Idaho 83301, (208) 736-2156.~~ (3-30-01)



- ~~vi. 1070 Hilina, Suite 200, Pocatello, Idaho 83201, (208) 236-6333. (3-30-01)~~  
~~vii. 1825 Hoopes Avenue, Idaho Falls, Idaho 83404, (208) 525-7149. (3-30-01)~~  
~~viii. 3110 E. Cleveland Blvd. #A7, Caldwell, Idaho 83605, (208) 454-7606. (5-3-03)~~  
~~ix. This document is also available at website <http://www.state.id.us/idvr/idvrhome.htm>. (3-30-01)~~

**005. -- 009. (RESERVED).**

**010. DEFINITIONS.**

- 01. Authorization to Purchase.** A purchase order issued on behalf of the Division. (5-3-03)
- 02. CFR.** Code of Federal Regulations. (7-1-93)
- 03. Client/Participant.** Any individual who has applied for or is eligible for Vocational Rehabilitation services. (5-3-03)
- 04. Designated State Agency.** The Idaho State Board of Education. (5-3-03)
- 05. Designated State Unit.** The Idaho Division of Vocational Rehabilitation. (7-1-93)
- 06. IDVR.** The Idaho Division of Vocational Rehabilitation. (4-5-00)
- 07. IPE.** Individualized Plan for Employment. (4-5-00)
- 08. Most Significant Disability (MSD).** Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and defined in 34CFR Part 361.5 (b) 30 and is further defined as:  
(5-3-03)(\_\_\_\_)
- a.** Having a severe physical, mental, cognitive or sensory impairment which seriously limits two (2) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and (5-3-03)
- b.** Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (3-20-04)
- 09. Method of Written Notification.** The written notification of findings and conclusions arising from an Informal Dispute Resolution, Mediation, Impartial Due Process Hearing, shall be served to the client via the U.S. Postal Service by means of certified mail. Durational requirements for appeals shall commence on the day received by the client as noted by the certified mail records. (5-3-03)
- 10. PM.** Policy Memorandum. (5-3-03)
- 11. RSA.** Rehabilitation Services Administration, U.S. Department of Education. (5-3-03)
- 12. State Administrator.** The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (4-5-00)
- 13. VRC.** Vocational Rehabilitation Counselor. (5-3-03)
- ~~**14. Vocational Rehabilitation Services.** Services that reduce the impact of functional limitations on the ability to achieve an employment outcome. (3-20-04)~~

**011. -- 099. (RESERVED).**

**100. CLIENT/PARTICIPANT APPEALS.**

In accordance with 34 CFR Part 361.57, the client/participant appeals process is governed by Section 100 of these rules and is outlined in the Division's agency Field Services Manual that is incorporated by reference into these rules in Section 004.01.b. (See <http://www.vr.idaho.gov/>) ( )

~~**01. Informal Dispute Resolution.** Within ten (10) calendar days of notification of the contested action, lack of action or decision, the client/participant may request that an Informal Dispute Resolution be held. The request shall be made in writing to the Regional Manager. The written request should state the reason for the review. (5-3-03)~~

~~**a.** The Regional Manager shall inform the client/participant in writing as to the time, place, and date of the Informal Dispute Resolution. The client/participant may choose to represent himself/herself or may have a representative(s) speak on his/her behalf. (5-3-03)~~

~~**b.** The Regional Manager will make a decision regarding the specifics of the Informal Dispute Resolution. This decision will be in written form and it will be sent to the client/participant, with a copy in the case file. (5-3-03)~~

~~**02. Mediation.** The request shall be made in writing to the Regional Manager. A written request should state the reason for the review. The Mediation must take place within the sixty (60) day requirement for an Impartial Due Process Hearing. (5-3-03)~~

~~**03. Impartial Due Process Hearing.** An Impartial Due Process Hearing can be held without an Informal Dispute Resolution or Mediation or if the client/participant is dissatisfied with the result of the Informal Dispute Resolution or Mediation. The Impartial Due Process Hearing will deal with the issues involved in the original Informal Dispute Resolution or Mediation, if one took place. The request for an Impartial Due Process Hearing will be made in writing to the Administrator of the Division within ten (10) calendar days of the Regional Manager's decision from the Informal Dispute Resolution or the Mediation Agreement from Mediation. The hearing by an impartial hearing officer must be held within sixty (60) days of a request by the client unless both parties agree to a specified delay. (5-3-03)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. TRANSPARENCY.**

To provide transparency of for-profit and not-for-profit vocational providers, on an equal footing, all vocational providers must: ( )

~~**01. Use of Voluntary Board.** Use a voluntary board for advice and guidance of the organizational services to IDVR clients. ( )~~

~~**02. Public Disclosure of Audit Information.** Publicly disclose audit information on an annual basis. ( )~~

~~**03. Publish Salary of CRP (Community Rehabilitation Program) CEO.** Annually publish the salary of the CRP CEO. ( )~~

~~301.2. -- 999. (RESERVED).~~

## IDAPA 49 - CERTIFIED SHORTHAND REPORTERS

### 49.01.01 - RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

#### DOCKET NO. 49-0101-0701

#### 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 54-3107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

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

The proposed rule changes are necessary to make a technical correction to the Idaho Code citation regarding the Board's authority and to provide the correct address and contact information for the Board.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is in contact information and not controversial.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 6th day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 49-0101-0701

**000. LEGAL AUTHORITY.**

These rules are adopted under the authority of Section 54-~~2808~~ 3107, Idaho Code.

(~~7-1-93~~)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. OFFICE INFORMATION.**

**01. ~~Street Address.~~** *The offices of the Idaho Certified Shorthand Reporters Board are located at 3350 Americana Terrace, Suite 243, Boise, Idaho.* (4-6-05)

**02. ~~Mailing Address.~~** *The mailing address of the Board is P. O. Box 83720, Boise, Idaho 83720-0017.* (4-6-05)

**03. ~~Telephone Number.~~** *The telephone number of the Board is (208) 334-2517.* (4-6-05)

**04. ~~Facsimile.~~** *The Board's FAX number is (208) 334-5211.* (4-6-05)

**05. ~~Electronic Address.~~** *The Board's web address is [www2.state.id.us/esr](http://www2.state.id.us/esr).* (4-6-05)

The office of the Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The telephone number of the office is (208) 334-3233. The facsimile number of the office is (208) 334-3945. The email address of the Board is [sre@ibol.idaho.gov](mailto:sre@ibol.idaho.gov). The website address of the Board is <http://www.ibol.idaho.gov/sre.htm>. ( )

## IDAPA 49 - CERTIFIED SHORTHAND REPORTERS

### 49.01.01 - RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

#### DOCKET NO. 49-0101-0801 (FEE RULE)

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 12, 2008.

**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 54-3107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Rule 008 changes the requirement for notification of name or address change from immediately to 14 days. Rule 125 establishes fees, which have not changed, but have been moved from the law to the rules to be consistent with other boards. Adds that fees are not refundable. Adds Rule 150 to clarify that renewals and reinstatements are subject to the Bureau's statute, Idaho Code 67-2614. Rule 200 allows the board to terminate applications that have lacked activity for a year. Rule 400 changes temporary certification to a temporary permit. Rule 500 allows the board more flexibility in discipline and gives them the ability to impose a civil fine of up to \$1,000 for each violation of the board's code. It also allows the board to recover costs and fees of investigation and prosecution. Further, makes technical updates throughout for example changing president to chairman and "the act" to the relevant code reference.

**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:

The 2008 Legislature passed HB 409. These rule changes are necessary to comply with the law. The Board of Certified Shorthand Reporters is now contracting for services with the Bureau and changes were necessary to accommodate the move.

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

The 2008 Legislature passed HB409 which sets fee caps in the law. This law change now sets the cap in law and the Board will set the fees in rule. This is consistent with other Boards served by the Bureau. These rules also allow the board to impose civil fines and recover costs and fees in disciplinary cases. This protects the public by giving the board additional tools for discipline and the ability to recover investigative and legal costs from the person in violation and not the other licensees.

**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:

Since the fees will remain the same, there will be no fiscal impact. There may be a small positive fiscal impact for the civil fines and costs and fees since the Board will be able to recover costs. Given the small number of disciplinary matters for this board, this impact will be minimal. However, any recovery of costs will help minimize future fee increases.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes should not be controversial and were discussed in an open meeting of the Board.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 49-0101-0801**

**008. CHANGES IN NAME AND ADDRESS -- ADDRESS FOR NOTIFICATION PURPOSES.**

**01. Change of Name.** Whenever a change of registrant name occurs, the Board must be *immediately* notified of the change within fourteen (14) days. Documentation confirming the change of name must be *provided to the Board on request* submitted with the notification. ~~(4-6-05)~~(8-12-08)T

**02. Change of Address.** Whenever a change of registrant mailing address occurs, the Board must be *immediately* notified of the change within fourteen (14) days. ~~(4-6-05)~~(8-12-08)T

**03. Address for Notification Purposes.** The most recent mailing address on record with the Board will be utilized for purposes of all written communication with the registrant including, but not limited to, notification of renewal and notices related to disciplinary actions. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. BOARD MEETINGS.**

The Board shall meet at least once a year. In addition to this annual meeting, the ~~president~~ chairman may call special meetings from time to time when it is deemed necessary, or upon request of two (2) or more members of the Board. ~~(4-6-05)~~(8-12-08)T

**101. OFFICERS.**

Officers elected from the Board shall be ~~president~~ chairman, and ~~secretary/treasurer~~ vice-chairman. An executive secretary may be appointed who is not a member of the Board. ~~(4-6-05)~~(8-12-08)T

**102. COMMITTEES.**

Regular or special committees may be appointed by the ~~president~~ chairman and shall present reports to the Board at the time specified or at the earliest regular or special meeting of the Board. A special voluntary committee from the public, which may include members of the Board, may be formed to render special services during examinations or as the Board may assign to them. ~~(1-1-97)~~(8-12-08)T

**01. Quorum.** A quorum shall be at least three (3) members of the Board legally holding office at the time of meeting. The board ~~president~~ chairman shall not vote except to break a tie. ~~(4-6-05)~~(8-12-08)T

**02. Certificates.** Certificates of registration shall be issued to each certified shorthand reporter, as prescribed by the ~~Act~~ Title 54, Chapter 31, on forms adopted by the Board. Certificates shall be displayed by certified shorthand reporters in their place of business. A new certificate may be issued by the Board to replace one lost, destroyed, or mutilated upon receipt of a replacement fee of ten dollars (\$10). Each certificate shall bear an individual number as assigned to that particular C.S.R. by the Board. ~~(1-1-97)~~(8-12-08)T

**103. -- 10924. (RESERVED).**

**125. FEES (RULE 125).**

Fees are established in accordance with Section 54-3110, Idaho Code as follows: (8-12-08)T

**01. Application Fee.** Application Fee (Certificate/Temporary Permit) -- Fifty dollars (\$50). (8-12-08)T

**02. Examination Fee.** Examination-Reexamination Fee -- Fifty dollars (\$50). (8-12-08)T

**03. Annual Renewal Fee.** Renewal Fee (Certificate/Temporary Permit) -- Seventy-Five dollars (\$75). (8-12-08)T

**04. Reinstatement Fee.** Reinstatement Fee -- Twenty-Five dollars (\$25). (8-12-08)T

**05. Examination Preparation Materials.** Examination Preparation Materials -- Twenty dollars (\$20) (8-12-08)T

**06. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application, examination or reinstatement of a license. (8-12-08)T

**126. -- 149. (RESERVED).**

**150. RENEWAL OF LICENSE (RULE 150).**

**01. Expiration Date.** All licenses expire and must be renewed annually on forms approved by the Board in accordance with Section 67-2614, Idaho Code. A license not renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (8-12-08)T

**02. Reinstatement.** Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (8-12-08)T

**151. -- 199. (RESERVED).**

**200. APPLICATION PROCEDURES.**

Applications for registration shall be. (7-1-93)

**01. Prescribed Forms.** Filed on a form or forms prescribed by the Board. (1-1-97)

**02. Filing Location.** Filed at the Boise office of the Board, accompanied by the required application fee. (1-1-97)

**03. Filing Deadline.** Received by the Board, not less than thirty (30) days prior to the date of examination. (1-1-97)

**04. Incomplete Application.** An application which is not fully completed by the applicant need not be considered or acted upon by the Board and shall be returned to the applicant ~~by the executive secretary~~ with a

statement of the reason for return.

~~(1-1-97)~~(8-12-08)T

**05. Lack of Activity.** Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months shall be deemed denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board.

(8-12-08)T

**201. -- 299. (RESERVED).**

**300. EXAMINATIONS.**

**01. Examination Process.** (4-6-05)

**a.** Late applicants shall not be admitted to the examination room. (1-1-97)

**b.** Picture identification shall be shown by all applicants before taking an examination. (4-6-05)

**c.** Examinees are forbidden to receive any unauthorized assistance during the examination. Communication between examinees or possession of unauthorized material or devices during the examination is strictly prohibited. (1-1-97)

**d.** Only scheduled examinees, Board members, ~~the executive secretary~~ and authorized personnel shall be admitted to the examination room. ~~(1-1-97)~~(8-12-08)T

**02. Scope of Examination.** (7-1-93)

**a.** The complete examining procedure for certification as a certified shorthand reporter consists of two (2) sections. The first section is the written examination covering subjects as are ordinarily given in a school of court reporting and which are common to all fields of practice. The second section is the skills portion which shall consist of the following "takes" and speeds. (1-1-97)

**i.** Question and Answer -- Two hundred twenty-five (225) words per minute. (1-1-97)

**ii.** Jury Charge -- Two hundred (200) words per minute. (1-1-97)

**iii.** Literary -- One hundred eighty (180) words per minute. (1-1-97)

**iv.** Density of Exam -- The syllabic content of the dictated exam shall be one point four (1.4). (7-1-93)

**b.** Examination prepared and graded by the National Court Reporters Association (NCRA) may be used by the Board. (1-1-97)

**c.** The examination is the same for all applicants. (7-1-93)

**d.** The examining committee which shall consist of the three C.S.R. Board members, shall inform applicants of the approximate time allowed for typing the skills portion of the examination. (1-1-97)

**e.** These "takes" can be passed individually for the Idaho examination. (4-6-05)

**03. Grading.** (7-1-93)

**a.** Each applicant must attain a grade of seventy-five percent (75%) or above to pass the written examination and ninety-five percent (95%) or above in each "take" to pass the skills portion. (1-1-97)

**b.** Every applicant receiving a grade of less than seventy-five percent (75%) in the written examination shall be deemed to have failed such examination and shall have the application denied without prejudice. (1-1-97)



c. Every applicant receiving a grade of less than ninety-five percent (95%) in each "take" shall be deemed to have failed such examination and shall have the application denied without prejudice. (1-1-97)

d. An applicant failing either the written section, or the skills portion, and having filed a new application for examination, shall be required to take and pass within a two-year period only the section for which a failing grade was received. (1-1-97)

**04. Inspection of Examination. (7-1-93)**

a. An applicant who fails to obtain a passing grade in the skills portion may inspect his/her examination papers at such times and locations as may be designated by the Board. Inspection of such examination papers shall be permitted within a thirty (30) day period after receipt of notice by the applicant of his/her failure to pass the examination. (1-1-97)

b. At the time of inspection no one other than the examinee or his/her attorney and a representative of the Board shall have access to such examination papers. (1-1-97)

**05. Inspection Review. (7-1-93)**

a. Within thirty (30) days after the date notice of the results of the examination has been mailed to him/her, an applicant who was unsuccessful in the examination may petition the Board for a review of his/her examination papers. (1-1-97)

b. The petition for review shall be made in writing stating the reason for such review and citing the item or items against which the request is directed. (7-1-93)

c. The Board shall, upon receiving such petition for review, conduct a hearing at the next scheduled Board meeting. (1-1-97)

**06. Retention of Examinations.** The Board shall retain for at least six (6) months, all examination papers and notes submitted by applicants. (1-1-97)

**301. -- 399. (RESERVED).**

**400. TEMPORARY CERTIFICATION PERMIT.**

**01. Eligibility. (7-1-93)**

a. Any one (1) or more of the following shall be considered as minimum evidence that the applicant is qualified to hold a temporary certificate: (7-1-93)

i. Hold a National Court Reporters Association (NCRA) merit certificate; (7-1-93)

ii. Hold a Certificate of Registered Professional Reporter (RPR) issued by the National Court Reporter Association (NCRA); (7-1-93)

iii. Hold a Certified Shorthand Reporter certificate in good standing from another state; (7-1-93)

iv. Hold a diploma or certificate of completion of all requirements to graduate from a National Court Reporter Association (NCRA) approved school; (7-1-93)

v. Has otherwise demonstrated his/her proficiency by a certificate from an agency from another state. (1-1-97)

b. The applicant shall in addition. (7-1-93)

- i. Have graduated from an accredited high school, or have had an equivalent education. (7-1-93)
- ii. Be of good moral character, and have filed a complete application with the Board, accompanied by the required fees, as set forth in ~~the Act~~ these rules. ~~(7-1-97)~~(8-12-08)T

**02. Certificate.** All temporary ~~certificates~~ permits shall be issued for a period of one (1) year and may be renewable for a single additional year upon payment of the required fees, as set forth in the Act, and showing of just cause. ~~(7-1-97)~~(8-12-08)T

**401. -- 9499. (RESERVED).**

**500. DISCIPLINARY PENALTY (RULE 500).**

**01. Civil Fine.** The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) for each violation upon anyone licensed under Title 54, Chapter 31, Idaho Code who is found by the Board to be in violation of Section 54-3112, Idaho Code. (8-12-08)T

**02. Costs and Fees.** The Board may order anyone licensed under Title 54, Chapter 31, Idaho Code, who is found by the Board to be in violation of the provisions of Title 54, Chapter 31, Idaho Code, to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee. (8-12-08)T

**501. -- 999. (RESERVED).**

## IDAPA 52 - IDAHO STATE LOTTERY

### 52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

#### DOCKET NO. 52-0103-0802 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-7408(1)(e) and (f), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 Lottery is introducing new ticket vending machines (Player Activated Terminals) to replace antiquated ticket vending machines. Lottery customers will be able to purchase lotto game tickets (Powerball) and instant scratch game tickets from the Player Activated Terminals using cash. The Player Activated Terminals also provide the convenience and benefit to the customer to choose to purchase tickets using a PIN-protected debit card. However, in order to provide this electronic convenience, and remain fiscally responsible, the Lottery must charge a minimal cost recovery fee to those customers who choose to take advantage of this convenience to purchase lottery tickets in such fashion. This is a user fee. Eventually, the PIN-protected debit purchase process will also be made available at counter terminals. In order to enable only responsible play, the Lottery will not accept credit card transactions.

The proposed rules make an addition to IDAPA 52.01.03, Rules Governing Operations of the Idaho State Lottery, to provide for collection of a cost-recovery (convenience) fee from Lottery customers who choose to take advantage of the convenience of purchasing lottery tickets via electronic transaction from Lottery ticket vending machines (Player Activated Terminals) or otherwise using their PIN-protected debit card.

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

The cost recovery (convenience) fee will merely offset the charge incurred by the electronic payment provider for processing the transaction. The Lottery anticipates charging a nominal fee (plus or minus fifty cents (\$.50)), and an audit of actual fees incurred at each fiscal year end will determine whether an adjustment to the convenience fee, either up or down, is necessary.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Anderson, Director, (208) 334-2600.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Jeff Anderson, Director  
Idaho State Lottery  
1199 Shoreline Ln., Ste. 100

Boise, ID 83702  
Phone: (208) 334-2600  
Fax: (208) 334-2610

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 52-0103-0802**

**100. GENERAL PROVISIONS (RULE 100).**

**01. Purpose.** These rules are established by the Commission to define and regulate the operation and administration of the Lottery and the Commission. (3-26-08)

**02. Lottery Commission.** The Commission is charged with the authority and duty to regulate Lottery activities in the state of Idaho, consistent with the Idaho Constitution and the enabling legislation. The headquarters of the Commission and of the Lottery is in Boise. (3-26-08)

**03. Powers and Duties of the Commission.** (3-26-08)

**a. Rule Promulgation.** The Commission promulgates rules and conditions under which the statewide Lottery will be conducted. Subjects covered in such rules include but need not be limited to: (3-26-08)

i. The types of Lottery games to be conducted; (3-26-08)

ii. The prices of tickets in the Lottery; (3-26-08)

iii. In general the numbers and sizes of prize disbursements, the manner and frequency of prize drawings, and the manner in which payment will be made to holders of winning tickets; (3-26-08)

iv. The locations at which Lottery tickets may be sold, the manner in which they are to be sold, and contracting with Lottery vendors, retailers and contractors; (3-26-08)

v. The manner in which Lottery sales revenues are to be collected; (3-26-08)

vi. The amount of compensation to be paid to retailers; (3-26-08)

vii. Other areas relating to the efficient and economical operation and administration of a statewide Lottery consonant with the public interest. (3-26-08)

**b. Delegation to Director.** In addition to those duties assigned to the Director in the Act, the Commission may, insofar as is consistent with the Idaho Constitution and the Act, delegate the performance of executive or administrative functions to the Director. (3-26-08)

**04. Time and Place of Meetings.** (3-26-08)

**a.** Regular meetings of the Commission must be held at least quarterly; the date, time, and place will be set by the Commission and, if possible, with at least two (2) weeks' advance notice. The Commission may meet with the Director to make recommendations and set policy, to approve or reject reports of the Director, to adopt rules, and to transact other business. (3-26-08)

**b.** Additional meetings necessary to discharge the business of the Commission may be called from time to time by the chairman or by a quorum of the Commission. (3-26-08)

**05. Open Meeting Law.** All meetings of the Commission shall be held in accordance with Idaho's Open Meeting Law, Sections 67-2340, et seq., Idaho Code, and in accordance with Section 67-7442, Idaho Code. All meetings of the Commission are open to the public, except when executive session is allowed for part of the meeting under the Open Meeting Law. (3-26-08)

**06. Director.** The Director is responsible for the operation of the Lottery and for managing the affairs of the Commission. A Deputy Director designated by the Director may act for the Director in the absence of the Director. If there is a vacancy in the office of Director, the Commission will designate the Deputy Director as Interim Director until the vacancy can be filled. (3-26-08)

**07. Powers and Duties of the Director.** (3-26-08)

**a.** The Director has the authority to implement and execute procedures that he may deem appropriate for the efficient administration of the Lottery. The Director may also recommend rules governing the establishment, administration, and operation of the Lottery to the Commission for its approval; (3-26-08)

**b.** The Director is authorized to employ sufficient staff as may be required to carry out the functions of the Commission and the Lottery; (3-26-08)

**c.** The Director may contract with retailers for the sale of Lottery games and must suspend or terminate any contract in accordance with the provisions of the Act and the rules of the Commission; (3-26-08)

**d.** The Director must continuously study and investigate all matters pertinent to the efficient operation of the Lottery; and (3-26-08)

**e.** The Director must maintain full and complete records of the operation of the Lottery. The Director must report on at least a monthly basis to the Commission and to the governor on the status of the Lottery. (3-26-08)

**f.** The duties and responsibilities of the Director that are not otherwise specified in Idaho law or the rules adopted by the Commission may be maintained as a policy of the Commission for the purpose of establishing a working relationship between the Director and the Commission. (3-26-08)

**08. Lottery Offices.** (3-26-08)

**a.** The principal office of the Lottery is located at 1199 Shoreline Lane, Suite 100, Boise, Idaho 83702. (3-26-08)

**b.** The Lottery may also operate other offices and facilities throughout the state as are appropriate to fulfill its responsibilities under law. (3-26-08)

**09. Lottery Budgets and Financial Statements.** The Director must: (3-26-08)

**a.** Submit quarterly financial statements to the Commission, the governor, the state treasurer, and the legislature. The quarterly financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The quarterly financial statements must be provided within forty-five (45) days of the last day of each quarter. (3-26-08)

**b.** Submit annual financial statements to the Commission, the governor, the state treasurer, and each member of the legislature. The annual financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The annual financial statements must be examined by the state controller or a firm of independent certified public accountants in accordance with generally accepted auditing standards and must be provided within ninety (90) days of the last day of the Lottery's fiscal year. (3-26-08)

**10. Contingency Reserve.** (3-26-08)

**a.** The Director may, with the approval of the Commission, allot from moneys available to pay administrative expenses an amount to be transferred to a contingency reserve established by the Commission. The money allotted can include amounts retained to fund specific future expenses or can be undesignated as to purpose. (3-26-08)

**b.** When the Commission approves a contingency reserve, it must determine the amount necessary for a reasonable contingency reserve. (3-26-08)

**c.** Upon approval of the Commission, money in the contingency reserve may be authorized to be used for specific purposes of the Lottery or to be used to fund general administrative expenses if there is a revenue shortfall. Expenses funded from the contingency reserve cannot be included with other administrative expenses for purposes of determining compliance with current administrative expenditure limitations. (3-26-08)

**11. Special Drawings.** (3-26-08)

**a.** The Director may authorize special drawings to award prizes, such as vacation trips, automobiles, or other tangible items in addition to, or in lieu of, cash awards. The Director will determine the nature and number of awards for each special drawing. Special drawings for promotional awards may be held independently of the Lottery's regular prize drawings or may be incorporated therein. The promotional drawings may be cosponsored and conducted in conjunction with Lottery retailers or other independent businesses. In view of the temporary nature and indeterminate frequency of the promotional awards drawings, a press announcement and normal advertising media will be used to inform the public of the rules and prizes for each special drawing. (3-26-08)

**b.** Notwithstanding the provisions of Paragraph 100.11.a. of this rule, the Director may, at his discretion, award in-lieu equivalent cash awards to the winners of tangible items, in those instances where the Director deems it appropriate. The value of noncash items must be estimated by using either the cost of the item or its fair-market value. (3-26-08)

**12. Retail Drawings.** The Director and his designee may authorize retailers to conduct drawings using non-winning Lottery tickets in conjunction with a particular Lottery game. Such authorization must be in writing, must specify the type of drawing to be conducted and must set forth the methodology to be used in conducting the drawing. (3-26-08)

**13. Retail Ticket Price Discounts.** (3-26-08)

**a.** Notwithstanding the price adopted for the retail sale of a ticket in the rules for a specific Lottery game, the Commission may offer discounts for the retail sale of Lottery tickets. (3-26-08)

**i.** Discounts for the retail sale of Lottery tickets may be offered to the public through the use of coupons approved by the Director or by any other method approved by the Director. (3-26-08)

**ii.** Coupons that offer a discount on the retail price of Lottery tickets must be distributed using methods designed to reach the public. These methods may include, but are not limited to, the use of direct mail, newspaper advertising, or by having coupons available at Lottery offices and retailer locations. (3-26-08)

**b.** Rules for a promotion conducted by the Lottery using retail ticket discounts must be announced by the Director and made available at the Lottery's offices and retailer locations. (3-26-08)

**14. Allocation of Revenues for Prizes.** (3-26-08)

**a.** Purpose: The primary objective of the Lottery is to produce the maximum amount of net revenues to benefit the public purpose of raising revenue consonant with the dignity of the state and the sensibilities of its citizens. In accomplishing this objective, at least forty-five percent (45%) of the total annual revenues shall be returned in the form of prizes. The Lottery may design and conduct games that return more than forty-five percent (45%) of the revenues received from the sale of tickets in the form of prizes as an incentive to increase the total amount of game sales over the level of sales that otherwise would have been reasonably expected using a lower prize

percentage. Games may also be authorized that return less than forty-five percent (45%) of that game's revenues so long as forty-five percent (45%) of the total annual revenues is returned as prizes. (3-26-08)

**b.** Prize payments: In addition to cash prize payments, money set aside by the Lottery and restricted for the payment of prizes is considered in satisfying the requirement of returning at least forty-five percent (45%) of total revenues to the public in the form of prizes. (3-26-08)

**c.** Averaging game prize payments: Notwithstanding the prize structure adopted for a Lottery game, the amount of revenue returned for prizes among all the games offered by the Lottery may be reallocated so long as at least forty-five percent (45%) of the total revenue earned from all games is returned to the public in the form of prizes on an annual basis. The Director must report to the Commission on any reallocations made pursuant to Section 100 of these rules. (3-26-08)

**15. Ownership of Lottery Tickets.** (3-26-08)

**a.** Except for tickets claimed jointly in accordance with the provisions of Paragraph 100.15.d. of this rule, until a name is printed or placed upon a Lottery ticket in the area designated for "name," the ticket is owned by the bearer of the ticket. When a name is placed on the ticket in the place designated for a name, the person whose name appears in that area is the owner of the ticket and is entitled to any prize attributable to the ticket. (3-26-08)

**b.** If more than one (1) name appears on a ticket, the ticket must be claimed in accordance with the joint ownership procedures listed in Paragraph 100.15.d. of this rule. (3-26-08)

**c.** Groups, family units, clubs, or other organizations may claim a winning ticket if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and that number is shown on the claim form. (3-26-08)

**d.** If a ticket is claimed to be owned by two (2) or more people, the following steps will be taken for payment of the prize: (3-26-08)

**i.** All people claiming ownership must complete and sign a request and release form. (3-26-08)

**ii.** At least one (1) of the people claiming ownership of the ticket must sign the ticket; that person's signature must also appear on the request and release form. (3-26-08)

**iii.** The Lottery reserves the right to issue a single prize check instead of multiple prize checks to the owners of a ticket if the value of each individual prize check would be less than fifty dollars (\$50). (3-26-08)

**iv.** Multiple winners of a Lottery prize will be paid only through the Boise Lottery office. Lottery retailers will not be required to pay more than one (1) winner of a single prize. (3-26-08)

**16. Claims.** (3-26-08)

**a.** Liability. By submitting a claim, the player agrees that the state, the Commission, the Lottery and all officials, officers, and employees of each are discharged from all further liability upon payment of the prize. (3-26-08)

**b.** Publicity. By submitting a claim, the player also agrees that the Lottery may use the prize winner's name and photograph for publicity purposes. (3-26-08)

**c.** Claim period. Prizes may be claimed for a period of one hundred eighty (180) days after the drawing in which the prize was won or from the last day tickets from the specific instant game were sold. Prizes won through an electronic terminal are payable in accordance with the Lottery's rules. If a claim is not made for the prize within the applicable period, the prize money will be added to future prize pools, to be used in addition to prize allotments already allocated, except as provided in Section 67-7433, Idaho Code. (3-26-08)

**d.** Invalid tickets. If a ticket presented to the Lottery is invalid pursuant to the terms of these rules or

the specific game rules, the ticket is not entitled to prize payment. (3-26-08)

**e.** Ticket a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature, if a signature space is provided. The person who signs the ticket is considered the owner of the ticket after signing it. Payment of any prize may be made to a person in possession of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the Commission, the Lottery, the Director, and Lottery employees terminates upon payment. (3-26-08)

**f.** Time of prize payment. All prizes will be paid within a reasonable time after a claim is verified by the Lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments is the date the claim is validated and processed, unless a different date is specified for a particular game in these rules or in the specific game rules. Later installment payments will be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The Lottery may, at any time, delay any prize payment in order to review a change in circumstances concerning the prize awarded, the payee, or the claim. (3-26-08)

**g.** Prizes payable for winner's life. If any prize is for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner is deemed to be twenty (20) years. (3-26-08)

**17. Prizes Payable After Death of Winner.** All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing a personal representative (or similar person responsible for the prize winner's estate, whether denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

**18. Disability of Prize Winner.** The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings that are or may become due to a person under a disability including, but not limited to, minority, mental deficiency, or physical or mental incapacity. (3-26-08)

**19. Stolen or Lost Tickets.** The Lottery has no responsibility for paying prizes attributable to stolen or lost tickets. (3-26-08)

**20. Effect of Game Rules.** In purchasing a ticket the player agrees to comply with Title 67, Chapter 74, Idaho Code, these rules, the specific game rules, Lottery instructions and procedures, and the final decisions of the Lottery. The Lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes will be final and binding upon all participants in the Lottery. If a dispute between the Lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the Lottery may, solely at the Director's option, replace the ticket with an unplayed ticket of an equivalent price from any game or refund the price of the ticket. This will be the sole and exclusive remedy of the player. (3-26-08)

**21. Disputed Prizes.** If there is a dispute, or it appears that there may a dispute concerning payment or ownership of any prize or any other legal issue involving the prize, the Lottery may refrain from making payment of the prize pending a final determination by the Lottery or by a court of competent jurisdiction as to the proper payment of the prize. (3-26-08)

**22. Sale of Lottery Tickets.** Lottery tickets may be sold for cash, check, money order, credit card, electronic funds transfer, or debit card. ( )

**23. Convenience Fee.** The Lottery may collect a cost recovery fee, set by the Commission, from Lottery customers choosing to purchase lottery tickets with the convenience of using debit card electronic transactions administered by the Lottery through the use of a third party payment processor. ( )



# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.02 - ELIGIBILITY RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0102-0801

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amend rule 122.03 to clarify leave without pay status and to clarify that if an employee on leave without pay terminates employment without returning to work, the leave without pay status is negated.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Winkle, Executive Director, PERSI, 334-2455.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 6th day of August, 2008.

Alan Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-2455  
Fax: 208- 334-3408

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0102-0801

**122. LEAVE OF ABSENCE (RULE 122).**

A member is an inactive member ineligible to contribute and receive membership service credit while on leave of absence without pay or while on leave of absence with less than one-half (1/2) pay, unless the absence is occasioned by a worker's compensation claim approved by a surety. An active member separated from employment under conditions where both the member and the employer plan a later return to employment should be placed on leave of absence without pay during the planned period of absence. (1-1-94)

**01. Employer and Employee Contributions -- Leave of Absence.** During the leave of absence without pay, employer and employee contributions cease. If the member is on a leave of absence as a result of an approved worker's compensation claim, employer and employee contributions are due and payable on any salary paid to the member. The member is entitled to a month of membership service credit for each month the member remains on leave of absence as a result of an approved worker's compensation claim and receives salary in addition to income benefits. (1-1-94)

**02. Documentation of Leave of Absence.** The employer shall provide PERSI with documentation, on a form provided by PERSI, of a leave of absence to clarify the member's status and retirement benefit entitlement. (1-1-94)

**03. Status of Employee on Leave of Absence.** An employee placed on a leave of absence by an employer remains in an employee status and is ineligible for payment of any separation benefits or for payment of a service, early, disability, or vested retirement allowance. ~~A leave of absence without pay status is not a bar to the payment of disability retirement allowance as provided by Section 59-1354, Idaho Code. If a member on leave of absence without pay terminates employment without returning to work, the leave without pay status is negated.~~ (1-1-94)( )

**04. Leave of Absence -- Effect on Benefit Enhancement.** An employee shall not be placed on a leave of absence without pay prior to the effective date of a benefit enhancement and then return to work after the effective date of the benefit enhancement for the purpose of qualifying for the benefit enhancement. An employee placed on unpaid leave of absence prior to the date of the benefit enhancement who returns to work after the effective date of the benefit enhancement and subsequently applies for retirement shall include with the application for retirement, certification from the employer that the leave of absence was not granted for the purpose of allowing the person to qualify for the benefit enhancement. (1-1-94)

# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.04 - DISABILITY RULES OF PERSI

DOCKET NO. 59-0104-0801

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amend rule 100 to state that five (5) years of credited service is required for disability eligibility and amend rule 101 to include reference to "general member".

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Winkle, Executive Director, PERSI, 334-2455. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 6th day of August, 2008.

Alan Winkle, Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702

P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-2455  
Fax: 208- 334-3408

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0104-0801

**100. GENERAL RULE (RULE 100).**

Only active members of PERSI with ~~ten five~~ (~~105~~) years of credited service, ~~including at least six (6) months of membership service~~, are eligible for disability retirement. (4-5-00)( )

**101. SERVICE RELATED DISABILITY FOR POLICE, GENERAL MEMBERS, AND FIREFIGHTERS (RULE 101).**

Police, general members, and certain firefighter members are eligible for disability retirement beginning from the first day of employment when the disability is caused by occupational hazards, as provided in Section 59-1352(2), Idaho Code. (4-5-00)( )

# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.05 - SEPARATION FROM SERVICE RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0105-0801

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2008.

**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 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amend rule 125.04 to allow for rollovers from the base plan to a Roth IRA.

**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:

This rule change will make the rule comply with federal requirements and/or will confer a benefit on PERSI employees.

**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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

No negative fiscal impact to the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations and because the change is required by federal law for qualified plans.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Winkle, Executive Director, PERSI, 334-2455.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 6th day of August, 2008.

Alan Winkle, Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702

P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-2455  
Fax: 208- 334-3408

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0105-0801**

**125. DIRECT ROLLOVERS OUT OF THE BASE PLAN (RULE 125).**

A direct rollover is a payment by the plan to an eligible retirement plan specified by the distributee. (5-3-03)

**01. Rollover Election.** This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500) paid directly to an eligible retirement plan specified by the distributee in a direct rollover. (5-3-03)

**02. Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (5-3-03)

**a.** Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; (5-3-03)

**b.** Any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code (Code); (5-3-03)

**c.** Any amount that is distributed on account of hardship; (5-3-03)

**d.** The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (5-3-03)

**e.** Any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200) during a year. (5-3-03)

**03. After-Tax Contributions.** For purposes of the direct rollover provisions in Subsection 125.02, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. (5-3-03)

**04. Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a Roth IRA described in Section 408A of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or a qualified plan described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. (5-3-03)(1-1-08)T

**05. Alternate Payees.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Sections 59-1319 and 1320, Idaho Code, are distributees with regard to the interest of the spouse or former spouse. (5-3-03)

# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.05 - SEPARATION FROM SERVICE RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0105-0802

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2008.

**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 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amend Rule 126 to reflect adoption of final federal regulations regarding required minimum distributions; add new rule 127 to allow for non-spouse beneficiary rollovers from the base plan to an IRA.

**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:

This rule change will make the rule comply with federal requirements and/or will confer a benefit on PERSI employees.

**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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No negative fiscal impact to the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations and because the change is required by federal law for qualified plans.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Winkle, Executive Director, PERSI, 334-2455.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 6th day of August, 2008.

Alan Winkle, Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702

P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-2455  
Fax: 208-334-3408

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0105-0802**

**126. REQUIRED MINIMUM DISTRIBUTIONS (RULE 126).**

**01. Default Application of Federal Requirements.** With respect to distributions under the Base Plan made in calendar years beginning on or after January 1, 2001, and except as provided in Subsection 126.026, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (Code) in accordance with ~~the regulations under section 401(a)(9) that were proposed in January 2001~~ a good faith interpretation of section 401(a)(9), notwithstanding any provision of the Base Plan to the contrary. ~~This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) of the Code or such other date specified in guidance published by the Internal Revenue Service.~~ (5-3-03)(7-1-08)T

**02. Required Beginning Date.** Except as otherwise provided in Subsections 126.03 through 126.06, distributions under the Base Plan shall begin not later than April 1 following the later of (a) the commencement year and (b) the year in which the member retires. For purposes of Rule 126, the "commencement year" is the calendar year in which the member reaches age seventy and one-half (70 1/2). (7-1-08)T

**03. Lifetime Distributions.** Distribution shall be made over the life of the participant or the lives of the participant and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary (7-1-08)T

**04. Timing of Required Distributions.** A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year. (7-1-08)T

**05. Adjustment of Required Distributions.** Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. (7-1-08)T

**026. Death Benefits.** All death benefits payable under the Base Plan will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. (5-3-03)

**127. TRANSFERS TO NON-SPOUSE BENEFICIARIES (RULE 127).**

This Section applies to distributions made on or after July 1, 2008. Notwithstanding any other provision of the Base Plan to the contrary that would otherwise limit the options of the beneficiary of a deceased member who is not the member's spouse, the administrator shall, upon the request of such a beneficiary, transfer a lump sum distribution to the trustee of an individual account established under Section 408 of the Code in accordance with the provisions of Section 402(e)(11) of the Code. (7-1-08)T

~~1278.~~ -- 999. (RESERVED).

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**

**59.01.05 - SEPARATION FROM SERVICE RULES OF THE PUBLIC  
EMPLOYEE RETIREMENT SYSTEM OF IDAHO**

**DOCKET NO.59-0105-0803**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amend rule 100 to remove obsolete reference to the Optional Retirement Plan.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Winkle, Executive Director, PERSI, 334-2455.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 6th day of August, 2008.

Alan Winkle, Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702

P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-2455; Fax: 208-334-3408

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0105-0803**

**100. REPAYMENT OF SEPARATION BENEFITS -- EMPLOYEE STATUS (RULE 100).**

Repayment of a separation benefit must commence while the member is an employee, as defined in Section 59-1302(14), Idaho Code. For purposes of this rule the term employee includes employees accruing benefits under the Department of Employment Retirement Plan, the Firefighters' Retirement Fund, and the Policeman's Retirement Fund, ~~and the Optional Retirement Program.~~

Statutory Reference: Section 59-1360, Idaho Code.

(1-1-94)( )



# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0106-0801

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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:

Amend rule 132 regarding the ability of an elected or appointed official to retire in place to replace "who is not a double employee" with "who is not an eligible employee with another employer", which is consistent with the reference to rule 101 of the Eligibility Rules; amend rule 178 to provide that the actuarially adjusted defined benefit dollar limitation applicable to a participant retiring prior to age sixty-two (62) does not apply to a participant with at least fifteen (15) years credited service for which the member was classified as a police officer or firefighter.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Winkle, Executive Director, PERSI, 334-2455.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 6th day of August, 2008.

Alan Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-2455  
Fax: 208- 334-3408

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0106-0801

**132. ELECTED OR APPOINTED OFFICIAL RETIRING IN PLACE (RULE 132).**

An active member serving as an elected or appointed official who does not normally work twenty (20) hours or more per week who achieves service retirement eligibility and who is not an double eligible employee with another employer pursuant to Rule 101 of ~~Chapter~~ IDAPA 59.01.02, "Eligibility Rules of PERSI," may then retire and continue in that position. The member shall receive retirement allowances under the conditions provided by Section 59-1356(2), Idaho Code.

Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code.

~~(1-1-94)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**178. DEFINED BENEFIT DOLLAR LIMITATION (RULE 178).**

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred and sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 178.01 and, if applicable, in Subsections ~~178.02~~ through 178.03).

~~(5-3-03)~~(\_\_\_\_)

**01. Less Than Ten Years of Service.** If the participant has fewer than ten (10) years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: (5-3-03)

a. The numerator of which is the number of years (or part thereof) of participation in the plan; and (5-3-03)

b. The denominator of which is ten (10). (5-3-03)

**02. Benefit Begins Prior to Age Sixty-Two.** If the benefit of a participant begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age sixty-two (62) (adjusted under Subsection 178.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. This Subsection 178.02 does not apply to participants who have at least fifteen (15) years of credited service for which the member was classified as a police officer or firefighter.

~~(5-3-03)~~(\_\_\_\_)

**03. Benefit Begins at Age Sixty-Five.** If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted under Subsection 178.01, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (5-3-03)

**04. Transition.** Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date of this Section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)). (5-3-03)

# 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 October 22, 2008, unless otherwise listed.  
(Temp & Prop) The Rule is both Temporary and Proposed.  
(\*PH) A Public Hearing has been scheduled.*

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

**16-0601-0801, Rules Governing Family and Children's Services.** Clarifies due process language; replaces references to what "a reasonable person would conclude" with "evidence-based" language; deletes children's mental health services from this chapter; updates rules regarding federally-funded adoption and foster care assistance and streamlines and decentralizes the Department's adoption process; changes chapter name to "Child and Family Services."

**16-0602-0802, Rules Governing Standards for Child Care Licensing.** Clarifies application, inspection, and criminal history and background check fees charged for day care licensing.

#### **16.06.12 - Idaho Child Care Program (ICCP)**

**16-0612-0802, (\*PH)** Requires providers and individuals receiving ICCP payments to have a criminal history and background check.

**16-0612-0803, (\*PH)** Clarifies application, inspection, and criminal history and background check fees charged for day care licensing.

**16-0737-0801, Children's Mental Health Services.** New chapter defines the scope of services and establishes eligibility criteria, application requirements, services, and appeal process.

#### **IDAPA 17 - INDUSTRIAL COMMISSION PO Box 83720, Boise, ID 83720-0041**

**17-0208-0802, Miscellaneous Provisions.** Adjusts the conversion factors for medical provider payments by the inflation factor percentage for Medicaid covered services; clarifies that rules apply to all entities providing services to injured workers even as agents; redefines medical "provider"; provides a medical fee schedule for hospitals providing medical services to injured Idaho workers. Comment by: 10/31/08.

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

#### **18.01.39 - Rebates and Illegal Inducements in Title Insurance Business**

#### **18-0139-0801, Chapter repeal.**

**18-0139-0802,** Chapter rewrite conforms rule to statute by requiring that producers of title insurance provide disclosure of a financial interest in a title entity to which they refer title insurance consumers.

**18-0143-0801, Certification of Fire Inspectors.** Establishes uniform training for all persons acting as assistants to the

state fire marshal and a mechanism for continuing education; changes chapter name and amends the scope of the rule.

**18-0144-0801, Schedule of Fees, Licenses and Miscellaneous Charges.** Imposes a filing fee for policy rates and forms submitted for filing in paper form.

**18-0161-0801, Credit Life and Credit Disability Insurance.** Corrects obsolete code references and terminology and removes inconsistencies with the current law.

**18-0173-0801, Rule to Implement the Individual Health Insurance Availability Act Plan Design.** Increases lifetime maximum benefit for organ transplants to \$250,000; makes cosmetic surgery benefit consistent with minimum requirements for individual health benefit plans established by IDAPA 18.01.30.

**IDAPA 21 - DIVISION OF VETERANS SERVICES  
320 Collins Road, Boise, ID 83702**

**21-0101-0801, Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.** Aligns appeals process with the APA to accommodate more complicated appeals; establishes provisions for notices of transfer and notices of discharge for bases not previously addressed; allows Administrator to designate a hearing officer other than the Veterans Affairs Commission when issues are legally complex or too time consuming.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES  
1109 Main St., Ste. 220, Boise, ID 83702**

**24.04.01 - Rules of the Board of Cosmetology**

**24-0401-0801, (Temp & Prop)** Allows Board to use a third party exam administrator; exams will rotate on a monthly basis in 3 locations statewide; no longer requires enrolling cosmetology students to register with Board; deletes requirement that applicants pass a jurisprudence exam; revises application to include proof of acceptable exam as information establishing qualifications.

**24-0401-0802,** Decreases initial license and renewal fees; deletes exam fee which is now paid directly to test administrator; clarifies location of restroom facilities for establishments; adds hours credited toward licensure to allow partial credit for courses if training changes from cosmetology to esthetics; corrects reference for electrology apprentice; adds haircutter into the apprentice sections.

**24.08.01 - Rules of the State Board of Morticians**

**24-0801-0801, (Temp & Prop)** Requires a licensed resident trainee to make 25 funeral arrangements and conduct 25 funerals as part of training.

**24-0801-0802,** Removes the reinstatement fee from rule which is set in Idaho Code at \$250.

**24-1201-0801, Rules of the Idaho State Board of Psychologist Examiners.** Establishes deadline for applications and responsibility for updating files; clarifies who sets time and date of exams; changes senior psychologist qualifications; continuing education includes 4 hours of ethics in a 3-year cycle; aligns educational requirements with American Psychology Association standards; adds a guideline in employment of unlicensed individuals.

**24-1401-0801, Rules of the State Board of Social Work Examiners.** Adds inactive status provision; increases application, original license, renewal, and endorsement fees.

**24-2101-0801, Rules of the Idaho State Contractors Board.** Upon notification of applicant Board may terminate pending or incomplete applications after 1 year of inactivity.

**\*24-2401-0801, Rules of the Board of Naturopathic Medical Examiners.** (\*PH) New chapter provides contact information and definitions and establishes application process, requirements for licensure, fees, examination, renewal process, scope of practice, certification, and standards for continuing education.

**IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD  
1365 North Orchard, Suite 172, Boise, ID 83706**

**25-0101-0801, Rules of the Outfitters and Guides Licensing Board.** Removes requirement that outfitters submit all training documents on their guides to the Board for review and storage.

**IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION  
PO Box 83720, Boise, ID 83720-0065****26.01.20 - Rules Governing the Administration of Park and Recreation Areas and Facilities**

**26-0120-0801**, Increases the fee ceiling for park campsites.

**26-0120-0802**, Operation of motorized vehicles for ingress and egress to campsites or other in-park destinations is permitted inside any state park; group use permits for 250 people or more require agency Director approval, including permits involving alcohol sales; allows 45-day advance notice requirement to be waived; clarifies use of saddle or other recreational packing livestock in parks; provides for more definitive guidance for agency staff in wildfire management issues; clarifies that hunting or pursuit of wildlife in a park is subject to IDFG rules.

**IDAPA 27 - BOARD OF PHARMACY  
PO Box 83720, Boise, ID 83720-0067****27.01.01 - Rules of the Idaho Board of Pharmacy.**

**27-0101-0805**, Defines "student pharmacist" which includes interns and externs; removes redundant and obsolete language regarding licensing requirements; permits on-line web applications as an acceptable access medium for the same types of items accessible through computer diskette; deletes the controlled substance limitation for externs and interns to communicate to another pharmacist prescription transfer information; includes skilled nursing facilities as a permitted facility to use a formulary prepared by its pharmacy and therapeutics committee for drug substitution purposes; permits annual inventory to be taken within a range of days of the prior year's inventory.

**27-0101-0806**, Clarifies the limits of evidentiary presumption in controlled substance registration suspension or revocation proceedings.

**27-0101-0807**, Establishes requirements for participating in and operating a Pilot Remote Pharmacy through the Remote Dispensing Pilot Program.

**27-0101-0808**, Changes relate to pharmacy practice in institutional facilities; defines "long-term care facility," "chart order," and "prepackaging"; permits chart order to serve as a prescription drug order in institutional facilities for the dispensing and disposal of drugs; permits, in certain circumstances, pharmacies that provide pharmaceutical care services under a contract with an institutional facility to contract with another pharmacy to provide such services when needed.

**27-0101-0809**, Increases wholesale distributor license fee to cover cost of criminal background checks.

**27-0101-0810**, Requires that a pharmacist-in-charge work at that pharmacy a certain amount of time during a work week or work month.

**27-0101-0811**, Requires that pharmacy technicians meet minimum age, education, and other requirements for registration and certification by Board; clarifies who may work within the area that constitutes a "pharmacy"; increases permissible ratio of pharmacists to pharmacy technicians in any practice setting; addresses other matters related to technician ratio.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION  
PO Box 83720, Boise, ID 83720-0074**

**31-0101-0801, Rules of Procedure of the Idaho Public Utilities Commission.** Provides for electronic filing of certain documents; codifies the information competitive local exchange carriers must file in their applications to provide local exchange service in Idaho; allows applicant to file reply comments in cases processed under Modified Procedure; shortens time to answer discovery requests to 21 days; delineates two types of formal hearings: technical hearings and customer hearings; requires trade secrets and other documents that are exempt from public inspection to be printed on yellow paper.

**IDAPA 35 - STATE TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35-0101-0801, Income Tax Administrative Rules.** Adds table for 2008 income tax brackets and rates and removes all but 5 years of historical data; limits the addition to taxable income required for out-of-state rollovers from an Idaho college savings account; clarifies that required bonus depreciation adjustments are for property acquired before 2008; clarifies who qualifies for the deduction for civil service retirement benefits received; deletes information on interest in income limitation and of a pass-through entity limitation; deletes limitations on NOLs of merged corporations not in statute; addresses sourcing of penalty payments and when sourcing determination is made for income received from the sale of intangible personal property; provides that unemployment compensation is Idaho source income to the extent the benefits are received for employment in Idaho; clarifies tax payments for individuals who have income from more than one pass-through entity, but no other income; clarifies when credit for income tax paid to another state is allowed to a qualifying part-year Idaho resident; excludes from the definition of qualified investment the cost

of property for which a deduction for bonus first-year depreciation is claimed; changes amounts of and qualifications for claiming the grocery credit; provides for the calculation of credits when earned by pass-through entities; removes the corporate headquarters credits; addresses requirements to provide W-2 and 1099 information by taxpayers who file electronic returns; identifies the due date for filing information returns; clarifies when the permanent building fund tax must be paid by an entity required to file a return; changes due date for the reconciliation returns from the last day of January to the last day of February; removes obsolete references and replaces them with "electronic filing" for federal W-2 filings.

**35-0102-0801, Sales Tax Administrative Rules.** Clarifies that contractors or retailers should not charge sales tax to the homeowner for installed real property improvements; exempts from sales tax separately stated charges for personal property tax on leased equipment, if certain conditions apply; requires a "trade-in" to be a single transaction and that the sales documents must describe both the property traded-in and the property purchased; store fixtures and data cables that must be removed from buildings when abandoned are personal property; exempts a business that processes fuel to be used for energy; states that a purchase must be made under the prescription or work order of one of the specifically named types of practitioners; use of the fleet will become taxable on the day after the end of registration period for which the mileage requirement is not met; allows retailers that report less than \$12,000 per year in taxable sales to file annually; redefines "ATV"; deletes requirement that a participating retailer provide a social security number.

**35.01.03 - Property Tax Administrative Rules.**

**35-0103-0802, (Temp & Prop)** Changes allocation of occupancy tax revenue among taxing districts and urban renewal allocation areas; adds the instruction to allocate the occupancy tax revenue to the funds listed in HB 470 based on the rate computed by using the full equalized value; provides for property tax exemptions expressed in Idaho Code and that they must be reported to tax commission.

**35-0103-0804,** Updates incorporation by reference section; increases layers of value data to report for properties receiving the homeowner's exemption; puts certification programs in separate rules and clarifies description and functions of the Tax Commissions Program of Education; establishes requirements and procedures for the Cadastral Certification Program; defines countywide taxing district and stipulates filing requirements; provides that the list required to be filed will serve as the taxpayer's application for exemption and eligibility for exemption requires form to be filed; clarifies the allocation of the exemption between or among counties for transient personal property and allows the taxpayer to choose where exemption will apply; requires that the value of property exempt by statute be reported by taxing district; explains how to value new construction and that taxable portion of the property would be included on the New Construction Roll; provides replacement funds to be paid to counties for exempt personal property; explains how to calculate the tax rate for certain funds; clarifies property tax budget and levy information that must be included in the notice of election to form a new taxing district; requires property tax notice to include amounts to be paid by state and the taxpayer; explains the calculations of deferred taxes for lands that change use and land that change ownership.

**35-0105-0801, Motor Fuels Tax Administrative Rules.** Adds annual gaseous fuels permit fees; adds biodiesel and biodiesel blends to the fuels list; annual gaseous fuels permit fee payments are required on fuel distributor report; biodiesel and blends received by a distributor are subject to the fuels tax and transfer fee; adds biodiesel producer to rule; defines "qualified consumer" as a person who produces biodiesel for his own use and allows this type of biodiesel producer to file his report annually; requires authorized signature on the distributor's application.

**35-0110-0801, Idaho Cigarette And Tobacco Tax Administrative Rules.** Adds "or distributors" to rule that exempts sales to out of state wholesalers.

**35-0111-0801, Idaho Unclaimed Property Administrative Rules.** Unclaimed property reports must meet statutory requirements; states that interest is due from original due date of an unclaimed property report.

**35-0201-0801, Tax Commission Administration and Enforcement Rules.** Requires taxpayers to provide copies of documents when requested by the Commission to verify the correctness of the tax return; establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds.

**IDAPA 37 - DEPARTMENT OF WATER RESOURCES  
PO Box 83720, Boise, ID 83720-0098**

**37-0301-0801, Adjudication Rules.** (Temp & Prop) Updates rule to conform to numerous statutory changes; updates

citations to Idaho Code; reduces number of claim forms from 2 to 1.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**PO Box 7129, Boise ID 83707-1129**

**39-0317-0801, Rules Governing Permits for Manufactured Homes, Modular Buildings and Office Trailers.** (Temp & Prop) Allow manufactured homes, modular buildings, and office trailers to be hauled when wind speeds are up to 30 miles per hour; eliminates the wind-velocity exemption for hauling these structures on a five-axle truck tractor or semi-trailer combination.

**39-0322-0801, Rules Governing Overlegal Permits for Extra-Length Vehicle Combinations.** (Temp & Prop) Allows vehicles with multiple axle configurations to operate with single tires on those axles but they cannot exceed 600 pounds per inch of tire width.

**39-0404-0801, Rules Governing Idaho Airport Aid Program.** New application provisions clarify requirements for the distribution of Idaho Airport Aid Program grant funds.

**IDAPA 40 - COMMISSION ON THE ARTS**  
**2410 Old Penitentiary Rd. N., Boise, ID 83712**

**40-0101-0801, Rules of the Idaho Commission on the Arts.** (Temp & Prop) Revises eligibility, application, and recipient duties for Commission grants.

**IDAPA 41 - PUBLIC HEALTH DISTRICTS**  
**8500 North Atlas Road, Hayden, ID 83835**

**41-0101-0801, Rules of Public Health District #1.** Requires septic system applications to be filed with a building permit; revises application restrictions to allow installation of drainfields prior to building the structure to be served; permitted and installed drainfields would be valid under permit conditions for 5 years, provided they are not substantially modified. Comment by: 10/24/08.

**IDAPA 46 - BOARD OF VETERINARY MEDICAL EXAMINERS**  
**PO Box 7249, Boise, ID 83707**

**46-0101-0801, Rules of the State of Idaho Board of Veterinary Medicine.** Establishes a uniform procedure for prescribing and dispensing legal drugs by veterinarians and retail veterinary drug outlets; requires certified euthanasia agencies to purchase approved drugs from a drug wholesaler only; permits an applicant for euthanasia technician certification to demonstrate efficiency in administering euthanasia drugs through alternative methods.

**IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION**  
**PO Box 83720, Boise, ID 83720-0037**

**47-0101-0801, Rules of the Idaho Division of Vocational Rehabilitation.** Addresses service delivery process; updates service delivery manual incorporated by reference; adds language regarding transparency of annual audits for vocational providers.

**IDAPA 49 - CERTIFIED SHORTHAND REPORTERS**  
**1109 Main St. Ste. 220, Boise, ID 83702**

**49.01.01 - Rules of Procedure of the Idaho Certified Shorthand Reporters Board.**

**49-0101-0701,** Corrects Board's legal authority citation, office address and contact information.

**49-0101-0801,** (Temp & Prop) Requires 14 days for notification of registrant's name or address change; establishes fees and adds that fees are not refundable; clarifies that renewals and reinstatements are subject to statute; Board can terminate applications if inactive for a year; changes temporary certification to a temporary permit; gives Board more flexibility in disciplining licensees including imposition of a civil fine up to \$1,000 for each violation of Board's code; allows Board to recover costs and fees of investigation and prosecution.

**IDAPA 52 - IDAHO LOTTERY COMMISSION**  
**1199 Shoreline Lane, Suite 100, Boise, ID 83702**

**52-0103-0801, Rules Governing Operations of the Idaho State Lottery.** Provides for collection of a cost-recovery (convenience) fee for debit card purchases of lottery tickets from Player Activated Terminals.

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**

**PO Box 83720, Boise, ID 83720-0078**

**59-0102-0801, Eligibility Rules of PERSI.** Clarifies that if an employee on leave without pay terminates employment without returning to work, the leave without pay status is negated.

**59-0104-0801, Disability Rules of PERSI.** Requires 5 years of credited service for disability eligibility and includes reference to "general member".

**59.01.05 - Separation from Service Rules for PERSI.**

**59-0105-0801, (Temp & Prop)** Allows for rollovers from the base plan to a Roth IRA.

**59-0105-0802, (Temp & Prop)** Reflects adoption of federal regulations regarding required minimum distributions; allows for non-spouse beneficiary rollovers from the base plan to an IRA.

**59-0105-0803,** Removes obsolete reference to the Optional Retirement Plan.

**59-0106-0801,** Retirement Rules of PERSI. Changes "double" employee to "eligible" employee to allow elected or appointed officials who work less than 20 hours per week and reach service retirement age to retire in place and continue working; provides that the defined benefit dollar limitation applicable to a participant retiring prior to age 62 does not apply to classified police officers or firefighters with at least 15 years credited service.

**THE FOLLOWING TEMPORARY RULE HAS BEEN ADOPTED:**

**IDAPA 35 - State Tax Commission**

**35-0103-0803,** Property Tax Administrative Rules.

Please refer to the Idaho Administrative Bulletin, **October 3, 2007, Volume 07-10** 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.**

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at [www.adm.idaho.gov/adminrules/](http://www.adm.idaho.gov/adminrules/) or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.



# Sections Affected Index

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.01 - Rules Governing Family and Children's Services**

Docket No. **16-0601-0801**

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