

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 08-1 refers to the first Bulletin issued in calendar year 2008; Bulletin 09-1 refers to the first Bulletin issued in calendar year 2009. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 09-1 refers to January 2009; Volume No. 09-2 refers to February 2009; and so forth. Example: The Bulletin published in January 2009 is cited as Volume 09-1. The December 2008 Bulletin is cited as Volume 08-12.

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.

***Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>*

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 "-", (38-0501-0901). 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. 38-0501-0901"

"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).

"0901" 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 2009. A subsequent rulemaking on this same rule chapter in calendar year 2009 would be designated as "0902". The docket number in this scenario would be 38-0501-0902.

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 these rules." OR "...in accordance with Subsection 201.06.c. of these rules."

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 2009

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
09-1	January 2009	*November 14, 2008	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
09-5	May 2009	April 3, 2009	May 6, 2009	May 27, 2009
09-6	June 2009	May 1, 2009	June 3, 2009	June 24, 2009
09-7	July 2009	May 29, 2009	July 1, 2009	July 22, 2009
09-8	August 2009	July 3, 2009	August 5, 2009	August 26, 2009
09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	**August 28, 2009	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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	*November 13, 2009	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 25, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
10-5	May 2010	April 2, 2010	May 5, 2010	May 26, 2010
10-6	June 2010	April 30, 2010	June 2, 2010	June 23, 2010
10-7	July 2010	June 4, 2010	July 7, 2010	July 28, 2010
10-8	August 2010	July 2, 2010	August 4, 2010	August 25, 2010
10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	**August 27, 2010	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

****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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DOCKET NO. 17-0203-0901

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, 72-723, and 72, 803, 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 21, 2009.

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. Requires self-insured employers to maintain a licensed resident claims adjuster located within Idaho to alleviate the need for employees with no expertise or licensure to service claims.
2. Medical reports are often mailed out of state for scanning which increases the length of time for the information to reach the in-state adjuster which runs counter to the requirement for "prompt" claims adjusting. This change would require documents to be date-stamped with the name of the receiving office and by each receiving agent or vendor acting on behalf of the claims office to determine where delays in claims processing may be occurring.
3. Sureties, upon approval, designate one in-state adjuster to service their claims. Sureties usually have more than one adjuster or later assign additional adjusters and often change adjusters for certain employers without the changes being reported to the Commission. This creates a problem of identification of the correct adjuster for the claimant and Commission. This change would require prompt and accurate reporting of each adjuster for each policyholder of the surety.
4. Deletion of an order adopted as a rule in 1969 in regards to a petition by an insurance carrier that is no longer an Idaho insurer to establish rules for banks that hold security deposits required by the Industrial Commission.
5. Reporting and assessment dates changed to coincide with 72-327, Idaho Code.
6. Updating language or "housekeeping" to keep terminology uniform throughout the rules.

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: There is no fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are not considered to be controversial. However, the rule does have the approval of the Industrial Commission's Advisory Committee.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Scott McDougall, (208)334-6063.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720, Boise, ID 83720-0041
Phone (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0203-0901

011. RULE GOVERNING QUALIFICATION OF INSURANCE CARRIER TO UNDERWRITE WORKMEN'S WORKERS' COMPENSATION LIABILITY.

01. Deposit With State Treasurer. To receive the approval of the Industrial Commission to write ~~Workmen's~~ Worker's Compensation coverage under Section 72-301, Idaho Code, a carrier whose application has been approved by the ~~Commissioner~~ Director of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, shall initially deposit security in the amount of twenty-five thousand dollars (\$25,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code, ~~but such deposit shall not be additional required if such carrier has made a qualifying deposit of twenty five thousand dollars (\$25,000) under the provisions of Section 41-317, Idaho Code.~~ (5-26-72)(____)

02. Application. Before the Commission shall approve any insurance ~~company~~ carrier to do business under the ~~Workmen's~~ Workers' Compensation Law, said ~~company~~ carrier shall apply to the Industrial Commission for permission to write compensation insurance and said application shall include the following: (5-26-72)(____)

a. A statement from the Director of the Idaho Department of insurance ~~commissioner~~ that the insurance ~~company~~ carrier has been granted authority under the insurance laws of the state of Idaho to write surety business; (5-26-72)(____)

b. The latest financial statement of said ~~company~~ carrier; (5-26-72)(____)

c. The name of the attorney-in-fact and attorney for service of process in Idaho; (5-26-72)

d. That an Idaho licensed adjuster or adjusters have been appointed, resident in Idaho, to whom have been given authority to make compensation payments and adjustments of claims arising under the Act and the name of said adjuster or adjusters and residence thereof. If more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided. (5-26-72)(____)

e. Satisfactory assurance that it will cause to have printed such blank forms as are, or may be, prescribed by the Commission and distributed to such employers as it may insure. (5-26-72)(____)

f. That it will cause to have printed uniform surety bonds in form approved by the Commission and cause all surety bonds covering the payment of compensation to be filed with the Industrial Commission in compliance with the law for all employers insured. Effective January 1, 1973, the Commission requires all sureties to use a continuous bond form, which is attached hereto. (5-26-72)

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the State of Idaho and the beneficiaries of awards rendered under the Workers' Compensation Law of the State of Idaho, for all sums said Principal is liable for by reason of workers' compensation policies issued to employers in the State of Idaho, insuring such employers' liability under Title 72, Idaho Code, the Workers' Compensation Law.

Under the authority of Chapter 3, Title 72, Idaho Code, the liability of the Surety on this bond shall in no event exceed an amount equal to the total amount of all outstanding and unpaid compensation awards against the Principal.

In case of any default by the Principal or in the event said Principal shall fail to pay, by reason of insolvency, or because a receiver has been appointed therefor, or by reason of refusal, neglect or delay to pay any final award or awards, the State of Idaho and any beneficiaries under the Workers' Compensation Law shall have a right of action at law against said Surety immediately upon default by said Principal.

This bond is issued for an indefinite term to begin on the _____ day of _____, 20____, and will continue in full force and effect until terminated in either of the following two (2) manners: This bond may be cancelled by the Surety by filing sixty (60) days' written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and this instrument to be sealed by the respective parties thereto this _____ day of _____, 20____. (7-15-88)

g. That renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, if said bonds are to be renewed. (5-26-72)

h. That the cancellation of surety contacts will be made as set forth in the law, if said contracts are cancelled; (5-26-72)

i. That said ~~company carrier~~ will deposit, in addition to the security required for authorization to write ~~Workmen's~~ Workers' Compensation coverage by ~~Section 41-317, Idaho Code, and~~ these rules, such further security equal to all unpaid outstanding awards of compensation; (5-26-72)(____)

j. That it will ~~company~~ comply with the statutes of the state of Idaho and rules of the Industrial Commission to the end that payments of compensation shall be sure and certain and not unnecessarily delayed; (5-26-72)(____)

k. That ~~is said carrier~~ will make such reports to the Commission as it may require in reference to matters under the ~~Workmen's~~ Workers' Compensation Law. IC Form 356, Report on Outstanding Awards, must be filed ~~monthly~~ quarterly with the Commission. (5-26-72)(____)

012. RULES GOVERNING INSURANCE ~~COMPANIES~~ CARRIERS.

An insurance ~~company~~ carrier must apply for and receive the approval of the Industrial Commission to write workers' compensation insurance pursuant to Section 72-301, Idaho Code. After receiving such approval, an insurance ~~company~~ carrier shall comply with the following: (3-23-98)(____)

01. Maintain Statutory Security Deposits with the State Treasurer. (3-23-98)

a. Each insurance ~~company~~ carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequent to that date. ~~If the insurance company has made a qualifying deposit of twenty-five thousand dollars (\$25,000) under the provisions of Section 41-317, Idaho Code, that amount shall be deemed contributory to the total required security.~~ (3-23-98)(____)

b. In addition to the security required in Subsection 012.01.a., above, each insurance ~~company~~ carrier shall deposit an amount equal to the total unpaid outstanding awards of said insurance ~~company~~ carrier. Such deposit shall be in the form of cash, U. S. obligations, Idaho municipal bonds, or a surety bond in the form set forth in

Subsection 011.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. (3-23-98)(____)

c. Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book-entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. (3-23-98)

02. Appoint Agent for Service of Process. Each insurance ~~company~~ carrier shall appoint the Director of the Department of Insurance as its attorney to receive service of legal process. (3-23-98)(____)

03. Maintain Resident Idaho Office. Each insurance ~~company~~ carrier shall maintain an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act. (____)

a. Each authorized insurance ~~company~~ carrier shall notify the Commission Secretary in writing of any change of the designated resident adjuster(s) for every insured Idaho employer within fifteen (15) days of such change. (3-23-98)(____)

b. Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. (____)

04. Supply Forms. Each insurance ~~company~~ carrier shall supply such forms as are or may be prescribed by the Commission pursuant to the Workers' Compensation Law and distribute them to all employers it insures. A list of required forms is available from the public information section of the Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041, telephone (208)334-6000. (3-23-98)(____)

05. Comply with Industrial Commission Reporting Requirements. Each insurance ~~company~~ carrier shall file such reports as the Industrial Commission may require concerning matters under the Workers' Compensation Law. (3-23-98)(____)

06. Report Proof of Coverage. (3-23-98)

a. Each insurance ~~company~~ carrier shall report proof of coverage information to a third party designated by the Industrial Commission as its agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The name and address of the Commission's designated agent(s) is available upon request from the Employer Compliance Section of the Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208)334-6000. (3-23-98)(____)

b. As an alternative to Subsection 012.06.a., an insurance ~~company~~ carrier may be allowed to report proof of coverage information directly to the Industrial Commission in an electronic format prescribed by the Commission by first making a written request to the Commission and obtaining the Commission's permission. A formal written agreement with the Commission is required prior to the electronic transmission of proof of coverage data to the Commission. (3-23-98)(____)

c. The Industrial Commission hereby adopts the International Association of Industrial Accident Boards and Commissions' (IAIABC) electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout and transaction standards is available upon request from the Employer Compliance Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208)334-6000. (3-23-98)

d. The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance ~~company~~ carrier providing coverage. (3-23-98)(____)

07. Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days. Each insurance ~~company~~ carrier shall report the issuance of any new workers' compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. (3-23-98)(____)

08. Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute. Each insurance ~~company~~ carrier shall report the cancellation and/or nonrenewal of any workers' compensation insurance policy to the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. (3-23-98)(____)

09. Report Election of Coverage on Form IC52 or Similar Format. Each insurance ~~company~~ carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," which follows this chapter as Appendix A. This report shall be submitted to the Industrial Commission in writing on eight and one-half by eleven inch (8 1/2 x 11) paper. (3-23-98)(____)

10. Report Outstanding Awards. Each insurance ~~company~~ carrier shall report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, any outstanding award on fatal, permanent partial impairment, and permanent total disability workers' compensation claims. (3-23-98)(____)

a. The report of outstanding awards shall be filed with the Industrial Commission by the tenth (10th) day of the month following the end of each calendar quarter. (3-23-98)

b. The report shall be filed even if there are no outstanding awards and shall indicate the fact that there are no outstanding awards to be reported. (3-23-98)

c. The report shall be submitted on or in a format that is substantially the same as Form IC36, "Report of Outstanding Awards for Fatal, Permanent Partial Impairment, and Permanent Total Disability Claims," which follows this chapter as Appendix B. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by fourteen inches (8 1/2 x 14) in size. (3-23-98)

d. The report shall be signed by a corporate officer. If an insurance ~~company~~ carrier has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the insurance ~~company~~ carrier shall prepare and file a consolidated report of outstanding awards. (3-23-98)(____)

e. The report shall list every outstanding fatal, permanent partial impairment, and total permanent disability claim, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. (3-23-98)

f. The report shall continue to list every outstanding award successively until the outstanding award is paid in full or is otherwise disposed of. (3-23-98)

g. The report shall designate the type of claim in Column 3 using the abbreviations "F" for fatal, "PPI" for permanent partial impairment, or "PT" for permanent total disability. (3-23-98)

h. The report shall specify the indemnity award for dependents on all fatal ("F") claims. (3-23-98)

i. The report shall identify the permanent impairment award on all permanent partial impairment ("PPI") claims. (3-23-98)

j. The report shall identify separately the medical payments and the indemnity payments on permanent total disability ("PT") claims. (3-23-98)

k. The report shall indicate in Column 5 the amount of any compensation paid during the reporting period. (3-23-98)

- l.** The report shall indicate in Column 6 the total amount of compensation paid to date. (3-23-98)
- m.** The report shall indicate in Column 7 adjustments due to clerical error or status changes such as remarriage or death. (3-23-98)
- n.** The report shall indicate in Column 8 the unpaid balance in each claim. (3-23-98)
- 11. Comply with Law and Rules.** Each insurance ~~company~~ carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed. (3-23-98)(____)

~~013. RULES PROVIDING FOR THE CUSTODY BY BANKS OF CERTAIN SECURITIES.~~

~~A petition having been duly presented by Argonaut Insurance Company, a corporation, and Argonaut Northwest Insurance Company, a corporation, and filed with the Industrial Accident Board of the State of Idaho on April 25, 1969, and it appearing that notice has been given to all interested persons known to the Board on or before said date; and it further appearing from the petition of the above named applicants that there exists reasonable need for the adoption of rules providing for the safekeeping, maintenance and custody of certain securities required under Section 72-801, Idaho Code, by authorized and approved banks as requested in said petition; and it further appearing that the Industrial Accident Board of Idaho does have the duty and authorization to adopt rules pertaining to said securities as provided under the provisions of Section 72-801, Idaho Code.~~ (5-27-69)

~~**01. Order Allowing Deposit of Securities in Bank.** IT IS HEREBY ORDERED, and this does order, that upon request by any self insured employer, the State Fund of Idaho, or surety companies, and upon approval of the state of Idaho in each instance, said requests by said self insured employers, State Fund, or surety companies shall allow and permit certain securities required under Section 72-801, Idaho Code, to be placed in the Trust Department of a bank approved by the Industrial Commission and the State Treasurer for safekeeping and custody; however, further provided that said deposits shall be made with and held by the Trust Department of said approved established bank located in Boise, Idaho, and further approved by the Industrial Commission and the State Treasurer, and said security is to be further held by the Trust Department of said bank under custodial arrangements likewise approved by the Industrial Commission and the State Treasurer. It is further provided, in each instance, that the cost of any such custodial arrangement shall be born by the self insured employer, State Insurance Fund, or surety company making said request. Further, neither the state of Idaho, nor any of its departments or agencies, shall have responsibility for the safekeeping of said deposited securities in the Trust Department of said designated and approved, established bank.~~ (5-27-69)

~~**02. Order Requiring Banks to Make Information Available Regarding Securities.** IT IS FURTHER ORDERED that in each of said instances of deposit or safekeeping and custody, said Trust Department of said established and selected bank shall at any time make available to the State Treasurer and the Industrial Commission, all information pertaining to said securities being held pursuant to Section 72-801, Idaho Code, and this rule.~~ (5-27-69)

~~**03. Order Allowing for Inspection by Authorized State Personnel.** IT IS FURTHER ORDERED that under such custodial arrangement, authorized personnel of the Office of the State Treasurer and the Industrial Commission may, in the presence of authorized personnel of said self insured employer, State Insurance Fund or surety company, as the case may be, make periodic physical inspection of said securities.~~ (5-27-69)

~~**04. Order Allowing Authorized Personnel to Clip Coupons from Securities.** IT IS FURTHER ORDERED that a duly authorized representative of said self insured employer, State Insurance Fund or surety company, as the case may be, may, in the presence of duly authorized personnel of said Trust Department of said banking institution, clip coupons from said securities to effect the collection of the interest, dividends or profits of said securities as is required by the nature of said securities on deposit.~~ (5-27-69)

~~**05. Provisions for Release, Exchange or Substitution of Securities.** IT IS FURTHER PROVIDED AND ORDERED under this rule that in no event are any of the securities so deposited with the Trust Department of said banking institution to be released to any individual, business, firm or institution, except upon order of a court of competent jurisdiction or upon proper certified order of the Industrial Commission, either for purposes of release of said securities or for substitution or exchange thereof, and in this regard, in all instances said securities so deposited~~

for custody and safekeeping with Trust Department of said established banks are to be kept with the Trust Department of said designated banking institutions. (5-27-69)

~~**06. Adoption of This Order as a Rule.** This order is to be regarded as a rule within the meaning of Section 72-801, Idaho Code, and Section 67-5203, 63-6, Idaho Code. Notice pursuant to Section 67-5203, Idaho Code, shall be given in accordance with the law to all interested persons for adoption of this rule, all in accordance with the sections above referred to of the Idaho Code.~~ (5-27-69)

0143. RULES GOVERNING SELF-INSURED EMPLOYERS.

Upon receiving the approval of the Industrial Commission to be a self-insured employer under Section 72-301, Idaho Code, to continue such approval a self-insured employer shall: (4-1-90)

01. Payroll Requirements. Maintain an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000), if such employer was originally approved by the Commission subsequent to April 30, 1984, and two million dollars (\$2,000,000) if such employer was originally approved by the Commission prior to May 1, 1984; provided, however, that any employer who was an approved self-insured employer on July 1, 1974 need not comply with the provisions of this section. (4-1-90)

02. Deposit with Treasurer. Maintain a deposit with the Idaho State Treasurer in the form of cash, U.S. obligations, Idaho municipal bonds, or a self-insurer's bond in substantially the form set forth below, in the amount of fifty thousand dollars (\$50,000), plus five percent (5%) of the employer's average annual payroll in the state of Idaho for the three (3) preceding years, not in excess of ten million dollars (\$10,000,000) if such employer was originally approved by the Commission subsequent to April 30, 1984; and five million dollars (\$5,000,000) if such employer was originally approved by the Commission prior to May 1, 1984. In addition thereto, the self-insured employer shall deposit additional security in an amount equal to all outstanding and unpaid awards of compensation under the Workers' Compensation Law. All security deposited by the self-insured employer shall be maintained as a trust fund exclusively for the purpose of securing payments by the employer of the compensation required by the Workers' Compensation Law. Any withdrawal of security deposited hereunder must be approved by the Commission. (4-1-90)

SELF-INSURER'S COMPENSATION BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____, a corporation of the State of _____, hereinafter called the Principal, as Principal, and the _____, a surety corporation authorized to transact a surety business in the State of Idaho, as Surety, are held and firmly bound unto the State of Idaho, for the use and benefit of all those employees of the Principal to whom or to the dependents of whom the Principal may, during the life of this bond, become liable for benefits under the Idaho Workers' Compensation Law, as hereinafter more fully referred to, in the sum equal to and limited by the sum or sums that may become due and/or payable by said Principal to said employees under the terms, provisions and limitations of said Workers' Compensation Law, and in accordance with the terms, agreements, conditions and limitations of this obligation not exceeding, however, the sum of _____ dollars, for the payment of which, well and truly made, the Principal well and truly binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, well and truly by these presents.

WHEREAS, in accordance with the provisions of Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, and Principal has elected to secure compensation to its employees by depositing and maintaining with the Industrial Commission of Idaho a surety bond issued and executed by the surety herein named, which surety is duly qualified to transact such business in the state of Idaho subject to the approval of the Industrial Commission of the State of Idaho.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay compensation according to the terms, provisions, and limitations of Idaho Code, Title 72, Chapter 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, to its injured employees or the dependents of its killed employees contemplated by the terms of and covered under the said law, and shall furnish medical, surgical, nursing and the hospital services and attention and funeral expenses as provided for in said law (all of which shall be understood to be included in the term "compensation" as hereinafter used), then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however to the following express conditions and agreements:

1. That any employee or the dependent of any employee of the Principal entitled to compensation under said Workers' Compensation Law, shall have the right to enforce in his own name the liability of the Surety hereunder, in whole or in part, for such compensation, either by at any time filing a separate claim against the Surety or by at any time making the Surety a part of the original claim against the employer; provided, however, that payment in whole or in part of such compensation by either the Principal or the Surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

That as between the employee and the Surety, notice to or knowledge of the occurrence of injury on the part of the employer shall be deemed notice to or knowledge, as the case may be, on the part of the Surety; that the obligation of the Surety, and the Surety, shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the Principal for the payment of compensation under the provisions of the Workers' Compensation Law aforesaid, and that the insolvency or bankruptcy of the Principal and its discharge therein, shall not relieve the Surety from the payment of compensation for injuries, including death resulting therefrom, sustained during the life of this bond by an employee of the Principal covered under the Workers' Compensation Law.

That upon request of the Industrial Commission of Idaho, it will make such changes in this form of bond by endorsement to be attached hereto or by the execution of a surety bond replacing this one, as the said Commission may deem requisite, to bring this bond into conformity with its rulings as to the form of surety bond required of employers under Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto.

This bond is issued for an indefinite term to begin on the ____ day of _____, 20__, and will continue in full force and effect until terminated in either of the following two manners: This bond may be cancelled by the Surety by filing sixty (60) days written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN TESTIMONY WHEREOF, the said Principal and said Surety have caused these presents to be executed in due form this ____ day of _____, 20__.

Countersigned

By

Resident Agent

Principal

SEAL

SEAL

By

By

Samples of this form are available from the Fiscal Section of the Industrial Commission, 317 Main Street, P. O. Box 83720, Boise, Idaho 83720-0041, Telephone (208) 334-6000. (4-1-90)

03. Maintain a Licensed Resident Adjuster. Maintain a resident licensed claims adjuster located within the state of Idaho who shall have full authority to service said claims on behalf of the employer including, but not limited to, the following: (~~4-1-90~~)(____)

a. Investigate and adjust all claims for compensation; (4-1-90)

b. Pay all compensation benefits due; (4-1-90)

c. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; (4-1-90)

- d. Enter into compensation agreements and lump sum settlements with Claimants; (4-1-90)
- e. Provide at the employer's expense necessary forms to any employee who wishes to file a claim under the Workers' Compensation Law. (4-1-90)

04. File Reports. File IC Form 36, which form is set forth in Subsection 012.04 above, once every three (3) months or more often as may be directed by the Commission. Make such reports to the Commission as it may require in reference to matters under the Workers' Compensation Law. (4-1-90)

05. Submit to Audits by Industrial Commission. Submit to audit by the Commission or its designee at any time and as often as it requires to verify the amount of premium such self-insured employer would be required to pay as premium to the State Insurance Fund, and to inspect or cause to be inspected the records of such self-insured employer for purposes of verifying premium taxes remitted. (4-1-90)

06. Comply with Law and Rules. Comply with the statutes of the state of Idaho and the rules of the Industrial Commission to the end that payment of compensation shall be sure and certain and not unnecessarily delayed. The Commission may withdraw its approval of any employer to operate as a self-insurer if it shall appear to the Commission that workers secured by said self-insured employer are not adequately protected and served, or the employer is failing to comply with the provisions of the Workers' Compensation Law. (4-1-90)

0154. -- 050. (RESERVED).

051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.

All sureties, self-insured employers, and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (5-5-93)

01. Idaho Office. All sureties, self-insured employers, and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The surety ~~or self-insured employer~~ shall authorize a member of its staff or a licensed adjuster, and the self-insured employer shall designate a licensed adjuster to make decisions regarding claims pursuant to Idaho Code, Section 72-305. As staffing changes occur and, at least annually, the surety, self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Idaho Code, Section 72-305. Answering machines, answering services, or toll free numbers outside of the state will not suffice. (~~5-5-93~~)()

02. Claim Files. All Idaho workers' compensation claim files shall be maintained within the state of Idaho, or if maintained on an out-of-state computer, data must be entered from within the State. Hard copies of data entry shall be maintained within the State. Claim files shall include, but are not limited to: (5-5-93)

- a. Notice of Injury and Claim for Benefits; (5-5-93)
- b. Copies of bills for medical care; (5-5-93)
- c. Copy of lost-time computations, if applicable; (5-5-93)
- d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.); (5-5-93)
- e. Employer's Supplemental Report; and (5-5-93)
- f. Medical reports. (5-5-93)

03. Correspondence. All original correspondence regarding Idaho workers' compensation claims shall be mailed from and maintained at in-state offices. (5-5-93)

04. Date Stamp. Each of the ~~above~~ documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, ~~by~~ and by each receiving agent or vendor acting on behalf of the claims office. (5-5-93)()

05. Notice and Claim. All Notices of Injury and Claims for Benefits, occupational illnesses and fatalities shall be sent directly to the in-state adjuster, surety, or self-insured employer. The original copy of the Notice of Injury and Claim for Benefits, occupational illness and fatality shall be sent directly to the Industrial Commission. (5-5-93)

06. Compensation. "Compensation" is used collectively and means any or all of the income benefits the medical and related benefits and medical services made under the provision of the Workers' Compensation Act. All compensation must be issued from the in-state office. (5-5-93)

07. Checks and Drafts. Checks must be signed and issued within the state of Idaho; drafts are prohibited. (5-5-93)

a. However, the Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a surety or self-insured employer to sign and issue checks outside the state of Idaho. (5-5-93)

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the surety or self-insured employer, attesting to the fact that the surety or self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (5-5-93)

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any surety or self-insured employer for which a waiver under this rule has been granted to assure that the surety or self-insured employer is complying with all statutes and rules pertaining to prompt payments of compensation. (5-5-93)

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the surety or self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the surety or self-insured employer an opportunity to be heard, may revoke the waiver and order the surety or self-insured employer to comply with the requirements of Subsection 051.07 of this rule. (5-5-93)

08. Copies of Checks. Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. (5-5-93)

09. Prompt Claim Servicing. Prompt claim servicing is defined as: (5-5-93)

a. Payment of medical bills in accordance with the provisions of IDAPA 17.02.08, Miscellaneous Provisions, Sections 031 and 032, ~~(formerly IDAPA 17-01-03-803.A and B)~~; (5-5-93)()

b. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (5-5-93)

10. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (5-5-93)

11. Non-Compliance. Non-compliance with the above requirements may result in the revocation of the authority of an insurance ~~company~~ carrier or self-insured employer to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (5-5-93)()

(BREAK IN CONTINUITY OF SECTIONS)

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, the state insurance fund, every authorized self-insurer, and every surety authorized to transact workers' compensation insurance in Idaho shall report ~~semi~~-annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. (3-23-98)(____)

01. Filing. The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report due each year on March 3rd. (3-23-98)(____)

02. Form. The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," contained in Appendix C at the end of this chapter. (3-23-98)

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. (3-23-98)

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 ~~and July 31~~ each year. (3-23-98)(____)

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. (3-23-98)

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. (3-23-98)

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 ~~or September 1~~ payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. (3-23-98)(____)

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). (3-23-98)

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. (3-23-98)

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0902

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, 72-723, and 72, 803, 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 21, 2009.

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 existence and status of any outstanding medical bills remaining due after approval of a lump sum settlement remains problematic. Some claimants are not aware of their liability to pay outstanding medical bills or medical obligations to third party payors creating a hardship for claimants and providers. The change would require attorneys to provide an itemization of the amount and disposition of any and all medical bills or medical obligations to third-party payors remaining due after approval of a lump sum settlement. The information would be required in the Attorney Fee Memorandum that is currently submitted with every lump sum settlement.

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

No fees or charges are being imposed as a result of this rulemaking.

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

There is no fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are not considered to be controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Scott McDougall, (208)334-6063.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone: (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0208-0902

033. RULE GOVERNING APPROVAL OF ATTORNEY FEES IN WORKERS' COMPENSATION CASES.

01. Authority and Definitions. Pursuant to Sections 72-404, 72-508, 72-707, 72-735 and 72-803, Idaho Code, the Commission promulgates this rule to govern the approval of attorney fees. (7-1-94)

a. "Available funds" means a sum of money to which a charging lien may attach. It shall not include any compensation paid or not disputed to be owed prior to claimant's agreement to retain the attorney. (7-1-94)

b. "Approval by Commission" means the Commission has approved the attorney fees in conjunction with an award of compensation or a lump sum settlement or otherwise in accordance with this rule upon a proper showing by the attorney seeking to have the fees approved. (7-1-94)

c. "Charging lien" means a lien, against a claimant's right to any compensation under the Workers' Compensation laws, which may be asserted by an attorney who is able to demonstrate that: (7-1-94)

i. There are compensation benefits available for distribution on equitable principles; (7-1-94)

ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid; (7-1-94)

iii. It was agreed that counsel anticipated payment from compensation funds rather than from the client; (7-1-94)

iv. The claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and (7-1-94)

v. There are equitable considerations that necessitate the recognition and application of the charging lien. (7-1-94)

d. "Fee agreement" means a written document evidencing an agreement between a claimant and counsel, in conformity with Rule 1.5, Idaho Rules of Professional Conduct (IRPC). (7-1-94)

e. "Reasonable" means that an attorney's fees are consistent with the fee agreement and are to be satisfied from available funds, subject to the element of reasonableness contained in IRPC 1.5. (7-1-94)

i. In a case in which no hearing on the merits has been held, twenty-five percent (25%) of available funds shall be presumed reasonable; or (7-1-94)

ii. In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of available funds shall be presumed reasonable; or (7-1-94)

iii. In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. (7-1-94)

02. Statement of Charging Lien. (7-1-94)

a. All requests for approval of fees shall be deemed requests for approval of a charging lien. (7-1-94)

b. An attorney representing a claimant in a Workers' Compensation matter shall in any proposed lump sum settlement, or upon request of the Commission, file with the Commission, and serve the claimant with a copy of

the fee agreement, and an affidavit or memorandum containing: (7-1-94)

- i. The date upon which the attorney became involved in the matter; (7-1-94)
- ii. Any issues which were undisputed at the time the attorney became involved; (7-1-94)
- iii. The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; (7-1-94)
- iv. Disputed issues that arose subsequent to the date the attorney was hired; (7-1-94)
- v. Counsel's itemization of compensation that constitutes available funds; (7-1-94)
- vi. Counsel's itemization of costs and calculation of fees; and (7-1-94)
- vii. Counsel's itemization of medical bills for which claim was made in the underlying action, but which remain unpaid by employer/surety at the time of lump sum settlement, along with counsel's explanation of the treatment to be given such bills/claims following approval of the lump sum settlement. ()
- viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the charging lien. (7-1-94)

c. Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. (7-1-94)

03. Procedure if Fees Are Determined Not to Be Reasonable. (7-1-94)

a. Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Subsection 033.02 may constitute grounds for an informal determination that the fee requested is not reasonable. (7-1-94)

b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. (7-1-94)

c. The Commission shall order an employer to release any available funds in excess of those subject to the requested charging lien and may order payment of fees subject to the charging lien which have been determined to be reasonable. (7-1-94)

d. The proponent of a fee which is greater than the percentage of recovery stated in Subsections 033.01.e.i., 033.01.e.ii., or 033.01.e.iii. shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a charging lien and reasonableness of his or her fee. (7-1-94)

04. Disclosure. Upon retention, the attorney shall provide to claimant a copy of a disclosure statement. No fee may be taken from a claimant by an attorney on a contingency fee basis unless the claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the fee agreement, so long as it contains the text of the numbered paragraphs one (1) and two (2) of the disclosure. A copy of the agreement must be given to the client. The disclosure statement shall be in a format substantially similar to the following:

State of Idaho
Industrial Commission

Client's name printed or typed
Attorney's name and address
printed or typed

DISCLOSURE STATEMENT

1. In workers' compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you.

2. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Commission to resolve the dispute.

I certify that I have read and understand this disclosure statement.

Client's Signature Date

Attorney's Signature Date

(7-1-94)

~~05. **Effective Dates.** Subparagraphs i., ii., and iii. of Subsection 033.01.e. are effective as to fee agreements entered into on and after December 1, 1992. All other provisions shall be effective on and after December 20, 1993.~~

(7-1-94)

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0903

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, 72-723, and 72, 803, 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 21, 2009.

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 temporary rule containing physician fee updates effective July 1, 2009, as required by 72-803, Idaho Code, will no longer be in effect upon sine die adjournment of the 2010 legislature. This proposed rule will provide the same fee schedule updates as the previous temporary rule, but allows the legislature to approve conversion factors going forward that have been updated in accordance with 72-803, Idaho Code.

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

No fee or charge is being imposed as a result of this rulemaking.

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

There is no impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are not considered to be controversial as they have been in place for almost two years.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, (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 28, 2009.

DATED this 26th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone: (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0208-0903

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 Surgery Center (ASC)" means a facility providing surgical services on an outpatient basis only. (4-2-08)

c. "Hospital" is 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)

d. "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 compensable under Idaho's Workers' Compensation Law. (3-12-07)

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

f. "Medical Service" means 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)

g. "Reasonable," means a charge does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined below. (3-12-07)

h. "Usual" means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (3-12-07)

i. "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. 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	\$58.19 <u>60.05</u>
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	\$140 <u>144.48</u>
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	\$125 <u>129.00</u>
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	\$110 <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	\$85 <u>87.72</u>
Surgery - Group Five	10000 - 12999 29000 - 29799	Integumentary System Casts & Strapping	\$67 <u>69.14</u>
Radiology	70000 - 79999	Radiology	\$85 <u>87.72</u>
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	\$45 <u>46.44</u>
Medicine - Group Two	90800 - 92999 96040 - 96999 99000 - 99607	Psychiatry & Medicine Assessments & Special Procedures E / M & Miscellaneous Services	\$64.50 <u>66.56</u>
Medicine - Group Three	93000 - 93999 95000 - 96020	Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures	\$70 <u>72.24</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 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)

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.01 - BOILER AND PRESSURE VESSEL SAFETY RULES -- GENERAL

DOCKET NO. 17-0601-0901 (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 72-508, 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 21, 2009.

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 current boiler regulatory program is not self-funded, does not have an effective means of enforcement, and the inspections are being conducted by the boiler insurance companies as is required by their policy. By repealing these administrative rules (Chapters 1-5 of IDAPA 17.06), the expenditures would be eliminated, the statute requiring equipment safety (Section 72-720, Idaho Code) would still be in effect so that unsafe conditions could still be addressed and the redundancy of requirements would be eliminated.

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: If adopted, this rule change would eliminate the annual expenditure of a minimum of \$15,000 and eliminate the expenditure of Code Adoption every three years at an additional \$15,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were presented at an open meeting to the interest groups and no negative comments were received.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone (208) 334-6000 Fax (208) 334-2321

IDAPA 17.06.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.02 - BOILER AND PRESSURE VESSEL SAFETY RULES -- ADMINISTRATION

DOCKET NO. 17-0602-0901(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 72-508, 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 21, 2009.

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 current boiler regulatory program is not self-funded, does not have an effective means of enforcement, and the inspections are being conducted by the boiler insurance companies as is required by their policy. By repealing these administrative rules (Chapters 1-5 of IDAPA 17.06), the expenditures would be eliminated, the statute requiring equipment safety (Section 72-720, Idaho Code) would still be in effect so that unsafe conditions could still be addressed and the redundancy of requirements would be eliminated.

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: If adopted, this rule change would eliminate the annual expenditure of a minimum of \$15,000 and eliminate the expenditure of Code Adoption every three years at an additional \$15,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were presented at an open meeting to the interest groups and no negative comments were received.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

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Industrial Commission
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Boise, ID 83720-0041
Phone (208) 334-6000 Fax (208) 334-2321

IDAPA 17.06.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.03 - BOILER AND PRESSURE VESSEL SAFETY RULES - INSPECTIONS

DOCKET NO. 17-0603-0901 (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 72-508, 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 21, 2009.

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 current boiler regulatory program is not self-funded, does not have an effective means of enforcement, and the inspections are being conducted by the boiler insurance companies as is required by their policy. By repealing these administrative rules (Chapters 1-5 of IDAPA 17.06), the expenditures would be eliminated, the statute requiring equipment safety (Section 72-720, Idaho Code) would still be in effect so that unsafe conditions could still be addressed and the redundancy of requirements would be eliminated.

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: If adopted, this rule change would eliminate the annual expenditure of a minimum of \$15,000 and eliminate the expenditure of Code Adoption every three years at an additional \$15,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were presented at an open meeting to the interest groups and no negative comments were received.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone (208) 334-6000 Fax (208) 334-2321

IDAPA 17.06.03 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.04 - BOILER AND PRESSURE VESSEL SAFETY RULES - REPAIRS AND ALTERATIONS

DOCKET NO. 17-0604-0901 (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 72-508, 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 21, 2009.

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 current boiler regulatory program is not self-funded, does not have an effective means of enforcement, and the inspections are being conducted by the boiler insurance companies as is required by their policy. By repealing these administrative rules (Chapters 1-5 of IDAPA 17.06), the expenditures would be eliminated, the statute requiring equipment safety (Section 72-720, Idaho Code) would still be in effect so that unsafe conditions could still be addressed and the redundancy of requirements would be eliminated.

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: If adopted, this rule change would eliminate the annual expenditure of a minimum of \$15,000 and eliminate the expenditure of Code Adoption every three years at an additional \$15,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were presented at an open meeting to the interest groups and no negative comments were received.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone (208) 334-6000 Fax (208) 334-2321

IDAPA 17.06.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.05 - BOILER AND PRESSURE VESSEL SAFETY RULES - BOILER ATTENDANTS

DOCKET NO. 17-0605-0901 (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 72-508, 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 21, 2009.

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 current boiler regulatory program is not self-funded, does not have an effective means of enforcement, and the inspections are being conducted by the boiler insurance companies as is required by their policy. By repealing these administrative rules (Chapters 1-5 of IDAPA 17.06), the expenditures would be eliminated, the statute requiring equipment safety (Section 72-720, Idaho Code) would still be in effect so that unsafe conditions could still be addressed and the redundancy of requirements would be eliminated.

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: If adopted, this rule change would eliminate the annual expenditure of a minimum of \$15,000 and eliminate the expenditure of Code Adoption every three years at an additional \$15,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were presented at an open meeting to the interest groups and no negative comments were received.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
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700 South Clearwater Lane
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Boise, ID 83720-0041
Phone (208) 334-6000 Fax (208) 334-2321

IDAPA 17.06.05 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.01 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - GENERAL PROVISIONS

DOCKET NO. 17-0801-0901

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, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements regarding logging signs and to make technical corrections.

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

No fee or charge is being imposed by through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 27, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
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Boise, ID 83720-0041
Phone (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0801-0901

009. EMPLOYER'S RESPONSIBILITY.

01. General Requirements. (7-1-97)

a. Every employer shall furnish employment and maintain places of employment which are safe according to the standards as set forth herein. (7-1-97)

b. Every employer shall adopt and use practices, means, methods, operations and processes which are adequate to render such employment and place of employment safe. (7-1-97)

i. Employers shall place highly visible "LOGGING AHEAD" type warning signs at the entrances of active logging jobs. ()

ii. Every employer shall furnish to crew a Company Emergency Rescue Plan. ()

c. Every employer should insure that Material Safety Data Sheets (MSDS) are reasonably accessible for every hazardous material. (7-1-97)()

d. Every employer shall do every other thing necessary within the framework of this Rule to protect the life and safety of employees. (7-1-97)

e. No employer shall require any employee to go or be in any place of employment which does not meet the minimum safety requirement of this Rule, except for the purpose of meeting such requirements. (7-1-97)

f. No employer shall fail or neglect. (7-1-97)

i. To make available and use safety devices and safeguards as are indicated. (7-1-97)

ii. To adopt and use methods and processes adequate to render the employment and place of employment safe. (7-1-97)

iii. To do every other thing necessary within the framework of this Rule to protect the life and safety of employees. (7-1-97)

g. No employer, owner or lessee of any real property shall construct or cause to be constructed any place of employment which does not meet the minimum safety requirements of this Rule. (7-1-97)

h. No person, employer, employee, other than an authorized person, shall do any of the following. (7-1-97)

i. Remove, displace, damage, destroy or carry off any safeguard, first aid material, notice or warning, furnished for use in any employment or place of employment, or interfere in any way with the use thereof by any other person. (7-1-97)

ii. Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment or place of employment. (7-1-97)

iii. No person shall fail or neglect to do everything necessary within the requirements of this Rule to protect the life and safety of employees. (7-1-97)

iv. The use of intoxicants while on duty is prohibited. Persons reporting for duty while under the influence of or affected by liquor shall not work until completely recovered. (7-1-97)

i. A definite procedure for checking the welfare of all workers during working hours shall be instituted and all workmen so advised. The employer shall assume responsibility of work assignments so that no worker shall be required to work in a position or location so isolated or hazardous that he is not within visual or

audible signal contact with another person who can render assistance in case of emergency. In any operation where cutting, yarding, loading, or a combination of these duties are carried on there shall be a minimum crew of two (2) persons who shall work as a team, and shall be in visual or audible signal contact with one another. This does not apply to operators or motorized equipment, watchmen, or certain other jobs which, by their nature are singular workmen assignments. There shall be some method of checking the men in at the end of the shift. Each immediate supervisor shall be responsible for his crew being accounted for. This standard also includes operators of moveable equipment. (7-1-97)

j. Every employer shall keep a record of all cases of injuries his employees receive at their work. This record shall be kept in such manner as to enable representatives of the Commission and/or Department to determine by examining the record, the injury rate of the employee force for the period covered by the report. (7-1-97)

k. Every employer shall investigate or cause to be investigated every accident resulting in a disabling injury that his employees suffer in connection with their employment. He shall promptly take any action thus found to be advisable. Employees shall assist in the investigation by giving any information and facts they have concerning the accident. (7-1-97)

02. Management Responsibility. (7-1-97)

a. Top management must take an active and interested part in the development and guidance of the operation's safety program, including fire safety. (7-1-97)

b. Management must apply a basic workable safety plan on the same priority as it does to any other work facet of the operation where elimination of all injuries is to be achieved in all phases of the operation. It is the duty of top management to assume full and definite responsibility. To attain these safety objectives, management must have the full cooperation of employers, Commission and Department. (7-1-97)

c. Every employer shall furnish employment which shall be safe for the employees therein and shall furnish such devices and safeguards and shall adopt and use such practices, means, methods, operation and processes as are adequate to render such employment and places of employment safe to protect the life and safety of employees. The employer shall make available necessary personal protective safety equipment. (7-1-97)

d. Regular safety inspection of all rigging, logging, machinery, rolling stock, bridges, and other equipment shall be made as often as the character of the equipment requires. Defective equipment or unsafe conditions found shall be replaced, repaired or remedied. (7-1-97)

e. All places of employment shall be inspected by a qualified person or persons as often as the type of operation or the character of the equipment requires. Defective equipment or unsafe conditions found by these inspections shall be replaced or repaired or remedied promptly. (7-1-97)

010. EMPLOYEE'S RESPONSIBILITY.

01. General Requirements. (7-1-97)

a. Employees shall not indulge in horseplay, scuffling, practical jokes or any activity which creates or constitutes a hazard while on the employer's property or at any time when being transported from or to work in facilities furnished by the employer. (7-1-97)

b. Employees who are assigned to, or engaged in the operation of any machinery or equipment, shall see that all guards, hoods, safety devices, etc., that are provided by the employer, are in proper place and properly adjusted. (7-1-97)

02. Employee Accidents. Each employee shall make it his individual responsibility to keep himself, his coworkers, and his machine or equipment free from accidents to the best of his ability. (7-1-97)

03. Study Requirements. So that each worker may be better qualified to cooperate with his fellow workmen in preventing accidents, he shall study and observe these and any other safety standards governing his

work. (7-1-97)

04. Employee Responsibilities. The responsibilities of an employee insofar as industrial safety is concerned shall be as follows. (7-1-97)

a. The employee shall report immediately, preferably in writing, to his foreman or safety committee member in his department of the plant, all known unsafe conditions and practices. (7-1-97)

b. The employee shall ascertain from the foreman where medical help may be obtained if it is needed. (7-1-97)

c. The employee shall not participate in practical jokes or horseplay. (7-1-97)

d. The employee shall make a prompt report to the foreman, first aid attendant, or person in charge, of every accident regardless of severity. (Such reports are required and are necessary for his protection in order that there may be a record of his injuries.) (7-1-97)

e. The employee shall at all times apply the principles of accident prevention in his daily work and shall use proper safety devices and protective equipment. No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or interfere in any way with the use thereof by any other person or interfere with the use of any method or process adopted for the protection of any employee in such employment or fail or neglect to do every other thing reasonably necessary to protect the life and safety of himself and fellow employees, and by observing safe practice rules shall set a good example for his fellow workmen. (7-1-97)

f. The employee shall not report to the job under the influence of intoxicants and shall not use intoxicants while on the job. The employer shall prohibit any employee from working on or being in the vicinity of any job while under the influence of or affected by intoxicants. Employers shall be responsible for the actions of any employee known to be in an intoxicated condition while on the job. (Workers are reminded that intoxication on the job may result in forfeiture of compensation for injury to say nothing of the hazard created to fellow workers.) (7-1-97)

g. The employee shall not be permitted to work while under the influence of hallucinatory drugs or chemicals or other drugs covered by the Federal Narcotics Act, unless such drugs or chemicals are prescribed by a licensed Medical Doctor, provided the employee does not create a hazard to himself or his fellow workers. (7-1-97)

h. The employee shall wear, use and properly care for personal protective safety equipment issued to him. These items shall be returned to the employer on termination of employment. (7-1-97)

i. Workers exposed to head hazards shall wear approved head protection. (7-1-97)

j. Proper eye protection shall be worn while doing work where a known eye hazard exists. (7-1-97)

k. The employee should consider the benefits of accident prevention to himself and to his job. (Safety-consciousness is the ability to anticipate accidents and a desire to prevent them.) (7-1-97)

l. The employee should make an effort to understand his job. (An efficient worker understands the job, and studies everything pertaining to it.) (7-1-97)

m. The employee should anticipate every way in which a person might be injured on the job, and conduct the work to avoid accidents. (7-1-97)

n. The employee should be on the alert constantly for any unsafe condition or practice. (An employee's own knowledge and interest in the work makes the best possible safety inspector.) (7-1-97)

o. The employee ~~should~~ shall learn first aid to be applied on the job, in the home, or anywhere else. (7-1-97)(____)

- p.** The employee should keep physically fit, and obtain sufficient rest. (7-1-97)
- q.** The employee should be certain, after receiving instructions, that they are understood completely before starting the work. (7-1-97)
- r.** The employee should actively participate in safety programs. (7-1-97)
- s.** The employee should study the safety educational material posted on the bulletin boards and distributed by the employer or safety committee. (7-1-97)
- t.** The employee should advise inexperienced fellow-employees of safe ways to do their work and warn them of dangers to be guarded against. (7-1-97)
- u.** It is the employer's responsibility to see that the foregoing provisions are complied with. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.02 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - HEALTH, SAFETY, AND SANITATION

DOCKET NO. 17-0802-0901

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 72-508, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements relating to first aid transportation, who is required to complete first aid training, identify the proper contents of first aid kits, clarify safety shoe and life jacket requirements, and to make technical corrections.

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:

There is no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 27, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0802-0901

010. FIRST AID.

01. Transportation. (7-1-97)

a. Suitable means of transportation shall be established and maintained at the site of all operations to be used in the event any employee is seriously injured. (7-1-97)

b. Transportation shall be of a nature to render reasonable comfort to an injured employee. (7-1-97)

~~**e.** In the event that the only transportation available shall be a crew bus, or similar vehicle, construction shall be such that a loaded stretcher may be freely passed into the vehicle. Arrangements shall also be made for devices to fasten and/or secure the stretcher in a horizontal position after it is loaded into such vehicle. (7-1-97)~~

~~**d.** Each crew bus, or similar vehicle, shall be equipped with at least one (1) ten-unit first aid kit. (7-1-97)~~

02. Communication. (7-1-97)

a. Every employer shall arrange suitable telephone or radio communication at the nearest reasonable point, and shall work out a definite plan of action to be taken in the event of serious injury to any employee. (7-1-97)

b. Instructions covering this plan of action shall be made available to all work crews. (7-1-97)

c. When practical, a poster shall be fastened and maintained either on, or in the cover of each first aid cabinet and at or near all phones, plainly stating the phone numbers of applicable emergency services. The use of the Boise Communication Center is recommended. The number is 1-800-632-8000. (7-1-97)

~~**d.** Every employer shall obtain specific job location (longitude and latitude preferred) and furnish to crew for emergency evacuation. ()~~

03. Attendance for Seriously Injured. (7-1-97)

a. Seriously injured employees shall, at all times, be attended by the most qualified available person to care for the injured employees. (7-1-97)

b. Seriously injured employees shall be carefully handled and removed to a hospital, or given medical attention as soon as possible. (7-1-97)

c. Caution shall be used in removing a helpless, or unconscious, person from the scene of an accident to prevent further injury. (7-1-97)

~~**04. First Aid Training.** *Persons in charge of workers shall be required to have completed an approved course in first aid and have a current card.* All woods workers shall be required to complete an approved course in first-aid and have a current card. (7-1-97)()~~

05. Stretcher or Spine Board. A stretcher or spine board (designed for and/or adaptable to the work location and terrain) and two blankets kept in sanitary and serviceable condition shall be available where such conditions are a factor in the proper transportation of, and first aid to, an injured workman. (7-1-97)

06. First Aid Kits. (7-1-97)

~~**a.** *Ten-unit field first aid kits shall be made available when working away from headquarters.* The employer shall provide first aid kits at each work site where trees are being felled, at each active landing and in each employee transport vehicle. (7-1-97)()~~

~~b. Each ten-unit first-aid kit should contain the following minimum assortment, or approved equivalent (see Table 010.06 A). If there is any question as to the suitability of some of these items in relation to injuries which are common to a specific occupation, the employer should seek the advice of a physician for recommended substitutes or additions. The following list sets forth the minimally acceptable number and type of first-aid supplies for required first-aid kits. The contents of the first-aid kits should be adequate for small work sites, consisting of approximately two (2) to three (3) employees. When larger operations or multiple operations are being conducted at the same location, additional first-aid kits should be provided at the work site or additional quantities of supplies should be included in the first-aid kits:~~

TABLE 010.06 A - SUGGESTED CONTENTS			
1 unit antiseptic applicators	10 per package	1 unit 2" x 6" yard gauze roller bandage	2 per package
2 units 1" adhesive compresses	16 per package	1 unit triangular bandage, 40"	1 per package
1 unit 2" bandage compresses	4 per package	Tweezers or forceps	1 each per pkg
1 unit 4" bandage compresses	1 per package	Facial Barrier	1 each per pkg
1 unit 3" x 3" plain gauze pads	4 per package	Latex Gloves	2 pair per pkg
Emergency first aid instructions in convenient form.			

TABLE 010.06 SUGGESTED CONTENTS	
<u>1. Gauze pads (at least 4 x 4 inches)</u>	<u>9. Tweezers</u>
<u>2. Two (2) large gauze pads (at least 8 x 10 inches)</u>	<u>10. Adhesive tape</u>
<u>3. Box adhesive bandages (band-aids)</u>	<u>11. Latex gloves</u>
<u>4. One (1) package gauze roller bandage (at least two (2) inches wide)</u>	<u>12. Resuscitation equipment such as resuscitation bag, airway, or pocket mask</u>
<u>5. Two (2) triangular bandages</u>	<u>13. Two (2) elastic wraps</u>
<u>6. Wound cleaning agent such as sealed moistened towelettes</u>	<u>14. Splint</u>
<u>7. Scissors</u>	<u>15. Directions for requesting emergency assistance</u>
<u>8. At least one (1) blanket</u>	

(7-1-97)()

~~c. This assortment should be duplicated for each additional twenty (20) employees working in the same location by adding ten-unit kits, or by larger kits containing approximately a duplicate quantity of supplies required.~~ (7-1-97)

~~d. Special kits, or the equivalent, shall be provided and approved, for special hazards peculiar to any given work location.~~ (7-1-97)

~~e. These kits shall be readily available and kept supplied.~~ (7-1-97)

~~f. For work crews of fewer than five (5) employees working away from work headquarters, a smaller assortment which is suitable for the hazards of the work performed may be acceptable. (7-1-97)~~

~~ge. First aid kits shall be in metal, or other sanitary containers. Such containers shall be designed and constructed so as to be impervious to conditions of weather, dust, dirt, or other foreign matter. (7-1-97)~~

~~h. Contents shall be sterile, and drugs shall be labeled with their common name and the use for which they are intended. First aid kits should be on every machine for prompt first aid attention in the event of any injury. (7-1-97)~~

~~**07. First Aid Room or First Aid Station. (7-1-97)**~~

~~a. The Commission or the Department may require the installation of a First Aid Room or First Aid Station at operations where a study of the various factors involved indicates the need. Factors to be considered are the number of workers employed, location and nature of the work being performed, and availability of established medical facilities. When, in the judgment of the Commission or the Department, such an installation is necessary, the employer, or employers concerned, shall provide adequate quarters and facilities. (7-1-97)~~

~~b. First Aid Rooms and First Aid Stations shall be well lighted, ventilated and kept clean and orderly. (7-1-97)~~

~~e. First Aid Stations shall be equipped with hot and cold running water, or a means to heat water, and with a cot, blankets and pillows. If both men and women are employed, a means shall be provided to furnish privacy for each sex. (7-1-97)~~

011. SAFETY EQUIPMENT AND PERSONAL PROTECTIVE EQUIPMENT.

01. General Requirements. (7-1-97)

a. Special protective equipment or apparel required for safe employment, other than clothing or equipment customarily supplied by employees, shall be furnished by the employer where necessary for the safety of employees. (7-1-97)

b. Employees are required to utilize all prescribed safety equipment and special protective equipment or apparel, and they shall exercise due care in maintaining it in safe, efficient and sanitary conditions. (7-1-97)

c. Defective safety equipment shall not be used. Where the need for their use is indicated, protective covering, ointments, gloves or other effective protection shall be provided for and used by persons exposed to materials which are irritating to the skin. (7-1-97)

02. Inspection, Maintenance and Sanitizing. (7-1-97)

a. Each employer shall maintain a regular system of inspection and maintenance of personal protective equipment furnished to workers. (7-1-97)

b. Air line equipment shall have necessary regulator and shall be inspected before each use. (7-1-97)

c. Workers shall check their equipment at the beginning of each shift. (7-1-97)

03. Eye Protection. (7-1-97)

a. Where workers are subject to eye hazards (flying particles, dusts, hazardous liquids, gases, mists or vapors, or injurious light rays) they shall be furnished with and shall wear eye protection suitable for the hazards involved. Such eye protection shall conform to the American National Standard Institute standards for Head, Eyes and Respiratory protection. (7-1-97)

b. Face shields may be used in lieu of other forms of eye protection where the nature of the operation is such that they will furnish equivalent protection. (7-1-97)

c. Clean water in ample quantities shall be immediately available where materials are handled that are caustic or corrosive to the eyes. (7-1-97)

04. Foot and Leg Protection. (7-1-97)

a. Employees shall wear footwear suitable for the work conditions. (7-1-97)

b. Employees shall wear sharp caulk-soled boots or other footwear which will afford maximum protection from slipping. (7-1-97)

~~**c.** The use of safety toe shoes is recommended for all workmen subject to foot injuries. Safety shoes, when used, shall meet the American National Standard Institute specifications.~~ (7-1-97)

~~**d.** Special types or designs of shoes, or foot guards, may be required to be worn where conditions exist that make their use necessary for the safety of the workers.~~ (7-1-97)

~~**e.** Leggings or high boots of leather, rubber or other suitable material should be worn by climbers, persons exposed to hot substances, or caustic solutions, etc., or where poisonous snakes may be encountered.~~ (7-1-97)

~~**f.** Employees whose *normal* duties require them to operate a chain saw, shall wear ballistic nylon or equivalent protection covering each leg from upper thigh to boot top, except when working as a climber or working from a bucket truck.~~ (7-1-97)()

05. Hand Protection. (7-1-97)

a. Hand protection suitable for the required usage should be worn wherever the nature of the work requires extra protection for the hands. (7-1-97)

b. Gloves shall not be worn where their use would create a hazard. (7-1-97)

06. Head Protection. (7-1-97)

a. Persons required to work where falling or flying objects, overhead structures exposed electrical conductors, equipment or material create a hazard shall wear approved safety hard hats or caps at all times while exposed to such hazards. (7-1-97)

b. Employees working in locations which present a hair catching or fire hazard shall wear caps or other head covering which completely covers the hair. (7-1-97)

07. Life Jackets, Vests and Life Rings.

NOTE: Where buoyant protective equipment is provided, it shall be of a design and shall be worn in a manner that will tend to maintain the wearer's face above water. It shall be capable of floating a sixteen (16) pound weight for three (3) hours in fresh water. Such equipment shall not be dependent upon manual or mechanical manipulation or chemical action to secure the buoyant effect. (7-1-97)

a. Employees shall be provided with, and shall wear, approved buoyant protective equipment at all times while working on or over water, as follows: (7-1-97)

~~**i.** On floating pontoons, rafts and floating stages.~~ (7-1-97)

~~**ii.** On open decks of floating plants (such as dredges, pile-drivers, cranes, pond saws, and similar types of equipment) which are not equipped with bulwarks, guardrails or life lines.~~ (7-1-97)

diii. During the construction, alteration or repair of structures extending over or adjacent to water, except when guardrails, safety nets, or safety belts and life lines are provided and used. (7-1-97)

eiv. Working alone at night where there are potential drowning hazards regardless of other safeguards provided. (7-1-97)

fv. On floating logs, boom sticks or unguarded walkways. (7-1-97)

gb. Life rings with sufficient line attached to meet conditions shall be located at convenient points along exposed sides of work areas adjacent to water. Such rings, if used at night where a person might be beyond illuminated areas, should be provided with a means of rendering them visible.

NOTE: Consult U.S. Coast Guard requirements for operations in navigable waters. (7-1-97)

08. Life Lines -- Safety Belts. (7-1-97)

a. Each life line and safety belt shall be of sufficient strength to support, without breaking, a weight of two thousand five hundred (2,500) pounds. (7-1-97)

b. All life lines and safety belts shall be periodically inspected by the supervisor in charge. Employees shall inspect their belts and lines daily. Any defective belts or life lines shall be discarded or repaired before use. (7-1-97)

c. Life lines shall be safely secured to strong stable supports and maintained with minimum slack. (7-1-97)

09. Work Clothing. (7-1-97)

a. Clothing shall be worn which is appropriate to work performed and conditions encountered. (7-1-97)

b. Loose sleeves, cuffs or other loose or ragged clothing shall not be worn near moving machinery. (7-1-97)

c. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritants or oxidizing agents shall be removed immediately and not worn again until properly cleaned. (7-1-97)

d. When it is necessary for workers to wear aprons or similar clothing near moving machines or hazardous materials, such clothing shall be so arranged that it can be instantly removed. (7-1-97)

e. Clothing with exposed metal buttons, metal visors or other conductive materials shall not be worn around exposed electrical conductors. (7-1-97)

10. Respiratory Equipment. (7-1-97)

a. When filter or cartridge-type respirators are required to be used regularly, each employee shall have one such respirator for his own exclusive use. (7-1-97)

b. Employers and employees shall familiarize themselves with the use, sanitary care and limitations of such respiratory equipment as they may have occasion to use. (7-1-97)

c. Whenever practical, harmful dusts, fumes, mists, vapors and gases shall be suppressed by water, oil or other means which will minimize harmful exposure and permit employees to work without the use of respiratory equipment. (7-1-97)

d. Whenever compressed air from an oil-lubricated compressor is used to supply respiratory equipment, a filter shall be inserted in the supply line to remove any oil, sediment or condensation that it may contain. Such filter shall be maintained in efficient working condition. (7-1-97)

e. When self-contained respiratory equipment is used in hazardous locations, a standby unit shall be maintained for rescue purposes. (7-1-97)

11. Hearing Protection. Where workers are subject to hazardous noise levels, they shall be furnished with and shall wear hearing protection suitable for the level of hazard involved. (7-1-97)

12. Additional Information and Requirements. Additional information and requirements for the use of safety equipment and personal protective equipment may be found in the Idaho General Safety and Health Standards IDAPA 17.10. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.03 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - EXPLOSIVES AND BLASTING

DOCKET NO. 17-0803-0901

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 72-508, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements relating to crimping of fused detonator caps.

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: There is no fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 27, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720, Boise, ID 83720-0041
Phone (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0803-0901

010. EXPLOSIVES AND BLASTING.

01. General Requirements.

(7-1-97)

- a.** The transportation, handling and storage of explosives including blasting agents, shall be performed only by or under the supervision of a person or persons of proven experience and ability in blasting operations and of dependable character. (7-1-97)
- b.** All operations with explosives shall be conducted in accordance with the requirements of applicable Local, State and Federal Laws. (7-1-97)
- c.** Manufacturer's recommendations in the handling and use of the explosives or powders should be followed. (7-1-97)
- d.** Explosives or blasting powders shall not be stored together with detonators. (7-1-97)
- e.** Handling and use of explosives shall be restricted to as few employees as practical. (7-1-97)
- f.** All drill holes shall be of greater diameter than the diameter of cartridges of explosives used. (7-1-97)
- g.** All holes which have been "Sprung" shall not be loaded until sufficient time has been allowed for the hole to cool. (7-1-97)
- h.** All hand tamping shall be done with wooden tamper. (7-1-97)
- i.** Primers shall have caps firmly seated in cartridges. (7-1-97)
- j.** Where fused detonators (caps) are used, standard crimpers shall be provided and used.
NOTE: Crimping with the teeth is expressly prohibited. (7-1-97)()
- k.** Primers shall not be forced into prepared blasting holes. (7-1-97)
- l.** Fuse selection for each shot or series of shots shall be of ample length to allow adequate escape time. (7-1-97)
- m.** No blasting or preparation for blasting shall be done during the approach or progress of an electrical storm. (7-1-97)
- n.** Before firing shots, clear personnel from area, post a guard at all access routes and the warning "FIRE-IN-THE-HOLE" shall be given. (7-1-97)
- o.** Approved methods of electrical firing shall be used with electric detonators. (7-1-97)
- p.** The number of charges to be fired shall be counted to be certain that no misfires are left before work in the area is resumed. (7-1-97)
- q.** Misfires shall be handled only by an experienced and competent powder man in accordance with procedure recognized by the Institute of Makers of Explosives, U.S. Bureau of Mines or other recognized agencies. (7-1-97)
- r.** Workers handling explosives shall not carry loose caps or primers in their pockets or smoke while in the vicinity of explosives, powder, or caps. (7-1-97)
- s.** Explosives, primers, or caps shall not be carried on any vehicle when transporting employees other than those using the explosives. (7-1-97)
- t.** All detonators, detonating fuses, and explosives left over at the end of the day shall be promptly returned to their proper magazines. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.05 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - SIGNALS AND SIGNAL SYSTEMS

DOCKET NO. 17-0805-0901

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 72-508, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements relating to signaling of dangerous conditions.

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

No fee or charge is being imposed by through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0805-0901

011. SIGNALING.

- 01. One Worker to Give Signals.** (7-1-97)
- a.** ~~Only one (1) worker in any crew shall give signals at the point where chokers are being set. Worker sending drag shall be the only one to give signals.~~ (7-1-97)()
- b.** Any person is authorized to give a stop signal when a worker is in danger or other emergency condition are apparent. (7-1-97)
- 02. Signal Must Be Clear and Distinct.** (7-1-97)
- a.** Machine operators shall not move any line unless the signal received is clear and distinct. (7-1-97)
- b.** If in doubt the operator shall repeat the signal as understood and wait for confirmation. (7-1-97)
- 03. Hand Signal Use Restricted.** (7-1-97)
- a.** Hand signals are permitted only when in plain sight of the operator. (7-1-97)
- b.** Hand signals may be used at any time as an emergency stop signal. (7-1-97)
- 04. Persons in Clear Before Signal Given.** All persons shall be in the clear before a signal is given to move logs or turns. (7-1-97)
- 05. Throwing Material Prohibited.** Throwing of any type of material as a signal is prohibited. (7-1-97)
- 06. Use of Jerk Wire Prohibited.** The use of jerk wire whistle system for any type of yarding operations is prohibited. (7-1-97)
- 07. Audible Signaling to Be Installed and Used.** A whistle, horn or other audible signaling device, clearly audible to all persons in the affected area, shall be installed and used on all machines operating as yarders ~~or swings.~~ (7-1-97)()
- 08. Audible Signaling Device at the Machine to Be Activated.** When radio or other means of signal transmission is used, an audible signal must be activated at the machine. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.08 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - FALLING AND BUCKING

DOCKET NO. 17-0808-0901

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 72-508, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements relating to first aid training by logging cutters, back-cuts of timber, and to make technical corrections to properly identify illustrations of undercuts.

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

No fee or charge is being imposed by through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0808-0901

010. FALLING AND BUCKING.

01. General Requirements. (7-1-97)

a. There shall be an established method of checking the workers in from the woods. Each supervisor shall be responsible for their crew being accounted for at the end of each shift. (7-1-97)

b. Common sense and good judgment must govern the safety of cutters as effected by weather conditions. At no time shall they work if wind is strong enough to prevent the falling of trees in the desired direction or when vision is impaired by weather conditions or darkness. (7-1-97)

c. All cutters shall have a current first aid card, ~~or shall avail themselves of the first opportunity to obtain such training.~~ Employers shall provide an opportunity for cutters to take a standard first aid course. (7-1-97)()

d. Tools of cutters such as axes, sledges, wedges, saws, etc., must be maintained in safe condition. Battered sledges, and wedges shall not be used. When power saws are used, wedges shall be made of soft material, such as wood or plastic. (7-1-97)

e. Cutters shall not be placed on hillsides immediately below each other or below other operations where there is possible danger. (7-1-97)

f. Trees shall not be felled if a falling tree endangers any worker, line, or any unit in operation. (7-1-97)

g. Before starting to fall or buck any tree or snag, the cutter must survey the area for possible hazards and proceed according to safe practices. Snags, which are unsafe to cut, shall be blown down with explosives, or felled by other methods. (7-1-97)

h. Dangerous or hazardous snags shall be felled prior to or in the course of cutting a strip. No danger tree shall be felled by one (1) cutter where and when the assistance of a fellow employee is necessary to minimize the danger or hazards involved. In the case that any danger tree or snag cannot be safely felled and must remain standing or unattended, such tree or snag shall be clearly identified and suitably marked, including all surrounding impact area, and the employee's supervisor shall be notified as soon as possible. (7-1-97)

i. In falling timber, adjacent brush and/or snow shall be cleared away from and around the tree to be felled to provide sufficient room to use saws and axes and provide an adequate escape path. (7-1-97)

j. Cutters shall not fall into another strip; leaners on the line shall be traded. Trees shall be felled into the open whenever conditions permit. (7-1-97)

k. Undercuts and side cuts shall be large enough to safely guide the trees and eliminate the possibility of splitting and/or barber chairing. Particular care shall be taken to hold enough wood to prevent the tree from prematurely slipping or twisting from the stump. Undercuts shall be cleaned out to the full depth of the saw cut. Especially large undercuts are necessary in heavy leaners. When required to safely fell a tree, mechanical or other means shall be employed to accomplish this objective. Pre-cutting of trees for the purpose of production logging is prohibited.

NOTE: Trees with no perceptible lean having an undercut to a depth of one quarter (1/4) of the diameter of the tree with an undercut height equal to one fifth (1/5) of the diameter of the tree will be assumed to be in reasonable compliance with the rule. (7-1-97)

l. Back-cuts shall be ~~even with or~~ above the level of the upper horizontal cut of the undercut. (7-1-97)()

m. While wedging, fallers shall watch for limbs or other material which might be jarred loose. Cutting

of holding wood in lieu of using wedges is prohibited. (7-1-97)

n. When falling or bucking a tree is completed the power saw motor should be stopped. Power saw motor should be stopped while the operator is traveling to the next tree. (7-1-97)

o. Cutters shall not work on the downhill side of the log being bucked unless absolutely unavoidable and only when the log is blocked or otherwise secured to prevent rolling when cut is completed. (7-1-97)

p. Cutters must give timely warning to all persons within range of any log which may have a tendency to roll or slide after being cut off. (7-1-97)

q. Logs shall be completely bucked through whenever possible. If it becomes hazardous to complete a cut, then the log shall be marked and identified by a predetermined method. Rigging crews shall be instructed to recognize such marks and when possible cutters shall warn rigging crew of locations where such unfinished cuts remain. (7-1-97)

r. A competent person properly experienced in this type of work shall be placed in charge of falling and bucking operations. Inexperienced workers shall not be allowed to fall timber or buck logs unless under the direction of an experienced workers. (7-1-97)

s. Power saws shall be kept in good repair at all times. All exhaust parts on power chain saws shall be constructed and maintained so the operator is exposed to a minimum amount of fumes and noise. (7-1-97)

t. Chain saws shall have sprockets and drive end of the bar adequately guarded. Idler ends, when used as two-man saw, shall also be guarded. (7-1-97)

u. Combustion engine driven power saws shall be equipped with a clutch. Saws with faulty clutches shall not be used. (7-1-97)

v. Combustion engine driven power saws shall be equipped with an automatic throttle which will return the motor to idling speed upon release of the throttle. (7-1-97)

w. Power saw motors shall be stopped while being fueled. (7-1-97)

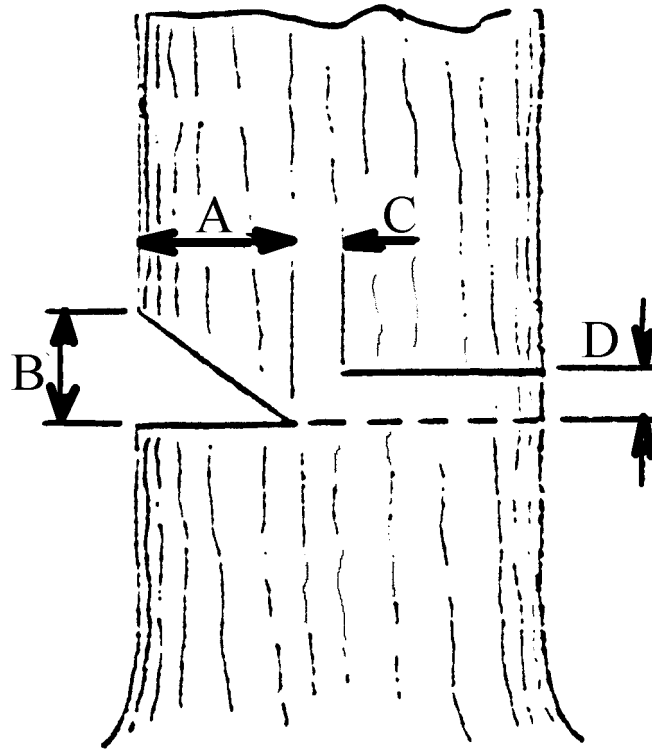
x. All personnel shall wear approved head protection, proper clothing and footwear. (7-1-97)

y. Employees whose normal duties require them to operate a chain saw, shall wear ballistic nylon or equivalent protection covering each leg from upper thigh to boot top, except when working as a climber or working from a bucket truck. (7-1-97)

011. ILLUSTRATION OF UNDERCUTS.

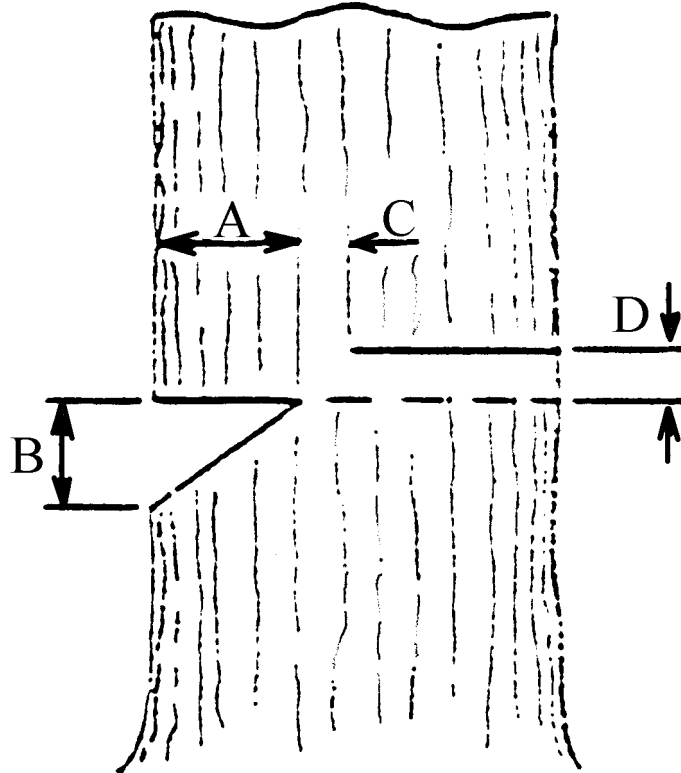
01. Illustration of Undercuts. (7-1-97)

FIGURE 011.01-A - CONVENTIONAL UNDERCUT



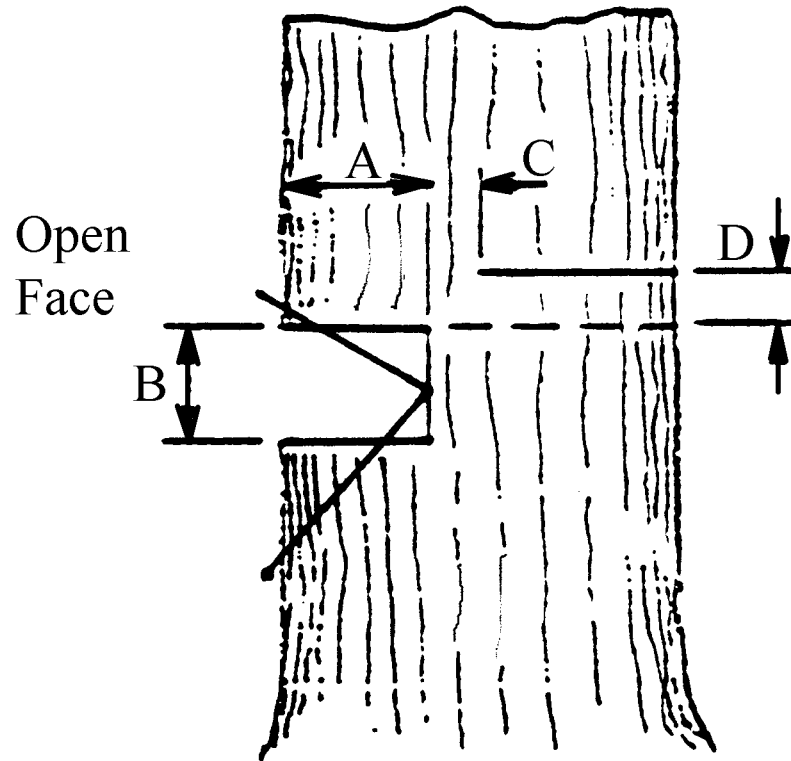
- a. Conventional Undercut (Figure 011.01-A) - Can be made with parallel saw cut and a diagonal cut. (7-1-97)()

FIGURE 011.01-B - HUMBOLT UNDERCUT



b. *Both cuts made with the saw (Figure 011.01-B) -- Leaves square end log. Same as Figure 011.01-A except that waste is on the stump.* Humbolt Undercut (Figure 011.01-B) Both cuts made with the saw (Figure 011.01-B) -- Leaves square end log. Same as Figure 011.01-A except that waste is on the stump. (7-1-97)()

FIGURE 011.01-C



~~c. Two (2) angle cuts with the saw (Figure 011.01 C) -- Used when it is necessary that the face does not close until the tree is near the ground. Open Face Undercut (Figure 011.01-C) Two (2) angle cuts with the saw (Figure 011.01-C) -- Used when it is necessary that the face does not close until the tree is near the ground.~~
(7-1-97)()

FIGURE 011.01-D IS BEING DELETED

~~d. A Humbolt undercut with faced stump (Figure 011.01 D) -- Used to allow the butt of the tree to hit the ground before the top.~~
(7-1-97)()

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.09 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - RIGGING, LINES, BLOCKS, AND SHACKLES

DOCKET NO. 17-0809-0901

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 72-508, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements relating to rope clip fastening.

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

No fee or charge is being imposed by through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
PO Box 83720
Boise, ID 83720-0041
Phone (208) 334-6000
Fax (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0809-0901

012. LINES, SHACKLES AND BLOCKS.

01. General Requirements. (7-1-97)

a. All lines, shackles, blocks, etc., should be maintained in good condition and shall be of sufficient size, diameter and material to withstand one and one half (1 1/2) times the maximum stress imposed. (7-1-97)

b. Wire rope or other rigging equipment shall be replaced which shows a fifteen (15) percent reduction in strength. (7-1-97)

02. Splices. (7-1-97)

a. Two (2) lines may be connected by a long splice, or by shackles of patent links of the next size larger than the line where practical. (7-1-97)

b. Safe margin of line must be used for making long splices. See Table 012.02-A.

TABLE 012.02-A		
Rope Diameter	Unraveled	Total Length
3/8"	8'	16'
5/8"	13'	20'
3/4"	15'	30'
7/8"	18'	36'
1"	20'	40'

(7-1-97)

03. Clips. (7-1-97)

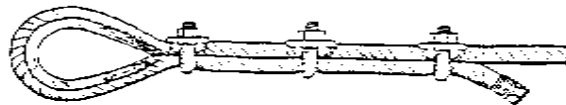
a. Clips should be spaced at least six (6) rope diameters apart to get maximum holding power. See Table 012.03-A.

TABLE 012.03-A		
Diameter of Rope	Number of Clips	Required Space Between Clips
1-1/2-inch	8	10 inches
1-3/8-inch	7	9 inches
1-1/4-inch	6	8 inches
1-1/8-inch	5	7 inches
1- inch	5	6 inches
7/8-inch	5	5-1/4 inches
3/4-inch	5	5-1/2 inches
3/8 to 5/8-inch	4	3 inches

(7-1-97)

b. Should always be attached with the base or saddle of the clip against the longer or “live” end of the rope. See Figure 012.03-A. This is the only right way.

FIGURE 012.03-A



R I G H T

(7-1-97)

c. Do not reverse the clips or stagger them. See Figure 012.03-B. Otherwise the “U” bolt will cut into the live rope when the load is applied.

FIGURE 012.03-B



W R O N G



W R O N G

(7-1-97)

d. After the rope has been used and is under tension the clips should again be tightened to take up any looseness caused by the tension reducing the rope diameter. Remember that even when properly applied a clip fastening has only about ninety percent (90%) of the strength of the rope and far less than that when ~~on wrong rigged~~ improperly. (7-1-97)()

04. Blocks. All blocks must be of steel construction or of material of equal or greater strength and so hung that they will not strike or interfere with other blocks or rigging. (7-1-97)

05. Pins. All pins in blocks shall be properly secured by keys of the largest size the pin hole will accommodate (7-1-97)

06. Shackles. (7-1-97)

a. Spread in jaws of shackles shall not exceed by more than one (1) inch the size of yoke or swivel of the block to which it is connected. (7-1-97)

b. All shackles must be made of forged steel or material of equivalent strength and one (1) size larger than the line it connects. (7-1-97)

07. Cable Cutting. Cable cutters, soft hammers, or cutting torch shall be available and shall be used for cutting cables. (7-1-97)

08. Damaged or Worn Wire Rope. Wire rope worn or damaged beyond the point of safety shall be taken out of service or properly repaired before further use. (7-1-97)

09. Wire Rope Certification. (7-1-97)

a. All wire rope offered for sales shall be certified as to its breaking strength by the manufacturer or vendor in accordance with the U. S. Bureau of Standards specifications. See Table 012.09-A

TABLE 012.09-A -- TYPICAL WIRE ROPE SPECIFICATIONS, (6X19, OR 6X25 IWRC*)					
Cable Dimensions		Improved Plow Steel		Extra-Improved Plow Steel	
Diameter (inches)	Weight per foot (pounds)	Safe working load** (pounds)	Breaking strength (pounds)	Safe working load (pounds)	Breaking strength (pounds)
1/4	0.116	1,960	5,880	2,270	6,800
5/6	0.18	3,050	9,160	3,510	10,540
3/8	.26	4,370	13,120	5,000	15,100
7/16	.35	5,930	17,780	6,800	20,400
1/2	.46	7,700	23,000	89,800	26,600
9/16	.59	9,700	29,000	11,200	33,600
5/8	.72	12,000	36,000	13,700	41,200
3/4	1.04	17,100	53,200	19,600	58,800
7/8	1.42	23,100	69,200	26,500	79,600
1	1.85	30,000	90,000	64,500	103,500
1 1/8	2.34	37,700	113,200	43,300	130,000
1 1/4	2.89	46,300	139,000	53,300	159,800
1 3/8	3.5	55,700	167,000	64,000	192,000
1 1/2	4.16	65,900	197,800	76,000	228,000
1 5/8	4.88	76,000	230,000	88,000	264,000
1 7/8	6.50	101,300	304,000	116,000	348,000
2	7.39	114,739	344,000	132,000	396,000
2 1/8	8.25	128,700	386,000	147,300	442,000
2 1/4	9.36	143,300	430,000	164,700	494,000
2 1/2	11.6	175,300	526,000	201,300	604,000
2 3/4	14.0	209,300	628,000	204,700	722,000

Specifications may vary with different line materials and swedge lines. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.10 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - CANOPY AND CANOPY CONSTRUCTION FOR LOGGING EQUIPMENT

DOCKET NO. 17-0810-0901

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 72-508, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements relating to seatbelts for logging construction equipment.

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

No fee or charge is being imposed by through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

Mindy Montgomery, Director
Industrial Commission
700 South Clearwater Lane
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Boise, ID 83720-0041
Phone (208) 334-6000
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0810-0901

011. TRACTORS AND SIMILAR LOGGING EQUIPMENT.

01. Operating Condition. The general operating condition of a tractor or equipment shall be sufficiently good to ensure the safety of the driver and other workmen. (7-1-97)

02. Guards. All guards shall be kept in place and in good repair at all times when the tractor or similar equipment is used. (7-1-97)

03. Repairs or Adjustments. Repairs or adjustments to clutches, frictions, or other parts of equipment which may cause hazardous movement of equipment shall not be done while engines are running. (7-1-97)

04. Blades or Similar Equipment. (7-1-97)

a. Blades or similar equipment shall be blocked or otherwise securely supported when making repairs or performing other work around such equipment when they are elevated from the ground. (7-1-97)

b. Equipment under repair or adjustment should be tagged out. (7-1-97)

05. Brakes and Steering. (7-1-97)

a. All equipment shall be equipped with a braking system capable of stopping and holding the maximum load on all grades at all times. (7-1-97)

b. Any defect found in braking system or steering devices of any equipment used in skidding or yarding operations shall not be used until repaired or replaced. (7-1-97)

06. Starting of Equipment. Equipment shall be started (cranked) only by the operator or other experienced persons. (7-1-97)

07. Seatbelts. (7-1-97)

a. Seatbelts shall be installed on all tractors and mobile equipment having roll-over protection or in accordance with a design by a Professional Engineer which offers equivalent employee protection. (7-1-97)

b. Seatbelts shall be used ~~unless the equipment operator and the person in charge of the job site have reasonable cause to believe that safety of the operator is jeopardized by wearing a seatbelt~~ when operating any machine equipped with Roll Over Protection Structure (ROPS), Falling Object Protection Structure (FOPS), or overhead guards. (7-1-97)()

08. Pin Connections. (7-1-97)

a. Pin connections are recommended for joints in the structural frame and especially at connections to the tractor frame or similar equipment frame. (7-1-97)

b. Gusset plates shall be installed at each place where individual pieces of pipe are joined. (7-1-97)

09. Sideguards. When practical, sideguards shall be installed to protect the operator from hazards. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

17.08.16 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - RECOMMENDED SAFETY PROGRAM

DOCKET NO. 17-0816-0901

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 72-508, 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 21, 2009.

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

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

The proposed changes are necessary to update the Logging Safety Standards to meet OSHA's current requirements relating to first aid training, and to clarify reporting of injuries and fatalities, management responsibilities, record keeping and establishment of a safety committee.

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

No fee or charge is being imposed by through this rulemaking.

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

There is no impact to the general fund as a result of this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes are not considered controversial and are necessary to meet current OSHA requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alvin Caine, (208) 332-7153.

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 28, 2009.

DATED this 27th day of August, 2009.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0816-0901

004. -- 0087. (RESERVED).

0098. DEFINITIONS.

For definitions refer to IDAPA 17.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007. (7-1-97)

009. ABBREVIATIONS.

For abbreviations, refer to IDAPA 17.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions." ()

(BREAK IN CONTINUITY OF SECTIONS)

011. FIRE AND SAFETY POLICY.

01. Elements. The basic elements or management responsibility for fire and safety policy are enumerated in this section. (7-1-97)

02. Management Leadership. The declaration of the safety policy should be made clear to all levels of supervision, purchasing, engineering, industrial and construction; and to all employees that top management has approved the operation's safety program. (7-1-97)

03. Planning. The program should be based on the following: accounting record of safety cost, accident recording system, accident investigation recommendations, operation inspection recommended corrections, employee suggestions, and job analysis to determine the work hazards. The hazard appraisal can be summarized as follows: mechanical and physical hazards; environmental hazards; and work procedure and practices. (7-1-97)

04. Management Discharge of Duty. (7-1-97)

a. If management is to discharge its duty in proper directing of the fire and safety program, it must organized a definite planned program of continuous supervision and leadership by all facets of the management organization. The very fact that safety must be woven into all operations and activities will not require extra managerial time beyond the ordinary to operate a business successfully, i.e., if the entire management team will assume their safety responsibility. (7-1-97)

b. The first problem of management is to determine the operation hazards. Once these are ascertained and appraised, suitable corrective action can be initiated. If the working unit is operating, the following specific activities should be carried out to find the hazards. These are: job inspection; job analysis; accident investigation (near accident, non-disabling injuries) to determine necessary remedial action to prevent reoccurrence of the accident. (7-1-97)

05. Hazard Appraisal. The partial list of terms covered by appraisals are summarized briefly as follows: mechanical and physical hazards; adequacy of mechanical guarding of machines and equipment; preventing the use of inferior manufactured and unsafe supplies, equipment, chain, cables, sheaves, tires, power saws, tractor canopy guards, approved head protection, fire extinguishers, solvents, mill saws, etc.; and physical exhaustion such as excessive work hours by truck drivers and mill maintenance employees. (7-1-97)

06. Environmental Hazards Inherent to the Operation. (7-1-97)

a. Personal protection devices (approved head protection, ear plugs, knee pads, proper eye protection,

respirators, etc.) (7-1-97)

b. Storage and use of flammable liquids and gases (gasoline, diesel, acetone, acetylene, acids, etc.) (7-1-97)

c. All employees should be familiar with proper work signals (falling, blasting, high lead signals, loading, mill signals, operation fire signal, etc.) (7-1-97)

d. Noise and fatigue hazards that are inherent to the industry (planers, cutoff saws, jack hammers, etc.). (7-1-97)

07. Work Procedures and Practices. (7-1-97)

a. Hazards directly related to work practices should be carefully observed and evaluated. (7-1-97)

b. A few of the important work practices which should be investigated are: use, care and maintenance of hand and portable power tools; degree of supervision given the worker; the extent of job training provided; the safety indoctrination and training of new or transferred employees; the proper use of fire extinguishers; the use of personal protective devices (approved head protection, shoes, etc); and the repair and maintenance of equipment with respect to machines, mechanical handling equipment, log loaders, yarding equipment, tractors, fork lifts, overhead cranes, headrigs, etc; (7-1-97)

08. Reporting of Injuries. (7-1-97)

a. The employer shall instruct all employees to report all job injuries before the shift ends, to the supervisor at the time injuries occur. Checks specifications for new machines, processes and equipment for compliance with existing safety standards, laws and safety requirements, and shall have such equipment fully inspected before it is placed in used. (7-1-97)

b. The employer is responsible for reporting all industrial lost time injuries to the Industrial Commission within forty-eight (48) hours. ()

09. Fatalities. All work fatalities should be immediately reported to the County Sheriff or Coroner, the Industrial Commission, and OSHA. ()

10. Management of Personnel. ()

a. The recruiting and placing of a new worker on the job is a major responsibility of the management organization. Every effort should be made to match the qualifications of the worker with the demands of the job. ()

b. The furnishing of first aid services, treatment of injuries, and inspection of working conditions is the employer's responsibility. ()

11. Assignment of Responsibilities. ()

a. Supervisors, purchasing agents, engineering personnel, safety directors, personnel directors, and employees have certain responsibilities in the fire and safety objectives in every operation. ()

b. Management must accept the normal obligation for preventing accidents. In many operations it is a practice to delegate the actual administration of the safety program to a person who can devote full time to it. In the smaller operations, safety administration may be a collateral duty carried on in conjunction with some other duties. The safety administrator or safety man should function in a staff capacity. Because the safety director operates in a consultant capacity, ultimate responsibility for accident prevention rests with the workers' supervisor, the foreman and line production organization. There is no doubt that the foreman is the key person in every safety program. Safety is not something separate and apart from production. If the job is done right, it is done safely. ()

c. Safety is an integral and important part of production, just as is quality and quantity, or meeting production schedules. ()

d. All these duties are foreman or project superintendent duties, and the most important part of the line production organization. This obligation cannot be delegated. As the person in charge of production, the foreman is responsible for the safety of his people. This fact must be made clear and should be included in the statement of policy. ()

12. Safety Director (Part-Time or Full-Time): ()

a. Makes periodic inspections of the operations and suggests corrective measures to eliminate hazards. ()

b. Should assist in investigation of all types of accidents to determine the cause, so as to prevent like accidents in the future. ()

c. Aids foremen in developing safe work procedures and practices and assists foremen in training their workers. ()

d. Keeps accident records and makes periodic reports to the proper official on the progress being made. Reports and records; report of accidents; accident investigation report; performance report (injury frequency & severity); accident cost report; safety committee reports; report on degree of corrective action taken on different recommendations. ()

e. Conducts or initiates safety training courses including first aid and fire fighting, where appropriate, and any other course inherent to the job (truck driver courses, power saw courses, welding, grinder usage, fork lift truck operator, etc.). ()

f. Establishes safety committee. ()

g. Sees that recommendations are promptly and properly implemented. ()

h. Checks specifications for new machines, processes and equipment for compliance with existing safety standards, laws and safety requirements, and shall have such equipment fully inspected before it is placed in use. ()

bi. He shall assist the safety committee in developing agendas for their meetings. (7-1-97)()

0913. Foreman Responsibilities. No theorem is more thoroughly proven and widely accepted than: the foreman is the key man in attaining proper work habits in any operation. It is the obligation of management to give the most careful attention to the selection, education, and training of foremen and train him in the proper way to train employees in correct and safe work methods to attain the best production in the safest way. (7-1-97)

104. First Aid Training. (7-1-97)

a- It shall be the responsibility of management to arrange to have ~~as many~~ all employees ~~as possible~~ take a full course in first aid training. It is a must that supervisory personnel shall take an approved First Aid Course, and have a current First Aid card. (7-1-97)()

b- It is suggested that log truck drivers take the required Red Cross, ten (10) hour First Aid Course or the Standard Bureau of Mines Aid course, or an approved First Aid Course and hold current card. (7-1-97)

145. Accident Record and Reporting System. (7-1-97)

a. The establishment, in the office of the employer, of an accident record and reporting system which will definitely tie into nationally uniform reporting, record, and statistical requirements United States American Standard Method of Recording and Measuring Work Injury Experiences (Z 16.1). (7-1-97)

b. Injury frequency rates shall be calculated annually on a calendar basis commencing the first of January each year. These rates shall be kept on file in the office of the employer for at least four years after the date of entry thereof, and shall be made available to the Industrial Commission and/or Division of Building Safety, upon request. (7-1-97)

c. The injury frequency rate shall be the number of lost time injuries to all employees per one million (1,000,000) man hours of exposure. The frequency rate is computed by multiplying the number of lost time injuries by one million (the standard of measurement) and dividing the product by the total number of man hours worked during the period. The formula is expressed as follows: Frequency equals the number of lost time injuries times one million (1,000,000) total man hours of exposure. (7-1-97)

d. A lost time injury shall be the term applied to any injury, arising out of, and in the course of employment which makes it impossible for the injured person to return to an established regular job at the beginning of the next regular shift following the shift during which the injury occurred, or some future shift. (7-1-97)

e. Man hours of exposure shall be the total number of man hours actually worked by all personnel in the industrial unit during the period for which the rate is being computed. (7-1-97)

f. Translating the number of injuries in a plant or organization, into frequency rates serves as a standard measure which enables anyone to compare the industrial injury record of the plant with that of other industrial organizations or with national and state frequency rates for the same industry. The standards that shall be used are the United States American Standard Method of Recording and Measuring Work Injury Experiences (Z 16.1). (7-1-97)

126. Training and Education. (7-1-97)

a. Establishment of effective job training methods and safety education. (7-1-97)

b. First Aid courses, proper work signals and job hazard warnings. (7-1-97)

c. Pamphlets, bulletin boards, safety meetings, posters, etc. (7-1-97)

d. The employer shall establish an adequate job training and safety education program. The relationship of safety to job quality and modern quantity production methods should be clearly understood. Good work production is governed by careful planning and accurate control of all phases of the operation. Accidents are the result of inadequate planning of faulty operation. (7-1-97)

e. Safety must be made an essential and integral part of every operation and integrated into the activity if the most successful quantity production is to be attained. The soundness of this statement has been proven many times by comparing the accident cost with the day by day curve of production. (7-1-97)

f. It is the responsibility of management to train employees in all phases of the work he is assigned. The worker training should begin at the time of employment with a careful presentation of the general safety information he must have to work on and in logging and lumbering or wood working operations. When the worker is placed on the job the worker must be given detailed training on proper work methods for accomplishment of the job. The correct way is the safe way. Telling is not training. (7-1-97)

g. People learn to do things primarily through doing. The employee's job training should be given by the five (5) step job training method: (7-1-97)

i. Tell the employee; (7-1-97)

ii. Show the employee; (7-1-97)

iii. Have the employee do it; (7-1-97)

- iv. Correct until the employee does it right; (7-1-97)
- v. Supervise to see that the employee keeps doing it right. (7-1-97)

h. Education and promotion are a supplemental means of reducing injuries. This device employs any number of methods to accomplish results. A good program may use but will not overemphasize emotional appeal to the workers using such devices as scholarships, stamps, posters, safety meetings, contests, and awards. It's management's responsibility to integrate education and training program and balance its effectiveness to employee training. Unsafe acts or unsafe work practices are the result of failure to train workers in safe work procedures. In establishing or operating a safe and quality work program, an appraisal of unsafe work procedures and poor quality of work is called for, and job training methods initiated to correct these practices. (7-1-97)

137. Employer, Employee, and Labor Representative Cooperation. (7-1-97)

a. The workers have a responsibility to obey the units safety rules, smoking rules, report unsafe conditions, to serve on the different safety committees, perform their work in a safe way, and to help fellow workers by showing them how to do their job safely. (7-1-97)

b. Many safety programs fail because the worker has not been made to feel that it is their program; that they can contribute as well as benefit from the program. It failed because it lacks employee participation and interest. The fact that employees are given the opportunity to participate and to contribute to the program not only opens a reservoir of valuable information on practical experience in accident prevention, it also gives the employee a feeling of being a part of the organization. (7-1-97)

c. The committee on safety should be made up of personnel selected from management and workers. Management members are supervisors and worker members may be selected by the union or by the employees. (7-1-97)

d. The labor unions should help develop a safe behavior among the workers. (7-1-97)

148. Maintenance of Safe Working Conditions. (7-1-97)

a. The employer shall provide a safe and healthy work area to work, including purchasing of safe equipment and tools and provide proper maintenance of such equipment. (7-1-97)

b. Since a safe and healthful place to work is the very foundation of the safety program, the mechanical, physical, and environmental conditions will be given first consideration. (7-1-97)

c. For almost every accident there are two (2) contributing causes - an unsafe condition and an unsafe act. A safe and healthful place to work will diminish or eliminate the first cause, the unsafe condition; but unless the unsafe act is corrected; accidents will continue to occur. Unsafe acts may stem from a number of factors, such as improper selection of the worker for the job, lack of job training, physical or mental limitations or inadequate supervision. When a safety program is first established or a new project with a new crew is started, this may necessitate a thorough periodic survey of the entire operation to determine hazards. (7-1-97)

159. Remedial Measures of Corrective Action. (7-1-97)

a. The employees shall support and correct the findings of job analysis, inspections, accident investigations, employee suggestions, etc. (7-1-97)

b. The assumption of responsibility for fire and accident prevention by management carries with it the continuing responsibility to assess the progress being made on the program, and where progress is unsatisfactory to take what steps are necessary to bring about improvement. Inspection alone is primarily a means of finding and eliminating fire and physical hazards, particularly in connection with enforcement. All educational and promotional activities should be integrated with inspection activities, and should be based on the specific needs of the establishment or operation. Inspection and educational and promotional programs are sometimes looked upon as entirely unrelated activities rather than a single integrated program. (7-1-97)

c. None of the foregoing activities are of value unless followed by effective corrective action. The responsible executive of top management must establish specific procedures to effect proper and complete corrective action in each area for problems that occur. In well managed establishments the areas of responsibility are clearly defined. The activities are well coordinated, supervision is good, employees safety behavior is excellent, and policies are well defined to permit smooth organization. This is not difficult; the corrective measures are applied as part of the day by day operating procedure. (7-1-97)

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.44 - SCHEDULE OF FEES, LICENSES AND MISCELLANEOUS CHARGES

DOCKET NO. 18-0144-0902 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 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 Sections 41-211, 41-401, and 41-5911(6), 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 21, 2009.

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:

House Bill 192 (Chapter 59, Title 41, Idaho Code) creates a process for external review of claim denials by health insurers. The law applies to health insurance policies issued on or after January 1, 2010, and requires that, upon request by a policyholder whose claim is denied for certain reasons, the Department of Insurance must assign the claim to a qualified Independent Review Organization (IRO). Organizations wishing to act as IROs must submit an application to the Department seeking approval and meet certain requirements, and must apply for reapproval every two years. This rulemaking imposes a fee of \$500 for the initial application by an IRO and a \$300 fee for reapproval every two years.

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:

The rule is necessary to protect the public health, safety, or welfare, and to comply with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Independent Review Organizations will be required to pay an initial approval fee of \$500 and a biennial reapproval fee of \$300. The fee is authorized by Section 41-5911(6), Idaho Code.

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

No negative fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes made by this rulemaking were needed to conform the existing rule to changes in state law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest at 208-334-4250.

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 28, 2009.

DATED this 20th day of August, 2009.

Shad Priest, Deputy Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 18-0144-0902

030. PRODUCER AND MISCELLANEOUS LICENSING FEES.

01. Original License Application. The following fees are due and must be paid with the filing application for original license, which fees include the issuance of a license, if issued: (3-13-02)

- a. Administrators -- three hundred dollars (\$300). (7-1-00)
- b. Producers -- eighty dollars (\$80). (3-13-02)
- c. Designation as a managing general agent -- eighty dollars (\$80). (3-13-02)
- d. Adjusters -- eighty dollars (\$80). (3-13-02)
- e. Reinsurance intermediary -- eighty dollars (\$80). (3-13-02)
- f. Surplus line brokers -- eighty dollars (\$80). (3-13-02)
- g. Life settlement providers -- five hundred dollars (\$500). (7-1-09)T
- h. Life settlement brokers -- three hundred dollars (\$300). (7-1-09)T

i. Independent review organization (biennial) -- five hundred dollars (\$500) for initial approval and three hundred dollars (\$300) for reapproval. (11-1-09)T

02. Examination Fees. The following fees are due and must be paid in order to take examinations for the following licenses: (3-13-02)

- a. Producers and adjusters -- application for examination and each time taken -- sixty dollars (\$60). (3-13-02)

03. Fingerprint Processing. Processing fingerprints (when required) -- sixty dollars (\$60). (7-1-00)

04. License Renewal. The following fees are due and must be paid for each license in order to renew or continue each and every license: (3-13-02)

- a. Adjusters, producers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. (3-16-04)

- b.** Redesignation as managing general agent (annual) -- eighty dollars (\$80). (3-13-02)
- c.** Administrators (biennial) -- eighty dollars (\$80). (3-19-07)
- i.** Renewal form shall be filed on or before December 31. (3-19-07)
- ii.** Any renewal form postmarked after December 31 shall include a penalty in an amount equal to the renewal fee. (3-19-07)
- iii.** A renewal form postmarked after January 31 must be submitted as a new application with supporting documents and the full application fee. (3-19-07)
- d.** Surplus line brokers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. (3-16-04)
- e.** Life settlement providers (biennial) -- three hundred dollars (\$300). (7-1-09)T
- f.** Life settlement brokers (biennial) -- eighty dollars (\$80). (7-1-09)T
- g.** Independent review organization (biennial) -- five hundred dollars (\$500) for initial application for approval and three hundred dollars (\$300) for reapproval. (11-1-09)T

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.53 - CONTINUING EDUCATION

DOCKET NO. 18-0153-0901

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 41-1013, 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 21, 2009.

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

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

IDAPA 18.01.53.012.01.b. states that three hours of law or ethics must be earned in each licensing period. This Subsection is being amended to delete the law requirement, since this is not required under the NAIC Producer Licensing Model Act and is not uniform with the model act provisions.

IDAPA 18.01.53.016 adds general subjects acceptable for public adjusters.

IDAPA 18.01.53.019 is being amended to add additional language to outline the qualification and standards that must be met to give credit to courses taught on-line.

IDAPA 18.01.53.021.01 is being amended to require reporting of course completion within one-hundred and eighty (180) days or at least thirty (30) days prior to the producer's license expiration date. This is to accommodate the processing of renewal applications and the verification of completion of Continuing Education Requirements.

IDAPA 18.01.53.024 addresses requirements for pursuing independent study courses.

IDAPA 18.01.53.025.02 gives additional credit when an individual teaches a course for credit. The Continuing Education requirements were decreased from forty (40) to twenty four (24) hours several years ago. The present standard of twenty four (24) hours is considered to be a minimal standard and the additional credit given for teaching is no longer necessary.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed and decided upon by a committee made up of representatives of the affected industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Genetti, 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 28, 2009.

DATED this 28th day of August, 2009.

Jim Genetti
Bureau Chief
Idaho Department of Insurance
700 W. State Street - 3rd Floor
P.O. Box 83720, Boise ID 83720-0043
Phone: 208/334-4250
Fax: 208/334-4398
E-mail: jim.genetti@doi.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0153-0901

011. APPLICABILITY.

01. Applicability to Certain Insurance Professionals. This rule applies to all resident producers licensed by the Department of Insurance except for producers licensed to sell only “limited lines (other than crop) insurance” as defined by Title 41, Chapter 10. ~~(5-3-03)~~()

02. High Standards for Programs. The Department of Insurance anticipates and expects that licensees will maintain high standards of professionalism in selecting quality education programs to fulfill the continuing education requirements set forth herein. (7-1-93)

012. BASIC REQUIREMENTS.

01. Proof of Completion. As a condition for the continuation of a license, a licensee must furnish the Director of the Department of Insurance (“Director”), on or before the licensing renewal date, proof of satisfactory completion of approved subjects or courses meeting the following requirements: (4-5-00)

a. Twenty-four (24) hours of continuing education credit during each licensing period, which licensing period is for two (2) years. (3-20-04)

b. At least three (3) hours of continuing education credit in ~~insurance law and/or~~ ethics must be earned each licensing period. The ethics courses must be stand-alone courses and not part of other courses. ~~(3-20-04)~~()

c. No more than four (4) hours of continuing education credit from courses approved for public adjusters shall apply toward the continuation of a producer license. ()

02. Relicensing Procedures After Voluntary Termination of License. An insurance agent who voluntarily terminates his/her license can apply to be relicensed without testing if the application is received by the Department within twelve (12) months after the termination and if the continuing education requirements were completed during the licensing period prior to voluntary termination. Non-resident insurance agents who were former resident agents and who wish to obtain a resident license once again will be subject to the continuing education requirements on a pro-rata basis. (4-5-00)

03. Completion Within Two Years. Each course to be applied toward satisfaction of the continuing education requirement must have been completed within the two (2) year period immediately preceding renewal of the license. Courses may not have been duplicated in the same renewal period. The date of completion for a self-study course is the date of successful completion of exam. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

016. PROGRAMS WHICH QUALIFY.

01. Requirements of Acceptable Program. A specific program will qualify as an acceptable continuing education program if it is a formal program of learning which contributes directly to the professional competence of a licensee. It will be left to each individual licensee to determine the course of study to be pursued. All programs must meet the standards outlined in Section 018. (7-1-93)

02. Subjects Which Qualify. (7-1-93)

a. The following general subjects are acceptable as long as they contribute to the knowledge and professional competence of an individual licensee as a producer and demonstrate a direct and specific application to insurance. (3-20-04)

- i. Insurance, annuities, and risk management. (7-1-93)
- ii. Insurance laws and rules. (7-1-93)
- iii. Mathematics, statistics, and probability. (7-1-93)
- iv. Economics. (7-1-93)
- v. Business law. (7-1-93)
- vi. Finance. (7-1-93)
- vii. Taxes, Trusts, Estate Planning. (4-5-00)
- viii. Business environment, management, or organization. (7-1-93)
- ix. Securities. (7-1-98)

b. The following general subjects are acceptable for public adjusters as long as they contribute to the knowledge and professional competence of an individual licensee and demonstrate a direct and specific application to adjusting. ()

- i. Insurance. ()
- ii. Insurance laws and rules. ()
- iii. Mathematics, statistics, and probability. ()
- iv. Economics. ()
- v. Business law. ()
- vi. Restoration. ()
- vii. Communications. ()
- viii. Arbitration. ()
- ix. Mitigation. ()

x. Glass replacement and/or repair. ()

bc. Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule. The responsibility for substantiating that a particular program meets the requirements of this rule rests solely upon the licensee. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

019. MEASUREMENT OF CREDIT.

01. Credits Measured in Full Hours. Professional education courses shall be credited for continuing education purposes in full hours only. The number of hours shall be equivalent to the actual number of contact hours which must include at least fifty (50) minutes of instruction or participation. As an example, a program will be granted eight (8) hours of credit if the total lapsed time is approximately eight (8) hours and the contact time is at least four hundred (400) minutes. The approved credit hours assigned a course determines the number of hours participants are required to complete. No credit will be given for partial attendance. (7-1-93)

02. College Courses. University or college upper division credit or noncredit courses shall be evaluated as follows: (7-1-93)

a. Credit courses -- each semester system credit hour shall not exceed fifteen (15) hours toward the requirement; each quarter system credit hour shall not exceed ten (10) hours. The final number of credits shall be determined by the Continuing Education Advisory Committee. (7-1-93)

b. Non-credit courses -- number of credits to be determined by the Continuing Education Advisory Committee. (7-1-93)

03. Internet Courses. Internet self-study courses will be credited one (1) hour of continuing education for every fifty (50) minutes of study material, excluding exams. Credit will be given based on the information received in accordance with Section 021 of these rules. ()

04. Webinar Courses. Webinars will be credited as classroom instruction or participation. In the event one course encompasses multiple webinars and self-study is required between webinars, the self-study material must be submitted to the Continuing Education Advisory Committee to be evaluated for additional credit in accordance with Section 021 of these rules. ()

05. Power Point Courses. Power point course presentations will be evaluated as follows: ()

a. Each power point slide must be accompanied by a timed outline of the subject matter to be presented. ()

b. Credit will be given based on the information received in accordance with Section 021 of these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

021. APPROVED PROGRAMS OF STUDY - CERTIFICATION BY DIRECTOR.

01. Requirements of Course Approval. All courses must be approved by the Continuing Education Advisory Committee and certified by the Director, except as noted under program requirements pursuant to Section 015. If a course is not approved in advance of presentation, an application for credit must be submitted to the

Continuing Education Advisory Committee within sixty (60) days of completion of the course on forms promulgated by the Director, with the exception of an individual licensee who may submit an application for courses completed within ~~the license renewal period if the licensee does so prior to his/her renewal date~~ one hundred eighty (180) days of the course completion date and at least thirty (30) days prior to the license expiration date. All correspondence courses or individual study programs must be approved and certified in accordance with Section 024 prior to being offered to licensees for continuing education credit. (5-3-03)(____)

02. Nonrefundable Application Fee. Each course application shall be accompanied by a nonrefundable application fee (as set forth in IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges"). (7-1-93)

03. Course Approval Procedures. Any individual, school, insurer, industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved subjects shall apply for such approval to the Director on forms approved by the Director or on other forms which provide information including but not limited to the following: (5-3-03)

- a. A specific outline and/or course material; (7-1-93)
- b. Time schedule; (7-1-93)
- c. Method of presentation; (7-1-93)
- d. Qualifications of instructor; and (7-1-93)
- e. Other information supporting the request for approval. (7-1-93)

04. Method to Determine Completion Required. The submission shall include a statement of the method used to determine the satisfactory completion of an approved subject. Such method may be a written examination, a written report by the agent, certification by the providing organization of the agent's program attendance or completion, or other methods approved by the Director as appropriate for the subject. (7-1-93)

05. Final Acceptance/Rejection of Program. Except as noted under Section 015, all continuing education course material received will be submitted to the Continuing Education Advisory Committee who will approve or deny the course or program as qualifying for credit, indicate the number of hours that will be awarded for approved subjects, and refer the class, seminar, or program to the Director for his certification. In cases of denial, the Continuing Education Advisory Committee will furnish a written explanation of the reason for such action. (5-3-03)

06. List of Programs Certified Acceptable. The Director will provide, upon request, a list of all programs currently available which the Department of Insurance has certified. (7-1-93)

07. Certification of Program. Certification of a program may be effective for a period of time not to exceed two (2) years or until such time as any material changes are made in the program, after which it must be resubmitted to the Continuing Education Advisory Committee for its review and approval. (7-1-93)

08. Advertising Programs Prior to Certification. If any course has not been approved and certified by the Director before the date on which it is to be presented, the course may be advertised or presented as "continuing education credits have been applied for" but shall not be represented or advertised in any manner as "approved" for continuing education credit. (5-3-03)

022. PROOF OF COMPLETION.

Upon completion of a class, program, or course of study, the authorized representative of the sponsoring organization shall, within ~~sixty~~ thirty (30) days of completion of the course: (7-1-93)(____)

01. Certificate of Completion. Provide a certificate of completion to each individual who satisfactorily completes the class, program, or course of study; and (7-1-93)

02. Certification of Attendees Completion. Certify to the Director electronically a list of all such

individuals, ~~specifying whether the determination of satisfactory completion was based upon attendance, written report, or examination.~~ (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

024. CREDIT FOR INDIVIDUAL STUDY PROGRAMS.

01. Requirements for Credit of Independent Study Programs. All approved correspondence courses or independent study programs must include an examination which requires a score of seventy percent (70%) or better to earn a certificate of completion. For each approved course, the sponsoring organization shall maintain multiple tests (two (2) or more) sufficient to maintain the integrity of the testing process. A written explanation of test security and administration methods shall accompany the course examination materials. Producers must enroll and pay for courses before receiving access to course materials. Exams may not be accessed prior to course review. Exams must not be available for downloading. Each unit and/or chapter of a course must contain review questions that must be answered before access to the following unit/chapter is allowed. Final exam questions must not duplicate unit/chapter questions. Course materials must not be accessible once the exam has been opened. Online course submissions must include access codes for review by the Continuing Education Advisory Committee. The examinations shall be administered, graded, and the results recorded by the organization to which approval was originally granted. Completed tests shall be retained by the sponsoring organization and shall not be returned to any licensee. (7-1-93)(____)

02. Prior Approval Required for Independent Study Programs. All correspondence courses or individual study programs must be submitted for approval and must be approved prior to being offered to licensees for continuing education credit. (7-1-93)

03. Time Period for Credit. Credit will be allowed only in the renewal period in which the course is completed. (7-1-93)

025. CREDIT FOR SERVICE AS LECTURER, DISCUSSION LEADER, OR SPEAKER.

~~**01. Credit for Instructor.** One (1) hour of continuing education credit will be awarded for each hour completed as an instructor or discussion leader, provided the class or program is certified by the Director and meets the continuing education requirements of those attending. (7-1-93)(____)~~

~~**02. Additional Credit for Instructor.** In addition, an instructor or discussion leader may claim an additional one (1) hour of credit for advance preparation for each one (1) hour of teaching, provided the time is actually devoted to preparation. For example, an instructor may claim up to twelve (12) hours of credit for teaching a six (6) hour course. Credit for either preparation or presentation will only be granted once for each course or program, not for successive preparation or presentations. (7-1-93)~~

IDAPA 19 - STATE BOARD OF DENTISTRY
19.01.01 - RULES OF THE STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-0901
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 54-912, Idaho Code.

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

THURSDAY, OCTOBER 15, 2009 - 10:00 A.M.

OFFICE OF THE IDAHO BOARD OF DENTISTRY
350 North 9th Street
Suite M-100
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:

Rule 045: The proposed rule change provides for licensure of dental specialists by making the rule more inclusive. It defines the procedures necessary for specialty examinations for licensure.

Rule 050: The proposed rule change provides that not more than eight (8) of the required continuing education credits for license renewals for dentists be from self-study.

Rule 051: The proposed rule change provides that not more than six (6) of the required continuing education credits for license renewals for dental hygienists be from self-study.

Rule 062: The proposed rule change provides that a dentist may use other anesthesia personnel in his office during dental procedures without the necessity of having an anesthesia permit, so long as the dentist's facilities meet the same requirements as a dentist who holds a permit.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the relatively simple nature of the rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Arthur R. Sacks, 208-334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 26th day of August, 2009.

Arthur R. Sacks
Executive Director
Idaho State Board of Dentistry
350 North 9th Street, Suite M-100, Boise, ID 83702
P. O. Box 83720, Boise, ID 83720-0021
Phone: 208-334-2369
Fax: 208-334-3247

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 19-0101-0901

045. LICENSURE OF DENTAL SPECIALISTS (RULE 45).

01. ~~Qualifications~~ Requirements for Specialty Licensure. Each applicant shall have a general license for the practice of dentistry in the state of Idaho or another state. Any applicant who desires to be licensed in one (1) of the Board recognized specialties, which include and are limited to Dental Public Health, Endodontics, Oral and Maxillofacial Pathology, Oral and Maxillofacial Radiology, Oral and Maxillofacial Surgery, Orthodontics, Pediatric Dentistry, Periodontics, and Prosthodontics, must be a graduate of and hold a certificate from both a dental school and a Graduate Training Program that are accredited by the Commission on Dental Accreditation of the American Dental Association. ~~Any dentist licensed in Idaho who has met the educational requirements and standards approved by the Board, and who has practiced in a Board recognized specialty prior to February 1, 1992, may be granted a specialty license by the Board without undergoing examination.~~ (4-6-05)()

02. Application. Application for license to practice a recognized dental specialty must be filed in the office of the Board of Dentistry, Statehouse Mail, Boise, Idaho. The application must be attested before a notary public. (7-1-93)

03. Examination. Specialty licensure in those specialties recognized may be granted solely at the discretion of the Idaho State Board of Dentistry. An examination covering the applicant's chosen field may be required and, if so, will be given by the Idaho State Board of Dentistry or its agent. Applicants who have met the requirements for licensure as a specialist may be required to pass an examination as follows: ()

a. Applicants who have passed a general licensure examination acceptable to the Board may be granted specialty licensure by Board approval. ()

b. Applicants who have passed a general licensure examination not acceptable to the Board may be required to pass a specialty examination. ()

c. ~~Candidates~~ Applicants who are certified by the American Board of that particular specialty as of the date of application for specialty licensure, ~~and who meet the qualifications set forth in the Board's Rules,~~ may be granted specialty licensure by Board approval. (3-20-04)()

04. Limitation of Practice. No dentist shall announce or otherwise hold himself out to the public as a specialist unless he has first complied with the requirements established by the Idaho State Board of Dentistry for such specialty and has been issued a specialty license authorizing him to do so. Any individual granted a specialty license must limit his practice to the specialty(s) in which he is licensed. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

050. CONTINUING EDUCATION FOR DENTISTS (RULE 50).

Effective October 1994, renewal of any active dental license will require evidence of completion of continuing education or volunteer dental practice that meets the following requirements. (4-6-05)

01. Requirements: (3-18-99)

a. All active dentists must hold a current CPR card. (7-1-93)

b. All active dentists shall acquire thirty (30) credits of continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. (3-30-07)

c. Continuing education must be oral health/health-related for the professional development of a dentist. The thirty (30) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, and viewing of videotape or listening to other media devoted to dental education. Not more than eight (8) of the required credits shall be obtained through self-study. (~~3-30-07~~)()

d. A dentist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)

e. Any person who becomes licensed as an active dentist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)

02. Documentation. In conjunction with license renewal, the dentist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)

051. CONTINUING EDUCATION FOR DENTAL HYGIENISTS (RULE 51).

Effective April 1994, renewal of any active dental hygiene license or dental hygiene license endorsement will require evidence of completion of continuing education or volunteer dental hygiene practice that meets the following requirements. (4-6-05)

01. Requirements for Renewal of an Active Status Dental Hygiene License: (4-6-05)

a. All active dental hygienists must hold a current CPR card. (6-2-92)

b. All active dental hygienists shall acquire twenty-four (24) credits of continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. (3-30-07)

c. Continuing education must be oral health/health-related education for the professional development of a dental hygienist. The twenty-four (24) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, viewing of videotape or listening to other media devoted to dental hygiene education. Not more than six (6) of the required credits shall be obtained through self-study. (~~3-30-07~~)()

d. A dental hygienist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental hygiene practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)

e. Any person who becomes licensed as an active dental hygienist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)

02. Requirements for Renewal of an Extended Access Dental Hygiene License Endorsement. In addition to any other continuing education requirements for renewal of a dental hygiene license, a person granted an

extended access dental hygiene license endorsement shall complete twelve (12) credits of continuing education in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. Any person who is issued an extended access dental hygiene license endorsement during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of those continuing education credits required under this section as specified by the Board. (3-30-07)

03. Documentation. In conjunction with license and endorsement renewal, the dental hygienist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental hygiene practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

062. USE OF OTHER ANESTHESIA PERSONNEL (RULE 62).

~~A dentist who does not hold an anesthesia permit may performing dental procedures in a dental office who utilize the services of on a patient who receives anesthesia induced by an anesthesiologist, a certified registered nurse anesthetist (CRNA), or another dentist with an anesthesia permit, must possess an anesthesia permit required under these rules for the level of anesthesia being provided to the patient. as follows: (4-5-00)()~~

01. Personnel and Equipment Requirements. ~~The dentist shall have the same personnel, facilities equipment, and drugs available during the procedure and during recovery as required of a dentist who has a permit for the level of anesthesia being provided. ()~~

02. Patient's Condition Monitored Until Discharge. ~~The qualified anesthesia provider who induces anesthesia shall monitor the patient's condition until the patient is discharged and record the patient's condition at discharge in the patient's dental record as required by the rules applicable to the level of anesthesia being induced. The anesthesia record shall be maintained in the patient's dental record and is the responsibility of the dentist who is performing the dental procedures. ()~~

03. Use of Services of a Qualified Anesthesia Provider. ~~A dentist who intends to use the services of a qualified anesthesia provider shall notify the Board in writing of his intent. Such notification need only be submitted once every licensing period. ()~~

04. Advertising. ~~A dentist who intends to use the services of a qualified anesthesia provider may advertise the service provided so long as each such advertisement contains a prominent disclaimer that the service "will be provided by a qualified anesthesia provider." ()~~

IDAPA 20 - DEPARTMENT OF LANDS

20.03.04 - RULES GOVERNING THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking, as well as changes pertaining to docket no. 20-0317-0901 also published in this Bulletin, will be held. The purpose of the hearing is to gather public comments on the proposed rules.

THURSDAY, OCTOBER 15th, 2009 -- 8 a.m. to 12 noon

**3780 Industrial Avenue South
Coeur d'Alene, 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 Idaho Department of Lands (IDL) is initiating this rulemaking to clarify and correct some of the rule changes approved in 2008. The issues to be addressed by this rulemaking include, but are not limited to, removing the actual fee amounts from the rules and allowing the Board to set the fees subject to the maximum fee amounts in Section 58-13, Idaho Code, clarifying several definitions and encroachment standards, allowing some boat lifts to be approved with an abbreviated permitting process, and providing for lake specific encroachment standards. This rulemaking will be conducted in conjunction with the IDAPA 20.03.17 rulemaking.

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

No changes to the existing fees are proposed.

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

This is a general fund program. The department does not anticipate any fiscal impacts on the state general fund due to the proposed changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted.

The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7 page 97. Negotiations were conducted over three (3) meetings in June, 2009.

ASSISTANCE ON TECHNICAL QUESTIONS, AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

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 28, 2007.

DATED this 27th day of August, 2009.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
PO Box 83720, Boise, Idaho 83720
(208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0304-0901

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (4-2-08)

01. International Building Code ©. 2006 Edition published by the International Code Council © and available on the Internet at: <http://www.icesafe.org>; **2008 National Electrical Code**. The 2008 National Electrical Code is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642. (4-2-08)()

02. 2003 Uniform Plumbing Code. The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. ()

023. United States Aid to Navigation System. Prepared by the United States Coast Guard and available on the Internet at: <http://www.uscgboating.org/safety/aton/system.htm>. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)

02. Aids to Navigation. Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. (4-2-08)

03. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (4-2-08)

04. Beds of Navigable Lakes. The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)

05. Board. The Idaho State Board of Land Commissioners or its designee. (4-2-08)

- 06. Boat Garage.** A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. (4-2-08)
- 07. Boat Lift.** A mechanism for mooring boats partially or entirely out of the water. (4-2-08)
- 08. Boat Ramp.** A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. (4-2-08)
- 09. Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (4-2-08)
- 10. Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. (4-2-08)
- 11. Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock. (4-2-08)
- 12. Covered Slip.** A slip, or group of slips, with a tubular frame, fabric canopy, and ~~no~~ eaves that do not extend beyond the underlying dock. ~~(4-2-08)~~(____)
- 13. Department.** The Idaho Department of Lands or its designee. (4-2-08)
- 14. Director.** The head of the Idaho Department of Lands or his designee. (4-2-08)
- 15. Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (4-2-08)
- 16. Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes and ~~floating toys~~ boat garages. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments." ~~(4-2-08)~~(____)
- 17. Floating Home or Float Home.** A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. (4-2-08)
- 18. Floating Toys.** ~~Non-navigational encroachments including, but not limited to, trampolines, inflatable structures, water ski courses, and other recreational equipment not moored to a dock.~~ Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. ~~(4-2-08)~~(____)
- 19. Jet Ski Ramp, Port, or Lift.** A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. (4-2-08)
- 20. Line of Navigability.** A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. (4-2-08)
- 21. Low Water Mark.** That line or elevation on the bed of a lake marked or located by the average low

water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. (4-2-08)

22. Moorage. A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. (4-2-08)

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (9-13-90)

24. Navigable Lake. Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (4-2-08)

25. Party. Each person or agency named or admitted as a party, or ~~property~~ properly seeking and entitled as of right to be admitted as a party ~~to a hearing on an application for an encroachment.~~ (9-13-90)()

26. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (4-2-08)

27. Piling. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. (4-2-08)

28. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (4-2-08)

30. Public Trust Doctrine. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-19-99)

31. Pylon. A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. (4-2-08)

32. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (4-2-08)

33. Riparian or Littoral Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. (4-2-08)()

34. Riparian or Littoral Right Lines. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (4-2-08)

35. **Side Tie.** Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (4-2-08)
36. **Single-Family Dock.** A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (4-2-08)
37. **Slip.** Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. (4-2-08)
38. **Submerged Lands.** The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)
39. **Two-Family Dock.** A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (4-2-08)
40. **Upland.** The land bordering on navigable lakes, rivers, and streams. (4-2-08)

011. ABBREVIATIONS.

01. **IDAPA.** Idaho Administrative Procedure Act. (4-2-08)
02. **ATON.** Aids to Navigation. (4-2-08)
03. **HDPE.** High-Density Polyethylene. ()

(BREAK IN CONTINUITY OF SECTIONS)

015. ENCROACHMENT STANDARDS.

01. **Single-Family and Two-Family Docks.** The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)
- a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. (4-2-08)
- b. Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (4-2-08)
- c. No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of ~~navigaton~~ navigability. (4-2-08)()
- d. A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of ~~navigaton~~ navigability. (4-2-08)()
02. **Community Docks.** (7-1-98)
- a. A community dock shall be considered a commercial navigational aid for purposes of processing the application. (4-2-08)

b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. (4-2-08)

c. A community dock shall not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (4-2-08)

d. If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (4-2-08)

e. A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the department: (4-2-08)

i. A new application for an encroachment permit. (4-2-08)

ii. Text and drawings that describe which moorage will be public and which moorage will be private. (4-2-08)

03. Commercial Marina. (4-2-08)

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public. ~~Such use may range from providing day moorage on either a first come, first served basis for free or rent, to renting or leasing moorage a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, but the so long as a renewal term may does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization.~~ (4-2-08)(____)

b. Commercial marinas that change are converted to a community dock ~~use~~ must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change. (4-2-08)(____)

c. If local city or county ordinances governing parking requirements for marinas have not been adopted, ~~Commercial marinas shall~~ must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages, and one (1) parking space per ~~two (2) float home moorages~~ one (1) private watercraft or float home moorage. In the event of conflict, the local ordinances shall prevail. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted. (4-2-08)(____)

d. If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. (4-2-08)

e. ~~Commercial marinas must have a minimum of fifty percent (50%) of their boat moorage available for use by the general public.~~ (4-2-08)

fe. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. ~~Private moorage is created when one (1) of the following occurs:~~ (4-2-08)(____)

i. ~~Moorage is rented or leased for longer than one (1) year without requiring a renewal.~~ (4-2-08)

ii. ~~Moorage is acquired with a purchase as described in Paragraph 015.03.a. of these rules.~~ (4-2-08)

gf. When calculating the moorage percentage, the amount of public moorage shall be compared to the

amount of private moorage. Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages. (4-2-08)

hg. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.gf. of these rules. ~~(4-2-08)~~(____)

ih. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands." (4-2-08)

ji. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private. (4-2-08)

04. Covered Slip. (4-2-08)

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. (4-2-08)

b. Slip covers should have colors that blend with the natural surroundings and are approved by the department. (4-2-08)

c. ~~Covered slips~~ Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. ~~(4-2-08)~~(____)

d. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: (4-2-08)

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (4-2-08)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (4-2-08)

05. Boat Garage. (4-2-08)

a. Boat garages are considered nonnavigational encroachments. (4-2-08)

b. Applications for permits to construct new boat garages, or to expand the total square footage of the existing footprint, will not be accepted unless the application is to support local emergency services. (4-2-08)

c. Existing permitted boat garages may be maintained or replaced at their current size. (4-2-08)

d. Relocation of an existing boat garage will require a permit. (4-2-08)

06. Breakwaters. Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (4-2-08)

07. Seawalls. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. (4-2-08)

08. Riprap. (4-2-08)

a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (4-2-08)

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. (4-2-08)

09. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner shall be allowed. (4-2-08)

10. Float Homes. (4-2-08)

a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. (4-2-08)

b. Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements: (4-2-08)

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed according to the International Building 2003 Uniform Plumbing Code, as incorporated by reference in Subsection 004.02 of these rules, installed properly, and has been pressure tested. (4-2-08)(____)

c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. (4-2-08)

d. All plumbing and electrical work on float homes must be done in accordance with the International Building 2003 Uniform Plumbing Code and the 2008 National Electrical Code, as incorporated by reference in Section 004 of these rules. (4-2-08)(____)

e. All float homes that are hooked to upland sewer or septic systems must be inspected and certified every year by a professional plumber licensed in the state of Idaho. Permittees or their designee are responsible for providing this documentation to the department. All float homes in Idaho that connect with upland sewer or septic systems should implement the following standards by January 1, 2012: (4-2-08)(____)

i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed. (____)

ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland

system. ()

iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe shall not significantly reduce the interior diameter. ()

iv. The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. ()

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. ()

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the department before the above date. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet these standards by December 31, 2012. Extensions beyond January 1, 2017 will not be allowed. Failure to meet these deadlines will be a violation of these rules and subject to the provisions of Section 080 of these rules. ()

g. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho. ()

11. Excavated or Dredged Channel. (4-2-08)

a. Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. (4-2-08)

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental ~~degradation~~ degradation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. (~~4-2-08~~)()

c. Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. (~~4-2-08~~)()

12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. (4-2-08)

13. General Encroachment Standards. (4-2-08)

a. Square Footage. The square footage ~~requirements~~ limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: (~~4-2-08~~)()

i. Boat lifts ~~that provide less shading than dock structures and as described in~~ as allowed pursuant to Paragraph 015.13.b. (~~4-2-08~~)()

ii. Jet ski ramp, port, or lift as ~~described in~~ allowed pursuant to Paragraph 015.13.b. (~~4-2-08~~)()

- iii. Slip covers. (4-2-08)
- iv. Undecked portions of breakwaters. (4-2-08)
- b.** Boat Lifts and Jet Ski Lifts. (4-2-08)
- i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
- ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
- iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee shall send a revised permit drawing with the lift location as an application to the department. If the lift meets the conditions outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii., it shall be approved as submitted. Future applications shall include the lifts. ()
- ~~vi.~~ Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (~~4-2-08~~)()
- c.** Angle from Shoreline. (4-2-08)
- i. Where feasible, all docks, piers, or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. (4-2-08)
- ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. (4-2-08)
- d.** Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. (4-2-08)
- e.** Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. (4-2-08)
- f.** Weather Conditions. Encroachments and their building materials shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately

secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. shall be reasonably resistant to puncture and other damage. (4-2-08)

g. Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. (4-2-08)

h. Overhead Clearance. (4-2-08)

i. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. (4-2-08)

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. (4-2-08)

i. Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. (4-2-08)

14. Floating Toys. ()

a. Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. ()

b. A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: ()

i. It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; ()

ii. It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. ()

15. Lake Specific Encroachment Permit Terms. ()

a. The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. ()

b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. ()

c. Lake specific encroachment permit conditions shall be used to assist with implementing lake management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. ()

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: www.idl.idaho.gov. ()

016. -- 019. (RESERVED).

020. APPLICATIONS.

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

02. Signature Requirement. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

04. Repairs, Reinstallation of Structures. No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs that adversely affect the bed of the lake will be considered a violation of these rules. (4-2-08)

05. Dock Reconfiguration. (4-2-08)

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii. No increase in the square footage, as ~~per~~ described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (~~4-2-08~~)()

iii. The entrances and exits of the facility do not change. (4-2-08)

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. (4-2-08)

07. Forms, Filing. Applications must be in writing on forms provided by the Department or copies. Applications and plans shall be filed in the local office of the Department, whose location is available on the internet at www.idl.idaho.gov, or the director's office in Boise, together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)

- a.** Plans shall include the following information on paper no larger than eight and one half by fourteen (8 1/2"x14") inches: (4-2-08)
- i.** Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)
 - ii.** Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)
 - iii.** Proof of current ownership or control of littoral property or littoral rights. (4-2-08)
 - iv.** A general vicinity map. (4-2-08)
 - v.** Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)
 - vi.** Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)
 - vii.** Names and current mailing addresses of adjacent littoral landowners. (4-2-08)
- b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)
- c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)
- d.** Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)
- e.** ~~The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: All applications shall be accompanied by a nonrefundable filing fee in an amount set by the State Board of Land Commissioners. (4-2-08)()~~
- ~~**i.** Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); (4-2-08)~~
 - ~~**ii.** Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)~~
 - ~~**iii.** Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)~~
 - ~~**iv.** Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)~~
- f.** Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)
- g.** Application for a single-family or two-family dock not extending beyond the line of navigability or

a nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable filing fee of two hundred fifty dollars (\$250). (4-2-08)

h. No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)

i. Applications and plans shall be stamped with the date of filing. (7-1-98)

j. Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. *Upon receipt of* Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, ~~or~~ a commercial navigational encroachment, or ~~for~~ a navigational encroachment extending beyond the line of navigability, the department shall, ~~within ten (10) days of receiving a complete application,~~ cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed. If, however, the director orders a hearing on the application within the time for publication of the above notice, the department shall dispense with publication of the notice of the application and shall proceed instead to publish a notice of the public hearing as provided in Subsection 030.05. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. (4-2-08)(_____)

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values. (4-2-08)

03. Notifications. Upon request or when the department deems it appropriate, the department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. (4-2-08)

04. Written Comments or Objections. Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following: (4-2-08)

a. Notify the department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or (4-2-08)

b. File with the Department written objections to the proposed encroachment and request a public

hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application shall deposit and pay to the department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05. (4-2-08)

05. Hearing. Notice of the time and place of public hearing on the application shall be published by the director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing shall be held within ninety (90) days from the date the application is accepted for filing. (7-1-98)

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments shall also be received by the Department. (7-1-98)

07. Decision After Hearing. The director shall render a final decision within thirty (30) days after close of the public hearing. A copy of his final decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment. (4-2-08)

08. Decision Where No Hearing. (4-2-08)

a. In the event no objection to the proposed encroachment is filed with the department and no public hearing is requested under Subsection 030.04, or ordered by the director under Subsection 030.01, the department, based upon its investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. shall prepare and forward to the applicant its decision. (4-2-08)

b. The applicant, if dissatisfied with the director's decision, shall have twenty (20) days from the date of the director's decision to request reconsideration thereof. If reconsideration is required, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his final decision. (4-2-08)

09. Judicial Review. Any applicant aggrieved by the director's final decision, or an aggrieved party who appeared at a hearing, shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500), insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. (4-2-08)

10. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the department shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no public hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a public hearing, the department determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit shall be granted. (4-2-08)

031. -- 034. (RESERVED).

035. TEMPORARY PERMITS.

01. Applicability. Temporary permits are used for construction, temporary activities related to

permitted encroachments, or other activities approved by the department. (4-2-08)

02. Permit Term. These permits are generally issued for less than one (1) year, but longer terms may be approved by the department and permits may be extended with department approval. (4-2-08)

03. Bonding. The department may require bonds for temporary permits. (4-2-08)

04. Fee. The board shall set fees for temporary permits, ~~but the fees shall be no greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is available on the Internet at www.idl.idaho.gov.~~ (4-2-08)(____)

05. Processing. These permits may be advertised if the department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or on site construction of an encroachment may commence only when the permit is issued or when the department notifies the applicant in writing that installation may be commenced or when the department has failed to act in accordance with Subsection 025.08. (4-2-08)

02. Removal of Construction Waste. (4-2-08)

a. Pilings, anchors, old docks, and other structures or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. (4-2-08)

b. Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality. (4-2-08)

03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. (7-1-98)

04. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or extended by the department. The department may issue a permit with an initial sunset clause that exceeds three (3) years, if the need is demonstrated by the applicant. (4-2-08)(____)

061. -- 064. (RESERVED).

065. ASSIGNMENTS.

01. Assignment of Encroachment Permit. Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office. (4-2-08)

02. Assignment Fee. The assignment fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the

~~board and shall be paid at the time the assignment is submitted to the department. The fee shall be paid at the time the assignment is submitted to the department.~~ (4-2-08)(____)

03. Approval Required for Assignment. An assignment is not valid until it has been approved by the department. (4-2-08)

04. Assignment With New Permit. Encroachments not in compliance with the approved permit may be assigned only if: (4-2-08)

a. An application for a new permit to correct the noncompliance is submitted at the same time. (4-2-08)

b. The assignee submits written consent to bring the encroachment permit into compliance. (4-2-08)

IDAPA 20 - DEPARTMENT OF LANDS

20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS

DOCKET NO. 20-0317-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking, as well as changes pertaining to docket no. 20-0304-0901 also published in this Bulletin, will be held. The purpose of the hearing is to gather public comments on the proposed rules.

THURSDAY - OCTOBER 15TH, 2009 - 8 a.m.to 12 noon

**3780 Industrial Avenue South
Coeur d'Alene, 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 Idaho Department of Lands (IDL) is initiating this rulemaking to clarify and correct some of the rule changes approved in 2008 and to provide continuity with IDAPA 20.03.04. The issues to be addressed by this rulemaking include, but are not limited to, removing the actual fee amounts from the rules and allowing the Board to set the fees, and clarifying the rights granted and how rental rates are determined. The lease modification process is also clarified. This rulemaking will be conducted in conjunction with the IDAPA 20.03.04 rulemaking.

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

No changes to the existing fees are proposed.

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

This is a general fund program. The department does not anticipate any fiscal impacts on the state general fund due to the proposed changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted.

The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7 page 98. Negotiations were conducted over three (3) meetings in June, 2009.

ASSISTANCE ON TECHNICAL QUESTIONS, AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

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 28, 2009.

DATED this 27th day of August, 2009.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
PO Box 83720, Boise, Idaho 83720
(208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0317-0901

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of lands in the beds of navigable lakes, rivers and streams to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. (3-26-08)

02. Director May Grant Leases. The director may grant leases for uses that are in the public interest and consistent with these rules. (7-1-97)

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the State of Idaho is available from the Department. (3-26-08)

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease shall be contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code, and compliance with local planning and zoning regulations if applicable. (7-1-97)

05. Other Permits and Licenses. Issuance of a lease shall not relieve an applicant from acquiring other permits and licenses that are required by law. (7-1-97)

06. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease shall obtain such a lease from the director when notified to do so. (7-1-97)

07. Term of Lease, Renewal of Lease. Leases shall be issued for a term of ten (10) years or as determined by the board. Leases may be renewed for additional periods to be determined by the department based upon satisfactory performance during the present term. Renewals shall be processed with a minimum of procedural requirements and shall not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. Lease renewals shall be initiated by the department. (3-26-08)

08. Director's Authorization to Issue and Renew Leases. The director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. (7-1-97)

09. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the ~~property~~ submerged or formerly submerged lands for all other purposes that do not interfere with the rights

authorized in the lease remains with the state.

(7-1-97)()

10. Rules Applicable to All Existing and Proposed Uses and Encroachments. These rules shall apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. (3-26-08)

11. Waiver of Lease Requirements. The director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake. (3-26-08)

12. Private Moorage at Commercial Marinas. (3-26-08)

a. This Subsection (025.12) does not apply to community docks. (3-26-08)

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho," Subsection 015.03 are met. (3-26-08)

c. The sale, lease, or rental of private moorage is in no way an encumbrance on any underlying public trust land. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. (3-26-08)

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey public trust lands and only conveys the right to use the designated portion of the marina. (3-26-08)

e. The department shall make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. (3-26-08)

026. -- 029. (RESERVED).

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The lease application fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the Board. (3-26-08)()

02. Fee Shall Be Required. A lease application and nonrefundable fee shall be required for new and existing encroachments. A lease application fee shall be required for leases that are renewed upon expiration. (3-26-08)

03. Application to Lease and Fee. The lease application and fee shall be submitted with the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: (3-26-08)

a. A letter of request stating the purpose of the lease. (3-26-08)

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment permit may satisfy this requirement. (3-26-08)

c. The permit number of each existing applicable encroachment permit. (3-26-08)

04. Submittal of Application to Lease and Fee. The lease application and fee shall be filed in the local office of the department, whose location is available on the Internet at www.idl.idaho.gov, or the director's

office in Boise. (3-26-08)

05. Notification of Approval or Denial. The applicant shall be notified in writing if the lease application is approved or denied. The applicant shall also be notified of any additional requirements. (3-26-08)

06. Request for Reconsideration. Any applicant aggrieved with the director's determination of rent or denial of a lease application may request reconsideration by the Director. (7-1-97)

031. -- 034. (RESERVED).

035. RENTAL.

The rental rate policy for submerged land leases shall be set by the Board. This policy is available on the Internet at www.idl.idaho.gov. (3-26-08)

01. Standardized Rental Rates. The board shall set standard submerged land lease rental rates for common uses such as commercial marinas, community docks, floathomes, restaurants, and retail stores. ~~These Rental rates may use for commercial marinas and other uses which produce revenue for the lessee will commonly be calculated as a percentage of market value or gross receipts, as well as~~ however, other methods may be used as determined appropriate by the board. (3-26-08)(____)

02. Nonstandard Rental Rates. The board shall direct the department to use a percentage of market value or gross receipts, or other methods determined appropriate by the board, as the submerged lands lease rental rate for uses that are uncommon, especially for non-navigational encroachments. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

050. LEASE MODIFICATION OR AMENDMENT.

01. Encroachment Amendment. A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. (3-26-08)

02. Modification of Existing Lease. Modification or amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. (3-26-08)(____)

03. Modification of Interior Facilities. ~~Changes in the interior arrangement of existing facilities that do not constitute a change of use and do not alter or enlarge the exterior dimensions, may not be deemed a modification under this rule. If the proposed changes to a facility do not require a new encroachment permit, a lease modification may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes.~~ The department shall determine if a lease modification is needed due to the proposed changes. ~~The lessee must give written notice to the Department at least ten (10) days in advance of making such changes.~~ When requested, the lessee shall also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. (3-26-08)(____)

051. -- 054. (RESERVED).

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any department office. (7-1-97)

02. Assignment Fee. The assignment fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the

Board.

~~(3-26-08)~~()

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. (3-26-08)

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the director. (7-1-97)

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.03 - RULES GOVERNING VETERANS SUPPORT FUND GRANT PROGRAM

DOCKET NO. 21-0103-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 118 through 122.

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 Veterans Support Fund established by Section 65-209, Idaho Code, began receiving funds through a check box on Idaho tax returns for 2008. The 2009 Idaho Legislature approved the addition of monies to the fund provided by the Gold Star license plate. These rules establish the framework for the expenditure of the funds in such fund through grants to projects and programs supporting veterans. Grants will not exceed the monies received by the Veterans Support Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

DATED this 27th day of August, 2009.

David E. Brasuell
Administrator
Division of Veterans Services
320 Collins Road
Boise, ID 83702
Phone: (208) 334-351
Fax (208) 334-2627

DOCKET NO. 21-0103-0901 - 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 09-8, August 5, 2009, pages 118 through 122.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.01.01 - RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS
DOCKET NO. 24-0101-0901
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 54-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule updates the Board of Architectural Examiners' website address and the incorporation by reference section to include the 2009-2010 NCARB Handbook for Interns and Architects. These updates will help ensure the most up-to-date standards are being met by interns and provide current website information for the board.

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

This temporary rule is necessary to protect the public. It ensures interns and their supervisors are using current standards.

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: 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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is due to update of current NCARB edition.

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 28, 2009.

DATED this 17th day August, 2009.

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 TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 24-0101-0901

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled ~~20049-200510~~ NCARB Handbook for Interns and Architects, dated ~~August~~ July 20049, referenced in Subsection 250.01, is herein incorporated by reference. The document titled NCARB Rules of Conduct as published by the National Council of Architectural Registration Boards, Dated ~~August~~ July 20049, referenced in Section 750, is hereby incorporated by reference. All documents incorporated by reference can be obtained at the office of the Bureau and on the Board web site. ~~(4-11-06)(7-1-09)T~~

005. ADDRESS OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS (RULE 5).

The office of the Board of Architectural Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is arc@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/arc.htm>. ~~(4-11-06)(7-1-09)T~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS
DOCKET NO. 24-0301-0901
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

The rule updates the State Board of Chiropractic Physicians' website address as it has changed. To protect the public, it adds a definition for direct personal supervision. It clarifies who qualifies as a chiropractic intern. It clarifies when a temporary permit is available.

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 the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 25th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-0301-0901

005. ADDRESS OF IDAHO BOARD OF CHIROPRACTIC PHYSICIANS (RULE 5).

The office of the Board of Chiropractic Physicians is located within the Bureau of Occupational Licenses, Owyhee

Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is chi@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/chi.htm>. (4-11-06)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITION (RULE 10).

051. Athletic Trainer. A person licensed by the Idaho Board of Medicine pursuant to Section 54-3909, Idaho Code. (4-11-06)

072. Board. The State Board of Chiropractic Physicians as prescribed in Section 54-703, Idaho Code. (7-1-93)

023. Bureau. The Bureau of Occupational Licenses as prescribed in Section 67-2602, Idaho Code. (3-15-02)

04. Direct Personal Supervision. Direct Personal Supervision means that the licensed chiropractic physician is physically present in the clinic, is monitoring the activities of the supervisee, and is available to intervene, if necessary. (_____)

045. Inactive Retired. The status of a licensee who is over sixty-five (65) years of age, has paid the inactive retired fee and is permanently retired from the practice of chiropractic. The holder of an inactive retired license may not practice chiropractic in Idaho. (3-15-02)

036. Inactive Status. The status of licensure that has been made inactive by compliance with Section 54-708(2) and Subsection 300.02. The holder of an inactive license may not practice chiropractic in Idaho. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

551. CHIROPRACTIC INTERN (RULE 551).

01. Definition. A chiropractic intern is defined as any individual who is presently enrolled in a school of chiropractic and is qualified to practice as an intern as established by the approved chiropractic college that the individual attends and who will function in a dependent relationship with a supervising chiropractic physician in the performance of chiropractic practice. (3-15-02)(_____)

02. Chiropractic Physician Responsible and Liable. The chiropractic physician shall be responsible and liable for: (3-15-02)

a. Direct personal supervision of the intern; (3-15-02)

b. Any acts of the intern in the performance of chiropractic practice; (3-15-02)

c. Determining that the intern possesses sufficient training and capabilities before authorization is given to perform any chiropractic practice. (3-15-02)

03. Chiropractic Intern Limitations. A chiropractic intern shall not: (3-15-02)

a. Perform any chiropractic practice independently, but must perform all such practice under the direct personal supervision of a licensed Chiropractic Physician; (3-15-02)

b. Provide diagnostic results or interpretations to the patient prior to consultation with the supervising Chiropractic Physician; (3-15-02)

c. Provide treatment advice to any patient without instructions from the supervising Chiropractic Physician. (3-15-02)

552. TEMPORARY PRACTICE PERMITS (RULE 552).

When an original application for license or internship is accepted by the board as being fully completed, in accordance with the requirements of the Idaho Chiropractic Physician Law and these Rules, a temporary permit to practice may be issued. (3-15-02)

01. Supervision Required. A permit holder may work only when under the direct personal supervision of a chiropractic physician currently licensed in Idaho. The name, address and signature of the supervising chiropractic physician shall appear on the application. (3-15-02)

02. Only One Permit May Be Issued. Only one (1) permit may be issued under any circumstances to any individual. (3-15-02)

03. Validity of Temporary Permits. Temporary permit to practice will be valid for a period not to exceed twelve (12) months and only: (3-15-02)

a. In the case of an applicant for Idaho licensure, until the results of the next scheduled examination have been released. No work permit will be issued to an applicant who has previously failed an examination for licensure in this or any other state, territory, possession, or country more than once. Failure to sit for the next scheduled examination will invalidate the work permit and no further permits will be issued. (~~3-15-02~~)()

b. In the case of an intern, until the scheduled date of graduation from an approved school of chiropractic. Upon original application for licensure in Idaho, the intern permit may be extended by the board until the results of the next scheduled examination have been released. No work permit will be issued to an applicant who has previously failed an examination for licensure in this or any other state, territory, possession, or country more than once. Failure to sit for the next scheduled examination will invalidate the work permit and no further permits will be issued. (~~3-15-02~~)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-0901 (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 54-2406, Idaho Code.

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

THURSDAY - OCTOBER 22, 2009 - 10:00 a.m.

**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 rule updates the Board's web address as it has changed. The rule reduces the fees for endorsement, original license, and the license renewal to reduce the Board's cash balance. The rule also creates, defines, and sets forth the qualifications for a Class 1 Restricted license and Very Small Wastewater System license. The Very Small Wastewater license is based upon DEQ rule changes that now allow for a very small wastewater facility license. The Class 1 Restricted license is designed to assist facilities with part-time operators and staff to allow more flexible qualifications for a license to run a specific facility. This rule will also clarify an ambiguity in the qualifications for a land application license.

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

Per Section 54-2407, Idaho Code, allows the Board to establish fees. The changes would reduce the amount of fees collected for the dedicated funds of the Board of Drinking and Wastewater Professionals by approximately \$38,190 per year based on 3,461 licensees and 358 applicants.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the Board of Drinking Water and Wastewater Professionals has been working with licensees, municipalities, the Department of Environment Quality and the Idaho Rural Water Association on qualifications for a Class 1 Restricted License.

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 28, 2009.

DATED this 17th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-0501-0901

005. ADDRESS OF IDAHO BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS (RULE 5).

The office of the Board of Drinking Water and Wastewater Professionals is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is wwp@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/wwp.htm>. (3-30-06)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

01. Board. The Idaho Board of Drinking Water and Wastewater Professionals. (3-24-05)

02. Bureau. The Idaho Bureau of Occupational Licenses. (3-24-05)

03. Class I Restricted License. Class I restricted license means a water or wastewater license associated with a specific class I system. A restricted license is available for water distribution or treatment or for wastewater collection or treatment. A restricted license is not transferable and does not qualify for endorsement. ()

034. DEQ. The Idaho Department of Environmental Quality. (3-24-05)

045. Direct Supervision. Supervision in a way that will ensure the proper operation and maintenance of the public drinking water or public wastewater system. Supervision shall include, but not be limited to, providing written, hands-on, or oral instruction as well as verification that the instructions are being completed. The supervisor has an active on-site and on-call presence at the specific facility. (2-26-08)

056. Endorsement. Endorsement (often referred to as "reciprocity") is that process by which a person licensed in another jurisdiction may apply for a license in Idaho. (3-24-05)

067. EPA. The United States Environmental Protection Agency. (3-24-05)

078. Experience. One (1) year of experience is equivalent to one thousand six hundred hours (1,600) worked. (2-26-08)

089. Operating Personnel. Operating personnel means any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public drinking water system or a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. (3-24-05)

~~0910.~~ **Person.** A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (3-24-05)

~~101.~~ **Public Drinking Water System or Public Water System.** Public drinking water system or public water system means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Every community and nontransient noncommunity water system, and each transient water system using a surface water source or ground water source directly influenced by surface water, shall be operated by a certified drinking water operator. (3-24-05)

~~112.~~ **Public Wastewater System or Wastewater System.** Public wastewater system or wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a nonprofit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, nonmechanical septic tank and subsurface treatment and distribution system, or industrial wastewater systems under private ownership. (3-24-05)

~~123.~~ **State.** The State of Idaho. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

175. LICENSE TYPES AND CLASSIFICATIONS (RULE 175).

The Board shall issue each of the following licenses under the provisions of Chapter 24, Title 54, Idaho Code. (3-24-05)

- 01. Drinking Water Distribution Operator.** (3-24-05)
 - a.** Class Operator-In-Training. (3-24-05)
 - b.** Class Very Small Water System. (3-24-05)
 - c.** Class I Restricted. ()
 - ed.** Class I. (3-24-05)
 - de.** Class II. (3-24-05)
 - ef.** Class III. (3-24-05)
 - fg.** Class IV. (3-24-05)
- 02. Drinking Water Treatment Operator.** (3-24-05)
 - a.** Class Operator-In-Training. (3-24-05)
 - b.** Class I Restricted. ()

bc.	Class I.	(3-24-05)
ed.	Class II.	(3-24-05)
de.	Class III.	(3-24-05)
ef.	Class IV.	(3-24-05)
03.	Wastewater Treatment Operator.	(3-24-05)
a.	Class Operator-In-Training.	(3-24-05)
b.	<u>Class Very Small Wastewater System.</u>	()
bc.	Lagoon.	(3-24-05)
d.	<u>Class I Restricted.</u>	()
ee.	Class I.	(3-24-05)
df.	Class II.	(3-24-05)
eg.	Class III.	(3-24-05)
fh.	Class IV.	(3-24-05)
gi.	Land Application.	(3-24-05)
04.	Wastewater Collection Operator.	(3-24-05)
a.	Class Operator-In-Training.	(3-24-05)
b.	<u>Class Very Small Wastewater System.</u>	()
c.	<u>Class I Restricted.</u>	()
bd.	Class I.	(3-24-05)
ee.	Class II.	(3-24-05)
df.	Class III.	(3-24-05)
eg.	Class IV.	(3-24-05)
05.	Wastewater Laboratory Analyst.	(3-24-05)
a.	Class I.	(3-24-05)
b.	Class II.	(3-24-05)
c.	Class III.	(3-24-05)
d.	Class IV.	(3-24-05)
06.	Backflow Assembly Tester.	(3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

200. FEES FOR EXAMINATION AND LICENSURE (RULE 200).

The fees for each license type and classification shall be as follows: (3-24-05)

- 01. Application Fee.** Application fee -- twenty-five dollars (\$25). (3-24-05)
- 02. Examination Fee.** The examination fees shall be those fees charged by the Association of Boards of Certification (ABC) or other approved examination provider. (3-24-05)
- 03. Endorsement Fee.** Endorsement fee -- ~~forty~~ thirty-five dollars (\$~~40~~35). (~~3-30-06~~)()
- 04. Original License Fee.** Original license fee -- ~~forty~~ thirty-five dollars (\$~~40~~35). (~~3-30-06~~)()
- 05. Annual Renewal Fee.** Annual renewal fee -- ~~forty~~ thirty-five dollars (\$~~40~~35). (~~3-30-06~~)()
- 06. Reinstatement Fees.** Reinstatement fee -- twenty-five dollars (\$25). (3-24-05)
- 07. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application, examination, reexamination, or reinstatement of a license. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

300. REQUIREMENTS FOR LICENSE (RULE 300).

Applicants shall submit an application together with the required fees and such documentation as is required. (3-24-05)

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%). For those classifications of Class II through IV, successful completion of the examinations from the immediate lower type and classification shall be a prerequisite to examination eligibility for the next higher classification of the same type, except that applicants for wastewater collection operator or wastewater laboratory analyst or drinking water distribution operator licenses may apply for any classification examination for which they hold the required education and experience. (3-30-06)

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (3-24-05)

b. The examination for all types and classes of licensure shall be validated and provided by the Association of Boards of Certification (ABC). The American Backflow Prevention Association (ABPA) backflow assembly tester examination is also approved for backflow assembly tester licensure. (5-8-09)

c. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (3-24-05)

d. Applicants must take and pass the examination within one (1) year of application approval. After one (1) year a new application and applicable fees must be submitted. (3-30-07)

02. Education and Experience Requirements. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable. (3-24-05)

a. Each applicant for an Operator-In-Training License must have a high school diploma or GED and pass the Class I exam or pass the very small water system exam. (5-8-09)

b. To qualify for a Very Small Water System license an operator must have a high school diploma or GED and ~~one hundred eighty-eight (10088)~~ hours of acceptable operator-in-training experience at a water system and complete an approved six-hour water treatment or chlorination course and an approved six-hour water distribution course for a combined total of one hundred (100) hours. (~~5-8-09~~)()

c. To qualify for a Very Small Wastewater System license an operator must have a high school diploma or GED and fifty (50) hours of acceptable operator-in-training experience at a wastewater collection system and fifty (50) hours of acceptable operator-in-training experience at a wastewater treatment system and complete an approved six-hour pumps and motors course; an approved six-hour lagoon operation and maintenance course; and an approved six-hour large soil absorption system course for a combined total of one hundred eighteen (118) hours. ()

d. To qualify for a Class I Restricted water or wastewater license an operator must have a high school diploma or GED and obtain two hundred sixty (260) hours of acceptable work experience with the system in one (1) year and work a full operating year with the system and complete sixteen (16) hours of continuing education relevant to the license and pass the relevant Class I examination. Upon obtaining one thousand six hundred (1,600) hours of supervised operating experience for each license, the operator shall be eligible to apply for an unrestricted Class I license. There is no limit on the amount of time needed to obtain the necessary experience to qualify for the unrestricted license. A restricted license is limited to a specific system. ()

ee. To qualify for a Class I license an applicant must have a high school diploma or GED and one (1) year of acceptable experience at a Class I or higher system. To upgrade an OIT license to a Class I the applicant must provide documented proof to the Board of having completed one (1) year of supervised operating experience in a Class I or higher public drinking water or wastewater system, and payment of the required fees. (2-26-08)

ff. To qualify for a Class II treatment or lab analyst license II an applicant must have a high school diploma or GED and three (3) years of acceptable Class I operating experience at a Class I or higher system. (2-26-08)

eg. To qualify for a Class III treatment or lab analyst III license an applicant must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class II operating experience of a Class II or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (2-26-08)

fh. To qualify for a Class IV treatment or lab analyst IV license an applicant must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class III operating experience at a Class III or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (2-26-08)

gi. To qualify for a Class II collection or distribution license an operator must have a high school diploma or GED and three (3) years of acceptable operating experience at a Class I or higher system. (3-24-05)

hj. To qualify for a Class III collection or distribution license an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

ik. To qualify for a Class IV collection or distribution license an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience at a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

jl. To qualify for a lagoon license, an operator must have a high school diploma or GED and twelve

(12) months of acceptable supervised operating experience at a Lagoon system. (3-24-05)

~~k.m.~~ To qualify for a Wastewater Land Application license, an operator must have a high school diploma or GED, a current wastewater treatment license that is at least Class I or higher, and minimum six (6) months of hands-on operating experience at a wastewater land application system. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (~~3-24-05~~)()

~~h.n.~~ To qualify for a backflow assembly tester license, an applicant must have a high school diploma or GED, and shall document successful completion of a Board-approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures. (3-30-06)

~~m.o.~~ To qualify for an original wastewater laboratory analyst license, an applicant must hold a current water treatment, wastewater treatment or lagoon license. (3-24-05)

03. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. (3-24-05)

a. No substitution for operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-24-05)

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both operating and responsible charge) has been met by actual on-site operating experience. (3-24-05)

c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (3-24-05)

d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of responsible charge experience. (3-24-05)

e. Education substituted for operating experience may not be also credited toward the education requirement. (3-24-05)

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)

04. Substituting Experience for Education. Where applicable, approved operating and responsible charge experience may be substituted for education as specified below: (3-24-05)

a. One (1) year of operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (3-24-05)

b. For Class III and IV, additional responsible charge experience (that exceeding the two-year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge equal one (1) year post high school education. (3-24-05)

05. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: (3-24-05)

a. Experience as an environmental or operations consultant; (3-24-05)

b. Experience in an environmental or engineering branch of federal, state, county, or local

- government; (3-24-05)
- c.** Experience as a wastewater collection system operator; (3-24-05)
 - d.** Experience as a wastewater treatment plant operator; (3-24-05)
 - e.** Experience as a water distribution system operator and/or manager; (3-24-05)
 - f.** One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)
 - g.** Experience in waste treatment operation and maintenance. (3-24-05)
- 06. Equivalency Policy.** Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-24-05)
- a.** High School - High School diploma equals GED or equivalent as approved by the Board equals four (4) years. (3-24-05)
 - b.** College - Thirty-five (35) credits equal one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the Board). (3-24-05)
 - c.** Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours equal one (1) CEU; forty-five (45) CEUs equal one (1) year of college. (3-24-05)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-0901 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 24, 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 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 21, 2009.

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:

House Bill 261 moved the licensing of Occupational Therapists and Occupational Therapy Assistants from the Board of Medicine to the Bureau of Occupational Licenses. IDAPA 22 is being changed to IDAPA 24 and the rules are being amended to comply with amendments to Chapter 37 and to protect the public health, safety and welfare.

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:

These rules are necessary to protect the public health, safety, and welfare and to comply with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

The 2009 Legislature passed House Bill 261 which amended Title 54, Chapter 37 of Idaho Code. Per 54-3712, Idaho Code, the Board of Occupational Therapists is setting fees in its rules for a license, a renewal, and an application.

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 proposed rules establish fees which will be deposited in the Bureau of Occupational Licenses dedicated fund. The fees will be used by the Board of Occupational Therapy to administer its act. Since all self governing boards are expected to be self-supporting, these fees are based on the estimated costs and the 560 current licensees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is due to amendments in Title 54, Chapter 37.

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 28, 2009.

DATED this 17th day August, 2009.

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 TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 24-0601-0901

000. LEGAL AUTHORITY.

Pursuant to Section 54-37147(2), Idaho Code, the Occupational Therapy Licensure Board of Idaho is authorized to promulgate rules ~~to govern the licensure of persons practicing occupational therapy in Idaho~~ that implement the provisions of Chapter 37, Title 54, Idaho Code. (7-1-93)(8-24-09)T

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES.

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking process in the adoption of these rules are available for review and copying at cost from the Bureau of Occupational Licenses, 1109 Main Street, Suite 220, Box 83720, Boise, Idaho 83702-0063. (4-2-03)(8-24-09)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

~~There are no documents incorporated by reference into this rule.~~ The "PDU Activities Chart" on pages 14-17 of the document titled National Board for Certification in Occupational Therapy (NBCOT), Inc. Certification Renewal Handbook, 2009, as published by the NBCOT, Inc. and copyrighted to NBCOT, Inc. in 2009, which is referenced in Subsection 250.1.b. of these rules. All documents incorporated by reference are available at the Board's office and through the Board's website. (4-2-03)(8-24-09)T

005. ~~OFFICE~~ ~~OFFICE HOURS~~ ~~MAILING ADDRESS AND STREET ADDRESS OF THE OCCUPATIONAL THERAPY LICENSURE BOARD OF IDAHO.~~

~~The central office of the Bureau of Occupational Licenses is in Boise, Idaho.~~ The office of the Occupational Therapy Licensure Board of Idaho 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 oct@ibol.idaho.gov. The Board's official web site address can be found at www.ibol.idaho.gov. (4-2-03)(8-24-09)T

~~01. Address. The Board's mailing address, unless otherwise indicated, will be the Idaho Bureau of Occupational Licenses, Statehouse Mail, Boise, Idaho 83720-5642. The Board's street address is 1109 Main Street, Suite 220, Boise, Idaho 83702.~~ (4-2-03)

~~02. Telephone. The telephone number of the Board is (208) 334-3233.~~ (4-2-03)

- ~~03.~~ ~~FAX.~~ ~~The Board's facsimile (FAX) number is 334-3945.~~ (4-2-03)
- ~~04.~~ ~~Office Hours.~~ ~~The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST.~~ (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

~~007.~~ ~~FILING OF DOCUMENTS — NUMBER OF COPIES.~~

~~All documents in rulemaking or contested case proceedings must be filed with the office of the Board. The original and ten (10) copies of all documents must be filed with the office of the Board.~~ (4-2-03)

~~008.~~ -- 009. (RESERVED).

010. DEFINITIONS.

- 01. Association.** The Idaho Occupational Therapy Association. (1-5-88)
- 02. Board.** The Occupational Therapy Licensure Board of Idaho. (1-5-88)
- 03. Bureau.** The Idaho Bureau of Occupational Licenses. (7-1-09)
- 04. Occupational Therapy.** ~~The use of purposeful, goal-oriented activity with individuals who are limited by physical injury or illness, psychological dysfunction, developmental or learning disabilities or deficits, poverty or cultural difficulties or the aging process in order to achieve optimum functional performance, independence, prevent further disability and maintain health. The practice of occupational therapy encompasses the evaluation, consultation and treatment of individuals whose abilities to cope with the tasks of daily living are threatened or impaired by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities or deficits, poverty or cultural difficulties or the aging process and includes a treatment program through the use of specific techniques which enhance functional performance and includes the evaluation or assessment of the patient or clients self-care, work and leisure skills, cognition, perception; sensory and motor performance; play skills; vocational and prevocational capacities; need for adaptive equipment; application of selected prosthetic or orthotic devices; and the administration of standardized and non-standardized assessments~~ The care and services provided by or under the direction and supervision of an occupational therapist. (1-5-88)(8-24-09)T
- 05. Occupational Therapist.** A person licensed to practice occupational therapy. (4-2-03)
- 06. Occupational Therapy Assistant.** A person licensed to ~~assist in the~~ practice ~~of~~ occupational therapy, and who works under the supervision of an occupational therapist. (4-2-03)(8-24-09)T
- ~~**α.** Occupational Therapy Assistant Supervision. The occupational therapist shall be responsible for the supervision of the occupational therapy assistant. The supervising and consulting therapist need not be physically present or on the premises at all times the occupational therapy assistant is performing the service. The mode and extent of the communication between the supervising or consulting occupational therapist and the occupational therapy assistant shall be determined by the competency of the assistant, the treatment setting and the diagnostic category of the client.~~ (7-1-99)
- 07. Graduate Occupational Therapist.** A person who holds a certificate of graduation from an approved occupational therapy curriculum, who has submitted a completed application for ~~licensure~~ certification by examination, and who may practice occupational therapy in association with and under the supervision of an occupational therapist and under authority of a Limited Permit. (4-2-03)(8-24-09)T
- ~~**α.** Graduate OT Supervision. Supervision of a "Graduate Occupational Therapist" shall require the supervising licensed occupational therapist to review and countersign all patient documentation.~~ (7-1-99)

08. Graduate Occupational Therapy Assistant. A person who holds a certificate of graduation from an approved occupational therapy assistant curriculum, has submitted a completed application for licensure by examination and is performing the duties of occupational therapy assistant in association with and under the supervision of an occupational ~~therapy~~ therapist and under the authority of a Limited Permit. ~~(4-2-03)~~(8-24-09)T

~~a. Graduate OTA Supervision. Supervision of a "Graduate Occupational Therapy Assistant" shall require the supervising licensed occupational therapist to review and countersign all patient documentation. (7-1-99)~~

09. Occupational Therapy Aide. An unlicensed person who aids a licensed occupational therapist or occupational therapy assistant in the practice of occupational therapy, whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy. (7-1-99)

~~a. Supervision. Supervision of an occupational therapy aide shall require supervision by a person licensed to practice as an occupational therapist or as an occupational therapy assistant and shall be consistent with Section 033 of these rules. (4-2-03)~~

09. Aide in the Delivery of Occupational Therapy Services. Also referred to in these rules as an "aide," is a person who is not licensed by the Board and who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function only under the guidance, responsibility and direct line of sight supervision of the licensed occupational therapist or an occupational therapy assistant who is appropriately supervised by an occupational therapist. The aide provides only specifically selected client related or non-client tasks for which the aide has been trained and has demonstrated competence.

10. Good Standing. The individual's license, certification, or registration is not currently suspended or revoked by any state regulatory entity. (8-24-09)T

11. NBCOT. The National Board for Certification in Occupational Therapy, Inc., is a not-for-profit credentialing agency that provides certification for the occupational therapy profession. (8-24-09)T

011. SUPERVISION.

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants, and aides. (8-24-09)T

01. Skill Levels. The following skill levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants and aides: (8-24-09)T

a. Entry Level - Working on initial skill development (zero to one (0-1) year experience) or working in a new area of practice; (8-24-09)T

b. Intermediate Level - Increased independence and mastery of basic roles and functions. Demonstrates ability to respond to new situations based on previous experience (generally one to five (1-5) years' experience); (8-24-09)T

c. Advanced Level - Refinement of skills with the ability to understand complex issues and respond accordingly. (8-24-09)T

02. Supervision Levels. The following supervision levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants and aides: (8-24-09)T

a. Direct Line of Site Supervision - An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide; (8-24-09)T

b. Direct Supervision - Daily, direct contact at the site of work with the supervisor physically present

at all times within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. This supervision is the minimal level of supervision required for students and for occupational therapy assistants applying deep thermal and electrotherapeutic modalities; (8-24-09)T

c. Close Supervision - Daily, direct contact at the site of work. The occupational therapist provides direction in developing the plan of treatment and periodically inspects the actual implementation of the plan. This supervision is the minimal level of supervision required for entry level occupational therapy assistants and occupational therapy assistants who are working under a temporary license; (8-24-09)T

d. Routine Supervision - Requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as by telephone or written communication. This supervision is the minimal level of supervision required for a temporary occupational therapist or for an intermediate level occupational therapy assistant; (8-24-09)T

e. General Supervision - Initial direction and periodic review of the following: service delivery, update of treatment plans, and treatment outcomes. The supervisor need not at all times be present at the premises where the occupational therapy assistant is performing the professional services. However, not less than monthly direct contact must be provided, with supervision available as needed by other methods. This supervision is the minimal level of supervision required for an intermediate to advanced occupational therapy assistant. (8-24-09)T

03. Supervision Ratios. An occupational therapist may supervise up to three (3) full-time occupational therapy assistants, but never more than two (2) entry level occupational therapy assistants. The total number of supervised occupational therapy assistants and non-licensed occupational therapy personnel (including any graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants, and aides) may not exceed five (5) without prior Board approval. The Board may permit the supervision of a greater number by an occupational therapist if, in the Board's opinion, there would be adequate supervision and the public's health and safety would be served. It is the supervising occupational therapist's responsibility to notify the Board of any circumstances requiring approval of a greater number and to submit a written plan for resolution of the situation. (8-24-09)T

04. Record Keeping. The occupational therapy assistant, graduate occupational therapist, and graduate occupational therapy assistant must maintain on file at the job site signed documentation reflecting supervision activities. This supervision documentation must contain the following: date of supervision, means of communication, and information discussed. Both the supervising occupational therapist and the occupational therapy assistant /limited permit licensee must sign each entry. (8-24-09)T

05. Occupational Therapy Assistants. Occupational Therapy Assistants may deliver occupational therapy services under the supervision of occupational therapists as follows. The occupational therapy assistant: (8-24-09)T

a. May only select, implement, and modify therapeutic activities and interventions that are consistent with client goals, the requirements of the practice setting, and the occupational therapy assistant's demonstrated competency levels; (8-24-09)T

b. Must not initiate a treatment program until the occupational therapist has evaluated the client and planned treatment for the client, or discharge the client from a treatment program without supervision from the occupational therapist; (8-24-09)T

c. Must not perform an evaluation, but may contribute to the evaluation process with the supervision of the occupational therapist; (8-24-09)T

d. May participate in the screening process by collecting data, such as records, by general observation and by conducting a general interview, and may communicate the information gathered to the occupational therapist; (8-24-09)T

e. May track the need for reassessment, report changes in status that might warrant reassessment or referral, and administer the reassessment under the supervision of the occupational therapist; (8-24-09)T

f. Must immediately discontinue any specific treatment procedure which appears harmful to the client, and so notify the occupational therapist; (8-24-09)T

g. Is responsible for knowing about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement; (8-24-09)T

h. May implement outcome measurements and provide needed client discharge resources. (8-24-09)T

06. Aides. Aides do not provide skilled occupational therapy services. An aide is trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client tasks. The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. An aide shall function only under the direct line of sight supervision of an occupational therapist or occupational therapy assistant. An aide may provide: (8-24-09)T

a. Non-client-related tasks, including clerical and maintenance activities and preparation of the work area or equipment. (8-24-09)T

b. Client-related, routine tasks during which the aide may interact with the client. The following conditions must exist when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide: (8-24-09)T

i. The outcome anticipated for the delegated task is predictable. (8-24-09)T

ii. The client and environment are stable and will not require that judgment, interpretations, or adaptations be made by the aide. (8-24-09)T

iii. The client has demonstrated some previous performance ability in executing the task. (8-24-09)T

iv. The task routine and process have been clearly established. (8-24-09)T

v. The aide has been trained and is able to demonstrate competency in carrying out the task and in using any necessary equipment. (8-24-09)T

vi. The aide has been instructed on how to specifically carry out the delegated task with the specific client. (8-24-09)T

vii. The aide knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant. (8-24-09)T

c. The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process. (8-24-09)T

012. DEEP THERMAL AND ELECTROTHERAPEUTIC MODALITIES, AND WOUND CARE.

01. Qualifications. Except as provided in Paragraph 012.01.b. i. of these rules, a person may not utilize occupational therapy techniques involving deep thermal, electrotherapeutic modalities or perform wound care management unless the person: (8-24-09)T

a. Is licensed by the Board as an occupational therapist; and (8-24-09)T

i. Is certified by the Hand Therapy Commission; or (8-24-09)T

ii. Has successfully completed three (3) continuing education units in the application of deep thermal and electrotherapeutic modalities and one and one half (1.5) continuing education units in wound care management, along with one hundred sixty (160) hours of supervised, on-the-job or clinical internship or affiliation training, pertaining to each area of deep thermal, electrotherapeutic modalities and wound care management. (8-24-09)T

b. A certified occupational therapy assistant may apply deep thermal and electrotherapeutic modalities only while the occupational therapy assistant is working under the direct supervision of a qualified occupational therapist. (8-24-09)T

0143. -- 019. (RESERVED).

020. GENERAL QUALIFICATIONS FOR LICENSURE.

01. Applicant. An applicant must be of good moral character. The Board may refuse licensure if it finds the applicant has engaged in conduct prohibited by Section 54-3712~~3~~, Idaho Code; provided, the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. ~~(1-5-88)~~(8-24-09)T

02. Education. Each applicant shall provide evidence of successful completion of the academic requirements of an educational program in occupational therapy that is accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE), or ~~an accrediting agency~~ by a predecessor or successor organization recognized by the United States Secretary of Education, the Council for Higher Education Accreditation, or both. ~~(4-2-03)~~(8-24-09)T

03. Experience. Each applicant shall submit evidence of having successfully completed a period of supervised fieldwork experience acceptable to the board, which fieldwork shall be: (4-2-03)

a. For an occupational therapist, a minimum of six (6) months of supervised fieldwork experience; or (4-2-03)

b. For an occupational therapy assistant, a minimum of four (24) months of supervised fieldwork experience. ~~(4-2-03)~~(8-24-09)T

04. Examination. Each applicant shall either pass an examination required by the Board or shall be entitled to apply for licensure by endorsement or limited permit. (1-5-88)

a. The written examination shall be the examination conducted by the National Board for Certification in Occupational Therapy, Inc. (NBCOT) and the passing score shall be the passing score established by the NBCOT. (4-2-03)

b. An applicant for licensure by examination who fails to pass the examination on two (2) attempts must submit a new application as specified in Subsection 021.01. ~~(4-30-93)~~(8-24-09)T

~~e. An applicant for licensure by examination who has failed to pass the examination on two (2) separate occasions will be denied eligibility to reapply; however his or her application may be considered on an individual basis if he or she submits proof of additional training. (1-5-88)~~

~~d. An applicant may obtain his examination scores and may review his papers in accordance with Section 54-3707(3), Idaho Code. (4-2-03)~~

05. Good Standing. An applicant must be in good standing as defined in these rules. (8-24-09)T

~~**056. Application Expiration.** An application upon which the applicant takes no further action will be held for no longer than one (1) year. (1-5-88)~~

021. APPLICATION FOR LICENSURE.

01. Licensure by Examination. Each applicant for licensure by examination shall submit a completed

written application to the Board, on forms prescribed by the Board, together with the application fee. The application shall be verified and under oath and shall require the following information: (7-1-99)

a. A certificate of graduation from an approved occupational therapy curriculum; or an approved occupational therapy assistant's curriculum accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or an accrediting agency recognized by the United States Secretary of Education, the Council for Higher Education Accreditation, or both; (4-2-03)

b. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (1-5-88)

c. The disclosure of any disciplinary action against the applicant by any state professional regulatory agency or professional organization; (1-5-88)

d. The disclosure of the issuance or denial of registration or licensure by any state or district regulatory body; (4-2-03)

e. Not less than two (2) certificates of recommendation from persons having personal knowledge of the applicant's character; (1-5-88)

f. ~~Two One (21),~~ three by four inch (3" x 4") or smaller unmounted photographs of the applicant's head and shoulders, ~~no larger than three by four inch (3" x 4") (head and shoulders),~~ taken not more than one (1) year ~~prior to~~ before the application date ~~of the application;~~ (1-5-88)(8-24-09)T

g. Such other information as deemed necessary for the Board to identify and evaluate the applicant's credentials; and (1-5-88)

h. A copy of the application to write the qualifying exam and the date the examination is scheduled. (1-5-88)

02. Licensure by Endorsement. An applicant may be eligible for licensure without examination if he or she meets all of the other qualifications prescribed in Section 54-3708~~9~~, Idaho Code, and also holds a current valid license or registration from some other state, territory or district of the United States, or certified by the National Board for Certification in Occupational Therapy providing they meet Idaho standards and are equivalent to the requirements for licensure pursuant to these rules. (7-1-99)(8-24-09)T

a. Each applicant for licensure by endorsement shall submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The application shall be verified, under oath, and contain the specific information in Subsection 021.01.a. through 021.01.g. of these rules. (1-5-88)(8-24-09)T

b. Proof of such licensure or registration shall be verified in a manner acceptable to the Board. (1-5-88)

03. Limited Permit. The Board may issue a Limited Permit to a graduate occupational therapist or graduate occupational therapy assistant who meets the requirements set forth by Sections 54-3706(1) and 54-3706(2), Idaho Code, who has not yet passed the examination as required in ~~Subsection Paragraph~~ 020.04.a. of these rules. (4-2-03)(8-24-09)T

a. Each person applying for a limited permit must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (8-24-09)T

~~**b.**~~ A Limited Permit shall only allow a person to practice occupational therapy in association with and under the supervision of a licensed occupational therapist. (1-5-88)

~~**c.**~~ A Limited Permit shall be valid only until the person is granted or denied a license under Section 54-3709~~10~~, Idaho Code, or until the results of the examination are available to the Board, whichever occurs first;

provided however, a Limited Permit shall not be effective for more than six (6) months from the date of issue.

~~(1-5-88)~~(8-24-09)T

ed. A Limited Permit may only be renewed once. (1-5-88)

04. Temporary License. The Board may issue a temporary license to a person applying for licensure as an occupational therapist or an occupational therapy assistant if the person is currently licensed and in good standing to practice in another jurisdiction and meets that jurisdiction's requirements for licensure by endorsement.

(8-24-09)T

a. Each person applying for temporary licensure must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (8-24-09)T

b. A temporary license shall automatically expire once the Board has processed the person's application for licensure and issued or denied the applied-for license, or in six (6) months after the date on which the Board issued the temporary license, whichever is sooner. (8-24-09)T

045. Personal Interview. The Board may, at its discretion, require the applicant to appear for a personal interview. (1-5-88)

056. Occupational Therapists Practicing in Idaho on Effective Date of These Rules. All persons practicing occupational therapy in Idaho and holding American Occupational Therapy Certification Board (AOTCB) registration on January 5, 1988, shall qualify for license by endorsement, ~~providing completed application is submitted within the six (6) months following January 5, 1988.~~ (4-2-03)(8-24-09)T

022. LICENSE EXPIRATION AND RENEWAL.

~~All licenses to practice as an occupational therapist or occupational therapy assistant shall expire on June 30 following issuance or renewal and shall become invalid after that date unless renewed. The Board may condition the issuance of such license for the full term upon the occurrence of events specified by the Board and the Board may extend such certification for an intermediate period of time.~~ (4-2-03)

~~**01- Annual Renewal.** Each license shall be renewed annually before July 1 by submitting a completed request for renewal accompanied by payment of the renewal fee to the Board. Licenses not renewed by the expiration date shall be canceled.~~ (4-2-03)

~~**02- Reinstatement.** Licenses canceled for nonpayment of yearly renewal fees may be reinstated by filing a completed request for renewal with the Board and paying reinstatement fees.~~ (1-5-88)

~~**03- Reapply.** A person whose license has been canceled or has lapsed for a period of more than five (5) years shall be required to reapply as a new applicant by examination.~~ (1-5-88)

~~**04- Continuing Education.** A summary of continuing education activities during the preceding year may be submitted with the renewal application to document this effort by the therapist. Appropriate continuing professional education activities include but are not limited to, the following:~~ (1-5-88)

~~**a-** Reading of professional books and journals. (1-5-88)~~

~~**b-** Attending or presenting at conferences, seminars or inservice programs. (1-5-88)~~

~~**e-** Supervision of clinical students. (1-5-88)~~

~~**d-** Holding state or national office in professional organizations. (1-5-88)~~

~~**e-** Formal course work in occupational therapy related subjects. (4-2-03)~~

~~**f-** Presentation of occupational therapy related information to allied professional or community groups. (4-2-03)~~

~~g. Conduct of occupational therapy related research or grant supported activity. (4-2-03)~~

~~h. Publication of an original article, review or report of clinical experience in an appropriate professional publication. (1-5-88)~~

01. Expiration Date. An individual's license expires on the individual's birth date. The individual must annually renew the license before the individual's birth date in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (8-24-09)T

02. Reinstatement. A license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (8-24-09)T

03. Application for Renewal. In order to renew a license, a licensee must submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. (8-24-09)T

023. -- 0294. (RESERVED).

025. CONTINUING EDUCATION.

In order to protect public health and safety and promote the public welfare, the Board has adopted the following continuing education requirement consisting of both continuing education units (CEUs) and professional development units (PDUs): (8-24-09)T

01. Requirement. Every two (2) years, a licensee must complete at least two (2) CEUs recommended by the Idaho Occupational Therapy Association and approved by the Board, along with at least ten (10) Board-approved professional development units (PDUs). The licensee's initial two (2) year period shall begin on the date on which this Board issues the licensee a license and end on the date on which the licensee submits the licensee's second renewal application. Thereafter, the two-year (2) period shall begin to run from the date of each renewal application in which the licensee was required to verify the completion of continuing education. (8-24-09)T

a. A CEU is a measurement of the licensee's participation in a Board-approved continuing education activity. One (1) CEU requires ten (10) contact hours of participation in a Board-approved continuing education program, excluding meals and breaks. One (1) contact hour equals one (1) clock hour for purpose of obtaining CEUs. (8-24-09)T

b. A PDU is a measurement of the licensee's participation in a professional development activity. One (1) contact hour of participation in Board-approved professional development activity equals one (1) PDU, one (1) academic credit equals ten (10) PDUs, and one (1) CEU equals ten (10) PDUs. If a licensee counts a CEU towards fulfilling the PDU requirement in a given two-year (2) period, the CEU unit will not count towards fulfilling the CEU requirement. Accepted PDU activities and their associated PDU values are set forth in the PDU Activities Chart at pages 14-17 of the NBCOT Certification Renewal Handbook, 2009 edition as incorporated by reference in Section 004. (8-24-09)T

02. Verification. The licensee must verify to the Board, as part of the annual license renewal process, that the licensee is in compliance with the continuing education requirement. (8-24-09)T

03. Courses and Activities. At least one (1) CEU and five (5) PDUs must directly relate to the delivery of occupational therapy services. The remaining PDUs and CEUs must be germane to the practice of occupational therapy and relate to other areas of a licensee's practice. A licensee may take online or home study courses, as long as a course completion certificate is provided. (8-24-09)T

a. CEUs and PDUs acceptable to the Board include, but are not limited to, programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Idaho Occupational Therapy Association (IOTA); post-professional coursework completed through any approved or accredited educational institution that is not part of a course of study leading to an academic degree; or otherwise meet all of the following criteria: (8-24-09)T

- i. The program or activity contributes directly to professional knowledge, skill, and ability: (8-24-09)T
 - ii. The program or activity relates directly to the practice of occupational therapy; and (8-24-09)T
 - iii. The program or activity must be objectively measurable in terms of the hours involved. (8-24-09)T
 - b. Partial credit will not be given for CEUs and PDUs. (8-24-09)T
 - c. The delivery of occupational therapy services may include: models, theories or frameworks that relate to client/patient care in preventing or minimizing impairment, enabling function within the person/environment or community context. (8-24-09)T
 - d. Other activities may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to one's practice (8-24-09)T
- 04. Carry Over and Duplication.** CEUs and PDUs cannot be carried over to the next reporting period. The same course taken more than once during a reporting cycle will only be counted once. (8-24-09)T
- 05. Documentation.** A licensee need not submit documentation of CEUs and PDUs when the licensee renews a license. However, a licensee must maintain documentation verifying that the licensee has completed the continuing education requirement for a period of four (4) years. A licensee must submit the verification documentation to the Board if the licensee is audited by the Board. A percentage of occupational therapists and certified occupational therapy assistants will be audited every year. (8-24-09)T
- a. Documentation for all activities must include licensee's name, date of activity or when course was completed, provider name, course title, description of course/activity, and number of PDUs and CEUs. (8-24-09)T
 - b. Records showing participation in each professional development activity must be maintained by the licensee. Acceptable documentation for specific activities includes: (8-24-09)T
 - i. Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance. (8-24-09)T
 - ii. In-service training. The required documentation for this activity is a certificate or documentation of attendance. (8-24-09)T
 - iii. Professional conference or workshop. The required documentation for this activity is a certificate or documentation of attendance. (8-24-09)T
 - iv. Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript. (8-24-09)T
 - v. Publications. The required documentation for this activity is a copy of the publication. (8-24-09)T
 - vi. Presentations. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period. (8-24-09)T
 - vii. Interactive online courses. The required documentation for this activity is a certificate or documentation of completion. (8-24-09)T
 - viii. Development of instructional materials incorporating alternative media such as video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process. (8-24-09)T
 - ix. Professional manuscript review. The required documentation for this activity is a letter from

publishing organization verifying review of manuscript. A maximum of ten (10) hours is allowed per reporting period for this category. (8-24-09)T

x. Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor. (8-24-09)T

xi. Serving on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of ten (10) hours is allowed per reporting period for this category. (8-24-09)T

xii. Self study of cassette, tape, video tape, or other multimedia device, or book. The required documentation for this activity is a two (2) page synopsis of each item written by the licensee. A maximum of ten (10) hours is allowed per reporting period for this category. (8-24-09)T

xiii. Level II fieldwork direct supervision of an occupational therapy student or occupational therapy assistant student by site designated supervisor(s). The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. A maximum of ten (10) hours per supervisor is allowed per reporting period for this category. (8-24-09)T

06. Exemptions.

A licensee may request an exemption from the continuing education requirement for a particular two-year (2) period under the following circumstances. The licensee must provide any information requested by the Board to assist in substantiating the licensee's need for a claimed exemption: (8-24-09)T

a. During the continuing education period the licensee was residing in another country for one (1) year or longer, reasonably preventing completion of the continuing competency requirements; (8-24-09)T

b. The licensee was absent from Idaho because of military service for a period of one (1) year or longer during the continuing education period, preventing completion of the continuing competency requirements; or (8-24-09)T

c. The licensee should be exempt from the continuing competency requirements for reasons of health or other good cause. (8-24-09)T

026. -- 029. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

032. DENIAL OR REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF LICENSE.

01. Disciplinary Authority. A new application may be denied or renewal refused, and every person licensed pursuant to Title 54, Chapter 37, Idaho Code and these rules is subject to discipline, pursuant to the procedures and powers established by and set forth in Section 54-3712~~3~~, Idaho Code, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," and the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (~~4-2-03~~)(8-24-09)T

02. Grounds for Discipline. In addition to the grounds set forth in Section 54-3712~~3~~, Idaho Code, applicants may be denied or refused licensure and licensees are subject to discipline upon the following grounds, including but not limited to: (~~4-2-03~~)(8-24-09)T

a. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts; (1-5-88)

b. Being guilty of unprofessional conduct or violating the Code of Ethics governing said licensees,

including the provision of health care which fails to meet the standard of health care provided by other qualified licensees in the same community or similar communities, taking into account the licensee's training, experience and the degree of expertise to which he holds himself out to the public; (1-5-88)

- c. Being convicted of a felony by a court of competent jurisdiction; (1-5-88)
- d. The unauthorized practice of medicine; (1-5-88)
- e. Violating any provisions of this act or any of the rules promulgated by the Board under the authority of the act; or (1-5-88)
- f. Failure to properly supervise persons as required in these rules ~~the activities of occupational therapy assistants or occupational therapy aides.~~ (4-2-03)(8-24-09)T

03. Penalties. In addition to any other disciplinary sanctions the Board may impose against a licensee, the Board may impose a fine of up to one thousand dollars (\$1,000) per violation, or in such greater amount as the Board may deem necessary to deprive the licensee of any economic advantage gained by the licensee through the conduct that resulted in discipline and that reimburses the Board for costs of the investigation and disciplinary proceedings. (8-24-09)T

033. OCCUPATIONAL THERAPY AIDE.

~~01. Evaluation of Patient/Client Before Task Assignment. The occupational therapist shall evaluate each patient/client before tasks are assigned to an occupational therapy aide. Only the occupational therapist or the occupational therapy assistant shall determine, assign, and modify those tasks that can be safely and effectively performed by an occupational therapy aide. (7-1-99)~~

~~02. What Aids Cannot Do. The occupational therapist and occupational therapy assistant shall not assign or permit aides to: (7-1-99)~~

- ~~a. Interpret referrals or prescriptions for occupational therapy services; (7-1-99)~~
- ~~b. Interpret or analyze evaluation data; (7-1-99)~~
- ~~c. Develop, plan, or modify treatment plans; (7-1-99)~~
- ~~d. Act independently without the supervision of an occupational therapist or occupational therapy assistant; (7-1-99)~~
- ~~e. Perform or document services represented as occupational therapy unless the occupational therapy aide is under the supervision of an occupational therapist or occupational therapy assistant. All documentation must be countersigned by the occupational therapist. (7-1-99)~~

~~03. Professional Supervision of an Occupational Therapy Aide. Professional supervision of an occupational therapy aide shall be provided by a licensed occupational therapist or occupational therapy assistant and shall include: (4-2-03)~~

- ~~a. Documented training by the occupational therapist or occupational therapy assistant of the occupational therapy aide in each specific occupational therapy technique for each specific client and the training shall be performed on the client. (4-2-03)~~
- ~~b. Face to face meetings between the occupational therapy aide and the occupational therapist or an occupational therapy assistant under the direction of the occupational therapist occurring at such intervals as determined by the occupational therapist to meet the client's needs, but shall occur at least once every two (2) weeks: (7-1-99)~~
- ~~c. The occupational therapist or occupational therapy assistant shall observe the occupational~~

~~therapy aide perform on the client the specific techniques for which the aide was trained at intervals as determined by the occupational therapist to meet the client's need, but shall occur at least once a month.~~ (4-2-03)

~~d. Meetings and client contacts will be documented in the client's record.~~ (7-1-99)

~~0343.~~ -- 040. (RESERVED).

041. FEES.

~~Actual fees shall be set to reflect costs of Board administration.~~ (1-5-88)

01. Fees. Necessary fees shall accompany applications. Fees shall not be refundable. ~~In those situations where the processing of an application requires extraordinary expenses, the Board will charge the applicant with reasonable fees to cover all or part of the extraordinary expenses.~~ (4-2-03)(8-24-09)T

02. Initial Licensure. The fee for initial licensure of occupational therapists shall be one hundred ~~ten~~ fifteen dollars (\$1105) and the fee for occupational therapy assistants shall be eighty-~~five~~ fifty dollars (\$805). (4-2-03)(8-24-09)T

03. Limited Permit or Temporary License. The fee for a limited permit ~~or temporary license~~ shall be ~~twenty-five~~ thirty dollars (\$2530) ~~for occupational therapists and for occupational therapy assistants.~~ (4-2-03)(8-24-09)T

04. Renewal Fee. The annual renewal fee shall be ~~sixty-five~~ seventy dollars (\$6570) for occupational therapists and ~~forty-five~~ fifty dollars (\$450) for occupational therapy assistants. ~~The failure of any licensee to renew his or her license shall not deprive such person of the right to renewal, except as provided for in Sections 54-3710 and 54-3712, Idaho Code.~~ (4-2-03)(8-24-09)T

05. Reinstatement Fee. The ~~reinstatement~~ fee ~~for to reinstate~~ a lapsed license shall be ~~the annual renewal fee for each year not licensed plus a fee of~~ thirty-five dollars (\$35). (1-5-88)(8-24-09)T

06. Inactive Fee. The fee for inactive licensure shall be ~~forty-five~~ fifty dollars (\$450) for occupational therapists and occupational therapy assistants. (4-2-03)(8-24-09)T

07. Inactive to Active License Fee. An inactive license may be converted to an active license by application to the Board and payment of required fees. (4-2-03)

a. The fee for converting an inactive to an active license shall be ~~a fee of thirty-five~~ forty dollars (\$~~35~~40) and the annual renewal fee for each year not actively licensed minus inactive fees previously paid. (4-2-03)(8-24-09)T

b. Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview. (4-2-03)

~~042. -- 049.~~ (RESERVED).

~~050. EFFECTIVE DATE.~~

~~These rules shall be effective January 5, 1988. Fee increases shall be effective April 2, 1993.~~ (7-1-93)

~~05142.~~ -- 999. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.07.01 - RULES OF THE IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS

DOCKET NO. 24-0701-0901

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 54-3003, 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 21, 2009.

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 updates the Board of Landscape Architect's website address as it has changed. Clarifies the references required for applicants.

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

No fee or charges is being imposed through this rulemaking.

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

There is no fiscal impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 17th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-0701-0901

005. ADDRESS OF IDAHO BOARD OF LANDSCAPE ARCHITECTS (RULE 5).

The office of the Board of Landscape Architects 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 lar@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov>~~Arch.htm~~. (3-26-08)(____)

(BREAK IN CONTINUITY OF SECTIONS)

201. APPLICATION FORM (RULE 201).

01. Reference Requirements. Applicants are required to furnish the Board with four (4) references. ~~Two (2) of the references must be from currently licensed Idaho Landscape Architects. The remaining two (2) may be licensed landscape architects, licensed engineers, licensed architects, or any combination thereof.~~ All references must be from competent individuals who are well acquainted with the applicant's character and professional ability. (3-20-04)(____)

02. Materials Submitted to Board. All required applications, statements, fees and other documentation must be submitted to the Board in care of the Bureau of Occupational Licenses, and shall include: (3-20-04)

- a. A passport photograph taken within thirty (30) days of the date of application; (3-20-04)
- b. Documentation of being at least eighteen (18) years of age at the time of application; and (3-20-04)
- c. Either certification of graduation from an approved college or school of landscape architecture; or (3-20-04)
- d. Documentation of all actual landscape architectural or other applicable experience signed by the person under whose supervision the work was performed, giving kind and type of work done, together with dates of employment. (3-20-04)

03. Deadlines. To be considered by the Board, completed applications must be received by the Bureau at least thirty (30) days prior to the first day of the month in which the Board will meet. Applications for examination must be filed with the Bureau of Occupational Licenses by April 1 for the June examination, or October 1 for the December examination. (3-20-04)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS

DOCKET NO. 24-0801-0901

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 54-1107, 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 21, 2009.

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

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

The rule updates the Board of Mortician's website address as it has changed. The rule also adds a section on continuing education and outlines the requirements in an effort to maintain licensee competency.

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

No fee or charges is being imposed through this rulemaking.

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

There is no fiscal impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 17th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-0801-0901

005. ADDRESS OF IDAHO BOARD OF MORTICIANS (RULE 5).

The office of the Board of Morticians is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is mor@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/mor.htm>. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

401. -- ~~42409.~~ (RESERVED).

410. CONTINUING EDUCATION (RULE 410).

In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. ()

01. Continuing Education (CE) Requirement. Each Idaho licensed mortician and funeral director must successfully complete a minimum of eight (8) hours of continuing education annually for license renewal. ()

a. Beginning July 1, 2011, each licensee must certify on their renewal application form that compliance with the annual CE requirements has been met during the previous twelve (12) months. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. ()

b. A licensee is considered to have satisfied the CE requirements for the first renewal of the initial license. ()

c. After July 1, 2011, and prior to reinstatement of a license lapsed, canceled, or otherwise non-renewed for less than five (5) years, the applicant must provide proof of attendance of eight (8) hours of continuing education for the previous twelve (12) months. A license that has lapsed, been canceled, or otherwise not renewed for more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. ()

02. Credit. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or by computer on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Only four (4) hours of the required continuing education may be from correspondence, computer on-line, or self-study in each renewal period. The remaining hours must be in an interactive setting that provides the opportunity for participants to communicate directly with the instructor. Each licensee must maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. ()

a. A licensee may carryover a maximum of eight (8) hours of continuing education to meet the next year's continuing education requirement. Only four (4) hours may be carried over from correspondence, computer on-line, or self-study. ()

03. Providers/Sponsors/Subjects of Continuing Education. The continuing education must be provided by a college or university, a national or state association, trade group, or other person or entity approved by the Board and must be germane to the license held. Continuing education may include, but shall not be limited to, the following subject areas: ()

a. Public Health and Technical. This includes, but is not limited to, embalming, restorative art, after care, organ procurement, sanitation, and infection control. ()

b. Business Management. This includes, but is not limited to, computer application, marketing,

personnel management, accounting, or comparable subjects. ()

c. Social Science. This includes, but is not limited to, communication skills (both written and oral), sociological factors, counseling, grief psychology, funeral customs, or comparable subjects. ()

d. Legal, Ethical, Regulatory. This includes, but is not limited to, OSHA (Occupational Safety and Health Association), FTC (Federal Trade Commission), ethical issues, legal interpretations, or comparable subjects. ()

04. Verification of Attendance. Each licensee must maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. ()

05. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for a licensee who fails to certify compliance with CE requirements. A licensee who makes a false attestation regarding compliance with the CE requirements is subject to disciplinary action by the Board. ()

06. Special Exemption. The Board has authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. Each licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. Request for special exemption must be made prior to licensure renewal. ()

411. -- 424. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY

DOCKET NO. 24-1001-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 54-1509, 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 21, 2009.

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 2009 Legislature passed Senate Bill 1115 which added "opticianry" to the exemptions in the law. This rule provides a definition for "opticianry." To benefit the public, it clarifies that failure to release contact lens prescriptions as required by Federal law could be gross incompetence. The rule clarifies the expiration date for prescriptions, spectacles and contact lenses for the benefit of the optometrist and the public.

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:

These temporary rules comply with federal programs and amendments in governing law and confer a public benefit.

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: 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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is due to revisions in Title 54, Chapter 15, 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 28, 2009.

DATED this 17th day of August, 2009.

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 TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 24-1001-0901

010. DEFINITIONS (RULE 10).

- 01. Board.** The State Board of Optometry as prescribed in Section 54-1503, Idaho Code. (7-1-93)
- 02. Bureau.** The Bureau of Occupational Licenses as prescribed in Sections 54-1509 and 67-2602, Idaho Code. (3-15-02)
- 03. Low Vision.** Refer to Section 54-1501(5), Idaho Code, correcting defects may include low vision but is not limited to low vision rehabilitation. (7-1-97)
- 04. Opticianry.** The professional practice of filling prescriptions from a licensed optometrist or ophthalmologist for ophthalmic lenses, contact lenses, and any other ophthalmic device used to improve vision. Opticianry does not include prescriptive authority. (7-1-09)T
- 045. Vision Therapy.** Any person who assesses, diagnoses, treats, or prescribes treatment for conditions of the visual system or manages a patient with vision therapy, visual training, visual rehabilitation, orthoptics or eye exercises or who hold him/herself out as being able to do so for the rehabilitation and/or treatment of physical, physiological, sensorimotor, neuromuscular or perceptual anomalies of the eyes or vision system or who prescribes or utilizes lenses, prisms, filters, occlusion or other devices for the enhancement, rehabilitation and/or treatment of the visual system or prevention of visual dysfunctions, except under the supervision and management of a licensed optometrist, is engaged in the practice of optometry. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

425. RULES DEFINING GROSS INCOMPETENCE (RULE 425).

In order to protect the public, the Board of Optometry defines as "gross incompetence" any behavior or practice on the part of the licensed optometrist which demonstrates a lack of competence with respect to discharging professional obligations or duties which might result in injury or damage to a patient whether such injury or damage actually occurs or not and in particular, the Board defines as "gross incompetence" any of the following: (11-6-93)

- 01. Failure to Meet Prevailing Standards.** Failure to meet prevailing standards, or willful rendering of substandard care, either individually or as part of a third party reimbursement agreement or by other agreement. (7-1-97)
- 02. Failure to Meet Prevailing Standards in the Referral of Any Patient Who Is Suffering From Any Apparent or Suspected Pathological Condition.** A failure to meet prevailing standards in the referral of any patient who is suffering from any apparent or suspected pathological condition to a person competent and licensed to properly treat or diagnose the condition. (7-1-93)
- 03. Employment of Techniques or Methods of Practice.** Employment of techniques or methods of practice in treating or prescribing for a patient when he does not have proper training in the technique or methods of practice. (7-1-93)
- 04. Failure to Advise Patient of Possible Danger When a Lens Not Meeting Impact Resistance Standards of F.D.A.** Failure to advise his patient of possible danger when a lens not meeting impact resistance standards of F.D.A. Regulation, Sec. 3.84,21 CFR., is provided for the patient. (7-1-93)
- 05. Failure to Provide Follow-Up Care.** Failure to provide follow-up care according to prevailing standards. (11-6-93)

- 06. Displaying Gross Ignorance or Demonstrating Gross Inefficiency.** Displaying gross ignorance or demonstrating gross inefficiency in the care of a patient. (7-1-93)
- 07. Failure to Verify the Specifications of All Lenses.** Failure to verify the specifications of all lenses provided by him. (11-6-93)
- 08. Failing to Perform Tests and Record Findings.** In the course of an examination of a patient, failure to perform tests and record findings in a manner consistent with prevailing standards of optometric care. (11-6-93)
- 09. Using Pharmaceutical Agents.** Using pharmaceutical agents in the practice of optometry without having attended sufficient training programs or schools and acquiring the knowledge necessary to use the drugs in a competent manner. (11-6-93)
- 10. Illegal Prescription Sale, Administration, Distribution, or Use of Drugs.** Prescribing, selling, administering, distributing, giving, or using drugs legally classified. Prescribing, selling, administering, distributing, giving, or using drugs legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes. (7-1-97)
- 11. Disciplinary Action or Sanctions.** Disciplinary action or sanctions taken by another state, jurisdiction, peer review body or a professional association or society against an optometrist for acts or conduct similar to acts or conduct which would constitute grounds for action as defined under "Rules of the Idaho Board of Optometry." (7-1-97)
- 12. Sanitary Office.** Has failed to maintain sanitary office conditions, equipment, and use appropriate techniques and procedures. (7-1-97)
- 13. Failure to Release Prescription.** Failure to release either a spectacle or contact lens prescription as required by Federal law. ~~(7-1-97)~~(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

450. CONTENTS OF PRESCRIPTION (RULE 450).

Every prescription written or issued by an optometrist practicing in Idaho shall contain at least the following information: (7-1-93)

- 01. Prescription for Spectacles.** Prescriptions for spectacles must contain the following: (7-1-93)
- a.** Sphere, cylinder, axis, prism power and additional power, if applicable; and (3-30-07)
- b.** The standard ~~E~~expiration date of the prescription must be at least one (1) year from date the prescription was originally issued. ~~(7-1-93)~~(7-1-09)T
- 02. All Prescriptions for Rigid Contact Lenses.** All prescriptions for rigid contact lenses must contain at least the following information: (7-1-93)
- a.** Base curve; (7-1-93)
- b.** Peripheral curve or curves including width; (7-1-93)
- c.** Overall diameter; (7-1-93)
- d.** Optical zone diameter; (7-1-93)

e. Power; and (3-30-07)

f. The standard ~~E~~expiration date of the prescription must be at least one (1) year from date the prescription was originally issued. A shorter prescription period may be allowed when based upon a documented medical condition. (~~7-1-93~~)(7-1-09)T

03. All Prescriptions for Soft Contact Lenses. All prescriptions for soft contact lenses must contain at least the following information: (7-1-93)

a. Lens manufacturer or “brand” name; (7-1-93)

b. Series or base curve; (7-1-93)

c. Power; (7-1-93)

d. Diameter, if applicable; (7-1-93)

e. Color, if applicable; and (7-1-93)

f. The standard ~~E~~expiration date of the prescription is one (1) year from date the prescription was originally issued. A shorter prescription period may be allowed when based upon a documented medical condition. (~~7-1-93~~)(7-1-09)T

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.11.01 - RULES OF THE STATE BOARD OF PODIATRY

DOCKET NO. 24-1101-0901

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 54-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 updates the contact information for the Board of Podiatry as it has changed. It updates the American Podiatric Medical Association's Code of Ethics referenced in Section 500 to reflect the current edition. It clarifies the licensure by endorsement requirements for residency programs and disciplinary action.

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

No fee or charges is being imposed through this rulemaking.

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

There is no fiscal impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 17th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-1101-0901

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled American Podiatric Medical Association's Code of Ethics as published by the American Podiatric Medical Association, dated April 2005~~8~~ and referenced in Section 500, is herein incorporated by reference and is available from the Board's office and on the Board web site. (4-11-06)()

005. ADDRESS OF THE IDAHO BOARD OF PODIATRY (RULE 5).

The office of the Board of Podiatry is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is pod@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at http://www.ibol.idaho.gov/~~pod.htm~~. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

401. LICENSURE BY ENDORSEMENT (RULE 401).

Under Section 54-613, Idaho Code, applicants for licensure by endorsement may be granted a license upon the approval of the Board. Each applicant for licensure by endorsement must provide documentation for each of the following before licensure will be considered: (3-15-02)

01. Complete Application. A complete application together with the required fee. (4-11-06)

02. Certification of License. Certification of having maintained a current license or other authority to practice issued by a regulatory board of Podiatry in any state or territory. (4-11-06)

03. Credentials. Credentials as required in Subsections 200.02 through 200.06~~5~~. (4-11-06)()

04. Examination. Successful passage of a written licensure examination covering all those subjects noted in Section 54-606, Idaho Code. Official certification of examination must be received by the board directly from: (4-11-06)

a. The applicant's state or territory of licensure; or (3-15-02)

b. The national board of podiatry examiners. (4-11-06)

05. Residency. Proof of completion of the residency requirement as set forth in Subsection 200.06 of this rule. However, if the applicant graduated from a college of podiatry prior to 1993, this requirement will be waived. ()

056. Practical Experience. Having practiced podiatry under licensure for three (3) of the last five (5) years immediately prior to the date of application. (4-11-06)

067. Continuing Education. Obtained at least twelve (12) hours of continuing education during the twelve (12) months prior to the date of application. (4-11-06)

078. Disciplinary Action. Has not been the subject of any disciplinary action including pending or unresolved licensure actions within the last five (5) years immediately prior to application and has never had a license to practice podiatry revoked, or suspended, ~~or otherwise sanctioned~~ either voluntarily or involuntarily in any jurisdiction. (3-15-02)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.12.01 - RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-0901 (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 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 21, 2009.

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 creates an inactive status as allowed in House Bill 45 which was passed by the 2009 Legislature. It establishes and clarifies the Board's ability to require a licensee complete a rehabilitation program as part of discipline for their violation which will assist the Board in protecting the public. It will also allow the Board to waive a licensee's continuing education in a hardship circumstance. Finally, these rules will allow additional activities to qualify for a licensee's continuing education and clarify the continuing education requirements.

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

The proposed set of rules increases certain fees to assist the Board of Psychologist Examiners with its cash balance and creates an inactive status. Annual renewal fee for inactive license will be \$150. Original application fee for licensure by exam will be \$200. Original application fee for licensure by endorsement/senior psychologist will be \$300.

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 fiscal impact to dedicated funds would depend on the number of licensees who choose to change their license from active to inactive. There is no fee change for an original application for licensure by exam so there would be no impact. Based on an average of seven endorsement applications per year, the increase in the original application fee for licensure by endorsement could have a positive impact of approximately \$700 per year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 17th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-1201-0901

005. ADDRESS OF THE IDAHO BOARD OF PSYCHOLOGIST EXAMINERS (RULE 5).

The office of the Board of Psychologist 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 psy@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at http://www.ibol.idaho.gov/. (3-19-07)(____)

(BREAK IN CONTINUITY OF SECTIONS)

150. FEES (RULE 150).

- 01. Annual Renewal Fee.** Annual renewal fee -- three hundred dollars (\$300). (3-19-07)
- 02. Annual Renewal Fee for Inactive License.** Annual renewal fee - one hundred fifty dollars (\$150). (____)
- 03. Original Application Fee For Licensure by Exam.** Application fee - two hundred dollars (\$200). (____)
- 024. Original Application Fee For Licensure by Endorsement/Senior Psychologist.** Original Application fee for licensure by endorsement/senior psychologist fee - ~~two~~ three hundred dollars (\$~~2300~~). (7-1-93)(____)
- 035. Service Extender Application Fee.** Application fee - one hundred dollars (\$100). (3-19-07)
- 046. Service Extender Annual Renewal Fee.** Annual renewal fee - one hundred dollars (\$100). (3-19-07)
- 057. Examination and Reexamination Fee.** Examination and reexamination fees are those charged by the national examining entity plus a processing fee of twenty-five dollars (\$25). (5-3-03)
- 068. Examination and Reexamination in Addition to Application Fee.** The examination or reexamination fee are in addition to the application fee and must accompany the application. (3-19-07)
- 09. Reinstatement Fee.** Any license cancelled for failure to renew may be reinstated upon payment of twenty-five dollars (\$25), together with the renewal fee for each year thereafter up to the time of reinstatement. (____)
- 10. Fees are Non-Refundable.** All fees are non-refundable. (____)

(BREAK IN CONTINUITY OF SECTIONS)

261. -- 29974. (RESERVED).

275. INACTIVE STATUS (RULE 275).

01. Request for Inactive Status. Persons 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 licensees desire active status, they must show fulfillment of continuing education requirements within the previous twelve (12) months and submit a fee equivalent to the difference between the current inactive and active renewal fee. ()

d. Licensees may not practice in Idaho while on inactive status. ()

276. -- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

376. -- 3979. (RESERVED).

380. REHABILITATION GUIDELINES (RULE 380).

In the event of a violation of Board laws or rules, the Board, in its discretion, may implement a plan of rehabilitation. Completion of the plan may lead to consideration of submission of an application for re-licensure, the removal of suspension, or the removal of supervision requirements. In the event the licensee has not met the Board's criteria for rehabilitation, the plan may be revised, expanded, or continued depending upon the progress of the rehabilitation program. The rehabilitation guidelines listed in this Section should be considered illustrative, but not exhaustive, of the potential options available to the Board. In each instance, rehabilitation guidelines will be tailored to the individual needs of the licensee. ()

01. Options in Devising Rehabilitation Program. The Board may follow one (1) or more options in devising a rehabilitation program: ()

a. The individual may be supervised in all or selected areas of activities related to his practice as a licensee by a licensed psychologist approved by the Board for a specified length of time. ()

i. The Board may specify the focus of the supervision. ()

ii. The Board may specify the number of hours per week required in a face-to-face supervisory contract. ()

iii. The Board may require the supervisor to provide periodic and timely reports to the Board concerning the progress of the supervisee. ()

iv. Any fees for supervision time will be the responsibility of the supervisee. ()

02. Educational Programs. The individual may be expected to successfully complete a variety of appropriate educational programs. Appropriate educational formats may include, but are not limited to, workshops, seminars, courses in regionally accredited universities, or organized pre- or post-doctoral internship settings. Workshops or seminars that are not held in a setting of academic review (approved continuing education) need prior approval of the Board. Any course of study must be approved by the Board prior to enrollment if it is to meet the criteria of a rehabilitation plan. ()

03. Additional Requirements. The Board may require of the individual: ()

01. Continuing Education Credit. Continuing education credit will be given to formally organized workshops or classes with an attendance roster and preassigned continuing education credit offered in association with or under the auspices of: (7-1-93)

- a. Regionally accredited institutions of higher education. (7-1-93)
- b. The American Psychological Association. (7-1-93)
- c. A Regional Psychological Association. (7-1-93)
- d. A State Psychological Association. (7-1-93)
- e. Credit will be given for the number of credit hours preauthorized by the sponsoring agency with no upper limit on the number of hours. (7-1-93)

02. Credit for International, National and Regional Meetings of Psychological Organizations. Six (6) hours of continuing education credit will be allowed for documented attendance at international, national and regional meetings of psychological organizations. (7-1-93)

03. Credit for Other Relevant Workshops, Classes or Training Experiences. Other relevant workshops, classes or training experiences may receive up to six (6) hours of credit per experience provided they are conducted by a licensed or reputable psychologist or other mental health professional. Each documented hour of training experience counts as one (1) hour of continuing education experience. A maximum of six (6) hours of this type of experience may be approved. (7-1-93)

04. Presentation of Papers. Presentation of papers at international, national, regional or state psychological or other professional associations may be counted as equivalent to six (6) hours per event. Only actual presentation time may be counted; preparation time does not qualify for credit. The licensee must provide the Board with a letter from a sponsor, host organization, or professional colleague, copy of the program, and a summary of the evaluations from the event. (7-1-93)()

05. Self-Study, Lectures or Public or Professional Publications and Presentations. The Board also recognizes the value of self-study, lectures or public or professional publications and presentations (including for example, in the case of the university faculty, preparation of a new course). Therefore, the Board will allow credit for six (6) hours of individual study per year. (7-1-93)

a. Self study. The reading of a publication may qualify for credit with proper documentation verifying completion. A licensee seeking credit for reading a publication must submit results from a test on the information contained within the publication. If a test is not available, the licensee must seek pre-approval of the Board. ()

b. Professional publications. Publication activities are limited to articles in professional journals, a chapter in an edited book, or a published book. The licensee must provide the Board with a copy of the cover page of the article or book in which the licensee has been published. For chapters of an edited book, licensees must submit a copy of the table of contents. ()

06. Board Assessment of Continuing Education Activities. The Board of Psychologist Examiners may avail itself of help and consultation from the American Psychological Association or the Idaho Psychological Association in assessing the appropriateness of continuing education activities. (7-1-93)()

07. On-Line Education. A maximum of ten (10) on-line continuing education hours relevant to the practice of psychology may be counted during each reporting period. ()

a. On-line continuing education hours must be offered by or obtained from regionally accredited institutions of higher education or approved by the American Psychological Association. ()

b. The licensee must provide the Board with a copy of the certification, verified by the authorized signatures from the course instructors, providers, or sponsoring institution, substantiating any hours completed by the

licensee.

()

08. Teleconferences. A maximum of six (6) continuing education hours may be counted through teleconference education during each reporting period. To qualify for credit, teleconferences must feature an interactive format. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor or that have a facilitator present at the conference site. The licensee must provide the Board with a copy of the certificate, or a letter signed by course instructors, providers, or sponsoring institution, substantiating any hours attended by licensee.

()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.12.01 - RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-0902

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 30, 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 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 21, 2009.

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 2009 Legislature passed House Bill 45 which made changes to the Psychology Act. The bill clarified the experience required for a psychology license to allow credit for an internship. The proposed rules are being changed to be consistent with the new law. The rules also allow for an additional path for licensure of out of state psychologists through endorsement. The rules also establish a temporary license to allow out of state psychologists to practice in Idaho to benefit the public in an emergency or special circumstance.

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:

The temporary rule complies with deadlines in amendments to governing law and confers a benefit.

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: 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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is due to update of current NCARB edition.

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 28, 2009.

DATED this 17th day August, 2009.

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 TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 24-1201-0902

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~~ Supervised Experience. One (1) of the two (2) years of ~~post-graduate~~ supervised 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~~)(7-30-09)T

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. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

250. ENDORSEMENT (RULE 250).

01. Eligibility for Endorsement. An applicant who is in possession of a valid statutory license or statutory certificate from another state or Canada may apply for licensing under the endorsement section of this law. (3-15-02)

02. Requirements for Endorsement. An applicant under the endorsement section shall have: (3-15-02)

a. A valid psychology license or certificate issued by the regulatory entity of another jurisdiction; and (3-15-02)

b. A current certificate of professional qualification in Psychology as defined in these rules; or (3-15-02)

c. ~~A degree of doctor of philosophy in psychology or a doctoral degree in a field related to psychology plus two (2) years of post-graduate experience acceptable to the Board and excluding internship, and document each~~

of the following: A registration with the National Register of Health Service Providers in Psychology; or ~~(3-15-02)~~(7-30-09)T

- i.* A passing score on the EPPP examination or other similar examination; ~~(3-15-02)~~
- ii.* Two (2) years of supervised experience, one (1) of which was post-doctoral, for a minimum of three thousand (3,000) total hours acceptable to the Board; ~~(3-15-02)~~
- d.** A certification by American Board of Professional Psychology; or (7-30-09)T
- e.** Graduated from an accredited college or university with a doctoral degree in psychology and two (2) years of supervised experience acceptable to the Board, one (1) year of which may include a pre-doctoral practicum or internship and one (1) year of which must be post-doctoral; or (7-30-09)T
- f.** Graduated from an accredited college or university with a doctoral degree in a field related to psychology, provided experience and training are acceptable to the Board; and (7-30-09)T
- iii.g.* A record of practicing Psychology at the independent level for the five (5) years immediately prior to application; and ~~(3-15-02)~~(7-30-09)T
- iv.h.* A history of no disciplinary action in any jurisdiction. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

300. ~~NO~~ TEMPORARY LICENSES (RULE 300).

~~No temporary licenses to practice psychology will be issued by the Board.~~ Persons not licensed in this state who desire to practice psychology under the provisions of this chapter for a period not to exceed thirty (30) days within a calendar year may do so if they hold an interjurisdictional practice certificate (IPC) from the association of state and provincial psychology boards (ASPPB). As such, in order to practice temporarily under the IPC psychologists would be required to notify the Board of their intent to practice and provide documentation of their status. It is the IPC holders responsibility to contact the ASPPB to send verification of IPC status, including verification of no discipline. ~~(7-1-93)~~(7-30-09)T

(BREAK IN CONTINUITY OF SECTIONS)

550. REQUIREMENTS FOR SUPERVISED PRACTICE (RULE 550).

01. Duration and Setting of Supervised Practice. (7-1-93)

a. A year of supervised experience is defined as a minimum of one thousand (1000) hours of supervised service provision acquired during not less than a twelve (12) month and no more than a thirty-six (36) calendar month period. The first year of supervised experience shall be accredited only after acquiring the equivalent of one (1) year of full time graduate study. A second year must be obtained post-doctorally. (5-3-03)

b. A minimum qualifying supervised experience consists of two (2) years of supervised experience, ~~neither of which is the internship, and at least~~ one (1) of which is obtained post-doctorally. ~~(7-1-93)~~(7-30-09)T

02. Qualifications of Supervisors. Supervising psychologists shall be licensed and shall have training in the specific area of practice in which they are offering supervision. (7-1-93)

03. Amount of Supervisory Contact. One (1) hour per week of face-to-face individual contact per twenty (20) hours of applicable experience is a minimum. (7-1-93)

04. Evaluation and Accreditation of Supervised Practice. The Board shall require submission of information by the supervisor(s) which enable it to evaluate and credit the extent and quality of the candidate's supervised practice. The form requesting such information shall cover the following: (7-1-93)

- a. Name of supervisee; (7-1-93)
- b. Educational level of supervisee; (7-1-93)
- c. Supervisor's name, address, license number, state in which granted and area of specialization; (7-1-93)
- d. Name and nature of setting in which supervised practice took place; (7-1-93)
- e. Date of practice covered in this report; (7-1-93)
- f. Number of practice hours during this period; (7-1-93)
- g. Supervisee's duties; (7-1-93)
- h. Number of one-to-one supervisory hours; (7-1-93)
- i. Assessment of supervisee's performance; and (7-1-93)
- j. Whether or not the supervisee received monetary compensation for the supervised services they provided. (7-1-93)

05. Unacceptable Supervision. Supervised practice time during which the supervisor deems supervisee's performance to have been unacceptable shall not be credited towards the required supervised practice hours. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-0901

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 54-3404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 Professional Counselor and Marriage and Family Therapists is proposing changes that clarify the content of the graduate program to ensure competency. It allows for supervision to be provided by a counselor education faculty member for the benefit of a student and it clarifies interns. For the benefit of out of state applicants, it provides that out of state supervised experience does not need to be provided by a registered supervisor. It deletes reference to professional counselor as it relates to administration fees for examination as fees are paid to test administrator. To ensure competency, it clarifies endorsement for applicants from a foreign country. To protect the public, it updates language for various methods of meeting the requirements which will provide a licensee more flexibility to meet the requirements. The Board is also updating the website as it has changed.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 14th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-1501-0901

005. ADDRESS OF IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS (RULE 5).

The office of the Board of Professional Counselors and Marriage and Family Therapists is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is cou@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/cou.htm>.

(3-30-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

150. QUALIFICATIONS FOR PROFESSIONAL COUNSELOR LICENSURE (RULE 150).

Licensure as a "professional counselor" shall be restricted to persons who have successfully completed the required examination and each of the following requirements: (3-30-06)

01. Graduate Program Requirement. A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling. (7-1-93)

a. A planned graduate program in a counseling field shall be defined as completion of one (1) of the following: (7-1-93)

i. A counseling program approved by the Council for Accreditation of Counseling and Related Educational Programs; or (7-1-93)

ii. A counseling program approved by the Council on Rehabilitation Education; or (7-1-93)

iii. A counseling program approved by the Board which shows evidence of education in the following areas: Counseling Theory, Counseling Techniques and Supervised Counseling Experience (this practicum must be supervised at the ratio of at least one (1) hour of one-to-one supervision for every ten (10) hours of experience in the setting) ~~and a minimum of one (1) graduate level course in at least six (6).~~ Applicant must show completion of one (1) graduate level course unique to each of the following eight (8) areas: (3-26-08)(____)

(1) Human growth and development: Includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological, sociological, and physiological approaches. Also included are areas such as human behavior (normal and abnormal), personality theory, and learning theory. (7-1-93)

(2) Social and cultural foundations: Includes studies of change, ethnic groups, subcultures, changing roles of women, sexism, urban and rural societies, population patterns, cultural mores, use of leisure time, and differing life patterns. (7-1-93)

(3) The helping relationship: Includes philosophic bases of the helping relationship: Consultation theory and/or an emphasis on the development of counselor and client (or consultee) self-awareness and self-understanding. (7-1-93)

(4) Groups: Includes theory and types of groups, as well as descriptions of group practices, methods dynamics, and facilitative skills. It includes either a supervised practice and/or a group experience. (7-1-93)

(5) Life-style and career development: Includes areas such as vocational-choice theory, relationship between career choice and life-style, sources of occupational and educational information, approaches to career decision-making processes, and career-development exploration techniques. (7-1-93)

(6) Appraisal of the individual: Includes the development of a framework for understanding the individual, including methods of data gathering and interpretation, individual and group testing, case-study approaches and the study of individual differences. Ethnic, cultural, and sex factors are also considered. (7-1-93)

(7) Research and evaluation: Includes areas such as statistics, research design, and development of research and demonstration proposals. It also includes understanding legislation relating to the development of research, program development, and demonstration proposals, as well as the development and evaluation of program objectives. (7-1-93)

(8) Professional orientation: Includes goals and objectives of professional counseling organizations, codes of ethics, legal consideration, standards of preparation, certification, and licensing and role of identity of counselors. (7-1-93)

b. A total of at least sixty (60) graduate semester hours or ninety (90) graduate quarter hours shall be required. (7-1-93)

c. Advanced counseling practicum shall be practica taken at the graduate school level. (7-1-93)

d. A graduate degree shall be one of the following beyond the baccalaureate level: The master's degree, the educational specialist certificate or degree, or the doctor's degree. (7-1-93)

e. An accredited university or college shall be a college or university accredited by one (1) of the following: the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges and Universities, the Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges. (3-26-08)

02. Supervised Experience Requirement. One thousand (1,000) hours of supervised experience in counseling acceptable to the Board. (7-1-93)

a. One thousand (1,000) hours is defined as one thousand (1,000) clock hours of experience working in a counseling setting, four hundred (400) hours of which shall be direct client contact. Supervised experience in practica and/or internships taken at the graduate level may be utilized. The supervised experience shall include a minimum of one (1) hour of face-to-face or one-to-one (1/1) or one-to-two (1/2) consultation with the supervisor for every twenty (20) hours of job/internship experience. Face-to-face may include a face-to-face setting provided by a live video connection between the supervisor and supervisee. As stated under Subsection 150.01.a.iv. counseling practicum experience as opposed to job or internship experience shall be supervised at a ratio of one (1) hour of supervision for every ten (10) hours in the settings. For example: (3-30-06)

i. A person in a twenty (20) hour per week job/internship who is receiving one (1) hour of individual supervision each week would accumulate one thousand (1,000) supervised hours in fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

ii. A person in a forty (40) hour per week setting with one (1) hour of supervision per week would still require fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

iii. A person in a forty (40) hour per week setting with two (2) hours of supervision per week would accumulate the one thousand (1,000) hours at the twenty to one (20/1) supervision ratio in twenty-five (25) weeks. (7-1-93)

b. Until July 1, 2004, the supervision must be provided by a Professional Counselor or a Clinical Professional Counselor licensed by the state of Idaho. Effective July 1, 2004, ~~postgraduate~~ supervision must be provided by a counselor education faculty member at an accredited college or university or a Professional Counselor, a Clinical Professional Counselor or a Marriage and Family Therapist licensed by the state of Idaho and registered with the Board as a Supervisor. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for licensure in that state are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. If supervision was obtained prior to

July 1, 1988, or in a state that does not regulate counseling, that supervision must have been provided by a qualified counselor educator as a part of a planned graduate program or by a person who holds a graduate degree beyond the baccalaureate level who is certified and/or licensed as a counselor, social worker, psychologist, or psychiatrist. Supervision by an administrative superior who is not in a counseling related profession is not acceptable to the Board. Supervision by a professional counseling peer, however, may be acceptable to the Board if the peer/supervisory relationship includes the same controls and procedures expected in an internship setting. (See Subsection 150.02.a.) For example, the relationship should include the staffing of cases, the critiquing of counseling tapes and this supervision must be conducted in a formal, professional, consistent manner on a regularly scheduled basis.

~~(3-30-06)~~()

c. Experience in counseling is defined as assisting individuals or groups, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan action reflecting interests, abilities, aptitudes, and needs as related to personal-social concerns, educational progress, and occupations and careers. Counseling experience may include the use of appraisal instruments, referral activities, and research findings.

(7-1-93)

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience.

(4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

245. REGISTERED INTERNS (RULE 245).

An individual pursuing Idaho licensure as a Professional Counselor may register with the Board as an Intern. An individual pursuing Idaho licensure as a Marriage and Family Therapist shall be licensed as an Associate Marriage and Family Therapist or Licensed Professional Counselor, or register prior to commencement of supervised experience with the Board as an Intern in compliance with Section 54-3402, Idaho Code. If the Marriage and Family Therapist applicant's supervised experience was obtained out of state, such applicant must meet the requirements of Rule 238.03, except that applicant's supervisor need not be registered with the Board.

~~(4-9-09)~~()

01. Requirements for Registration.

(4-2-03)

a. Possess a graduate degree in counseling, marriage and family therapy, or a closely related field from an accredited university or college.

(4-2-03)

b. Be actively pursuing postgraduate supervised experience.

(4-2-03)

c. Designate a supervisor who is registered as a supervisor or who is otherwise approved to provide marriage and family therapy supervision as defined in Section 54-3405C, Idaho Code, and who shall be responsible to provide supervision.

(3-20-04)

02. Registration. An individual applying for registration as a Counselor Intern or Marriage and Family Therapist Intern shall fully complete the application form as established by the Board and submit the designated fee as adopted by Board rule.

(4-2-03)

03. Practice.

(4-2-03)

a. A Registered Intern may only practice counseling or marriage and family therapy under the direct supervision of a Counselor Supervisor or Marriage and Family Therapist Supervisor who shall be responsible to ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided.

(4-2-03)

b. Only a Registered Intern may use the title Counselor Intern or Marriage and Family Therapist Intern.

(4-2-03)

c. An individual shall not practice as an intern for more than four (4) years from the original date of registration. (4-2-03)

246. -- 249. (RESERVED).

250. FEES (RULE 250).

01. Application Fee. Application fee: (7-1-97)

a. Professional Counselor -- seventy-five dollars (\$75). (3-13-02)

b. Clinical Professional Counselor -- seventy-five dollars (\$75). (3-13-02)

c. Marriage and Family Therapist -- seventy-five dollars (\$75). (3-13-02)

d. Associate Marriage and Family Therapist -- seventy-five dollars (\$75). (4-9-09)

e. Intern Registration -- twenty-five dollars (\$25). (4-2-03)

02. ~~Professional Counselor and~~ Marriage and Family Therapist Examination or Reexamination Fee. The ~~Professional Counselor and~~ Marriage and Family Therapist license examination or reexamination fee shall be the fee as set by the provider of the approved examination plus an administration fee of twenty-five dollars (\$25). ~~(3-30-06)~~(____)

03. Original License Fee. Original license fee for Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or Marriage and Family Therapist -- seventy-five dollars (\$75). (4-9-09)

04. Annual Renewal Fee. Annual license renewal fee for Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or Marriage and Family Therapist -- one hundred dollars (\$100). (4-9-09)

05. Annual Renewal Fee for Inactive License. Annual license renewal fee for inactive Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or Marriage and Family Therapist -- fifty dollars (\$50). (4-9-09)

06. Annual Renewal Fee for Senior Status. Annual license renewal fee for senior Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or Marriage and Family Therapist -- sixty dollars (\$60). (4-9-09)

07. Fees are Non-Refundable. All fees are non-refundable. (7-1-93)

251. -- 299. (RESERVED).

300. ENDORSEMENT (RULE 300).

The Board may grant a license to any person who submits a completed application on a form approved by the Board together with the required fees and who: (3-13-02)

01. Holds a Current License. The applicant must be the holder of a current active license, in the profession for which a license is being sought, issued by the authorized regulatory entity in another state or foreign country; The foreign country must have substantially similar requirements for licensing as is provided for new applicants in Idaho. ~~†~~The certification of ~~which licensure~~ must be received ~~directly~~ by the Board from the issuing agency; and (3-13-02)(____)

02. Has Not Been Disciplined. The applicant must ~~certify they~~ have not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (3-13-02)(____)

03. Is of Good Moral Character. The applicant must ~~certify they are~~ be of good moral character and have not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and ~~(3-13-02)~~(____)

04. Has Documented Experience. The applicant must provide a documented record of at least five (5) years actual practice under licensure immediately prior to application in the profession for which a license is being sought, or can demonstrate hardship or extenuating circumstances that prohibited practice during a portion of the five (5) year period as determined by the Board; and (3-13-02)

05. Will Abide by Laws, Rules and Code of Ethics. The applicant must certify under oath to abide by the laws and rules governing the practice of counseling and marriage and family therapy in Idaho and the applicable code of ethics as adopted; and either (3-30-07)

06. National Credential Registry. If applicant has been granted credentials by the American Association of State Counseling Boards as qualifying for Category II of the national credential registry or any such similar qualification granted by a national credentialing entity otherwise approved by the Board; or (3-30-07)

07. Provides Information. The applicant must document at least three (3) of the following during the five (5) years immediately prior to application: (3-13-02)

a. A minimum of one thousand (1,000) hours client contact; (3-13-02)

b. Service as an officer of a state or national counseling or marriage and family therapy organization, or a member of a state or national counseling or marriage and family therapy board or committee, or other leadership positions as may be approved by the Board; (3-13-02)

c. Teaching at least three (3) graduate courses for credit at an accredited college or university; (3-13-02)

d. A certificate to supervise issued by the NBCC or AAMFT; (3-13-02)

e. Providing at least twelve (12) months of supervision to each of no less than three (3) persons seeking licensure; (3-13-02)

f. Maintained professional liability insurance for the previous five (5) years with proof of no claims filed; (3-13-02)

g. Obtained a post graduate degree in a field of study related to counseling or marriage and family therapy that is in addition to the minimum licensure requirements; (3-13-02)

h. Current certification by a national credentialing entity as approved by the Board in the discipline for which licensure is sought; (3-13-02)

i. A total of one hundred (100) hours of continuing education completed in the five (5) years immediately prior to application. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

425. CONTINUING EDUCATION (RULE 425).

Every person holding an Idaho license as a Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or a Marriage and Family Therapist must ~~annually~~ complete in each twelve-month period preceding the renewal of a license, twenty (20) contact hours of continuing education ~~prior to license renewal~~. A contact hour is one (1) hour of actual participation in a continuing education activity, exclusive of breaks.

~~(4-9-09)~~()

01. Contact Hours. The contact hours of continuing education must be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. No less than three (3) contact hours for each renewal period must be in ethics, which must be specific to legal issues, law, or ethics. Therapeutic workshops, retreats and other self-help activities are not considered continuing education training unless specific parts of the experience are applicable to counseling or therapy practice. ~~(3-30-06)~~()

02. Documentation of Attendance. It shall be necessary for the ~~applicant~~ licensee to ~~provide~~ maintain documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the ~~applicant~~ licensee. This documentation must be ~~maintained by the applicant and~~ provided to the Board upon request by the Board or its agent. ~~(4-2-03)~~()

03. Approved Contact Hours, Limitations, and Required Documents. ()

a. College or University Courses for Credit or Audit. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. However, all courses are subject to Board approval. For college or university courses, one (1) semester credit equals fifteen (15) contact hours; one (1) quarter credit equals ten (10) contact hours. The licensee must provide the Board with a copy of the licensee's transcript substantiating any hours attended by the licensee. ()

b. Seminars, Workshops, Conferences. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. Teleconferences must feature an interactive format in order to qualify for contact hour credit. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor. The licensee must provide the Board with a copy of the certificate, or letter signed by course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. ()

c. Publications. A maximum of four (4) contact hours may be counted in this category during each reporting period. Publication activities are limited to articles in journals, a chapter in an edited book, or a published book or professional publication. The licensee must provide the Board with a copy of the cover page or the article or book in which the licensee has been published. For a chapter in an edited book the licensee must submit a copy of the table of contents. ()

d. Presentations. A maximum of four (4) contact hours may be counted in this category during each reporting period. Presentations may be used for contact hour credit if the topic is germane to the field. A particular presentation will qualify for contact hour credit one (1) time in a five (5) year period. Only actual presentation time may be counted; preparation time does not qualify for contact hour credit. The licensee must provide the Board with a copy of the conference program or a letter from the sponsor, host organization, or professional colleague. ()

e. Clinical Supervision and Case Consultation. A maximum of five (5) contact hours of received supervision/consultation may be counted in this category during each reporting period. In order to qualify for contact hour credit, supervision/consultation must be received on a regular basis with a set agenda. No credit will be given for the licensee's supervision of others. The licensee must provide the Board with a letter from the supervisor or consultant listing periods of supervision, where the supervision occurred, and the name of the supervisor. ()

f. Dissertation. A maximum of five (5) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a copy of the licensee's transcript and the title of the dissertation. ()

g. Leadership. A maximum of four (4) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a letter from a professional colleague listing the position of leadership, periods of leadership, and the name of the organization under which the leadership took place. The following leadership positions qualify for continuing education credits: ()

i. Officer of a state or national counseling or therapy organization; ()

- ii. Editor of a professional counseling or therapy journal: ()
- iii. Member of a national ethics disciplinary review committee rendering licenses, certification, or professional membership: ()
- iv. Active member of a counseling or therapy working committee producing a substantial written product: ()
- v. Chair of a major counseling or therapy conference or convention: or ()
- vi. Other leadership positions with justifiable professional learning experiences. ()
- h.** Home Study and On-line Education. A maximum of ten (10) contact hours may be counted through self-study during each reporting period. In order for a home study or on-line course to qualify for contact hours, the course must be provided by a Board-approved continuing education provider or a course pre-approved by the Board. Ethics contact hours cannot be earned through self-study or on-line education. ()
- i.** Copy of Certification Required. A licensee applying for home study or on-line credit must provide the Board a copy of the certification that is verified by the authorized signatures from the course instructors, providers, or sponsoring institution and substantiates any hours completed by the licensee. A licensee seeking contact credit for reading a publication must submit results from a test on the information contained within the publication and administered by an independent third-party. ()
- j.** Continuing Education Credit. Continuing education credit may be granted for a maximum of two (2) hours each renewal period for time spent attending one (1) Board meeting. Members of the Board are not entitled to continuing education credit for Board service. ()

034. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. No more than five (5) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (4-2-03)

045. Compliance Audit. The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-3407, Idaho Code. (4-2-03)

056. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must request such exemption prior to renewal and provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. There is no continuing education required of those holding a current inactive license. (~~3-26-08~~)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.16.01 - RULES OF THE STATE BOARD OF DENTURITRY

DOCKET NO. 24-1601-0901

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 54-3309, 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 21, 2009.

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:

Updates the Board of Denturtry contact information, as it has changed. To protect the public, it clarifies that the supervising denturist or dentist must be present and directly observe any intern interaction with a patient.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 3rd day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-1601-0901

005. ADDRESS OF IDAHO BOARD OF DENTURITRY (RULE 5).

The office of the Board of Denturtry is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's

FAX number is (208) 334-3945. The Board's e-mail address is ~~ibol~~ibolden@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/den.htm>. (3-24-05)()

(BREAK IN CONTINUITY OF SECTIONS)

300. INTERNSHIP (RULE 300).

- 01. Requirements and Conditions for Internship.** (3-10-00)
- a.** To be eligible for internship the applicant must have completed: (3-10-00)
- i.** The educational requirements set forth in Section 54-3310(b), Idaho Code; or (3-10-00)
- ii.** Have dentistry experience of three (3) years within the five (5) years immediately preceding application. (3-10-00)
- b.** Where an internship is established based on experience, the internship is valid only while the intern is actively pursuing completion of Idaho licensure requirements. (3-10-00)
- c.** Application shall be made on forms provided by the Bureau of Occupational Licenses and shall: (3-10-00)
- i.** Document the location of practice; (3-10-00)
- ii.** Include the name and address of the supervising dentist or dentist; (3-10-00)
- iii.** Include a sworn or affirmed statement by the supervising dentist or dentist; (3-10-00)
- iv.** Include a sworn or affirmed statement by the supervisor accepting supervision of the intern; (3-10-00)
- v.** Include a sworn statement by applicant that he is knowledgeable of law and rules and will abide by all requirements of such law and rules; and (3-10-00)
- vi.** Include such other information necessary to establish applicant's qualifications for licensure as a dentist and establish compliance with pre-intern requirements. (3-10-00)
- d.** The supervising dentist or dentist must be present and directly observe any intern interaction with a patient. ()
- e.** Two (2) years of internship under the supervision of a licensed dentist shall be completed in not less than twenty-four (24) months and shall not exceed thirty (30) months except as approved by the board. (4-2-08)
- 02. Internship Equivalency.** A person shall be considered to have the equivalent of two (2) years internship under a licensed dentist who has met and verifies one (1) of the following within the five (5) years immediately preceding application: (3-10-00)
- a.** Two (2) years internship as a denture lab technician under a licensed dentist; or (3-10-00)
- b.** Two (2) years in the military as a denture lab technician; or (3-10-00)
- c.** Three (3) years experience as a dentist under licensure in another state or Canada. (3-10-00)
- 03. Internship Not to Exceed One Year.** Internship not to exceed one (1) year acquired through a

formal training program in an acceptable school will be accepted toward the two (2) year required internship for licensure. (7-1-93)

04. Training Requirements. Each year of required internship shall consist of two thousand (2,000) clock hours of training and performance of the following minimum procedures for licensure. (7-1-93)

a. Procedures shall include all steps required in constructing a finished denture but are not limited to the following: (7-1-93)

i. Patient charting -- thirty-six (36) minimum. (7-1-93)

ii. Operatory sanitation -- thirty-six (36) minimum. (7-1-93)

iii. Oral examination -- thirty-six (36) minimum. (7-1-93)

iv. Impressions, preliminary and final (pour models, custom trays) -- thirty-six (36) minimum. (7-1-93)

v. Bite registrations -- twelve (12) minimum. (7-1-93)

vi. Articulations -- twelve (12) minimum. (7-1-93)

vii. Set ups -- twelve (12) minimum. (7-1-93)

viii. Try ins -- twelve (12) minimum. (7-1-93)

ix. Processing (wax up, flask-boil out, packing, grind-polish) -- thirty-six (36) minimum. (7-1-93)

x. Delivery-post adjustment -- thirty-six (36) minimum. (7-1-93)

b. Processed relines (one (1) plate = one (1) unit) -- twenty-four (24) units. (7-1-93)

c. Tooth repairs -- forty-eight (48) minimum. (7-1-93)

d. Broken or fractured plates or partials -- forty-eight (48) minimum. (7-1-93)

05. Reporting Requirements. Interns must file reports, attested to by the supervisor, with the board on forms provided by the Bureau of Occupational Licenses on a monthly basis and recapped at termination or completion of the training. (7-1-93)

06. Denture Clinic Requirements. Denture clinic requirements for approved internship training: (7-1-93)

a. There shall be not more than one (1) internee per licensed denturist or dentist who is practicing at the clinic on a full time basis. (7-1-93)

b. There shall be a separate work station in the laboratory area for each intern with standard equipment, i.e. lathe, torch and storage space. The intern shall provide necessary hand tools to perform the duties of the denture profession. Use of the operatory facilities and other equipment will be shared with the intern. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-0901 (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 54-4705, 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 21, 2009.

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 Acupuncture operates on fees paid by its licensees. This change would decrease the application fee, and the annual renewal fees for licensure, certification, and technician certification. The Board is also updating their website address.

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

This fee or charge is being imposed pursuant to Section 54-1115A, Idaho Code: This change would reduce the following fees: application fee from \$200 to \$100; annual renewal fees for licensure and certification from \$200 to \$125; and annual renewal fees for technician certification from \$150 to \$75.

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 amount of fees collected for the Board of Acupuncture by approximately \$13,250 per year based on the number of licensees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 3rd day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-1701-0901

005. ADDRESS OF THE IDAHO STATE BOARD OF ACUPUNCTURE (RULE 5).

The office of the Board of Acupuncture is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is acu@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at www.ibol.idaho.gov/~~acu.htm~~. (3-21-07)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

300. FEES (RULE 300).

- 01. Application Fee.** Application fee for any original license or certification - ~~two~~ one hundred dollars (\$~~2~~100). (3-21-07)(_____)
- 02. Original License Fee.** (3-30-01)
- a.** Original license fee - two hundred dollars (\$200). (3-21-07)
- b.** Original fee for certification - two hundred dollars (\$200). (3-21-07)
- c.** Original fee for technician certification - one hundred fifty dollars (\$150). (3-30-01)
- 03. Annual Renewal Fee.** (3-10-00)
- a.** Annual renewal fee for licensure - ~~two~~ one hundred twenty-five dollars (~~\$200~~ 125). (3-21-07)(_____)
- b.** Annual renewal fee for certification - ~~two~~ one hundred twenty-five dollars (~~\$200~~ 125). (3-21-07)(_____)
- c.** Annual renewal fee for technician certification - ~~one hundred fifty~~ seventy-five dollars (~~\$150~~ 75). (3-10-00)(_____)
- 04. Inactive License.** Inactive license or certification fee - fifty dollars (\$50). (3-30-01)
- 05. Non-refundable.** All fees are non-refundable. (3-10-00)
- 06. Yearly Fees.** With the exception of Subsection 300.01 and 300.02, all fees provided under these rules are yearly fees. (3-10-00)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-0901 (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 54-4106, Idaho Code and Title XI, Federal 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 21, 2009.

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 Real Estate Appraisers is updating the incorporation by reference to reflect the current Uniform Standards of Professional Appraisal Practice (USPAP) edition. It is updating the web address for the Board as it has changed. It corrects code references. To eliminate ambiguity, it clarifies the definition of a classroom hour and a residential unit. It increases the license renewal fee from \$250 to \$350 to meet the Board's increased operating costs. It adds a lack of activity section to allow for termination of incomplete applications upon notification. It clarifies the requirements for licensure as established by the federal Appraisal Qualifications Board. It clarifies continuing education for registered trainees. It corrects education classroom hours for residential appraisers to be in compliance with the Appraisal Qualifications Board (AQB). It clarifies education requirements for general appraisers to be in compliance with the AQB. It clarifies continuing education (CE) requirements. It provides an exemption from CE for health or other good cause as determined by the Board.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The Board is increasing the license renewal fee from \$250 to \$350.

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 Board of Real Estate Appraisers is raising the license renewal fee from \$250 to \$350. This could have a positive impact of \$76,800 on dedicated funds based on 768 licensees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 17th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-1801-0901

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)," ~~2008~~ 2010-2011 Edition published by the Appraisal Foundation and effective ~~January 1~~ April 3, 2008 as referenced in Subsection 700, is herein incorporated by reference and is available for review at the Board's office and may be purchased from the Appraisal Foundation. ~~(5-8-09)~~(____)

005. ADDRESS OF THE IDAHO REAL ESTATE APPRAISER BOARD (RULE 5).

The office of the Real Estate Appraiser Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is rea@ibol.idaho.gov. The Board's official web site address ~~is~~ can be found at <http://ibol.idaho.gov/rea.htm>. ~~(3-30-07)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

The definitions numbered one through ~~twelve~~ sixteen (1-~~126~~), appearing at Section 54-4104, Idaho Code are incorporated herein by reference as if set forth in full. ~~(7-1-93)~~(____)

01. Advisory Committee. A committee of state certified or licensed real estate appraisers appointed by the board to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education and examination requirements that are appropriate for each classification of state certified or licensed real estate appraiser. (7-1-93)

02. Appraisal Foundation. The Appraisal Foundation means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois. (7-1-97)

03. Appraiser Qualifications Board. Appraiser Qualifications Board of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers. (7-1-97)

04. Appraisal Standards Board. The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. (7-1-97)

05. Bureau. The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-4106(2)(a) and 67-2601, Idaho Code. (3-13-02)

06. Chief. The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code. (7-1-93)

07. Classroom Hour. Fifty (50) minutes out of each sixty (60) minute hour in a setting that is a face-to-face exchange of ideas and may include on-line virtual classrooms that allows real time interaction between the instructor and students. ~~(7-1-93)~~(____)

08. Field Real Estate Appraisal Experience. Personal inspections of real property, assembly and analysis of relevant facts, and by the use of reason and the exercise of judgement, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. (4-6-05)

- 09. FIRREA.** Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 was designed to ensure that more reliable appraisals are rendered in connection with federally related transactions. (7-1-93)
- 10. Nationally Recognized Appraisal Organization.** An appraisal organization which is a sponsor of The Appraisal Foundation. (4-2-08)
- 11. Real Estate.** In addition to the previous definition in Section 54-4104(~~711~~), Idaho Code, will also mean an identified parcel or tract of land, including improvements, if any. (~~7-1-93~~)()
- 12. Real Property.** In addition to the previous definition in Section 54-4104(~~§11~~), Idaho Code, will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate. (~~7-1-93~~)()
- 13. Residential Unit.** Real estate with a current highest and best use of a residential nature. A residential unit includes a kitchen and a bathroom. (~~7-1-93~~)()
- 14. Specialized Appraisal Services.** Services which include situations in which an appraiser is employed or retained to provide appraisal services that do not fall within the defined term “appraisal assignments.” Specialized appraisal services relate to the employer’s or client’s individual needs or investment objectives and commonly include specialized marketing and financing studies as well as analysis, opinions, and conclusions rendered in connection with activities such as real estate brokerage, mortgage banking, and real estate counseling, including real estate tax counseling. (7-1-97)
- 15. Uniform Standards of Professional Appraisal Practice or USPAP.** Those uniform standards adopted by the Appraisal Foundation’s Appraisal Standards Board. These standards may be altered, amended, interpreted, supplemented, or repealed by the Appraisal Standards Board (ASB) from time to time. (3-13-02)
- 16. USPAP Course.** For the purposes of licensure and license renewal, any reference to the approved USPAP course shall mean the National USPAP Course provided by Appraisal Qualifications Board Certified USPAP Instructors and Educational Providers. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

- 150. FEES (RULE 150).**
Fees are established in accord with Section 54-4113, Idaho Code as follows: (7-1-93)
- 01. Application.** Application fee for License - two hundred fifty dollars (\$250). (4-11-06)
- 02. Original License.** Original License - one hundred twenty-five dollars (\$125*). (4-11-06)
- 03. License Renewal.** License renewal - ~~two~~ three hundred fifty dollars (~~\$2350~~*). (~~4-11-06~~)()
- 04. Reinstatement.** Reinstatement fees are as provided in Section 67-2614, Idaho Code - twenty-five dollars (\$25). (7-1-93)
- 05. Application for Reciprocity.** Application for reciprocity - two hundred fifty dollars (\$250*). (3-30-01)
- 06. Original License Via Reciprocity.** Original License via reciprocity - one hundred twenty-five dollars (\$125*). (4-11-06)
- 07. Temporary Permit.** Temporary permit - one hundred dollars (\$100). (7-1-93)
- 08. Trainee Registration Fee.** Trainee registration fee - fifty dollars (\$50). (3-13-02)

09. Examination and Reexamination Fees. Examination and Reexamination fees will be calculated based on the actual cost of the examination. Successful applicants will be notified of the fees at the time they are scheduled for examination. (7-1-97)

10. Fees are Non-Refundable. Fees are non-refundable. (7-1-93)

11. Fees Followed By Asterisk (*) Means. Proposed fees for these categories marked with an asterisk (*) include twenty five-dollars (\$25) to be submitted by the state to the federal government. Title XI, Section 1109 requires each state to submit a roster listing of state licensed appraisers to the Appraiser Subcommittee "no less than annually." The state is also required to collect from such individuals who perform appraisals in federally related transactions an annual registry fee of "not more than twenty five dollars (\$25)," such fees to be transmitted by the state to the federal government on an annual basis. (4-11-06)

151. -- 199. (RESERVED).

200. APPLICATION (RULE 200).

01. Filing Application with Supporting Documents and Fees. Any person desiring to apply for licensure must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. After the qualifications have been reviewed, verified and approved by the Board, the applicant will receive the pre-approved examination application and must submit the appropriate fees to the examining entity. (4-11-06)

02. Application Deadline Date. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled board meeting in order to be reviewed by the Board. Applications received less than thirty (30) days in advance will be held until a subsequent meeting. (3-13-02)

03. Eligibility for Examination. The qualified applicant will be assigned to the first available examination subsequent to the determination of eligibility based on documentation that the applicant has met the required education and experience requirements. (4-11-06)

04. Trainee Registration Application. Any person desiring registration as a trainee must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled Board meeting in order to be reviewed by the Board. (3-13-02)

05. Lack of Activity. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon thirty (30) days written notice, unless good cause is established to the Board. ()

201. -- 249. (RESERVED).

250. REQUIREMENTS FOR LICENSURE (RULE 250).

All applicants for licensure in any real estate appraiser classification must comply with the following education, experience and examination requirements in addition to meeting those requirements set forth in Sections 275, 300, 350, and 400 below. (4-11-06)

01. Education. If an individual has completed the education requirements on or before December 31, 2007, the individual must submit a complete application to the board before January 1, 2011. If an individual has not completed their educational requirement on or before December 31, 2007, or submits an application on January 1, 2011 or later, the individual must complete the educational requirements which became effective January 1, 2008 and any subsequent requirements adopted prior to the individual's application date. Hours will be credited only for courses with content that follows the Required Core Curriculum as outlined by the Appraisal Qualification Board. (4-2-08)

a. Credit toward the classroom hour requirement may only be granted where the length of the

educational offering is at least fifteen (15) hours, and the individual successfully completes a closed-book examination pertinent to the educational offering. (4-11-06)

b. Credit for the classroom hour requirement may be obtained from the following: (7-1-97)

i. Colleges or Universities. (7-1-97)

ii. Community or Junior Colleges. (7-1-97)

iii. Courses approved by the Appraisal Qualifications Board. (4-2-08)

iv. State or Federal Agencies or Commissions. (7-1-97)

v. Other providers approved by the Board. (7-1-97)

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. (3-18-99)

d. Course credits that are obtained from the course provider by challenge examination without attending the course will not be accepted. (4-11-06)

e. Prior to January 1, 2008, ~~Various~~ appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of those topics listed in Subsection 250.01.e. that are required for the license classification for which application is being made. Licensed Residential and Certified Residential must include emphasis in one (1) to four (4) unit residential properties; Certified General must include emphasis in nonresidential properties. (4-11-06)(____)

i. Basic appraisal principles. (4-11-06)

ii. Basic appraisal procedures. (4-11-06)

iii. The fifteen (15) hour national USPAP course. (4-11-06)

iv. Market analysis and highest and best use. (4-11-06)

v. Appraiser site valuation and cost approach. (4-11-06)

vi. Sales comparison approach. (4-11-06)

vii. Sales income approach. (4-11-06)

viii. Report writing and case studies. (4-11-06)

ix. Statistics, modeling and finance. (4-11-06)

x. Advanced applications and case studies. (4-11-06)

xi. Appraisal subject matter electives. (4-11-06)

f. Advanced courses will be those courses for which an introductory or basic course is required as a prerequisite. Typically classes titled "Introductory," "Basic," or "Principles" will not be accepted for advanced requirements. (4-11-06)

02. Experience. (7-1-97)

a. The work product claimed for experience credit must be in conformity with the USPAP or shall be in compliance with generally accepted standards which were in effect at the time those appraisals were prepared.

(3-13-02)

- b.** All appraisal experience must be obtained as a registered trainee or as a licensed appraiser. (4-11-06)
- c.** Only experience gained during the five (5) years immediately preceding application will be considered for evaluation. (4-11-06)
- d.** Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study. (4-11-06)
- e.** Each applicant applying for licensure must verify completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board. (4-11-06)
- i.** The Board requires submission of a log that details hours claimed for experience credit. The log must include the following: ()
- (1) Type of property; ()
 - (2) Address of the property; ()
 - (3) Report date; ()
 - (4) Description of work performed; ~~and~~ ()
 - (5) Number of work hours; ~~(4-11-06)~~()
 - (6) Complexity; ()
 - (7) Approaches to value; ()
 - (8) Appraised value; ()
 - (9) Scope of supervising appraiser's review; and ()
 - (10) Supervision. ()
- ii.** The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit. (7-1-97)
- iii.** The Board may request submission of written reports or file memoranda that substantiate an applicant's claim for experience credit. (4-11-06)
- f.** Ad valorem tax appraisers must demonstrate the use of techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 010.408, Field Real Estate Appraisal Experience in order to receive experience credit. ~~(4-11-06)~~()
- 03. Examination.** Successful completion of an examination appropriate to the license classification being applied for and approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (4-11-06)

251. -- 274. (RESERVED).

275. REGISTERED TRAINEE REAL ESTATE APPRAISER (RULE 275).

01. Qualification. Each applicant for registration as an appraiser trainee must meet the following requirements: (4-11-06)

a. Education. Beginning July 1, 2006, all applicants for registration as a trainee must document completion of at least seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)

i. Basic Appraisal Principles - not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and (4-11-06)

ii. Basic Appraisal Procedures - not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and (4-11-06)

iii. National USPAP Course - not less than fifteen (15) hours. (4-11-06)

b. Experience. All applicants for registration as a trainee must retain and identify at least one (1) licensed real estate appraiser who agrees to provide the supervision required by law and rule. The supervising appraiser shall: (4-11-06)

i. Hold a current and unrestricted Idaho license as a Certified Residential Appraiser or a Certified General Appraiser; and (4-11-06)

ii. Submit evidence of completion of an approved four-hour continuing education course regarding the role of a supervising appraiser. ()

iii. Not have been disciplined by the Board within the previous four (4) years from acting as a supervisor; and (4-11-06)

iv. Not be registered to provide supervision responsibilities to more than three (3) appraiser trainees at any one (1) time; and (4-11-06)

v. Be responsible for the training and direct supervision of the appraiser trainee; and (4-11-06)

vi. Accept responsibility for all appraisal reports by signing and certifying that the report is in compliance with USPAP; and (4-11-06)

vii. Review all appraiser trainee appraisal report(s); and (4-11-06)

viii. Personally inspect each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. (4-11-06)

c. Examination. Each trainee applicant shall document successful passage of examinations in each of the prerequisite courses required for registration as a trainee. (4-11-06)

02. Scope and Practice. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to USPAP. (4-11-06)

a. Each appraiser trainee is permitted to have more than one (1) supervising appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. (4-11-06)

b. An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the following for each appraisal: (4-11-06)

- i. Type of property. (4-11-06)
- ii. Date of report. (4-11-06)
- iii. Address of subject property. (4-11-06)
- iv. Description of work performed by the trainee and the scope of review and supervision of the supervisor. (4-11-06)
- v. Number of work hours. (4-11-06)
- vi. Signature and license number of the supervising appraiser. (4-11-06)
- c. An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. (4-11-06)

03. Continuing Education. Prior to the second renewal ~~of~~ and for each renewal thereafter, an appraiser trainee ~~registration the appraiser trainee~~ shall be required to obtain: ~~(4-11-06)~~(____)

a. The equivalent of fifteen (15) classroom hours of instruction in approved courses or seminars during the twelve (12) month period preceding the renewal. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP update course or the equivalent. ~~(4-11-06)~~(____)

b. All continuing education shall be in compliance with Subsections 401.01 through 401.035. ~~(4-11-06)~~(____)

c. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. (4-11-06)

d. The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. (4-11-06)

276. -- 299. (RESERVED).

300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 300).

The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being licensed, every licensee must annually meet the continuing education requirement. (4-11-06)

01. Education. Prior to January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Licensed Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than ninety (90) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than ~~seventy-five (75)~~ seventy-five (75) classroom hours of study related to those topics outlined under Subsection 250.01.e., the basic principles of real estate appraising. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics will be credited to the classroom hour requirement. Beginning on January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall: ~~(3-30-07)~~(____)

a. Document registration as an Appraiser Trainee; and (4-11-06)

b. Document the successful completion of not less than seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)

i. Residential Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and (4-11-06)

ii. Residential Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and (4-11-06)

iii. Residential Sales Comparison and Income Approaches - not less than thirty (30) hours specifically including Valuation Principles and Procedures - Sales Comparison Approach; Valuation Principles and Procedures - Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and (4-11-06)

iv. Residential Report Writing and Case Studies - not less than fifteen (15) hours specifically including Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies. (4-11-06)

02. Experience. Prerequisite to sit for the examination: (7-1-97)

a. Document two thousand (2,000) hours of supervised appraisal experience as a registered Appraiser Trainee in no less than twelve (12) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. Of the required two thousand (2,000) hours, the applicant must accumulate a minimum of one thousand five hundred (1,500) hours from field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

03. Examination. Successful completion of the Licensed Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).

The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 250. Subsequent to being certified, an individual must meet the continuing education requirement. (4-2-08)

01. Education. Prior to January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho State Certified General Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than one hundred eighty (180) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than one hundred sixty (160) classroom hours of study related to those topics outlined under Subsection 250.01.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; and one hundred (100) classroom hours of advanced non residential specialized courses relating to the topics specified at Subsection 250.01.e. Beginning on January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall: (3-30-07)

a. Hold a Bachelors Degree or higher from an accredited college or university or document successful completion of no less than thirty (30) college semester credit hours in English Composition, Micro Economics,

Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Computer Science, and Business or Real Estate Law, and two (2) elective courses in accounting, geography, ageconomics, business management, or real estate; and (4-2-08)

b. Document registration as an Appraiser Trainee ~~or licensure as a Licensed Residential Real Estate Appraiser or licensure as a Certified Residential Real Estate Appraiser~~; and document the successful completion of not less than two hundred twenty-five (225) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)(____)

i. Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; (____)

ii. General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours; (____)

iii. General Appraiser Sales Comparison Approach: not less than thirty (30) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; (____)

iv. General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours; (____)

v. General Appraiser Income Approach: not less than sixty (60) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; (____)

vi. General Appraiser Report Writing and Case Studies: not less than thirty (30) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (____)

vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.b.; or (____)

c. Document licensure as a Licensed Residential Real Estate Appraiser and the successful completion of not less than ~~one hundred ten~~ fifty (210/150) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)(____)

i. Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)

ii. General Appraiser Market Analysis and Highest and Best Use: not less than ~~thirty~~ fifteen (30/15) hours; and (4-11-06)(____)

iii. General Appraiser Sales Comparison Approach: not less than ~~thirty~~ fifteen (30/15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (4-11-06)(____)

iv. General Appraiser Site Valuation and Cost Approach: not less than ~~thirty~~ fifteen (30/15) hours; and (4-11-06)(____)

v. General Appraiser Income Approach: not less than ~~sixty~~ forty-five (60/45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (4-11-06)(____)

vi. General Appraiser Report Writing and Case Studies: not less than ~~thirty~~ fifteen (30/15) hours

specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (4-11-06)()

vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.c.; or ()

d. Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: ()

i. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and ()

ii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ()

iii. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and ()

iv. General Appraiser Income Approach: not less than forty-five (45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ()

v. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ()

02. Experience. Experience is a prerequisite to sit for the licensure examination: (4-11-06)

a. Document three thousand (3,000) hours of appraisal experience in no less than thirty (30) months (See Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. One thousand five hundred (1,500) hours of the experience must be nonresidential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection 250.02.d. (4-11-06)

401. CONTINUING EDUCATION (RULE 401).

All certified/licensed appraisers must comply with the following continuing education requirements: (7-1-97)

01. Purpose of Continuing Education. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising. (7-1-97)

02. Hours Required. The equivalent of fifteen (15) classroom hours of instruction in courses or seminars during each year prior to renewal is required. If the licensee completes two (2) or more courses having substantially the same content during any one (1) renewal period, the licensee only will receive continuing education credit for one (1) of the courses. (3-20-04)()

a. A classroom hour is defined as fifty (50) minutes out of each sixty (60) minute segment. (7-1-93)

b. Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours. (7-1-97)

c. Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the Appraisal Qualification Board and by courses approved by Real Estate Appraiser Boards of states

with reciprocity with Idaho. All other courses must have approval of the Board, which shall require documentation including the instructors and their qualifications, course content, length of course, and its location. Courses shall be approved for a period of four (4) years. (4-6-05)

d. Once every twenty-four (24) months, ~~an~~ Idaho State Certified/Licensed Real Estate Appraisers and registered trainees will be required to attend an approved seven (7) hour USPAP update course or the equivalent. ~~(5-8-09)~~()

03. Credit for Appraisal Educational Processes and Programs. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. (4-2-08)

04. Credit for Attending the Licensure Board Meetings. Continuing education credit may be granted for a maximum of two (2) hours each renewal period for time spent attending one (1) Board meeting. Members of the board shall not be entitled to continuing education credit for board service. (4-2-08)

05. Requirement When a Certificate/License Is Cancelled. For each year (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, fifteen (15) hours of continuing education must be documented, including a seven (7) hour USPAP update course, prior to reinstatement. (3-30-07)

06. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The appraiser must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-0901

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 54-4205, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 updates the contact information for the Board of Examiners of Residential Care Facility Administrators as it has changed. It allows for termination of inactive applications upon notification to the applicant in an effort to ensure files are current. It clarifies the qualifications for applicants licensed as nursing home administrators to ensure they are competent to run a residential care facility. It adds a special exemption from continuing education requirements to allow the Board to consider a hardship.

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

No fee or charge is being imposed through this rulemaking.

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

There is no fiscal impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 18th day of August, 2009.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Set. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEXT FOR DOCKET NO. 24-1901-0901

005. ADDRESS OF IDAHO BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS (RULE 5).

The office of the Board of Examiners of Residential Care Facility Administrators is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is rca@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/rea.htm>.

(3-30-06)()

(BREAK IN CONTINUITY OF SECTIONS)

100. APPLICATIONS (RULE 100).

Applications will be on forms approved by the Board. No application will be considered for any action unless accompanied by the appropriate fees and until the required supporting documentation is received by the Bureau. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon thirty (30) days written notice, unless good cause is established to the Board.

(3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

150. QUALIFICATIONS FOR ADMINISTRATOR LICENSE (RULE 150).

01. Qualifications. Each applicant for an administrator's license and each licensed administrator, as requested by the Board, shall submit proof, along with their application, that said individual meets the following qualifications for the issuance of a license or permit, or the retention or renewal of a license: (4-6-05)

042. Good Moral Character. The applicant shall cause to be submitted a criminal background check by an entity approved by the Board establishing that the applicant has not been convicted, pled guilty or nolo contendere or received a withheld judgment for a felony or any crime involving dishonesty or the health or safety of a person. (3-30-06)

151. -- 199. (RESERVED).

160. NURSING HOME ADMINISTRATOR QUALIFICATIONS FOR LICENSE (RULE 160).

Any applicant who holds a valid Idaho nursing home administrator license must meet the requirements provided in Section 54-4211(2), Idaho Code, and must take and pass the Board-approved residential care administrator examination. This requirement may be waived if the applicant submits evidence satisfactory to the Board that he has at least one (1) year of leadership or management experience working in a residential care facility within the five (5) years preceding the application. ()

161. -- 199. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

401. CONTINUING EDUCATION (RULE 401).

01. Minimum Hours Required. Applicants for annual renewal shall be required to complete a minimum of twelve (12) hours of continuing education courses within the preceding twelve (12) month period. Basic First Aid, Cardio-Pulmonary Resuscitation, medication assistance, or fire safety courses shall not be considered for continuing education credit. (3-30-06)

02. Course Approval. Courses of study relevant to residential care facility administration and sponsored or provided by the following entities or organizations shall be approved for continuing education credits: (3-30-06)

a. Accredited colleges or universities. (3-30-06)

b. Federal, state or local government entities. (3-30-06)

c. National or state associations. (3-30-06)

d. Otherwise approved by the Board based upon documentation submitted by the licensee or course provider reviewing the nature and subject of the course and its relevancy to residential care administration, name of instructor(s) and their qualifications, date, time and location of the course and procedures for verification of attendance. (3-30-06)

03. Credit. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or by computer on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Each licensee shall maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. (3-30-06)

04. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.22.01 - RULES OF THE IDAHO LIQUEFIED PETROLEUM GAS SAFETY BOARD

DOCKET NO. 24-2201-0901 (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 54-5310, 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 21, 2009.

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 Liquefied Petroleum Gas Safety Board is proposing changes that will update the web address for the board as it has changed. The board was established in 2005. The costs of getting the program started were higher than anticipated due to the time required to inspect facilities and educate individuals regarding compliance. Many facilities had to be inspected several times. As facilities comply, the number of inspections should decrease. A fee increase is necessary because the Board operates on dedicated funds and the fees have not supported the program. At the end of fiscal year 2009, the Board had a deficit of over \$132,000. Fewer inspections and higher fees will allow the Board's revenues to be closer to its expenditures and begin eliminating the deficit.

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

The Liquefied Petroleum Gas Safety Board is increasing the facility license fee and annual renewal fee from \$50 to \$100, increasing the bulk storage facility license fee and annual renewal fee from \$200 to \$400, increasing the dealer license and renewal fee from \$50 to \$75, and increasing the endorsement fee from \$50 to \$75.

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 increases being proposed could mean an increase in dedicated funds of approximately \$33,750 based on 558 licensees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 14th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-2201-0901

005. ADDRESS OF IDAHO LIQUEFIED PETROLEUM GAS SAFETY BOARD (RULE 5).

The office of the Idaho State Liquefied Petroleum Gas Safety Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is lpdg@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/Ipdl.htm>. (3-30-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

150. APPLICATION (RULE 150).

01. Application Form. Each applicant for a license shall submit a complete application on application forms approved by the Board together with the required fee(s). (____)

02. Supplemental Documents. The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. (3-30-06)(____)

03. Lack of Activity. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon thirty (30) days written notice, unless good cause is established to the Board. (____)

151. – 174. (RESERVED).

175. FEES (RULE 175).

Applications should not be filed unless the applicant can meet all requirements. (3-30-06)

01. Application Fee. Application fee - thirty dollars (\$30). (3-30-06)

02. Original Individual License and Annual Renewal Fee. License fee - ~~fifty~~ seventy-five dollars (\$~~50~~75). (3-30-06)(____)

03. Original Facility License Fee and Annual Renewal Fee. Facility with ten thousand (10,000) gallon or less storage capacity - ~~fifty~~ one hundred dollars (\$~~50~~100). (3-30-06)(____)

04. Original Bulk Storage Facility Fee and Annual Renewal Fee. Bulk Storage Facility with more than ten thousand (10,000) gallon storage capacity - ~~two~~ four hundred dollars (\$~~200~~400). (3-30-06)(____)

05. Endorsement Fee. Endorsement fee - ~~fifty~~ seventy-five dollars (\$~~50~~75). (3-30-06)(____)

06. Reinstatement Fee. Reinstatement fee - fifty dollars (\$50). (3-30-06)

07. Refund of Fees. No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license. (3-30-06)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-0901 (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 54-2910, 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 21, 2009.

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 Speech and Hearing Services is updating the web address for the Board as it has changed. The rule is establishing the endorsement fee the same as the original license fee. It increases the renewal fee by \$25, and clarifies that exam fees for unexcused applicants are non refundable. To ensure competency, it clarifies the need for continuing education when reinstating a license. To benefit out of state applicants, it adds a section that clarifies the requirements for endorsement. It adds provision to carry over continuing education and adds a special exemption for continuing education for the benefit of licensees. It clarifies when a provisional permit can be issued and how many permit holders can be supervised at a time. It clarifies what records must be maintained by the supervisor of a hearing aid dealer and fitter. It clarifies the quarterly report for audiology and hearing aid dealer and fitter and what needs to be included.

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

Rule 175 increases the renewal fees from \$100 to \$125.

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 Board of Speech and Hearing Services is raising the license renewal fee from \$100 to \$125. This could have a positive impact of approximately \$15,625 on dedicated funds based on the 625 licensees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 17th day of August, 2009.

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 PROPOSED TEXT FOR DOCKET NO. 24-2301-0901

005. ADDRESS OF IDAHO SPEECH AND HEARING SERVICES LICENSURE BOARD (RULE 5).

The office of the Idaho Speech and Hearing Services Licensure Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is shs@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/shs.htm>. ~~(3-30-06)()~~

(BREAK IN CONTINUITY OF SECTIONS)

175. FEES (RULE 175).

Applications should not be filed unless the applicant can meet all requirements. (3-30-06)

01. Application Fee. Application Fee - Thirty dollars (\$30). (3-30-06)

02. Original License/Endorsement Fee. The original license/endorsement fee is one hundred dollars (\$100) to be accompanied by the completed application. ~~(3-30-06)()~~

03. Examination/Reexamination Fee. Examination fee shall be that charged by the examination provider plus an administration fee of fifty dollars (\$50) when the examination is administered by the Board. (3-30-06)

04. Provisional Permit. Provisional permit fee is one hundred dollars (\$100). (3-30-06)

05. Annual Renewal Fee. Annual renewal fee is one hundred twenty-five dollars (~~\$100~~25). ~~(3-30-06)()~~

06. Refund of Fees. No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license or examination fees for unexcused applicants. ~~(3-30-06)()~~

176. -- 199. (RESERVED).

200. RENEWAL OF LICENSE (RULE 200).

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board on the birth date of an individual licensee in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-30-06)

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, and the applicant must submit proof of having obtained the required continuing education in the twelve (12) months prior to reinstatement. ~~(3-30-06)()~~

(BREAK IN CONTINUITY OF SECTIONS)

301. -- 3409. (RESERVED).

310. ENDORSEMENT (RULE 310).

01. Licensure by Endorsement. The Board may grant a license to any person who submits a

completed, Board-approved application form, together with the required fees, and who: ()

a. Holds a current, active license, at the level for which a license is being sought that has been issued by the authorized regulatory entity in another state. Certification that the license is current and active must be received directly by the Board from the issuing agency; ()

b. Has not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity, and has never voluntarily surrendered a license; ()

c. Is of good moral character and has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and ()

d. Has certified under oath to abide by the laws and rules governing the practice of speech and hearing services in Idaho. ()

310. -- 349. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

400. CONTINUING EDUCATION (RULE 400).

Every person holding an Idaho license pursuant to this act must annually complete ten (10) contact hours of continuing education prior to license renewal. (3-30-06)

01. Contact Hours. The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. (3-30-06)

02. Documentation of Attendance. It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (3-30-06)

03. Compliance Audit. The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-2923, Idaho Code. (3-30-06)

04. Initial Compliance. Licensees shall not be required to meet the continuing education requirement for the first renewal. (3-30-06)

05. Equivalence. One (1) continuing education hour shall equal one (1) clock hour. (3-30-06)

06. Carryover of Continuing Education (CE) 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 five (5) hours may be carried forward from the immediately preceding year. ()

07. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. Requests for special exemption must be received by the Bureau fifteen (15) business days prior to expiration of the license. ()

401. -- 449. (RESERVED).

450. PROVISIONAL PERMIT (RULE 450).

01. Issuance of a Provisional Permit. The Board may issue a provisional permit in the following instances: ()

a. To allow a person to engage in the practice of audiology or speech-language pathology while completing either the required postgraduate experience or a comparable experience as part of a doctoral program in audiology. ~~The Board may issue a provisional permit, or~~ ()

b. To allow a person to engage in fitting and dealing hearing aids ~~pursuant to rules adopted by the Board.~~ ()

c. The holder of a provisional permit may practice only while under the supervision of a person fully licensed under this chapter. ~~(3-30-06)~~()

042. Adequate Personal Contact -- Requirements. (3-30-06)

a. The supervisor and provisional permit holder must make contact in person each work day to review any assignments, client contacts, diagnoses, therapies, and hearing aid fittings for the first sixty (60) days of employment. The nature of the supervision and contact must allow for immediate feedback and includes audio/visual, in person, or telephone contacts. (4-2-08)

b. After the first sixty (60) days of employment, contact in person, described in Subsection 450.042.a., must be made no less than once in each calendar week throughout the remaining period of the permit. ~~(4-2-08)~~()

c. In the event a permit holder fails the licensing examination two (2) consecutive times, and is eligible to maintain a permit, the supervisor and permit holder must reinstate contact in person each work day as set forth in Subsection 450.042.a. ~~(3-30-06)~~()

d. All client and supervisor contacts shall be recorded in the permit holder's quarterly report. (3-30-06)

023. Supervisor -- Responsibilities -- Restrictions. (3-30-06)

a. The supervisor must be familiar with Section 54-29085 and 54-2907, Idaho Code. ~~(3-30-06)~~()

b. The supervisor is responsible for all practice and the ethical conduct of each permit holder under supervision. (3-30-06)

c. A supervisor may not supervise more than ~~one~~ two (~~1~~2) permit holders at a time. ~~(3-30-06)~~()

d. The supervisor must have an established business site within the state of Idaho which he regularly utilizes as a base of operation. The supervisor and the permit holder shall be required to work within the same facility. ~~(3-30-06)~~()

e. The supervisor must provide the permit holder with adequate training and client contact necessary to prepare for the required examination. (3-30-06)

f. The supervisor of a hearing aid dealer and fitter permit holder must record with the Board a plan of training that encompasses all ten sections covered in the license examination. The plan must be accepted and approved by the Board or its agent prior to issuance of the permit. The supervisor shall document, by the quarterly report, the permit holder's progress. ~~(3-30-06)~~()

g. A supervisor may terminate his supervision of a permit holder by a written notice to the Bureau and the permit holder by certified mail at least ten (10) calendar days prior to the termination. (3-30-06)

034. Application -- Quarterly Reports. (3-30-06)

a. Application for permit must include completed application, examination fee, permit fee, supervisor statement and plan of training and supervision. (3-30-06)

b. A permit is not valid unless an unrevoked statement accepting supervisory responsibility by a qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the expiration date of the new permit is adjusted to not exceed the date of the third licensure examination following the original application. (3-30-06)

c. Eighteen (18) months is the maximum time allowed for any combination of new or renewed permits. (3-30-06)

d. Every permit holder must submit a quarterly report of his activities on forms furnished by the Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. All sales or fittings made by the person holding a permit holder to practice audiology or a permit to engage in the dealing and fitting of hearing aids will be indicated on the quarterly report forms supplied by the Bureau. Supplemental attachments to be submitted with this form include: (3-30-06)(____)

i. Log of client and supervisor contacts as specified in Subsection 450.022.d. of these rules. (3-30-06)(____)

ii. Supervisor's statement of completion of training assignments by permit holder as specified in Subsection 450.023.f. (3-30-06)(____)

iii. Copy of test results for all persons tested by the permit holder whether or not a sale occurred. (3-30-06)

iv. Copy of hearing aid order for all fittings including specifications of instruments ordered. Hearing aid dealers and fitters and audiologists must provide a copy of hearing aid order. (3-30-06)(____)

e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit ~~will~~ may be revoked. A new permit may be applied for in accordance with Subsection 450.03.a. (3-30-06)(____)

045. Exemptions. (3-30-06)

a. A permit holder who possesses the Certificate of Clinical Competence in Audiology from American Speech-Language-Hearing Association (ASHA) or who is Board Certified by National Board for Certification in Hearing Instrument Sciences (NBC-HIS) shall be exempt from Subsections 450.022.a., 450.023.d., and 450.023.f. from the date of issuance of the permit until the date of the next offered licensing examination. (3-30-06)(____)

b. Failure of the licensing examination or failure to take the next offered licensing examination rescinds this exemption. (3-30-06)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.26.01 - RULES OF THE IDAHO BOARD OF MIDWIFERY

DOCKET NO. 24-2601-0901 (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 Sections [54-5504]54-5404 and [54-5505] 54-5405, 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 21, 2009.

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 2009 legislature passed House Bill 185 which created the State Board of Midwifery. The proposed rules are necessary in order to implement the provisions of Title 54, Chapter [55] 54, Idaho Code.

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

The proposed rules establish the following fees: initial application processing fee of \$50; license fee of \$550; annual renewal fee of \$550; and reinstatement fee of \$50.

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

The proposed rules establish fees which will be deposited in the Bureau of Occupational Licenses dedicated fund. The fees will be used by the Board of Midwifery to administer the act. Since all self governing boards are expected to be self-supporting, these fees are based on the estimated costs and the anticipated number of licensees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in noticed open meetings.

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 28, 2009.

DATED this 25th day of August, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945, Fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-2601-0901

IDAPA 24
TITLE 26
CHAPTER 01

24.26.01 - RULES OF THE IDAHO BOARD OF MIDWIFERY

000. LEGAL AUTHORITY (RULE 0).

In accordance with Section [54-5504] 54-5404, Idaho Code, the Idaho Board of Midwifery shall promulgate rules that implement the provisions of [Chapter 55, Title 54] Chapter 54, Title 54, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are cited as IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery." ()

02. Scope. These rules establish the framework for licensure of midwives and the provisions for what midwives are allowed to do, what they may not do, when they shall advise their clients to seek other medical advice and when to transport a client. ()

002. WRITTEN INTERPRETATIONS (RULE 2).

The Board may have written statements pertaining to the Board's interpretation of these rules. Such interpretations, if any, are available for public inspection and copying at cost at the Board's office. ()

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals are governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE (RULE 4).

The following documents are incorporated by reference into these rules, and are available at the Board's office and through the Board's website: ()

01. Prevention of Perinatal Group B Streptococcal Disease. Published by the Centers for Disease Control and Prevention, MMWR 2002;51 (No. RR 11), dated August 16, 2002, referenced in Paragraph 350.01.d. ()

02. Essential Documents of the National Association of Certified Professional Midwives. Copyright date 2004, referenced in Subsection 356.01. ()

03. Analysis of the 2001 Job Analysis Survey. Published by the North American Registry of Midwives (NARM). ()

005. OFFICE -- ADDRESS AND CONTACT INFORMATION (RULE 5).

The Board's office is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The Board's phone number is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is mid@ibol.idaho.gov. The Board's official website can be found at <http://www.ibol.idaho.gov>. ()

006. PUBLIC RECORDS (RULE 6).

The Board's records are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

- 01. Board.** The Idaho Board of Midwifery as created in Section [54-5503] 54-5403, Idaho Code. ()
- 02. Bureau.** The Idaho Bureau of Occupational Licenses as prescribed in Section 67-2602, Idaho Code. ()
- 03. Client.** A woman under the care of a licensed midwife, as well as the woman's fetus and newborn child. ()
- 04. CPM.** A certified professional midwife; in other words, a person who is certified by NARM or any successor organization. ()
- 05. Licensed Midwife.** A person who holds a current license issued by the Board, who shall be designated "L.M." ()
- 06. MEAC.** The Midwifery education accreditation council, the organization established in 1991 and recognized by the U.S. department of education as an accrediting agency for midwifery education programs and institutions. ()
- 07. NARM.** The North American Registry of Midwives, the international certification agency that establishes and administers certification for the CPM credential. ()
- 08. NACPM.** The National Association of Certified Professional Midwives, the national organization for certified professional midwives. ()
- 09. Practice of Midwifery.** Providing maternity care for women and their newborns during the antepartum, intrapartum and postpartum periods. The postpartum period for both maternal and newborn care may not exceed six (6) weeks from the date of delivery. ()

011. -- 019. (RESERVED).

020. ORGANIZATION (RULE 20).

- 01. Meetings.** The Board shall meet at least annually and at other such times and places as designated by the Chairman or upon the written request of any two (2) members of the Board. ()
- a.** All meetings shall be held in accordance with the Idaho Open Meeting Law, Chapter 23, Title 67, Idaho Code. ()
- b.** A minimum of three (3) Board members shall constitute a quorum and may exercise all powers and authority conferred on the Board in order to hold a meeting of the Board. A majority vote of the Board members present at a meeting shall be considered the action of the Board as a whole. ()
- 02. Organization of the Board.** At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. ()
- a.** The Chairman shall when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. ()
- b.** The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. The Chief of the Bureau shall act as an agent of the Board and shall be the custodian of all records of the Board. ()

021. -- 099. (RESERVED).

100. QUALIFICATIONS FOR LICENSURE (RULE 100).

01. Applications. Applications for licensure must be submitted on Board-approved forms. ()

02. Qualifications. Applicants for licensure must submit a completed application, required application and licensing fees, and documentation, acceptable to the Board, establishing that the applicant: ()

a. Currently is certified as a CPM by NARM or a successor organization. ()

b. Has successfully completed Board-approved, MEAC-accredited courses in pharmacology, the treatment of shock/IV therapy, and suturing specific to midwives. ()

03. Waiver of Current CPM Certification Requirement. The Board may waive the current CPM certification requirement, specified here in Paragraph 100.02.a., for any applicant who has continuously practiced midwifery in Idaho for at least five (5) years prior to July 1, 2009. To qualify for the waiver, the applicant must apply for licensure before July 1, 2010 and submit with the application documentation, acceptable to the Board, of the following: ()

a. The applicant's primary attendance at seventy-five (75) births within the past ten (10) years, ten (10) of which occurred in the two (2) years immediately preceding the applicant's application for licensure; ()

b. Current certification in adult, infant, and child cardiopulmonary resuscitation and in neonatal resuscitation obtained through completion of American Heart Association approved cardiopulmonary resuscitation courses and American Academy of Pediatrics approved neonatal resuscitation courses; and ()

c. Complete practice data, as referenced in Subsection 200.04, for the two (2) years preceding the application for licensure. The complete practice data documentation must be submitted on a Board-approved form. ()

04. Incomplete or Stalled Applications. The applicant must provide or facilitate the provision of any supplemental third party documents that may be required by the Board. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board shall be deemed denied and it shall be terminated upon thirty (30) days written notice, unless good cause is established to the Board. ()

101. -- 174. (RESERVED).

175. FEES (RULE 175).

01. Initial Application Processing Fee. A fifty dollar (\$50) application processing fee must accompany initial licensure applications. ()

02. License Fee. The initial license fee is five hundred fifty dollars (\$550). This initial, one-time fee will be refunded if the Board does not issue the license for which application has been made. ()

03. Annual Renewal Fee. The annual license renewal fee is five hundred fifty dollars (\$550). The annual license renewal fee will be refunded if the license is not renewed by the Board. ()

04. Reinstatement Fee. The fee to reinstate a license that has been cancelled for failure to renew is fifty dollars (\$50). ()

05. Refund of Fees. Unless otherwise provided for in this Rule, all fees are non-refundable. ()

176. -- 199. (RESERVED).

200. RENEWAL OF LICENSE (RULE 200).

01. Expiration Date. A licensed midwife's license expires on the licensed midwife's birth date. The license must be annually renewed before the licensed midwife's birth date in accordance with Section 67-2614, Idaho Code. Licenses that are not renewed as required will be cancelled pursuant to Section 67-2614, Idaho Code. ()

02. Reinstatement. A license that has been cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. ()

03. Application for Renewal. In order to renew a license a licensed midwife must submit a timely, completed, Board-approved renewal application form and pay the required application and renewal fees. ()

04. Complete Practice Data. The information submitted by the licensed midwife on the Board-approved application form must include complete practice data for the twelve (12) months immediately preceding the date of the renewal application. Such information shall include: ()

- a. The number of clients to whom the licensed midwife has provided care; ()
- b. The number of deliveries, including; ()
 - i. The number of cesareans; ()
 - ii. The number of vaginal births after cesarean (VBACs); ()
- c. The average, oldest, and youngest maternal ages; ()
- d. The number of primiparae; ()
- e. All APGAR scores below five (5) at five (5) minutes; ()
- f. The number of prenatal transfers and transfers during labor, delivery and immediately following birth, including: ()
 - i. Transfers of mothers; ()
 - ii. Transfers of babies; ()
 - iii. Reasons for transfers; ()
 - iv. Transfers of all newborns being admitted to the neonatal intensive care unit (NICU) for more than twenty four (24) hours. ()
- g. Any perinatal deaths occurring up to six weeks post-delivery, broken out by: ()
 - i. Weight; ()
 - ii. Gestational Age; ()
 - iii. Age of the baby; ()
 - iv. Stillbirths, if any; ()
- h. Any significant neonatal or perinatal problem, not listed above, during the six (6) weeks following birth. ()

05. Continuing Education Verification. When a licensed midwife submits a renewal application, the licensed midwife must certify by signed affidavit that the annual continuing education requirements set by the Board

have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with continuing education requirements. ()

201. -- 299. (RESERVED).

300. CONTINUING EDUCATION REQUIREMENT (RULE 300).

In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. ()

01. Annual Continuing Education Requirement. A licensed midwife must successfully complete a minimum of ten (10) continuing education hours per year. Two (2) of these hours must be in peer review participation as described in Subsection 300.06. One (1) continuing education hour equals one (1) clock hour. A licensed midwife is considered to have satisfied the annual continuing education requirement for the first renewal of the initial license. ()

02. Subject Material. The subject material of the continuing education must be germane to the practice of midwifery and either acceptable to NARM as counting towards recertification of a licensed midwife as a CPM or otherwise approved by the Board. ()

03. Verification of Attendance. Each licensed midwife must maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any hours attended. This verification must be maintained by the licensed midwife for no less than seven (7) years and provided to the Board upon request by the Board or its agent. ()

04. Distance Learning and Independent Study. The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the licensed midwife in a face-to-face setting with the course instructor. Distance Learning or Independent Study courses will be eligible for continuing education credits if approved by NARM or upon approval of the Board. ()

05. Requests for Board Approval. All requests for Board approval of educational programs must be made to the Board in writing at least sixty (60) days before the program is scheduled to occur. Requests must be accompanied by a statement that includes: ()

- a. The name of the instructor or instructors; ()
- b. The date and time and location of the course; ()
- c. The specific agenda for the course; ()
- d. The number of continuing education credit hours requested; and ()
- e. A statement of how the course is believed to be germane to the practice of midwifery. ()

06. Peer Review System. As part of the Board's annual continuing education requirement, each licensed midwife must participate in peer review activities for a minimum of two (2) hours per year. ()

a. The purpose of peer review is to enable licensed midwives to retrospectively present and review cases in an effort to further educate themselves about the appropriateness, quality, utilization, and ethical performance of midwifery care. ()

b. Licensed midwives are responsible for organizing their own peer review sessions. At least three (3) licensed midwives or CPMs must participate in a peer review session in order for the session to count towards a licensed midwife's annual two-hour peer review activity requirement. ()

c. Each licensed midwife must make a presentation, that must include, without limitation, the following information: ()

- i. Total number of clients currently in the licensed midwife's care; ()
 - ii. The number of upcoming due dates for clients in the licensed midwife's practice; ()
 - iii. The number of women in the licensed midwife's practice that are postpartum; ()
 - iv. The number of births the licensed midwife has been involved with since the last peer review session; and ()
 - v. One (1) or more specific cases arising since the licensed midwife's last peer review session. The licensed midwife must present any cases involving serious complications or the transport of a mother or baby to the hospital. ()
- d. The information presented in a peer review session is confidential. The identities of the client, other health care providers, and other persons involved in a case may not be divulged during the peer review session. ()

07. Carryover Hours. A licensed midwife may carryover a maximum of five (5) hours of continuing education to meet the next year's continuing education requirement. ()

08. Hardship Waiver. The Board may waive a licensed midwives annual continuing education requirement for reasons of individual hardship, including health or other good cause. The licensed midwife must request the waiver and provide the Board with any information requested to assist the Board in substantiating the claimed hardship. This waiver is granted at the sole discretion of the Board. ()

301. -- 324. (RESERVED).

325. INFORMED CONSENT (RULE 325).

01. Informed Consent Required. A licensed midwife must obtain and document informed consent from a client before caring for that client. The informed consent must be documented on an informed consent form, signed and dated by the client, in which the client acknowledges, at a minimum, that the following information has been provided to the client by the midwife: ()

- a. The licensed midwife's training and experience; ()
- b. Instructions for obtaining a copy of the Board's rules; ()
- c. Instructions for obtaining a copy of the Essential Documents of the NACPM and Analysis of the 2001 Job Analysis Survey, published by NARM; ()
- d. Instructions for filing complaints with the Board; ()
- e. Notice that the licensed midwife does or does not have professional liability insurance coverage; ()
- f. A written protocol for emergencies, including hospital transport that is specific to each individual client; and ()
- g. A description of the procedures, benefits and risks of out-of-hospital birth, primarily those conditions that may arise during delivery. ()

02. Record of Informed Consent. All licensed midwives must maintain a record of all signed informed consent forms for each client for a minimum of nine (9) years after the last day of care for such client. ()

326. -- 349. (RESERVED).

350. FORMULARY (RULE 350).

01. Midwifery Formulary. A licensed midwife may obtain and administer, during the practice of midwifery, the following: ()

- a. Oxygen; ()
- b. Oxytocin as a postpartum antihemorrhagic agent; ()
- c. Injectable local anesthetic for the repair of lacerations that are no more extensive than second degree; ()
- d. Antibiotics for group b streptococcus prophylaxis consistent with the guidelines set forth in Prevention of Perinatal Group B Streptococcal Disease, published by the Centers for Disease Control and Prevention; ()
- e. Epinephrine administered via a metered dose auto-injector; ()
- f. Intravenous fluids for stabilization of the woman; ()
- g. Rhoo (D) immune globulin; ()
- h. Vitamin K1; and ()
- i. Eye prophylactics to the baby. ()

02. Other Legend Drugs. During the practice of midwifery a licensed midwife may not obtain or administer legend drugs that are not listed in the midwifery formulary. Drugs of a similar nature and character may be used if determined by the Board to be consistent with the practice of midwifery and provided that at least one hundred twenty (120) days' advance notice of the proposal to allow the use of such drugs is given to the Board of Pharmacy and the Board of Medicine and neither Board objects to the addition of such drugs to the midwifery formulary.()

351. USE OF FORMULARY DRUGS (RULE 351).

A licensed midwife may use the drugs described in the midwifery formulary according to the following protocol describing the indication for use, dosage, route of administration and duration of treatment:

Drug	Indication	Dose	Route of Administration	Duration of Treatment
Oxygen	Maternal/Fetal Distress	10-12 L/min. 10 L/min.	Bag and mask Mask	Until maternal/fetal stabilization is achieved or transfer to hospital is complete
	Neonatal Resuscitation	10-12 L/min. 10 L/min.	Bag and mask Mask	Until stabilization is achieved or transfer to a hospital is complete
Oxytocin (Pitocin)	Postpartum hemorrhage only	10 Units/ml	Intramuscularly only	1-2 doses Transport to hospital required if more than two doses are administered

Drug	Indication	Dose	Route of Administration	Duration of Treatment
Lidocaine HCl 2%	Local anesthetic for use during postpartum repair of lacerations or episiotomy	Maximum 50 ml	Percutaneous infiltration only	Completion of repair
Penicillin G (Recommended)	Group B Strep Prophylaxis	5 million units initial dose, then 2.5 million units every 4 hours until birth	IV in ≥ 100 ml LR, NS or D ₅ LR	Birth of baby
Ampicillin Sodium (Alternative)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 4 hours until birth	IV in ≥ 100 ml NS or LR	Birth of baby
Cefazolin Sodium (drug of choice for penicillin allergy with low risk for anaphylaxis)	Group B Strep Prophylaxis	2 grams initial dose, then 1 gram every 8 hours	IV in ≥ 100 ml LR, NS or D ₅ LR	Birth of baby
Clindamycin Phosphate (drug of choice for penicillin allergy with high risk for anaphylaxis)	Group B Strep Prophylaxis	900 mg every 8 hours	IV in ≥ 100 ml NS (not LR)	Birth of baby
Epinephrine HCl 1:1000 (EpiPen)	Treatment or post-exposure prevention of severe allergic reactions	0.3 ml pre-metered dose	Subcutaneously or intramuscularly	Every 20 minutes or until emergency medical services arrive Administer first dose then immediately request emergency services
Lactated Ringer's (LR) 5% Dextrose in Lactated Ringer's solution (D ₅ LR) 0.9% Sodium Chloride (NS) Sterile Water	To achieve maternal stabilization Reconstitution of antibiotic powder	1 - 2 liter bags First liter run in at a wide-open rate, the second liter titrated to client's condition As directed	Intravenously with ≥ 18 gauge catheter As directed	Until maternal stabilization is achieved or transfer to a hospital is complete Birth of Baby

Drug	Indication	Dose	Route of Administration	Duration of Treatment
RH ₀ (D) Immune Globulin	Prevention of RH ₀ (D) sensitization in RH ₀ (D) negative women	300 mcg	Intramuscularly	Single dose at any gestation for RH ₀ (D) negative, antibody negative women within 72 hours of spontaneous bleeding or abdominal trauma. Single dose at 26-28 weeks gestation for RH ₀ (D) negative, antibody negative women Single dose for RH ₀ (D) negative, antibody negative women within 72 hours of delivery of RH ₀ (D) positive infant, or infant with unknown blood type
Vitamin K ₁	Prophylaxis for Vitamin K Deficiency Bleeding	1 mg	Intramuscularly	1 dose
0.5% Erythromycin Ophthalmic Ointment	Prophylaxis of Neonatal Ophthalmia	1 cm ribbon in each eye	Topical	1 dose

()

352. OBTAINING, STORING, AND DISPOSING OF FORMULARY DRUGS (RULE 352).

A licensed midwife must adhere to the following protocol for obtaining, storing, and disposing of formulary drugs during the practice of midwifery. ()

01. Obtaining Formulary Drugs. A licensed midwife may obtain formulary drugs as allowed by law, including, without limitation, from: ()

a. A person or entity that is licensed as a Wholesale Distributor by the Idaho State Board of Pharmacy; and ()

b. A retail pharmacy, in minimal quantities for office use. ()

02. Storing Formulary Drugs. A licensed midwife must store all formulary drugs in secure areas suitable for preventing unauthorized access and for ensuring a proper environment for the preservation of the drugs. However, licensed midwives may carry formulary drugs to the home setting while providing care within the course and scope of the practice of midwifery. The licensed midwife must promptly return the formulary drugs to the secure area when the licensed midwife has finished using them for patient care. ()

03. Disposing of Formulary Drugs. A licensed midwife must dispose of formulary drugs using means that are reasonably calculated to guard against unauthorized access by persons and harmful excretion of the drugs into the environment. The means that may be used include, without limitation: ()

a. Transferring the drugs to a reverse distributor who is registered to destroy drugs with the U.S. Drug Enforcement Agency; ()

b. Removing the drugs from their original containers, mixing them with an undesirable substance

such as coffee grounds or kitty litter, putting them in impermeable, non-descript containers such as empty cans or sealable bags, and throwing the containers in the trash; or ()

c. Flushing the drugs down the toilet if the accompanying patient information instructs that it is safe to do so. ()

353. -- 354. (RESERVED).

355. MEDICAL WASTE (RULE 355).

A licensed midwife must dispose of medical waste during the practice of midwifery according to the following protocol: ()

01. Containers for Non-Sharp, Medical Waste. Medical waste, except for sharps, must be placed in disposable containers/bags which are impervious to moisture and strong enough to preclude ripping, tearing or bursting under normal conditions of use. The bags must be securely tied so as to prevent leakage or expulsion of solid or liquid waste during storage, handling or transport. The containment system must have a tight-fitting cover and be kept clean and in good repair. All bags used for containment of medical waste must be clearly identified by label or color, or both. ()

02. Containers for Sharps. Sharps must be placed in impervious, rigid, puncture-resistant containers immediately after use. Needles must not be bent, clipped or broken by hand. Rigid containers of discarded sharps must either be labeled or colored like the disposable bags used for other medical waste, or placed in such labeled or colored bags. ()

03. Storage Duration. Medical waste may not be stored for more than seven (7) days, unless the storage temperature is below thirty-two (32) degrees Fahrenheit. Medical waste must never be stored for more than ninety (90) days. ()

04. Waste Disposal. Medical waste must be disposed of by persons knowledgeable in handling of medical waste. ()

356. SCOPE AND PRACTICE STANDARDS.

A licensed midwife must adhere to the following scope and practice standards when providing antepartum, intrapartum, postpartum, and newborn care. ()

01. NACPM Scope and Practice Standards. The Board adopts the Essential Documents of the National Association of Certified Professional Midwives as scope and practice standards for licensed midwives. All licensed midwives must adhere to these scope and practice standards during the practice of midwifery to the extent such scope and practice standards are consistent with the Board's enabling law, [Chapter 55, Title 54] Chapter 54, Title 54, Idaho Code. ()

02. Conditions for Which a Licensed Midwife May Not Provide Care. A licensed midwife may not provide care for a client with: ()

a. A current history of any of the following disorders, diagnoses, conditions, or symptoms: ()

i. Placental abnormality; ()

ii. Multiple gestation; ()

iii. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first; ()

iv. Birth under thirty-seven (37) weeks and after forty-two (42) completed weeks' gestational age; or ()

v. A body mass index of forty (40.0) or higher at the time of conception; ()

- b. A past history of any of the following disorders, diagnoses, conditions, or symptoms: ()
 - i. More than one (1) cesarean section, a cesarean section within eighteen (18) months of the current delivery or any cesarean section that was surgically closed with a classical or vertical uterine incision; ()
 - ii. Rh or other blood group or platelet sensitization, hematological or coagulation disorders; ()
 - iii. Prior chemotherapy or radiation treatment for a malignancy; ()
 - iv. Previous pre-eclampsia resulting in premature delivery; ()
 - v. Cervical insufficiency; or ()
 - vi. HIV positive status. ()

03. Conditions for Which a Licensed Midwife May Not Provide Care Without Physician Involvement. A licensed midwife may not provide care for a client with a history of the disorders, diagnoses, conditions, or symptoms listed here in Subsection 356.03 unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a physician licensed under Chapter 18, Title 54, Idaho Code. Before providing care to such a client, the licensed midwife must notify the client in writing that the client must obtain the described physician care as a condition to the client's eligibility to obtain maternity care from the licensed midwife. The licensed midwife must, additionally, obtain the client's signed acknowledgement that the client has received the written notice. The disorders, diagnoses, conditions, and symptoms are: ()

- a. Diabetes; ()
- b. Thyroid disease; ()
- c. Epilepsy; ()
- d. Hypertension; ()
- e. Cardiac disease; ()
- f. Pulmonary disease; ()
- g. Renal disease; ()
- h. Gastrointestinal disorders; ()
- i. Previous major surgery of the pulmonary system, cardiovascular system, urinary tract or gastrointestinal tract; ()
- j. Current abnormal cervical cytology; ()
- k. Sleep apnea; ()
- l. Previous bariatric surgery; ()
- m. Hepatitis; or ()
- n. History of illegal drug use or excessive prescription drug use. For purposes of this Paragraph, "history" means a "current history," and "illegal drug use" means "illegal drug abuse or addiction." ()

04. Conditions for Which a Licensed Midwife Must Recommend Physician Involvement. Before providing care for a client with a history of any of the disorders, diagnoses, conditions or symptoms listed in this

Subsection 356.04, a licensed midwife must provide written notice to the client that the client is advised to see a physician licensed under Chapter 18, Title 54, Idaho Code, during the client's pregnancy. Additionally, the licensed midwife must obtain the client's signed acknowledgement that the client has received the written notice. The disorders, diagnoses, conditions, and symptoms are: ()

- a. Previous complicated pregnancy; ()
- b. Previous cesarean section; ()
- c. Previous pregnancy loss in second or third trimester; ()
- d. Previous spontaneous premature labor; ()
- e. Previous pre-term rupture of membranes; ()
- f. Previous pre-eclampsia; ()
- g. Previous hypertensive disease of pregnancy; ()
- h. Parvo; ()
- i. Toxo; ()
- j. CMV; ()
- k. HSV; ()
- l. Previous maternal/newborn group b streptococcus infection; ()
- m. A body mass index of at least thirty-five (35.0) but less than forty (40.0) at the time of conception; ()
- n. Underlying family genetic disorders with potential for transmission; or ()
- o. Psychosocial situations that may complicate pregnancy. ()
- 05. Conditions for which a Licensed Midwife must Facilitate Hospital Transfer. ()**
 - a. Conditions. A licensed midwife must facilitate the immediate transfer of a client to a hospital for emergency care if the client has any of the following disorders, diagnoses, conditions or symptoms: ()
 - i. Maternal fever in labor of more than 100.6 degrees Fahrenheit, in the absence of environmental factors; ()
 - ii. Suggestion of fetal jeopardy, such as frank bleeding before delivery, any abnormal bleeding (with or without abdominal pain), evidence of placental abruption, meconium with non-reassuring fetal heart tone patterns where birth is not imminent, or abnormal fetal heart tones with non-reassuring patterns where birth is not imminent; ()
 - iii. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first; ()
 - iv. Second stage labor after two (2) hours of initiation of pushing when the mother has had a previous cesarean section; ()
 - v. Current spontaneous premature labor; ()

- vi. Current pre-term premature rupture of membranes; ()
 - vii. Current pre-eclampsia; ()
 - viii. Current hypertensive disease of pregnancy; ()
 - ix. Continuous uncontrolled bleeding; ()
 - x. Bleeding that necessitates the administration of more than two (2) doses of oxytocin or other antihemorrhagic agent; ()
 - xi. Delivery injuries to the bladder or bowel; ()
 - xii. Grand mal seizure; ()
 - xiii. Uncontrolled vomiting; ()
 - xiv. Coughing or vomiting of blood; ()
 - xv. Severe chest pain; or ()
 - xvi. Sudden onset of shortness of breath and associated labored breathing. ()
- b.** Plan for Emergency Transfer and Transport. When facilitating a transfer under Subsection 356.05, the licensed midwife must notify the hospital when the transfer is initiated, accompany the client to the hospital, if feasible, or communicate by telephone with the hospital if the licensed midwife is unable to be present personally. The licensed midwife must also ensure that the transfer of care is accompanied by the client's medical record, which must include: ()
- i. The client's name, address, and next of kin contact information; ()
 - ii. A list of diagnosed medical conditions; ()
 - iii. A list of prescription or over the counter medications regularly taken; ()
 - iv. A history of previous allergic reactions to medications; and ()
 - v. If feasible, the licensed midwife's assessment of the client's current medical condition and description of the care provided by the licensed midwife before transfer. ()

357. -- 449. (RESERVED).

450. DISCIPLINE (RULE 450).

01. Grounds for Discipline. The Board may discipline a licensed midwife for unprofessional conduct, including, without limitation, any of the following: ()

- a.** Disregarding a client's dignity or right to privacy as to her person, condition, possessions, or medical record; ()
- b.** Breaching any legal requirement of confidentiality with respect to a client, unless ordered by a court of law; ()
- c.** Submitting a birth certificate known by the licensed midwife to be false or fraudulent, or willfully making or filing false or incomplete reports or records in the practice of midwifery; ()
- d.** Failing to provide information sufficient to allow a client to give fully informed consent; ()

e. Engaging in the practice of midwifery while impaired because of the use of alcohol or drugs; ()

f. Violating any standards of conduct set forth in these rules, whether or not specifically labeled as such, and including without limitation any scope and practice standards, record-keeping requirements, notice requirements, or requirements for documenting informed consent. ()

02. Discipline to Be Imposed. If the Board determines that grounds for discipline exist, it may impose discipline on a licensed midwife that includes, without limitation, the following: ()

a. Require that a licensed midwife practice midwifery under the supervision of another health care provider. The Board may specify the nature and extent of the supervision and may require the licensed midwife to enter into a consultation, collaboration, proctoring, or supervisory agreement, written or otherwise, with the other health care provider; ()

b. Suspend or revoke a license; ()

c. Impose a civil fine not to exceed one thousand dollars (\$1,000) for each violation of the Board's laws and rules; and ()

d. Order payment of the costs and fees incurred by the Board for the investigation and prosecution of the violation of the Board's laws and rules. ()

451. -- 999. (RESERVED).

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0901 (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 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 21, 2009.

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 000 adds the Board's website address;
- Rule 002 adds additional activities to the definition of Hazardous Excursions;
- Rule 015 eliminates the multiple year license and clarifies on line fees;
- Rule 029 clarifies Outfitter bond cancellations;
- Rule 053 clarifies the fee for controlled hunts;
- Rule 056 eliminates the rule associated with cash bonds; and
- Rule 064 clarifies the Executive Director's limited authority to grant or deny certain license applications or temporary authorization applications.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges being imposed through this rulemaking. Fees being removed from this rule are detailed in Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this proposed rule change will have minimal impact on the outfitting and guiding industry and on the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the 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 28, 2009.

DATED this 30th day of August, 2009.

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 PROPOSED TEXT OF DOCKET NO. 25-0101-0901

000. LEGAL AUTHORITY.

Rules of the Idaho Outfitters and Guides Licensing Board have been promulgated in accordance with the Idaho Administrative Procedures Act and pursuant to authority granted in the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21). Pursuant to Section 36-2107, Idaho Code, the Board offices shall be located at 1365 N. Orchard, Suite 172, Boise, Idaho 83706. The Board's normal working hours are from 8 a.m. to 5 p.m. Mountain Time zone. The Board's telephone number is (208) 327-7380 and the FAX number is (208) 327-7382. The Board's website address is www.oglb.idaho.gov. The Board shall accept electronic signatures including facsimile signatures and other electronic signatures to the extent the Board's electronic equipment is able to receive and process such signatures.

(3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

002. DEFINITIONS.

The Act defines certain terminology applicable to its interpretation and administration (Idaho Code 36-2102). Further definitions, for the purposes of these Rules are: (4-1-92)

01. Act. Shall mean Idaho Code, Title 36, Chapter 21, commonly known as the Outfitters and Guides Act, as amended. (4-1-92)

02. Administrative Noncompliance. (3-10-03)

a. Two (2) or more repeated failures to apply for license renewal in a timely manner; or (3-10-03)

b. Two (2) or more repeated failures to file a complete application pursuant to Section 36-2113(a)(1), Idaho Code. (3-10-03)

03. Authorized Person. An investigator or enforcement agent in the employ of the Board, a conservation officer of the Idaho Department of Fish and Game, or any local, state, or federal law enforcement officer. (4-1-92)

04. Board. The Idaho Outfitters and Guides Licensing Board. (4-1-92)

05. Board Meeting. The set schedule of meeting dates established for conduct of regular Board business on a calendar year basis. Additional meetings may be scheduled as necessary (See Section 071). (4-1-92)

06. Booking Agent. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. (4-1-92)

07. Compensation. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party shall not be deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. (4-1-92)

08. Completed Application. An application submitted for Board consideration which contains all of the material required to be submitted by the Board for that license category. (4-1-92)

09. Consideration. The receipt or taking of goods, services, or cash in exchange for the provision of facilities and services in the conduct of outfitted or guided activities. (4-1-92)

10. Desert. A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments. (4-1-92)

11. Designated Agent. An individual who meets all qualifications for an outfitter's license who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed by the Board to operate as an outfitter and who shall, together with the licensed outfitter, be responsible and accountable for the conduct of the licensed outfitter's operations. A designated agent may act as a guide if he possesses the qualifications of a guide as determined by the Board. (Previously referred to as Managing Agent). (4-11-06)

12. Drift Boats. Shall be substituted for and have the same meaning as "float boats" defined below. (4-1-92)

13. Enforcement Agent. An individual employed by the Board having the power of peace officers to enforce the provisions of the Idaho Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and the Rules promulgated thereunder. (4-1-92)

14. Facilities and Services. The provision of personnel, lodging (tent, home, lodge, or hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Section 36-2102(b), Idaho Code. (4-1-92)

15. First Aid Card. A valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Board. (4-1-92)

16. Fishing. Fishing activities on those waters and for those species described in the rules of the Idaho Department of Fish and Game, IDAPA 13.01.11, "Rules Governing Fish," general fishing seasons and any anadromous fishing rules; for purposes of the "Act," fishing is defined as follows: (4-1-92)

- a.** Anadromous fishing means fishing for salmon or steelhead trout. (4-1-92)
- b.** Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (4-1-92)
- c.** Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by Idaho Department of Fish and Game rules. (4-1-92)
- d.** Incidental fishing means fishing conducted as a minor activity. (4-1-92)
- e.** Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (4-1-92)
- f.** Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (4-1-92)

17. Float Boats. Watercraft (inflatable watercraft, dories, drift boats, canoes, catarafts, kayaks, sport yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steerage only. Downstream steerage does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. (4-1-92)

18. Guide. An individual who meets the criteria as set forth in Idaho Code 36-2102(c), and has further

met the required qualifications as prescribed in the Rules to provide professional guided services to clientele in the pursuit and conduct of licensed activities. (4-1-92)

19. Guide License. A license issued by the Board to an individual who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities as defined in Idaho Code 36-2102(c). (4-1-92)

20. Hazardous Excursions. Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, ~~and~~ guiding courses, rescue courses, fishing courses, motored and non-motored cycling, ~~but does not include~~ wagon rides, ~~or~~ sleigh rides, and dog sled rides. (~~3-10-03~~)()

21. He/His/Him. Shall mean either the male or female gender. (4-1-92)

22. Hunting. The pursuit of any game animal or bird and all related activities including packing of client camp equipment, supplies, game meat and clients to and from a hunting camp. (3-30-01)

23. Incidental Activity. Shall be and is the same as a minor activity. (4-1-92)

24. Minor Amendment. All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. (4-11-06)

25. Investigator. An individual employed by the Board to monitor compliance with the provisions of the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and Rules promulgated thereunder and issue warning tickets for violations thereof. An investigator shall not have arrest powers nor any other power of a peace officer. (4-1-92)

26. Major Activity. A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. (4-1-92)

27. Major Amendment. All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. (4-1-92)

28. Minor Activity. A licensed activity the nature of which must be carried out in conjunction with a major activity, but is not the primary purpose of the excursion. (3-15-02)

29. Mountainous. A region receiving limited to abundant annual precipitation with an associated vegetative cover of grass, weeds, shrubs, or trees. Cool summer temperatures and cold winter temperatures prevail. A mountainous area is a land surface ranging from level to gently rolling low hills to elevated lands that are often broken with poor to well-developed, deeply entrenched drainage systems, rims, cliffs, and escarpments to steep-sided land masses of impressive size and height. (4-1-92)

30. New Opportunity. A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. (4-1-92)

31. Nonresident. An individual, corporation, firm, or partnership who is not a resident of the state of Idaho. (See "Resident"). (4-1-92)

32. Operating Area. The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-1-92)

33. Operating Plan. A detailed schedule or plan of operation which an outfitter proposes to follow in

the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (4-1-92)

34. Outfitter. An individual, corporation, firm, partnership, or other organization or combination thereof that meets the criteria as set forth in Idaho Code 36-2102(b), and has further met the required qualifications as prescribed in the Rules to conduct an outfitting business in Idaho. (4-1-92)

35. Outfitter License. A license issued by the Board to an individual, partnership, corporation, or other duly constituted organization to conduct activities as defined in Section 36-2102(b), Idaho Code. The conduct of an outfitted operation on any land(s) is not authorized unless signed permission, a permit, or a lease is obtained from the land owner(s), or their agent(s), and filed with the Board. (3-15-02)

36. Out-of-Pocket Costs. The direct costs attributable to a recreational activity. Such direct costs shall not include: (4-1-92)

a. Compensation for either sponsors or participants; (4-1-92)

b. Amortization or depreciation of debt or equipment; or (4-1-92)

c. Costs of non-expendable supplies. (4-1-92)

37. Power Boats. All motorized watercraft used on Idaho waters open to commercial outfitting activities as set forth in Subsections 059.01 and 059.02. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steering. (4-1-92)

38. Relinquishment of License Privileges. The failure to re-apply at the expiration of a license; the loss through nonuse, inactivity, revocation, or voluntary surrender of a license; or other loss of license. (See Subsection 030.03). (3-23-98)

39. Resident. An individual, corporation, firm, or partnership who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license. (4-1-92)

40. Rules. The Rules of the Board. (4-1-92)

41. Stay of Board Action. An order, pursuant to Idaho Code 67-5215(c), stopping or delaying the enforcement of a Board decision, order or action. (4-1-92)

42. Third Party Agreement. The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (4-1-92)

43. Trainee. A person not less than sixteen (16) years of age who does not possess the necessary experience or skill qualifications required to obtain a guide license, but who is working toward obtaining the necessary experience or skill qualifications. This required training shall be recorded on a form provided by the Board. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (5-1-95)

44. Boat Trainee Under Supervision. A boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored. (3-10-03)

45. Unethical/Unprofessional Conduct. Any activity(ies) by an outfitter or guide which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: (3-30-01)

a. An outfitter employing an unlicensed guide; (3-30-01)

b. Providing false, fraudulent or misleading information to the Board; (3-30-01)

- c. Failure to obey an order of the Board; (3-30-01)
 - d. Failure to provide services as advertised or contracted; (3-30-01)
 - e. Harassment of the public in their use of Idaho's outdoor recreational opportunities; (3-30-01)
 - f. Violation of state or federal fish and game laws; (3-30-01)
 - g. Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; (3-30-01)
 - h. Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; (3-30-01)
 - i. Failure to pay a supplier of goods or services to the outfitter business; (3-15-02)
 - j. Failure to pay state taxes; or (3-15-02)
 - k. Operating in a manner which endangers the health, safety, or welfare of the public. (3-30-01)
 - l. Selling lifetime excursions, lifetime hunts, or selling of outfitted activities to an individual for the life of that individual and collecting fees accordingly. (4-11-06)
- 46. Validated Training Form.** An approved form bearing the "Great Seal of the State of Idaho" and the official stamp of the Board affixed thereon. (4-1-92)
- 47. Watercraft.** A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (4-1-92)

(BREAK IN CONTINUITY OF SECTIONS)

015. ANNUAL DATE, MULTIPLE YEARS, FEES, AND PAYMENT.

- 01. Annual Dates.** (3-20-04)
- a. All outfitter and designated license applications must be completed and received by the Board by January 31 of each year. (3-20-04)
 - b. All outfitter applications and designated agent applications received by the Board after January 31 that are not complete will be subject to special processing fees. (3-20-04)
 - c. The last day of the license year for all licenses is March 31 of each year. (3-20-04)
 - d. Guide license applications may be submitted at any time during the year. (3-20-04)
- 02. Outfitter and Designated Agent Penalty Fee.** When a completed renewal application is filed with the Board after the last day of the license year, the following penalty shall apply: (4-11-06)
- a. A completed application received by the Board the last day of the license year - no penalty fee shall apply. (4-11-06)
 - b. A completed application received by the Board after the last day of the license year - a penalty fee

shall be paid before the license is issued. (4-11-06)

03. License Lapsed and Relinquished. A completed outfitter application received by the Board after ninety (90) days after the last day of the license year will not be accepted for licensure. The license will have lapsed and therefore is void and vacated. If a completed application is not received by the Board by ninety (90) days after the last day of the license year, the license is relinquished. (3-10-03)

04. Refund of Unused One Time Application Fees. All unused portions of one (1) time new outfitter, new designated agent, or new guide application fees shall be returned to the applicant. (3-19-99)

~~**05. Multiple Year Licenses.** (3-20-04)~~

~~**a.** Beginning in license year 2004, outfitter and designated agent licenses may be issued for a one (1) year or three (3) year period. All new applicants must be licensed for two (2) years before the applicant may apply for a three (3) year license. (3-20-04)~~

~~**b.** License fees shall be prorated based on the number of years for which the applicant is licensed. The multiyear license fee may be transferred to the bona fide purchaser of an outfitter business. Bona fide purchasers of an outfitter business will be credited for annual license fees for prorated years remaining with a business at the time of the purchase. (3-20-04)~~

~~**c.** The multiple year fee must be paid at the time of renewal and prior to the beginning of the license period. This does not relieve a licensed outfitter from submitting annual reports and use reports, and annual bonding and insurance requirements. (3-20-04)~~

~~**d.** There shall be no reimbursement of fees should the license become revoked or relinquished. (3-20-04)~~

~~**e.** Outfitters must submit renewal applications no later than January 31 prior to the subsequent license period. (3-20-04)~~

065. Payment. (4-11-06)

a. Prior to the issuance of a license, an applicant must submit the appropriate fee in the form of a certified check, cashier's check, money order, outfitter's company check or use of outfitter and designated agent credit cards. (4-11-06)

b. The applicant must pay an annual license fee for each license issued, submit annual use reports for each license, and be able to differentiate between each business and its clients. (4-11-06)

c. Designated Agents must pay an annual license fee for each license issued. (4-11-06)

d. Guides must pay an annual license fee for a license but that license can be amended to include more than one (1) outfitter. (4-11-06)

076. Expedited or Emergency Application Fees. The fee for expedited or emergency applications for which there is a request to have the application pulled forward before other applications and have it processed and a license issued within seven (7) days of receipt of the application shall be: (3-16-04)

a. One hundred fifty dollars (\$150) for an outfitter license; (3-16-04)

b. Seventy-five dollars (\$75) for a designated agent license; and (3-16-04)

c. Fifty dollars (\$50) for a guide license. (3-16-04)

087. Resubmittal, Exceptional or Special Processing of Application. The fee for resubmittal, exceptional or special processing of an application that is incomplete, or for other reasons for which the Board is

otherwise unable to process the application shall be: (3-16-04)

- a. One hundred dollars (\$100) for an outfitter license; (3-16-04)
- b. Seventy-five dollars (\$75) for a designated license; (3-16-04)
- c. Fifty dollars (\$50) for a guide license; and (3-16-04)
- d. Five dollars (\$5) for allocation fee recovery. (3-16-04)

~~09. **Fees Associated With the Filing of Applications.** There shall be a credit for online and electronic filing of applications, and a fee for the use of credit cards corresponding to the cost to the agency for processing the card pursuant to Section 36-2108, Idaho Code. (3-16-04)~~

- ~~a. Twenty dollars (\$20) for an outfitter license; (3-16-04)~~
- ~~b. Seven dollars (\$7) for a designated agent license; and (3-16-04)~~
- ~~c. Five dollars and twenty-five cents (\$5.25) for a guide license. (3-16-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

029. OUTFITTER LICENSE BOND CANCELLATION.

An outfitter or designated agent shall immediately notify the Board in the event their bond is cancelled. The cancellation of an outfitter license bond by the insurer automatically ~~canels~~ suspends the outfitter's license and the outfitter shall immediately cease operation. The license shall remain suspended until such time that the outfitter can demonstrate that the bond has been reinstated or a new bond issued and until the license is reinstated. Special processing fees will apply. If the bond is not reinstated within ninety (90) days, the license shall be relinquished.
(3-1-86)()

(BREAK IN CONTINUITY OF SECTIONS)

053. CONTROLLED HUNTS OUTSIDE OUTFITTER'S OPERATING AREA.

01. Requirements to Conduct a Controlled Hunt Outside Operating Area. An outfitter wishing to conduct a controlled hunt outside his licensed area with a client with a controlled hunt permit must: (3-30-01)

- a. Obtain written permission from all outfitters whose licensed area(s) will be directly involved in the hunt; (3-30-01)
- b. Obtain written permission from all applicable landowners or land managers; (3-30-01)
- c. Obtain approval from the Outfitters and Guides Licensing Board to conduct the hunt by satisfying the following criteria: (3-30-01)
 - i. Must be licensed for the controlled hunt species; and (3-30-01)
 - ii. Send a written request to the Board for special one-time hunt approval, to include the hunter name and address, hunting license, tag and permit numbers, controlled hunt number, and dates of hunt. (3-30-01)
- d. Submit a ~~ten-dollar (\$10)~~ minor amendment fee. (3-30-01)()

02. Authorization by Board. Upon approval the Board will issue a letter authorizing the one-time hunt. This notification will include the name and address of the hunter(s), controlled hunt number, hunter(s) license, tag and permit numbers. No compensation or remuneration shall be permitted between outfitters participating in the conduct of a controlled hunt on another outfitter's area, unless the outfitter supplies a service for that compensation. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

056. BOND REQUIREMENTS.

Pursuant to Section 36-2108(b), Idaho Code, outfitters shall submit a bond of five thousand dollars (\$5,000) if the gross income of the outfitting business for the previous calendar year, rounded up to the nearest whole thousand dollars, does not exceed ten thousand dollars (\$10,000). Outfitters with a gross income of the outfitting business for the previous calendar year of more than ten thousand dollars (\$10,000) shall submit a bond of ten thousand dollars (\$10,000). An outfitter who conducts day trips only may petition the Board for a reduction to a five thousand dollar (\$5,000) bond. ~~With prior approval from the Board, outfitters may submit a cash bond to the Board including, but not limited to, certificates of deposit, registered checks, certified funds and money orders.~~ (3-19-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

064. AUTHORIZATION FOR GRANTING, DENIAL AND REVOCATION OF LICENSES.

01. Executive Director Authorizations. The Executive Director is authorized to grant, issue or deny, suspend, or revoke temporary authorizations, licenses and license amendments, hot pursuit agreements and allocated tags with the concurrence of the Board, under the following conditions: (3-10-03)(____)

a. The Executive Director may grant and issue all routine temporary authorizations, license applications, ~~and~~ amendments and related matters when the applicant does not have any convictions for fish and game violations, ~~falsified or otherwise invalid first aid cards,~~ or other ~~convictions of~~ violations of the grounds enumerated in Section 36-2113(a), Idaho Code, has not falsified or provided any misleading information to the Board, and otherwise ~~qualify~~ qualifies for licensure. ~~The Executive Director may issue a temporary authorization to an applicant pending final approval and issuance of a license. The Executive Director may not waive fees.~~ (3-10-03)(____)

b. The Executive Director may grant all license applications which otherwise qualify for licensure, but which have ~~convictions of~~ violations of the grounds enumerated in Section 36-2113(a), Idaho Code, which occurred five (5) years prior to the date of application, except that a license will not be granted by the Executive Director to an applicant who has a felony conviction of any nature, or conviction ~~of any outfitter and guide law violation or conviction of a major fish and game violation~~ of a flagrant violation pursuant to Section 36-1402(e), Idaho Code. (3-30-01)(____)

c. The Executive Director may grant a license with probationary status for conviction of minor fish and game violations or violations enumerated in Section 36-2113(a), Idaho Code, that occurred at least five (5) years prior to the date of application, excluding felony convictions. ~~The Executive Director shall not grant a license to an applicant who has a conviction of a flagrant violation pursuant to Section. 36-2401(e), Idaho Code.~~ (3-30-01)(____)

d. The Executive Director may defer granting or denying any license or related matter to the Board for action by the Board. (3-30-01)(____)

e. The Executive Director may not waive fees. (____)

02. Board Conditions. The Board may grant or deny a license pursuant to the provisions of Sections 36-2109 and 36-2113, Idaho Code, under the following conditions: (3-30-01)

a. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are over five (5) years old and may or may not place the licensee on probation.

(3-30-01)

b. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are less than five (5) years old and may or may not place the licensee on probation.

(3-30-01)

c. The Board shall proceed with the denial of an applicant for a hunting or fishing outfitter or guide license or proceed with the revocation process on a licensee upon conviction of a flagrant violation pursuant to Section 36-1402(e), Idaho Code, unless unusual mitigating circumstances exist.

(3-30-01)

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

DOCKET NO. 26-0120-0902

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 21, 2009.

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 new 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.

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: None.

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 hearings will be scheduled prior to the upcoming legislative session if requested pursuant to Section 67-5222, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Frost, 208-514-2410.

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 28, 2009.

DATED this 23rd day of August, 2009.

Steve Frost
Interim 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 PROPOSED TEXT FOR DOCKET NO. 26-0120-0902

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)~~(____)

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

DOCKET NO. 26-0120-0903

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 21, 2009.

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 new rule 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.

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: None.

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 hearings will be scheduled prior to the upcoming legislative session if requested pursuant to Section 67-5222, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Frost, 208-514-2410.

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 28, 2009.

DATED this 3rd day of August, 2009.

Steve Frost
Interim 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 PROPOSED TEXT FOR DOCKET NO. 26-0120-0903

525. 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 must be extinguished before checking out of the campsite. 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)()

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0904

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 21, 2009.

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 new rule will assist the agency in properly informing the public regarding protection of wildlife within the boundaries of state park property. 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: 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: None.

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 hearings will be scheduled prior to the upcoming legislative session if requested pursuant to Section 67-5222, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Frost, 208-514-2410.

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 28, 2009.

DATED this 23rd day of August, 2009.

Steve Frost
Interim 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 PROPOSED TEXT FOR DOCKET NO. 26-0120-0904

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 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.31 - RULES GOVERNING THE ADMINISTRATION OF THE IDAHO DEPARTMENT OF PARKS AND RECREATION STATE AND FEDERAL GRANT FUNDS

DOCKET NO. 26-0131-0901 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223, 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 21, 2009.

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 2009 Legislature amended Section 67-7126, Idaho Code, to increase the price of an off-highway vehicle registration sticker by one dollar (\$1.00) to fund County Sheriff's to enforce off-highway vehicle related law enforcement. Idaho Code further directs the Idaho Department of Parks and Recreation Board to establish a formula in rule to distribute these funds to Sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program.

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

The 2009 Legislature amended Section 67-7126, Idaho Code, to increase the price of an off-highway vehicle registration sticker by one dollar (\$1.00) to fund County Sheriff's to enforce off-highway vehicle related law enforcement.

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 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 Steve Frost, 208-514-2410.

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 28, 2009.

DATED this 23rd day of August, 2009.

Steve Frost
Interim 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 PROPOSED TEXT FOR DOCKET NO. 26-0131-0901

251. OFF-HIGHWAY VEHICLE LAW ENFORCEMENT FUND DISTRIBUTION.

01. Deposits Into and Usage of Fund. One dollar (\$1) of every off-highway vehicle registration shall be deposited into the off-highway vehicle law enforcement fund. Moneys in this fund shall be paid out and used as follows: ()

a. Sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program recognized by the Department shall receive moneys from the fund based upon the formula provided in this rule. ()

b. A program shall be recognized as an off-highway vehicle law enforcement program if it is sponsored by a county sheriff to promote off-highway vehicle safety, education, and law enforcement and is overseen by an advisory committee of three (3) or more individuals to include at least one (1) sheriff or deputy sheriff, one (1) motorbike representative, and one (1) all-terrain vehicle or utility type vehicle representative. ()

c. The Department shall not withhold recognition of an off-highway vehicle law enforcement program unless it is clearly demonstrated that the program has not performed its off-highway vehicle enforcement duties within the past calendar year. An annual report of accomplishments of the previous calendar year by each participating sheriff shall be delivered to the Department by March 1 of each year and shall include: ()

i. The number of citations issued; ()

ii. Assistance calls responded to; ()

iii. Off-highway vehicle contacts made; and ()

iv. Safety classes held. ()

d. Money from the off-highway vehicle law enforcement fund shall be used to defray costs for enforcement by sheriffs' offices pertaining to the use of all terrain vehicles, motorbikes, specialty off-highway vehicles, and utility type vehicles as defined in section 67-7101, Idaho Code. ()

e. Money in the off-highway vehicle law enforcement fund shall be used by the Department for the purpose of defraying costs of off highway vehicle related law enforcement activities that are conducted by a county sheriff's office and for no other purpose. Defrayable costs shall include: ()

i. Wages (including overtime wages) of county sheriff's deputies directly engaged in off-highway vehicle law enforcement, as described in this Section; ()

ii. Wages for court appearances pertaining to violations of Idaho law pertaining to off-highway vehicles, as described in this Section; and ()

iii. Direct costs to the sheriff's office required to facilitate the enforcement of off-highway vehicle laws, including vehicle purchase costs, fuel costs, supply costs and vehicle maintenance costs. ()

02. Annual Notification of Qualifying Offices. Each year no later than April 1, the Department shall notify the Idaho Sheriffs' Association in writing regarding which sheriff's offices are recognized by the Department as qualifying for enforcement funding under Section 67-7126, Idaho Code, and the balance of the off-highway vehicle law enforcement fund. It shall be the responsibility of each sheriff's office to provide information regarding its off-highway vehicle enforcement program in order for the Department to determine whether it recognizes the program. A sheriff's office shall have fourteen (14) days to request reconsideration of the Department's decision withholding recognition, and the Department shall act upon such request within fourteen (14) days. ()

03. Formula for Distribution of Funds. The Department shall distribute the funds in the off-highway vehicle law enforcement fund based on the following formula: ()

a. Total federal acres with reference to the Payments in Lieu of Taxes (PILT) number for each eligible county minus large tracts of land not open to off-highway vehicle use. The result is the total off-highway vehicle opportunity on federal public land for that county. ()

b. Calculate the percentage of the total off-highway vehicle opportunity on federal public land for each eligible county as compared to the entire state. ()

c. Multiply this percentage by 0.6 to get 60% of the value. ()

d. Calculate the percentage of off-highway vehicle registration designations for each eligible county as compared to the entire state. ()

e. Multiply this percentage by point zero four (0.4) to get forty percent (40%) of the value. ()

f. Add the sixty percent (60%) value from the total off-highway vehicle opportunity on federal public land to the forty (40%) value of the off-highway vehicle registrations. This total will be the percentage of the off-highway vehicle law enforcement funds for which the individual county is eligible. ()

04. Distribution of Funds Not Used. For the off-highway vehicle law enforcement funds that are not allocated to a county because they do not have an off-highway vehicle enforcement program as described by this rule, or for funds from undesignated registrations, the funds return to the off-highway vehicle law enforcement fund. Any undistributed money shall be allocated as follows: ()

a. Fifty percent (50%) of the unallocated money shall be distributed as per the distribution formula previously listed; and ()

b. Fifty percent (50%) of the unallocated money shall be held by the Idaho Sheriff's Association to be used for emphasis areas of off-highway vehicle law enforcement. ()

05. Annual Audit. All counties that receive off-highway vehicle law enforcement funding are subject to an annual audit of the expenditure of the funds. ()

~~2542.~~ -- 299. (RESERVED).

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.34 - IDAHO PROTECTION AGAINST INVASIVE SPECIES STICKER RULES

DOCKET NO. 26-0134-0901 (FEE RULE - NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 67-7002 and 67-7008A, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 101 through 104.

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

This fee or charge is being imposed pursuant to Section 67-7008A, Idaho Code. In accordance with the provisions of Section 67-7008A (2009 HB 213), the Idaho Department of Parks and Recreation is responsible for the creation, distribution, and sale of Idaho protection against invasive species stickers, and to collect and distribute those revenues to the Idaho State Department of Agriculture for the Idaho Invasive Species Fund.

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: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Renee' Iverson, IDPR Registration Unit Supervisor, (208) 514-2458.

DATED this 5th day of August, 2009.

Renee' Iverson, Registration Unit Supervisor
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
PO Box 83720, Boise ID 83720-0065
Phone (208) 514-2458/ Fax (208) 334-2639

DOCKET NO. 26-0134-0901 - ADOPTION OF PENDING FEE 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 09-6, June 3, 2009, pages 101 through 104.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0901

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 21, 2009.

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:

Current licensee contact information is essential to a successful regulatory process. The current Board of Pharmacy rules do not require licensees to provide updates on a timely basis. The proposed rules will amend the standards of conduct to require licensees to provide the Board with notice of any changes to the licensee's name, address, or telephone number within ten (10) business days from the date of any such change.

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

No fees or charges are being imposed or increased through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

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 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 28, 2009.

DATED this 28th day of August 2009.

Mark Johnston, R.Ph.
Executive Director
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 PROPOSED TEXT OF DOCKET NO. 27-0101-0901

142. ~~STANDARDS OF CONDUCT~~ **PROFESSIONAL RESPONSIBILITIES.**

A failure to fulfill any of the following duties may constitute a violation of Section 54-1726(a), Idaho Code. ()

01. Duty to Cooperate in Investigation. It is the duty of every licensee and registrant to cooperate with a disciplinary investigation, and any failure or refusal to do so is grounds for disciplinary action. ~~(4-6-05)~~()

02. Duty to Report Theft, Loss, or Adulteration. It is the duty of every pharmacist-in-charge or pharmacy director to report any theft or loss of controlled substances and any adulteration of any prescription drug to the Board, even if the theft, loss, or adulteration has been accounted for and the employee disciplined internally. The report of theft or loss, required hereunder, shall contain all of the information reported to the Drug Enforcement Administration (DEA), as required under 21 CFR 1301.74(c), and shall be reported to the Board at the same time it is reported to the DEA. (3-30-07)

03. Duty to Provide Current Contact Information. It is the duty of every licensee and registrant to provide the Board with notice of any change to the licensee's or registrant's name, address, or telephone number within ten (10) business days from the change. ()

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0902 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 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 21, 2009.

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 proposed rules are necessary to implement provisions of House Bill No. 306, which was passed by the 2009 Idaho Legislature, signed by the Governor, and which became effective on July 1, 2009. The statute provides authorization for the practice of telepharmacy across state lines. It further provides that "institutions, as defined in the rules of board, engaged in the practice of telepharmacy across state lines" are "drug outlets" which are required to be registered by the Board of Pharmacy. The statute states that the Board "shall establish by rule . . . the criteria" which an institution engaged in the practice of telepharmacy across states "must meet to qualify for registration" as a "[t]elepharmacy drug outlet across state lines." The statute provides that out-of-state pharmacists who are not licensed to practice pharmacy in Idaho but who are licensed to practice pharmacy in another state, must be registered by the Idaho Board of Pharmacy before they can provide telepharmacy services for a patient located in Idaho. The statute states that the fee for such pharmacist registration is to be "the fee(s) specified by the board for the issuance of the registration." In contrast, the fee for registration of telepharmacy drug outlets across states lines is specified in the statute as "the same fee as those registering under subsection (2)(a)(ii) of this section," which is the institutional drug outlet registration category. The statute also adds to Chapter 17, Title 54, Idaho Code, definitions of "practice of telepharmacy" and "practice of telepharmacy across lines," which definitions each end with the phrase "as defined in the rules of the board."

The proposed rules establish the criteria for registration of drug outlets engaged in the practice of telepharmacy across state lines and of pharmacists engaged in the practice of telepharmacy across state lines. The proposed rules provide a necessary regulatory framework for the practice of telepharmacy across state lines in order to meet its statutory charge under the Idaho Pharmacy Act to promulgate regulations necessary to promote, preserve, and protect the health, safety, and welfare of the public by and through the effective control of the practice of pharmacy and of the registration of drug outlets. The proposed rules establish, as required by the new statute, a registration fee for registration of out-of-state pharmacists engaged in the practice of telepharmacy across state lines. The proposed registration fee is two hundred fifty dollars (\$250) and the proposed annual renewal fee is the same. The fee for registration of telepharmacy drug outlets across state lines is contained in the statute. The proposed rules also repeal existing rules regarding the Telepharmacy Pilot Project (Board Rules 261 through 264), which rules deal exclusively with telepharmacy solely within Idaho on a pilot basis, and amend other Board rules to provide rules applicable to both telepharmacy across state lines and telepharmacy within Idaho. The proposed rules authorize outsourcing, under certain circumstances, of "central prescription processing or filling" to a "central pharmacy" and define those terms. Registered telepharmacy drug outlets are included within the "central pharmacy" definition. The proposed rules establish the criteria to be met in order to outsource central prescription processing or filling. The section of the rules regarding registration of telepharmacy drug outlets across state lines includes definitions of "institution engaged in the practice of telepharmacy across state lines," "central order entry pharmacy," and "hospital system."

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

Temporary and proposed status is sought for the rule change. Since the statute went into effect July 1, 2009, and since the statute in several places alludes to board rulemaking regarding several specific subjects, temporary status confers a benefit in that the practice of telepharmacy across state lines can begin immediately within an articulated regulatory context. That not only confers a benefit on those entities providing and receiving telepharmacy services across state lines services and on the patients of the receiving entities, but it results in protection of the public health, safety, or welfare by allowing the practice of telepharmacy across state lines to begin in Idaho with appropriate regulatory oversight having been established from the outset. Justification for temporary status for the pharmacist registration fee portion of the rule is provided below.

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:

Temporary status regarding the imposition of the fee to be paid by out-of-state pharmacists who must be registered by the Board in order to provide telepharmacy across state lines services to a patient in Idaho would avoid the immediate danger of delaying the start of the practice of telepharmacy across state lines. No pharmacist who is not licensed to practice pharmacy within the state of Idaho may engage in the practice of telepharmacy across state lines unless registered by the Board pursuant to the terms of Section 54-1723A, Idaho Code. The statute provides that in addition to the mandatory requirements in subsection (2)(a)(b) and (d) of the foregoing Section, the applicant "shall. . .(c) Pay the fee(s) specified by the board for the issuance of the registration. . ." The use of the word "shall" in a statute indicates a mandatory act. Additionally, Section 54-1729(2)(b), Idaho Code, requires that all employees or personnel of a telepharmacy drug outlet across state lines "be registered by the board pursuant to section 54-1723A, Idaho Code." An institution engaged in the practice of telepharmacy across state lines must be registered by the Board as a telepharmacy drug outlet across state lines. Section 54-1729(5), Idaho Code, however, specifies the exact registration fee to be paid for registration by an institution applying for registration as a telepharmacy. Thus, there is the incongruity of the drug outlet registration fee being fixed by statute, the pharmacist employees of such drug outlets being mandatorily required to obtain registration in order to engage in the practice of telepharmacy across state lines, and the registrant being mandatorily required as a condition of obtaining registration to "pay the fee(s) specified by the board for issuance of the registration." That incongruity creates the danger of potentially delaying the operation of telepharmacy drug outlets across state lines since the nature of the statutory framework is such that they can only provide telepharmacy services into Idaho through a pharmacist who is either licensed by the Board to practice pharmacy in Idaho or who is licensed in another state and registered by the Board in Idaho to practice telepharmacy across state lines. Permitting the pharmacist registration fee to proceed as both a temporary and proposed rule avoids the danger that the effective operation of telepharmacy across state lines would be delayed until the legislature could approve, amend, or modify by concurrent resolution a fee rule. Delay of full implementation of the statute also carries a risk of potential danger to public health, safety, or welfare in that institutions within Idaho having legitimate patient care needs which could be serviced by outsourcing certain pharmacy services to a telepharmacy drug outlet across state lines could be effectively delayed in obtaining such care for several months.

Pursuant to Section 54-1723A, the fee for registration to engage in the practice of telepharmacy across state lines will be two hundred fifty dollars (\$250) and the annual registration renewal fee will be two hundred fifty dollars (\$250).

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: NA

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 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 28, 2009.

DATED this 28th day of August, 2009.

Mark Johnston, R.Ph.
Executive Director
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 TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 27-0101-0902

252. PHARMACY PRACTICE IN INSTITUTIONS.

01. Definitions. For purposes of these rules the following apply: (7-1-93)

a. Institutional Facility is a hospital, skilled nursing care facility, intermediate care facility, extended care facility, long-term care facility, and any other such 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 licensed practitioners of the healing arts engage in private practice. (5-8-09)

b. Long-Term Care Facility is a nursing home, retirement care, mental care, or other facility or institution that provides extended health care to resident patients. (5-8-09)

c. Institutional Pharmacy is the portion of an institutional facility that 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 that shall be registered with the Board pursuant Title 54, Chapter 17, Idaho Code. (5-8-09)

d. Centralized Prescription Filling is the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order. (5-8-09)

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 or to perform processing functions such as dispensing and drug regimen review. (~~5-8-09~~)(7-1-09)T

f. Chart Order is 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: (5-8-09)

i. The full name of the patient; (5-8-09)

ii. Date of issuance; (5-8-09)

iii. Name, strength, and dosage form of the drug prescribed; (5-8-09)

- iv. Directions for use; and (5-8-09)
- 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. (5-8-09)
- g. Prepackaging is 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. (5-8-09)
- h. Central Pharmacy is defined as a pharmacy within the state of Idaho or a registered telepharmacy drug outlet across state lines to which centralized prescription processing or filling services have been outsourced pursuant to these rules. (7-1-09)T
- i. Continuous Quality Improvement Program is defined as a system of standards and procedures to identify and evaluate quality-related events, and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system that determine the outcomes of medication use. (7-1-09)T
- i. Drug Regimen Review is defined as including, but is not limited to, the following activities: (7-1-09)T
- i. Evaluation of the prescription drug order and patient records for known allergies; (7-1-09)T
- ii. Rational therapy contraindications; (7-1-09)T
- iii. Reasonable dose, duration of use, and route of administration, considering age, gender, and other patient factors; (7-1-09)T
- iv. Reasonable directions for use; (7-1-09)T
- v. Potential or actual adverse drug reactions; (7-1-09)T
- vi. Drug-drug interactions; (7-1-09)T
- vii. Drug-food interactions; (7-1-09)T
- viii. Drug-disease contraindications; (7-1-09)T
- ix. Therapeutic duplication; (7-1-09)T
- x. Proper utilization (including over- or under-utilization), and optimum therapeutic outcomes; and (7-1-09)T
- xi. Abuse or misuse. (7-1-09)T
- 02. Purpose.** Pursuant to Section 54-1703, Idaho Code, these rules implement the provisions of the Idaho Pharmacy Act concerning registration of facilities as specified in Section 54-1729, Idaho Code. (7-1-93)
- 03. Applicability.** These rules apply to all institutions and institutional pharmacies as defined in these rules. (5-8-09)
- 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 that satisfy the provisions of Section 54-1729, Idaho Code, and Subsection 251.05 through Section 259 of these rules. (7-1-93)
- 05. Directors of ~~Institutional Pharmacy~~.** Each institutional pharmacy ~~shall~~ and each central pharmacy

~~must~~ be directed by a pharmacist (hereinafter referred to as “the director”) who is licensed ~~to engage in the practice of pharmacy or registered~~ in this state and who is knowledgeable in, and thoroughly familiar with the specialized functions of institutional pharmacies. ~~He shall~~ Each director will be responsible for all activities of ~~the~~ his respective institutional pharmacy ~~or central pharmacy~~ and for meeting the requirements of ~~the Idaho Pharmacy Act and these rules~~ state and federal law and regulations. (7-1-93)(7-1-09)T

06. Supportive Personnel. The director of an institutional pharmacy shall be assisted by a sufficient number of additional licensed pharmacists and ancillary personnel as may be required to operate the 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 technical personnel. (7-1-93)

b. The policies and procedures shall, at a minimum, specify that ancillary technical personnel are personally and directly supervised by a licensed pharmacist and that ancillary technical personnel may not be assigned duties that may only be performed by a licensed pharmacist. (7-1-93)

c. Secretarial and clerical assistance and support may be utilized as required to assist with recordkeeping, report submission, and other administrative duties; however, such personnel may not perform any technical duties. (7-1-93)

07. Supervision by Director. All activities and operations of an 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 licensed pharmacists to ensure that all such functions and activities are performed competently, safely, and without risk of harm to patients. (7-1-93)

09. Pharmacist Absence. During times that an institutional pharmacy is anticipated to be unattended by a licensed pharmacist, the director shall make arrangements in advance for the provision of drugs to the medical staff and other authorized personnel of the institutional facility. (7-1-93)

10. Access to Pharmacy. Only one (1) supervisory, registered nurse in any eight-hour (8) shift may be allowed access to the pharmacy and may remove drugs there from. (7-1-93)

11. Designated Nurse. The supervisory 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 recordkeeping and other required procedures. 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 the name and strength of the drug, the amount, the date and time, and signature of the nurse; and (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)

(BREAK IN CONTINUITY OF SECTIONS)

257. ~~DRUGS FROM OUTSIDE SOURCES~~ OUTSOURCING.

01. Institutional Pharmacies. An institutional pharmacy may outsource centralized prescription processing or filling services to a central 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 or when the institutional pharmacy cannot provide services on an ongoing basis, provided that the institutional pharmacy: (7-1-09)T

a. Has obtained approval from the institutional facility to outsource centralized prescription processing or filling services for its inpatients and residents; (7-1-09)T

b. Has a written contract with the central pharmacy outlining the services to be provided by the central pharmacy and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; (7-1-09)T

c. Provides a valid chart order to the central pharmacy it has contracted with for the centralized prescription processing or filling services; and (7-1-09)T

d. Shares a common electronic file or has appropriate technology to allow access by the central pharmacy to sufficient information necessary or required to fill or refill a prescription order. (7-1-09)T

02. Policies, Procedures, and Documentation for Institutional Pharmacies and Central Pharmacies. Each party performing or contracting for centralized prescription processing or filling services under Subsection 257.01 of these rules must: (7-1-09)T

a. Maintain a policies and procedures manual and documentation that implementation of such policies and procedures is occurring. The manual and documentation must include, but are not limited to, the following: (7-1-09)T

i. A copy of the outsourcing approval required under Paragraph 257.01.a. of these rules; (7-1-09)T

ii. A copy of the contract required under Paragraph 257.01.b. of these rules; (7-1-09)T

iii. The maintenance of appropriate records to identify the pharmacists providing centralized prescription processing or filling services; (7-1-09)T

iv. The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process; (7-1-09)T

v. The provision of adequate security to protect the privacy of protected health information;(7-1-09)T

vi. The protocol for accessing prescription drugs in the institutional pharmacy outsourcing centralized prescription processing or filling services and for maintaining the security of such drugs; (7-1-09)T

vii. The protocol to assure that the central pharmacy maintains sufficient Board licensed or registered pharmacists to meet the centralized processing or filling needs of the institutional facility outsourcing such services to the central pharmacy; (7-1-09)T

viii. Identification of the director of the central pharmacy and of the institutional pharmacy contracting with the central pharmacy; and (7-1-09)T

ix. The maintenance of a continuous quality improvement program for centralized processing or filling services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems. (7-1-09)T

b. Implementation documentation must be retained for a period of two (2) years. (7-1-09)T

c. Make the policy and procedures manual and implementation documentation available to the Board for review upon request. (7-1-09)T

043. ~~Outside Pharmacies~~ Institutional Facilities. Whenever an institutional facility without an institutional pharmacy obtains drugs, devices, or ~~pharmaceutical~~ other pharmacy services ~~are obtained~~ from outside

of the institutional facility, arrangements ~~shall~~ must be made to ensure 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. The arrangements shall be made in writing and shall, at a minimum, specify that: ~~(7-1-93)~~(7-1-09)T

- a. The outside pharmacist is to act in the capacity of a part-time director and therefore, is 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 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; and (7-01-94)
- h. All drugs supplied shall be labeled so as to ensure that recalls can be effected and that proper control and supervision of the drugs may be exercised. (7-1-93)

~~024.~~ **Centralized Prescription Processing or Filling for Immediate Need Limited Outsourcing by Outside Pharmacy.** An outside pharmacy that provides prescription processing or filling services for an institutional facility ~~which that~~ 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 filling services outsourced to it, if all of the following conditions are met: ~~(5-8-09)~~(7-1-09)T

- a. The outsourcing of prescription processing or filling services shall be only for the limited purpose of ensuring 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; (5-8-09)
- b. The outsourcing pharmacy has obtained approval from the Institutional Facility to outsource centralized prescription processing or filling services for its inpatients and residents; (5-8-09)
- c. The outsourcing pharmacy provides a valid chart order to the pharmacy it has contracted with for the centralized prescription processing or filling services; and (5-8-09)
- 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. (5-8-09)

~~035.~~ **Patient's Own Drugs.** (7-1-93)

- a. Whenever patients bring drugs into an institutional facility, the drugs shall not be administered unless they can be precisely identified and only pursuant to a physician's order, including chart order. (5-8-09)
- b. If the patient's drugs are not to be administered, then the director shall, according to procedures specified in writing, have the patient's drugs turned in to the pharmacy, which shall package, seal, 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)

(BREAK IN CONTINUITY OF SECTIONS)

~~261. TELEPHARMACY PILOT PROJECT.~~

~~The Board, through its executive director, may authorize specific institutional facilities and the institutional pharmacies located therein to participate in a telepharmacy program. The following rules shall apply to institutions so authorized by the Board for the telepharmacy practiced in the institution. The purpose of the Telepharmacy Pilot Project is to allow the provision of pharmaceutical care through the use of telecommunications and information technologies to patients at a distance from the pharmacy and pharmacist providing the pharmaceutical care. During the pilot project phase of the telepharmacy program, designation to participate in the telepharmacy program shall be at the discretion of the Board and the executive director.~~ (4-6-05)

~~262. DEFINITIONS.~~

~~01. **Central Pharmacy.** An institutional pharmacy authorized by the Board to participate in a telepharmacy program.~~ (4-6-05)

~~02. **Consulting Pharmacists.** Pharmacists employed at a central pharmacy who provide pharmaceutical care to patients at a rural institutional facility.~~ (4-6-05)

~~03. **Rural Institutional Facility.** An institutional facility authorized by the Board to participate in a telepharmacy program. Rural institutional facilities are those facilities federally designated as critical access hospitals or other facilities operating in a health professional shortage area and that are unable to otherwise obtain pharmaceutical care on a timely basis twenty-four (24) hours per day.~~ (4-6-05)

~~04. **Rural Institutional Pharmacy.** The institutional pharmacy located within a rural institutional facility.~~ (4-6-05)

~~05. **Telepharmacy Program.** The pilot project adopted by the Board to allow selected central pharmacies and selected rural institutional facilities to engage in the provision of pharmaceutical care through the use of telecommunications and information technologies to patients at a distance from the pharmacy and pharmacist providing the pharmaceutical care.~~ (4-6-05)

~~263. CONTRACT FOR TELEPHARMACY PROGRAM.~~

~~A central pharmacy may contract with a rural institutional facility for operation of a telepharmacy program as specified herein.~~ (4-6-05)

~~01. **Contract Matters.** The contract shall address the following matters:~~ (4-6-05)

~~a. Identify the director of pharmacy of the central pharmacy and the director of pharmacy of the rural institutional pharmacy and provide for notice to the parties and to the Board in the event of a change in either director.~~ (4-6-05)

~~b. Contain a description of the telepharmacy services to be performed by the central pharmacy for the rural institutional pharmacy, including:~~ (4-6-05)

~~i. Protocols for communication of orders for prescription drugs from the practitioners at the rural institutional pharmacy to the pharmacists at the central pharmacy.~~ (4-6-05)

~~ii. Protocols for the central pharmacy to accomplish dispensing of prescription drugs at the rural institutional facility and to ensure that the central pharmacy has sufficient consulting pharmacists and support staff to meet the pharmacy needs of the institutional facility where the central pharmacy is located as well as performing the pharmacy functions for the rural institutional pharmacy as are contemplated under the contract.~~ (4-6-05)

~~iii. A description of the access to prescription drugs in the rural institutional pharmacy under the program and protocol for maintaining the security of prescription drugs in the rural institutional pharmacy. (4-6-05)~~

~~iv. Contain a provision for the orderly transition of pharmaceutical services for the rural institutional pharmacy in the event the central pharmacy elects to terminate its participation in the telepharmacy program, such transition to include an adequate time for the rural institutional pharmacy to locate appropriate pharmaceutical services from another source. (4-6-05)~~

~~v. The term of the contract shall not exceed two (2) years and shall be subject to the right of the Board and its executive director to conduct an annual review of the operations under the contract and of the telepharmacy program. (4-6-05)~~

~~02. **Additional Contract Matters.** The contract may address additional matters regarding the Telepharmacy Program between the central pharmacy and the rural institutional facility. (4-6-05)~~

~~03. **Contract Approval.** The contract must be approved by the executive director of the Board prior to the commencement of telepharmacy services between the central pharmacy and the rural institutional facility. In reviewing the contract, the executive director shall evaluate the proposed terms in the light of: (4-6-05)~~

~~a. Promoting, preserving, and protecting the health, safety, and welfare of the public; (4-6-05)~~

~~b. Maintaining appropriate professional standards for the practice of pharmacy; and (4-6-05)~~

~~c. Maintaining appropriate safeguards for the protection of prescription drug inventories, especially controlled substance inventories, at the Rural Institutional Pharmacy. (4-6-05)~~

~~**264. SPECIAL RULES FOR DIVISION OF RESPONSIBILITY FOR TELEPHARMACY.**~~

~~Notwithstanding anything in these rules to the contrary, for rural institutional pharmacies and central pharmacies, and the pharmacists practicing under an approved contract for telepharmacy services, the following rules shall apply. (4-6-05)~~

~~01. **Responsibility of Director of Central Pharmacy.** The director of pharmacy of the central pharmacy shall be responsible for all telepharmacy services performed by the central pharmacy under the approved contract and for meeting the requirements of the Idaho Pharmacy Act and these rules with respect to such services. The telepharmacy activities and operations performed by the central pharmacy under the approved contract and the ancillary personnel of the central pharmacy engaged in such activities and operations shall be personally and directly supervised by the director of pharmacy in the same fashion as all other activities and operations at the central pharmacy. (4-6-05)~~

~~02. **Responsibility of Director of Rural Institutional Pharmacy.** The director of pharmacy of the rural institutional pharmacy shall remain responsible for all other aspects of the rural institutional pharmacy but shall not be responsible for the services performed by the central pharmacy under the approved contract. Where ancillary personnel are directed or supervised in telepharmacy activities by the central pharmacy, responsibility for such direction and supervision shall lie with the central pharmacy and the director thereof. (4-6-05)~~

~~**261. -- 264. (RESERVED).**~~

(BREAK IN CONTINUITY OF SECTIONS)

292. REGISTRATION, DRUG OUTLET.

01. Annual Renewal of Registration of Drug Outlet. (7-1-93)

a. Annually each drug outlet shall renew its registration no later than July 1 on a form provided by the Board and accompanied by the required fee. (7-1-93)

b. Each facility may be inspected by an inspector of the Board to ascertain that proper procedures are being carried out in regard to distribution of drugs. (7-1-93)

02. Retail Drug Outlet. (7-1-93)

a. A Retail Pharmacy Drug Outlet is a community pharmacy or any other pharmacy managed by an Idaho licensed pharmacist. (7-1-93)

b. A Retail Non-Pharmacy Drug Outlet includes any grocery store, bar, hotel, department store, vending machine, etc., not registered as a pharmacy that sells non-legend drugs, devices, or medical supplies to be sold at retail. (7-1-93)

03. Registrations and Renewals of Retail Non-Pharmacy Drug Outlet. For the issuing of registrations and renewals required by Section 54-1729, Idaho Code, the fee for each retail non-pharmacy drug outlet registration shall be determined as follows: (7-1-93)

a. "B" registration for those stocking not more than fifty (50) drug items; (8-4-94)

b. "A" registration for those stocking more than fifty (50) drug items; and (7-1-93)

c. "V" registration for vending machines, annual fee of five dollars (\$5). (8-4-94)

d. Reinstatement of a non-pharmacy registration shall be a minimum of five dollars (\$5) or one-half (1/2) the annual fee. (7-1-93)

04. Institutional Pharmacy Outlet. A hospital pharmacy, nursing home pharmacy, state institution pharmacy, and any other institutional outlet having a pharmacy within the facility. (7-1-93)

05. Institutional Non-Pharmacy Drug Outlet. A hospital, nursing home, state institution, shelter home, convalescent home, extended care facility, drug abuse treatment center, family planning clinic, and any other outlet not having a pharmacy within the facility. (7-1-93)

06. Manufacturing Drug Outlet. A manufacturer manufacturing pharmaceuticals within the state, or a manufacturer located outside the state but doing business within the state of Idaho. (7-1-93)

07. Wholesale Drug Outlet. A company located within the state or outside the state but doing business within the state of Idaho. (7-1-93)

08. Vending Machines. Machines used for non-prescription drugs not otherwise restricted for over-the-counter sale will be considered a separate drug outlet and must be registered with the Board. (7-1-93)

a. Application for registration must be made on forms provided by the Board, accompanied by a reasonable registration fee for each machine that shall have a registration number issued by the Board. (7-1-93)

b. Registration must be renewed annually on or before June 30. (7-1-93)

c. Drugs and medical supplies stored in vending machines are subject to inspection by the Board upon reasonable notice. (7-1-93)

09. Durable Medical Equipment (DME) Outlet. (7-1-98)

a. All entities holding for sale legend or non-legend devices to be sold at retail or wholesale must be registered with the Board. Said legend devices may only be sold or delivered at retail upon the lawful order of a practitioner. DME outlets may hold non-legend drugs for sale. (7-1-98)

b. Registered DME outlets may hold for sale at retail only upon the order of a practitioner the following legend drugs: (7-1-98)

- i. Pure oxygen for human application; (7-1-98)
- ii. Nitrous oxide; (7-1-98)
- iii. Sterile sodium chloride; and (7-1-98)
- iv. Sterile water for injection. (7-1-98)

10. Telepharmacy Drug Outlet Across State Lines. (7-1-09)T

a. “Institution engaged in the practice of telepharmacy across state lines” means an out-of-state hospital with an institutional pharmacy licensed or registered in another state, or a central order entry pharmacy licensed or registered in another state and that is part of a hospital system. (7-1-09)T

b. “Central order entry pharmacy” means an out-of-state pharmacy that processes information related to the practice of pharmacy, that engages solely in centralized prescription processing but from which drugs are not dispensed, and that is physically located outside the institutional pharmacy of a hospital. (7-1-09)T

c. “Hospital system” means one (1) or more hospitals under common ownership, where at least one (1) of the hospitals has within it a licensed or registered institutional pharmacy. A hospital system may also include, under the same common ownership, one (1) or more licensed or registered central order entry pharmacies. (7-1-09)T

d. For registration as a telepharmacy drug outlet across state lines, an institution engaged in the practice of telepharmacy across state lines must satisfy the requirements of Section 54-1729, Idaho Code. (7-1-09)T

101. Registration Issued at Specific Location. A registration will be issued to an applicant at a specific location and is not transferable as to person or place. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

294. REGISTRATION OF PHARMACISTS TO ENGAGE IN THE PRACTICE OF TELEPHARMACY ACROSS STATE LINES.

01. Registration. To engage in the practice of telepharmacy across state lines, a pharmacist who is not licensed to practice pharmacy within the state of Idaho must be registered by the Board. (7-1-09)T

02. Requirements and Registration Fee. In order to be registered to engage in the practice of telepharmacy across state lines, the pharmacist must satisfy all the requirements of Section 54-1723A, Idaho Code, and pay a registration fee of two hundred fifty dollars (\$250). (7-1-09)T

03. Renewal and Renewal Fee. The renewal of registration to engage in the practice of telepharmacy across state lines will be as specified in Section 54-1723A(5), Idaho Code, and the annual renewal fee shall be two hundred fifty dollars (\$250). (7-1-09)T

2945. -- 320. (RESERVED).

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0903

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 21, 2009.

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 is necessary to alleviate any public safety issues that may be created by pharmacies not being open during their established hours of operation. The proposed rules will require pharmacies to notify the Board of Pharmacy in writing of their hours of operation and to notify the Board of any change in those hours at least thirty (30) days prior to commencing new hours of operation. The rules will require pharmacies to remain open during their stated hours of operation and to maintain sufficient staffing to ensure pharmacies are open during their stated business hours.

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

No fees or charges are being imposed or increased through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

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 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 28, 2009.

DATED this 28th day of August, 2009.

Mark Johnston, R.Ph.
Executive Director
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 PROPOSED TEXT OF DOCKET NO. 27-0101-0903

180. DIFFERENTIAL HOURS.

01. Security at Pharmacy. A pharmacy must provide adequate security for its drug supplies, equipment, and records and in the absence of a pharmacist, the pharmacy must be closed. If a pharmacy is located within a larger business establishment that is open to the public for business at times when a pharmacist is not present, the pharmacy must be totally enclosed by a partition, such as a glass or metal mesh screen or a security fence, that is sufficient to provide adequate security for the pharmacy, as approved by the Board or its representatives. In the absence of a pharmacist, the pharmacy must be locked. Employees of the business establishment may not be authorized to enter the closed pharmacy during those hours that the business establishment is open to the public for business. (7-1-93)

02. Equipment, Records, Drugs, and Other Items. All equipment and records referred to in these rules and all drugs, devices, poisons, and other items or products that are restricted to sale either by or under the personal supervision of a pharmacist must be kept in the pharmacy area. (7-1-93)

03. Prescription Orders and Refill Requests. Written prescription orders and refill requests can be delivered to a pharmacy at any time. If no pharmacist is present, the prescription orders must be deposited by the patient, or his agent delivering the prescription order or refill request, into a "mail slot" or "drop box" that deposits the prescription order into the pharmacy area. The times that the pharmacy is open for business must be displayed in a manner that is prominently visible to the person depositing the prescription order. (7-1-93)

04. Storage of Prescriptions. Prescriptions shall be stored in the pharmacy and cannot be removed from the pharmacy unless the pharmacist is present and the removal is for the immediate delivery to the patient, person picking up the prescription for the patient, or person delivering the prescription to the patient at his residence or similar place. (7-1-93)

05. Sale Restrictions. No drugs, devices, poisons, or other items or products that are restricted to sale either by or under the personal supervision of a pharmacist may be sold or delivered without a pharmacist being present in the pharmacy. (7-1-93)

06. Separate Telephone. Any pharmacy having hours differing from the remainder of a business shall have a separate and distinct telephone number from that of the business. The telephone shall not be answerable in the remainder of the establishment unless all telephone conversations during a pharmacist's absence are recorded and played back by the pharmacist. (7-1-93)

07. Oral Prescriptions. An oral prescription may not be accepted if the pharmacist is not present unless the prescription is taken on a recording that must inform the caller of the times the pharmacy is open. (7-1-93)

08. Hours Open for Business. A pharmacy must notify the Board, on a form prescribed by the Board, of the hours that the pharmacy is open for business. Any pharmacy desiring to change the hours that it is open for business, must notify the Board, on a form prescribed by the Board, at least thirty (30) days prior to commencing such hours. A pharmacy must prominently display in a permanent manner on or adjacent to its entrance the hours it is open for business. A pharmacy must remain open for business the hours for which the Board has received such notification and that are prominently displayed. A pharmacy must maintain sufficient staffing by pharmacists in order to ensure that the pharmacy will be open during the hours of operation for which the pharmacy provided notice to the Board. If a pharmacy is located within a larger business establishment that has hours of operation different from the pharmacy, the hours the pharmacy is open for business shall be prominently displayed, in a permanent manner, at the pharmacy area and on, or adjacent to, the entrance to the mercantile establishment. (7-1-93)(____)

09. Advertising. Any advertising by the business establishment that references the pharmacy or products sold only in the pharmacy, and that includes the hours that the business establishment is open to the public for business, must also indicate the hours that the pharmacy is open to the public for business. (7-1-93)

10. Notification to the Board of Differential Hours. Any person desiring to operate a pharmacy within an establishment having hours of business differing from the pharmacy, must notify the Board at least thirty (30) days prior to commencing such differential hours. To constitute notification, the applicant must complete and file the form provided by the Board with the required information. Board inspection and approval shall be completed prior to commencing differential hours. The inspection and approval or disapproval shall be completed within ten (10) days of receiving notification that the premises are ready for inspection. Approval or disapproval shall be predicated upon compliance with this rule and the pharmacy minimum standards set forth in Section 151 of these rules. (7-1-93)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0904

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 21, 2009.

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 Legend Drug Donation Act requires the Board of Pharmacy to promulgate rules to develop and implement the program. The proposed rules will provide standards and procedures for the transfer, acceptance, and storage of donated drugs; for inspecting donated drugs; for distribution of donated drugs; for dispensing of donated drugs; and provisions to enforce the Idaho Legend Drug Donation Act.

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

No fees or charges are being imposed or increased through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted to seek consensus on the content of the rule.

The Idaho Legend Drug Act, which went into effect on July 1, 2009, mandated that the Board adopt rules necessary for implementation and enforcement of the program established by the Legislature, and listed five subject areas for which the Board was to adopt rules. Negotiated rulemaking was not feasible in this context. Board staff, however, did solicit information from charitable clinics to consider in developing the standards and procedures required by the statute.

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 28, 2009.

DATED this 28th day of August, 2009.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720, Boise, ID 83720-0067
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-0904

366. -- ~~400379.~~ (RESERVED).

380. LEGEND DRUG DONATION – STANDARDS AND PROCEDURES.

01. Drug Donation Criteria. In order to be eligible for donation, drugs must meet the following criteria: ()

a. The drug name, strength, lot number, and expiration date must appear on the drug package or label. ()

b. Donated drugs must be approved by the federal Food and Drug Administration and: ()

i. Be sealed in the manufacturer’s unopened original tamper-evident packaging and either: ()

(1) Individually packaged, or ()

(2) Packaged in unit-dose packaging; ()

ii. Be oral or parenteral drugs in sealed single-dose containers approved by the federal Food and Drug Administration; ()

iii. Be topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or ()

iv. Be parenteral drugs in sealed multiple-dose containers approved by the federal Food and Drug Administration from which no doses have been withdrawn. ()

c. Donated drugs must not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug wholesaler or manufacturer. ()

d. Donated drugs must not require storage temperatures other than normal room temperature as specified by the manufacturer or United States Pharmacopoeia, because of the potential for these drugs to become adulterated. ()

e. Donated drugs must not be the subject of federal Food and Drug Administration restricted drug distribution programs, including but not limited to thalidomide and lenalidomide. ()

02. Donation Standards. ()

a. The licensed pharmacist or physician at the charitable clinic or center will be responsible for defining a specified set of drugs that will be included in their formulary. ()

b. Donating entities may only donate drugs that appear on the charitable clinic or center’s formulary. ()

c. A licensed pharmacist, nurse, or physician from the donating entity must sign and date a manifest before delivery of the donated drugs to the charitable clinic or center that: ()

i. Certifies that the drugs have been maintained in a secure and temperature controlled environment that meets the drug manufacturers’ recommendations and the United States Pharmacopoeia standards; ()

ii. Certifies that the donated drugs have been continuously under control of a health care professional

and have never been in the custody of a patient or other individual: ()

iii. Certifies that the donating entity has only donated drugs on the charitable clinic or center's formulary: ()

iv. Certifies that the donating entity has complied with the provisions of these rules: ()

v. Certifies that the patient's name, prescription number, and any other identifying marks have been removed or redacted from the package by the donating entity: ()

vi. Lists the names of the donating entity and the name of the receiving charitable clinic or center: and ()

vii. Lists the name, strength, expiration date, lot number, and quantity of each prescription drug to be donated. ()

d. A copy of the manifest must be delivered to the charitable clinic or center with the donated drugs. ()

03. Receipt of Donated Drugs. ()

a. A licensed pharmacist must verify that donated drugs meet the criteria in Subsection 380.01 of these rules, and upon receipt must: ()

i. Verify utilizing a current drug identification book, a computer program, or an online service for the same that the drug name and strength noted on the label of each unit of the packaged, donated drug is correct; and ()

ii. Determine that donated drugs are not adulterated or misbranded and are safe to dispense. ()

b. Improperly donated drugs that do not meet criteria in Subsections 380.01 or 380.03 of these rules must be destroyed, and documentation of such destruction must be maintained within a destruction record. ()

c. A licensed pharmacist at the charitable clinic or center must document receipt of each donated drug on each manifest. ()

d. In the event that the identifying patient information is not removed by the donating entity, the pharmacist at the charitable clinic or center must remove or redact that information. ()

04. Storage of Donated Drugs. ()

a. Drug storage must have proper environmental controls to assure the integrity of the drug in accordance with the drug manufacturer's recommendations and United States Pharmacopoeia standards. ()

b. Donated drugs may be commingled with the charitable clinic or center's regular stock of drugs only if the packaging on the donated drugs has been labeled to show that the drugs were obtained through a donating entity. ()

c. Donated drugs with packaging that has not been labeled to show that the drugs were obtained through a donating entity must be kept in an area that is separately designated from the charitable clinic or center's regular stock of drugs. ()

d. The space in which drugs are stored must be locked at all times except during operating hours or other time when a licensed pharmacist or physician is physically present in the charitable clinic or center. ()

05. Dispensing Donated Drugs to Medically Indigent Patients. ()

a. Donated drugs that are expired, adulterated, misbranded, recalled, deteriorated, or not kept under proper conditions must not be re-dispensed to indigent patients and must be destroyed. Documentation of such destruction must be maintained within a destruction record. ()

b. A pharmacist or physician working at a charitable clinic or center who re-dispenses donated drugs to any patient must: ()

i. Utilize a proper and appropriate container; ()

ii. Place a label on the container that conforms to provisions of these rules; and ()

iii. Initial the prescription label. ()

c. The re-dispensed drug must be assigned the same expiration date as is on the original package. ()

d. A charitable clinic or center must maintain dispensing records for each donated drug dispensed. ()

e. Pharmacists or physicians dispensing donated drugs are required to provide patient counseling. ()

06. Miscellaneous. ()

a. A licensed pharmacist or physician must be on duty during all hours of operation of the charitable clinic or center. ()

b. Legend drugs donated under these rules must not be sold, resold, offered for sale, traded, or transferred to another charitable clinic or center. ()

c. Nothing in these rules precludes a charitable clinic or center from charging an indigent patient a dispensing fee. ()

07. Record Keeping Requirements. ()

a. Donating entities must maintain all manifests in a readily retrievable fashion for at least two (2) years. ()

b. Charitable clinics or centers must maintain destruction records, dispensing records, and manifests in a readily retrievable fashion for at least two (2) years. ()

381. -- 400. (RESERVED).

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0905

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 21, 2009.

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 is necessary to allow pharmacists to provide up to a three (3)-month supply of legend drugs that are not controlled substances, when a prescription is written for a smaller supply but includes refills sufficient to equal the larger supply. The proposed rulemaking amends an existing rule to clarify that a pharmacist, filling a drug order for a legend drug that is not a controlled substance, may provide up to a three (3)-month supply when the practitioner has written a prescription for a smaller supply with refills in sufficient numbers to fill the larger supply.

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: NA

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 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 28, 2009.

DATED this 28th day of August, 2009.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
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Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-0905

184. UNPROFESSIONAL CONDUCT.

The following acts or practices by a licensed pharmacist or a pharmacy owner declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest: (7-1-93)

01. General. Manufacturing, compounding, selling, or dispensing or permitting to be manufactured, compounded, sold, or dispensed substandard drugs or preparations. (7-1-93)

02. Secret Formulas. Using secret formulas. (7-1-93)

03. Prescriber Incentives. Allowing a commission or rebate to be paid to a person writing, making, or otherwise ordering a prescription, or providing consultant services at no charge to receive prescription business. (7-1-93)

04. Prescription Order Noncompliance. Failing to strictly follow the instructions of the person writing, making, or ordering a prescription as to refills, contents, or label, or giving a copy of a prescription to any person without marking said prescription across the face: "Copy for Information Only. Not to Be Filled," except that a pharmacist, utilizing his best professional judgment, may provide up to a three-month supply of a legend drug that is not a controlled substance when the practitioner has written a drug order to be filled with a smaller supply but which includes refills in sufficient numbers to fill a three-month supply. (7-1-93)()

05. Errors or Omissions. Failing to confer with the person writing, making or ordering a prescription, if there is an error or omission therein which should be questioned. (7-1-93)

06. False or Deceptive Advertising. Advertising in a manner that is false, misleading or deceptive, which includes making material claims of professional superiority that cannot be substantiated. (7-1-93)

07. Addiction. Being addicted or habituated to the use of alcohol or controlled substances. (7-1-93)

08. Diversion of Drug Products and Devices. Supplying or diverting drugs, biologicals, and other medicines, substances, or devices, legally sold in pharmacies, that allows unqualified persons to circumvent laws pertaining to the legal sale of such articles. (7-1-93)

09. Fraudulent Practice. Performing, or in any way being a party to, any fraudulent or deceitful practice or transaction. (7-1-93)

10. Incompetency and Negligence. Performing duties as a pharmacist or pharmacy owner in an incompetent, unskilled, or negligent manner. (7-1-93)

11. Unprofessional Conduct. Exhibiting unprofessional conduct toward customers, employees, colleagues, inspectors or others. (7-1-93)

12. Insubordination. Failure to follow an order of the Board. (2-23-94)

13. Inappropriate Conduct. Any activity by a pharmacist that is inappropriate to the conduct of the profession of pharmacy. (2-23-94)

14. Disciplinary Actions in Other States. Conduct that results in a suspension, revocation or other disciplinary proceeding or action with respect to a pharmacy or pharmacist license that the Idaho licensee holds in another state. (7-1-98)

15. Reporting Theft, Loss, or Adulteration. Failure of any pharmacist-in-charge or pharmacy director to report any theft or loss of controlled substances or any adulteration of a prescription drug to the Board, even if the theft, loss, or adulteration was accounted for and the employee was disciplined by the employer. (4-6-05)

16. Cooperating in an Investigation. Failure of any licensee to cooperate with a disciplinary investigation. (4-6-05)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0906

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 21, 2009.

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 is necessary to allow pharmacists to provide pharmaceutical care outside of a licensed pharmacy under certain conditions. The proposed rules set forth the conditions under which a licensed pharmacist may practice outside a licensed pharmacy. These conditions address access to records and information, provide for security and documentation, and mandate the maintenance of records to provide accountability and an audit trail.

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

No fees or charges are being imposed or increased through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), 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 28, 2009.

DATED this 28th day of August, 2009.

Mark Johnston, R.Ph.
Executive Director
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 PROPOSED TEXT OF DOCKET NO. 27-0101-0906

165. PHARMACEUTICAL CARE.

A licensed pharmacist's scope of pharmacy practice may include, but is not limited to, the provision of those acts or services necessary to provide pharmaceutical care as defined in these rules. (5-8-09)

01. Definitions. (7-1-99)

a. Collaborative pharmacy practice. Means that practice of pharmacy whereby one (1) or more pharmacists have jointly agreed to work in conjunction with one (1) or more practitioners under protocol whereby the pharmacist may perform certain patient care functions authorized by the practitioner under certain specified conditions or limitations. (5-8-09)

b. Collaborative pharmacy practice agreement. Means a written and signed agreement between one (1) or more pharmacists and one (1) or more practitioners that provides for collaborative pharmacy practice for the purpose of conducting drug therapy management services, as defined in these rules. (5-8-09)

c. Drug therapy management. Means a distinct service or group of services that optimize therapeutic outcomes for individual patients. Drug therapy management services are independent of, but can occur in conjunction with, the provision of a drug or a device. Drug therapy management encompasses a broad range of professional activities and responsibilities within the licensed pharmacist's scope of practice. These services may include, but are not limited to, the following, according to the individual needs of the patient: (5-8-09)

i. Performing or obtaining necessary assessments of the patient's health status; (5-8-09)

ii. Formulating a drug treatment plan; (5-8-09)

iii. Selecting, initiating, modifying, or administering drug therapy; (5-8-09)

iv. Monitoring and evaluating the patient's response to therapy, including safety and effectiveness; (5-8-09)

v. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (5-8-09)

vi. Documenting the care delivered and communicating essential information to the patient's other primary care providers; (5-8-09)

vii. Providing information, support services and resources designed to enhance patient adherence with his therapeutic regimens; (5-8-09)

viii. Coordinating and integrating drug therapy management services within the broader health care-management services being provided to the patient; and (5-8-09)

ix. Such other drug therapy management services as may be allowed by law. (5-8-09)

d. Health information. Means any information, whether oral or recorded in any form or medium, that: (5-8-09)

i. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (5-8-09)

ii. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of healthcare to an individual. (5-8-09)

- e.** HIPAA. Means the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and any amendments thereof. (5-8-09)
- f.** Individually identifiable health information. Means information that is a subset of health information, including demographic information collected from an individual and that: (5-8-09)
- i.** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (5-8-09)
- ii.** Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual that: (5-8-09)
- (1) Identifies the individual; or (5-8-09)
- (2) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (5-8-09)
- g.** Other pharmaceutical patient care services. Means services that may include, but are not limited to, the following: (5-8-09)
- i.** Collaborative pharmacy practice. (5-8-09)
- ii.** Such other pharmaceutical patient care services as may be allowed by law. (5-8-09)
- h.** Pharmaceutical care. Means the provision by a pharmacist of drug therapy management services and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in these rules. (5-8-09)
- i.** Pharmacist's scope of practice pursuant to the collaborative practice agreement. Means those duties and limitations of duties placed upon one (1) or more pharmacists by the collaborative practitioner or practitioners, the Board, and applicable law and includes the limitations implied by the scope of practice of the collaborating practitioner or practitioners. (5-8-09)
- j.** Practitioner. Means, for purposes of Section 165, an individual currently licensed, registered, or otherwise authorized in Idaho to prescribe and administer drugs in the course of professional practice. (5-8-09)
- k.** Protected health information. Means individually identifiable health information that, except as provided in Subparagraph 165.01.k.iv. of these rules, is: (5-8-09)
- i.** Transmitted by electronic media; (5-8-09)
- ii.** Maintained in any medium described in the definition of electronic media at 45 CFR 162.103 (HIPAA privacy rules); and (5-8-09)
- iii.** Transmitted or maintained in any other form or medium. (5-8-09)
- iv.** Protected health information excludes individually identifiable health information in: (5-8-09)
- (1) Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1231(g)); (5-8-09)
- (2) Records described at 20 U.S.C. Section 1231 (g)(4)(B)(iv); and (5-8-09)
- (3) Employment records held by a licensee in its role as an employer. (5-8-09)

02. Collaborative Pharmacy Practice. Collaborative pharmacy practice is subject to the following requirements: (5-8-09)

a. Collaborative pharmacy practice agreement. A pharmacist planning to engage in collaborative pharmacy practice shall have on file at his place of practice the written collaborative pharmacy practice agreement. The initial existence and subsequent termination of any such agreement and any additional information the Board may require concerning the collaborative pharmacy practice agreement including the agreement itself, shall be made available to the Board for review upon request. The agreement may allow the pharmacist, within the pharmacist's scope of practice pursuant to the collaborative pharmacy practice agreement, to conduct drug therapy management services approved by the practitioner and as defined by these rules. The collaboration that the practitioner agrees to conduct with the pharmacist must be within the scope of the practitioner's current practice. Patients or caregivers shall be advised of such agreement. (5-8-09)

b. Contents. The collaborative pharmacy practice agreement shall include: (5-8-09)

i. Identification of the practitioner and pharmacist who are parties to the agreement; (5-8-09)

ii. The types of drug therapy management decisions that the pharmacist is allowed to make; (5-8-09)

iii. A method for the practitioner to monitor compliance with the agreement and clinical outcomes and to intercede where necessary; (5-8-09)

iv. A provision that allows the practitioner to override a collaborative practice decision made by the pharmacist whenever he deems it necessary or appropriate; (5-8-09)

v. A provision that allows either party to cancel the agreement by written notification; (5-8-09)

vi. An effective date; and (5-8-09)

vii. Signatures of each collaborating pharmacist and practitioner who are parties to the agreement as well as dates of signing. Amendments to a collaborative pharmacy practice agreement must be documented, signed, and dated. (5-8-09)

c. Initiation of the collaborative pharmacy practice agreement. The collaborative pharmacy practice agreement must be coupled with a medical order from the practitioner to initiate allowed activities for any particular patient. (5-8-09)

d. Documentation of pharmacist activities. Documentation of allowed activities must be kept as part of the patient's permanent record and must be readily available to other health care professionals providing care to that patient and who are authorized to receive it. Documentation of allowed activities shall be considered protected health information. (5-8-09)

e. Review. At a minimum, the written agreement shall be reviewed and renewed and, if necessary, revised every year. (5-8-09)

03. Independent Practice. A licensed pharmacist may provide pharmaceutical care outside of a licensed pharmacy if all of the following conditions are met: ()

a. The pharmacist has access to prescription records, patient profiles, or other relevant medical information for purposes of pharmaceutical care and appropriately reviews such information before performing any such functions; ()

b. Access to the information described in Paragraph 165.03.a. of these rules is secure from unauthorized access and use, and all access by pharmacists is documented; and ()

c. A pharmacist providing pharmaceutical care outside of the premises of a licensed pharmacy shall

maintain the records or other patient-specific information used in such activities in a readily retrievable form in a system that is secured and managed by the pharmacy with whom the pharmacist is providing such services or, if acting independent of a pharmacy, a secure system maintained by the pharmacist. Such records or information shall:

()

i. Provide accountability and an audit trail;

()

ii. Be provided to the Board upon request; and

()

iii. Be preserved for a period of at least two (2) years from the date relied upon or consulted for the purposes of performing any such function.

()

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0907

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 21, 2009.

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 is necessary to reflect changes made by the 2009 Idaho Legislature to the Wholesale Drug Distribution Act. The proposed rule adds repackagers who are authorized distributors of record for FDA registered manufacturers to the definition of normal distribution channel.

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

No fees or charges are being imposed or increased through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

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 to reflect changes made in current law.

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 28, 2009.

DATED this 28th day of August, 2009.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
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Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-0907

321. DEFINITIONS.

01. Authentication. To affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred. (4-2-08)

02. Authorized Distributor of Record. A wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with the following: (4-2-08)

a. The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (4-2-08)

b. The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis. (4-2-08)

03. Chain Pharmacy Warehouse. A physical location for prescription drugs that acts as a central warehouse and performs intra-company sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control. (4-2-08)

04. Co-Licensed Partner or Product. An instance where two (2) or more parties have the right to engage in the manufacturing or marketing, or both, of a prescription drug consistent with the federal Food and Drug Administration's implementation of the Prescription Drug Marketing Act. (4-2-08)

05. Components. Articles intended for use as a component of any articles specified in Subsections 321.01, 321.02, or 321.03 of these rules. (4-2-08)

06. Drop Shipment. The sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, that manufacturer's co-licensed product partner, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug. The wholesale distributor invoices the pharmacy, chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor. (4-2-08)

07. Drug. Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or their supplement. (7-1-93)

08. Facility. Facility of a wholesale distributor where prescription drugs are stored, handled, repackaged, or offered for sale. (4-2-08)

09. Manufacturer. A person licensed or approved by the federal Food and Drug Administration to engage in the manufacture of drugs or devices consistent with the federal Food and Drug Administration definition of "manufacturer" under its regulations and guidance implementing the Prescription Drug Marketing Act. (4-2-08)

10. Manufacturer's Exclusive Distributor. A person who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor, pursuant to Section 54-1753, Idaho Code, and must also be an authorized distributor of record to be

considered part of the normal distribution channel. (4-2-08)

11. Normal Distribution Channel. A chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, or from that manufacturer directly or through its co-licensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States Food and Drug Administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States Food and Drug Administration, either directly or by drop shipment to:

(4-2-08)()

- a. A pharmacy to a patient; (4-2-08)
- b. A designated person authorized by law to dispense or administer such drug to a patient; (4-2-08)
- c. A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; (4-2-08)
- d. A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intra-company pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or (4-2-08)
- e. A chain pharmacy warehouse to the chain pharmacy warehouse's intra-company pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient. (4-2-08)

12. Pedigree. A document or electronic file containing information that records each wholesale distribution of a prescription drug. (4-2-08)

13. Prescription Drug. Any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by prescription, including finished dosage forms and bulk substances, subject to Section 503(b) of the federal Food, Drug and Cosmetic Act. (4-2-08)

14. Repackage. Repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding any repackaging completed by the pharmacist responsible for the purpose of dispensing the drug to the patient. (4-2-08)

15. Repackager. A person who repackages. (4-2-08)

16. Sample. A unit of a drug that is not intended to be sold and is intended to promote the sale of the drug. (4-2-08)

17. Third Party Logistics Provider. A person who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, but who does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third party logistics provider must be licensed as a wholesale distributor, pursuant to Section 54-1753, Idaho Code, and must also be an authorized distributor of record to be considered part of the normal distribution channel. (4-2-08)

18. Wholesale Distribution. Distribution of prescription drugs to persons other than a consumer or patient, but excluding the following: (4-2-08)

- a. Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity or any transaction or transfer between co-licensees of a co-licensed product. (4-2-08)
- b. The sale, purchase, distribution, trade, or transfer of a prescription drug or the offer to sell,

purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons. (4-2-08)

c. The distribution of prescription drug samples by manufacturers' representatives. (4-2-08)

d. Drug returns when conducted by a hospital, health care entity, or charitable institution in accordance with 21 CFR 203.23. (4-2-08)

e. The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use. (4-2-08)

f. The sale, purchase, or trade of a drug; an offer to sell, purchase, or trade a drug; or the dispensing of a drug pursuant to a prescription. (4-2-08)

g. The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets. (4-2-08)

h. The sale, purchase, distribution, trade, or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, to date, been exclusively in the normal distribution channel. (4-2-08)

i. The delivery of, or the offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs if the common carrier does not store, warehouse, or take legal ownership of the prescription drug. (4-2-08)

j. The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor. (4-2-08)

19. Wholesale Distributor. A person engaged in wholesale distribution of drugs including, but not limited to: manufacturers; repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturer's and distributor's warehouses; manufacturer's exclusive distributors; authorized distributors of record; drug wholesalers or distributors; independent wholesale drug traders; specialty wholesale distributors; third party logistics providers; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the normal distribution channel, a wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record. (4-2-08)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0908

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 21, 2009.

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 is necessary to clarify that a pharmacy may transfer a prescription to another pharmacy without first having to fill it. The proposed rule will permit a pharmacist to transfer a prescription to another pharmacy to be filled or refilled. The rule will also clarify the recordkeeping responsibility of the receiving pharmacy.

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

No fees or charges are being imposed or increased through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

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 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 28, 2009.

DATED this 28th day of August, 2009.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, ID 83720-0067
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Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-0908

160. PRESCRIPTION TRANSFER.

A pharmacist may transfer prescription order information for the purpose of filling or refilling a prescription only if the information is communicated orally directly from pharmacist to pharmacist. Such oral information can be communicated by a 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. 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. (5-8-09)(____)

01. Transferring Prescriptions for Controlled Substances. A prescription for a controlled substance 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 in Subsection 160.02 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. Documenting the Transfer of a Prescription. The pharmacist who transfers the prescription shall: (5-8-09)

a. Invalidate the original prescription by writing the word “void” across the face of the form; and (7-1-93)

b. On the back of the form, 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. Documenting the Receipt of a Transferred Prescription. The pharmacist who receives the transferred prescription shall: (5-8-09)

a. Reduce the transferred information to writing including all information required by law or rule and a notation that the prescription is a “transfer”; and (7-1-93)

b. On ~~the back of~~ the form, 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, the number of refills authorized, the number of valid refills remaining, the date of the last refill, and the serial number of the prescription transferred. (7-1-93)(____)

04. Documenting Prescription Transfers by Computer. Transferring pharmacies that utilize a computer prescription database that 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, and the hard copy shall also contain all of the information required under Section 160 of these rules.~~ (3-30-01)(____)

05. Documenting Receipt of Prescription Transfers by Computer. A receiving pharmacy that utilizes a computer prescription database that contains all of the prescription information required by law or rule must generate a hard copy to be treated as a new prescription; however, the receiving pharmacy may enter the information required under Section 160 of these rules into the pharmacy’s prescription database in lieu of writing the information

on the hard copy of the new prescription. ()

056. Transferring Prescription 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 of these rules are followed. (7-1-93)

067. Transferring Prescription Between Pharmacies Using Common Electronic Prescription Files. (7-1-98)

a. For prescriptions written for drugs other than controlled substances two (2) or more pharmacies may establish and use a common electronic prescription file to maintain required dispensing information. Pharmacies using the common file are not required to transfer prescriptions or information for dispensing purposes between or among other pharmacies using in the same common electronic prescription file. (7-1-98)

b. For controlled substances pharmacies using a common electronic prescription must satisfy all documentation requirements of a manual prescription transfer. (7-1-98)

c. All common electronic prescription files must contain complete and accurate records of each prescription and refill dispensed. Hard copies must be generated and treated as new prescriptions by the receiving pharmacies. (7-1-98)

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 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 67-4715, 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 21, 2009.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: This rulemaking will repeal this chapter of rules. The rules are being rewritten under Docket No. 28-0203-0902.

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 chapter of rules is being repealed and rewritten to allow the Idaho Travel Council the flexibility to advise and execute the travel grant program, which will confer a benefit on non-profit organizations with travel and convention programs applying for an Idaho Travel Council Regional Travel and Convention Promotion grant.

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: 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: NA

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 Cathy Bourner, Grant Analyst, (208) 334-2470, ext. 2153.

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 28, 2009.

DATED this 28th day of August, 2009.

Karen Ballard
Division of Tourism Administrator
Idaho Department of Commerce
700 W. State St.

P. O. Box 83720
Boise, ID 83720-0093
Phone: (208) 334-2470, ext. 2100
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IDAPA 28.02.03 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-0902 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 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 67-4715, 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 21, 2009.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is a complete rewrite of this chapter of rules. The rules are being repealed under Docket No. 28-0203-0901. This rewrite of the Idaho Travel Council's (ITC) Regional Travel and Convention Grant program is an attempt to refine the administrative rules currently in place, allowing for more flexibility in the ITC's ability to administer the program. Presently, the rules contain administrative details that require legislative action to modify or update. This rewrite will redefine these details as rules subject to ITC approval, and alleviate the necessity for legislative action to make minor changes in the grant program. There is no intent to remove legislative oversight of the program or dilute any existing rules insofar as they provide a framework for the distribution of grant funds. In fact, there are some additions being made to the existing rules which clarify legislative intent. Due to the extent of the changes being made, and in consideration of the expenses that would be incurred in making such extensive changes, the ITC determined a repeal and rewrite of the rules was most appropriate.

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 chapter of rules is being repealed and rewritten to allow the Idaho Travel Council the flexibility to advise and execute the travel grant program, which will confer a benefit on non-profit organizations with travel and convention programs applying for an Idaho Travel Council Regional Travel and Convention Promotion grant.

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: 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: NA

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 Cathy Bourner, Grant Analyst, (208) 334-2470, ext. 2153.

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 28, 2009.

DATED this 28th day of August, 2009.

Karen Ballard
Division of Tourism Administrator
Idaho Department of Commerce
700 W. State St.
P. O. Box 83720
Boise, ID 83720-0093
Phone: (208) 334-2470, ext. 2100
Fax: (208) 334-2631

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 28-0203-0902

IDAPA 28
TITLE 02
CHAPTER 03

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

000. LEGAL AUTHORITY.

These rules have been adopted pursuant to Sections 67-4715, 67-4717, and 67-4718, Idaho Code, which imposes a two percent (2%) tax on the sale of hotel/motel and private campground accommodations and created the Idaho Travel and Convention Industry Committee, herein referred to as the Idaho Travel Council (ITC). The revenues generated by this tax (less ten percent (10%) administrative expense) are to be invested one-half (1/2) by the state and one-half (1/2) by the local regions within Idaho in well-planned promotional programs. The ITC, through the Idaho Department of Commerce (Department), has been given the responsibility of administering this program which includes the local regional grant program. (8-1-09)T

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 28.02.03, "Rules of the Idaho Regional Travel and Convention Grant Program" (ITC Grant Program). (8-1-09)T

02. Scope. The primary objective is the creation and implementation of plans designed to stimulate and expand the travel and convention industry within the state's seven (7) planning regions. (8-1-09)T

002. WRITTEN INTERPRETATIONS.

In accordance with Sections 67-5201(19)(b)(iv), 67-4715, 67-4717 and 67-4718, Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Idaho Department of Commerce, 700 West State Street, Boise, Idaho. (8-1-09)T

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. (8-1-09)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (8-1-09)T

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

The central office for the Idaho Travel Council Grant Program is located at the Idaho Department of Commerce. The office is open daily from 8 a.m. and 5 p.m., except Saturday, Sunday, and legal holidays. Appropriate ITC grant program documents may be filed at, or mailed to: Idaho Travel Council Grant Program, Idaho Department of Commerce, 700 West State Street, P. O. Box 83720, Boise, Idaho 83720-0093. (8-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Information regarding ITC applications or awarded grants are considered to be public information and will be released upon request. These documents are available for public inspection and copying at cost. (8-1-09)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

As used in this chapter: (8-1-09)T

01. Council. The Idaho Travel Council (ITC) as set forth in Section 67-4712, Idaho Code. (8-1-09)T

02. Division of Tourism. The staff of the Division of Tourism Development unit of the Idaho Department of Commerce. (8-1-09)T

03. Department. The Idaho Department of Commerce as set forth in Section 67-4701, Idaho Code. (8-1-09)T

04. Grant Program Guidelines. Interpretation of these rules by the Idaho Travel Council. (8-1-09)T

011. PROGRAM INTENT.

The intent of the ITC's Regional Grant Program is to distribute grant funds to non-profit, incorporated organizations which have in place a viable travel or convention promotion program, or both, in their area of operation. Preference is given to programs of Destination Marketing Organizations (DMOs) with a primary focus of promoting overnight visitation in their area. (8-1-09)T

012. GRANT AWARD SCHEDULE.

01. Application Deadlines. Grants will be awarded annually at the first ITC meeting of the fiscal year, approximately August 1. A schedule of application deadlines will be posted on the Department's website and is available by request from the Division of Tourism. (8-1-09)T

02. Grant Award Status. Applicants will be notified of their grant award status within seven (7) days of the ITC's grant award date. (8-1-09)T

03. Grant Cycle. Grant cycle is approximately fourteen (14) months, beginning with the ITC's grant award date and ending on September 30 of the following year. Funded activities should be completed within the fourteen (14) month cycle. (8-1-09)T

013. DISTRIBUTION OF FUNDS.

The Idaho Regional Travel and Convention Grant is a reimbursement grant. (8-1-09)T

01. Documentation of Funds Expended. The Department will allocate funds to the grantee upon submission of complete documentation of funds expended. (8-1-09)T

02. Documentation of Reimbursable Expenses. Documentation for reimbursable expenses will be determined by the Department and the ITC as outlined in the guidelines. (8-1-09)T

014. NON-PROFIT STATUS.

If not already on file with the Department, grant applicants must provide the following documents as proof of non-profit status prior to or with their application. (8-1-09)T

01. Proof of Non-Profit Status. State of Idaho Certificate of Incorporation and Articles of Incorporation from the Secretary of State or a letter of determination from the Internal Revenue Service. (8-1-09)T

02. Employer Identification Number. Notice of Employer Identification Number assigned by the Internal Revenue Service. (8-1-09)T

015. POTENTIAL CONFLICT OF INTEREST.
An affiliation with a profit-making organization could imply a conflict of interest. Such conflict could render the application ineligible. (8-1-09)T

016. CATEGORIES OF APPLICANTS.
The area of impact of the non-profit applicant will determine the application type as follows: (8-1-09)T

01. Local/Regional Grant Application. A non-profit organization whose area of impact lies within the boundaries of a single region. (8-1-09)T

a. Regional applicants serve as an umbrella organization, promoting travel to locations throughout the region. (8-1-09)T

b. Tourism regions are defined in Section 67-4711, Idaho Code. (8-1-09)T

02. Multi-Regional Application. A non-profit organization that represents more than one (1) region or has a presence in each region of the state. The association serves as an umbrella organization, promoting travel to locations throughout the state. (8-1-09)T

017. ELIGIBLE PROJECTS.
Eligible projects under the Regional Travel and Convention Grant Program must be consistent with the legislative declaration of policy in Title 67, Chapter 47, Idaho Code. Programs that are eligible for consideration must fall under the basic definition of travel or convention promotion. (8-1-09)T

018. INELIGIBLE PROJECTS.
It is not the purpose of this grant program to fund the day-to-day, administrative expenses of organizations that have a travel or convention promotion element. (8-1-09)T

01. Organizational Administrative Expense. Rent, phone, supplies, wages and salaries, other overhead and administrative expenses are not reimbursable; however, the actual cost of staff wages and benefits (Other Personnel Expenses (OPE)) may be used as cash match with documentation. (8-1-09)T

02. Salary or Personnel. Expenses related to grant writing are not eligible. (8-1-09)T

03. Alternative Funding Sources. Projects that have alternative funding sources (for example, regular Chamber of Commerce budgets) or that have been funded previously with the agency's own funds may be deemed ineligible. (8-1-09)T

019. LOCAL EVENTS.
It is not the intent of the Council to fund the promotion of local events. However, the Council will consider the unique benefits of events that have the potential of having a measurable impact on consumer travel and spending patterns. Such requests for funding will be judged on their specific merits. (8-1-09)T

020. REPETITIVE FUNDING OF PROJECTS.
The Council may fund repetitive projects. However, applicants should not conclude that a plan will be funded because it has been funded in the past. When a previously funded plan is resubmitted, the applicant should show the return on investment as it relates to ITC program intent. (8-1-09)T

021. PROGRAM CREDIT.
All projects funded by the Idaho Regional Travel and Convention Grant Program must credit said program as

determined appropriate by the ITC. (8-1-09)T

022. GRANT ADMINISTRATION GUIDELINES.

01. Noncompliance with Guidelines. Noncompliance with administrative guidelines may lead to grant termination or omission from future grant awards, or both. (8-1-09)T

02. Usage of Funds. Applicant must agree that funds will be used in accordance with ITC grant contract and guidelines, including: (8-1-09)T

a. Submitting narrative progress reports according to contract schedule; (8-1-09)T

b. Using appropriate forms with accompanying documentation; (8-1-09)T

c. Abiding by subcontract procedures in the guidelines; and (8-1-09)T

d. Providing complete audit documentation when applicable. (8-1-09)T

023. ADHERENCE TO STATE LAWS AND REGULATIONS.

01. Applicable Laws and Regulations. The applicant must agree to use the grant funds in accordance with all applicable state laws and regulations relative to purchasing, fiscal, and audit requirements. (8-1-09)T

02. Sales Tax. Receipt of an ITC grant does not exempt an organization from paying sales tax. (8-1-09)T

024. AUDIT REQUIREMENT.

Grantees who receive one hundred thousand dollars (\$100,000) or more in grant funds must have an audit. The audit must be performed by a Certified Public Accountant and submitted to the Department within sixty (60) days following the close of the grant cycle. The Council may also require an audit for grants less than one hundred thousand dollars (\$100,000). Estimated audit costs must be included in the grant application. Audits are exempt from match requirements. (8-1-09)T

025. -- 199. (RESERVED).

200. APPLICANT ORGANIZATIONAL REQUIREMENTS.

Applicants for this grant program must show in their application that they have: (8-1-09)T

01. Plan. A goal-oriented plan for travel or convention promotion, or both, with measurements appropriate to the scope of work. (8-1-09)T

02. Resources. Adequate resources to: (8-1-09)T

a. Carry out the plan as outlined in the grant application; and (8-1-09)T

b. Operate and maintain a financial management system for the plan. (8-1-09)T

03. Ability to Manage. The ability to manage the grant. (8-1-09)T

201. MATCHING FUNDS.

Match must be documented in the application. (8-1-09)T

01. Match Required. The Idaho Regional Travel and Convention Grant Program requires match from all organizations applying for funding as a way to increase the regional or local commitment to the plan, and to assist in generating more dollars for tourism promotion. (8-1-09)T

02. Match Percentage. All plans must provide cash match of twelve and one-half percent (12.5%) of

the amount awarded. All match must be outlined in the scope of work within the grant application. Audits are exempt from match requirements. (8-1-09)T

03. Match Definition. Match is defined in the guidelines, but is considered documented cash contributions, wages and benefits or income used to fund a project. (8-1-09)T

04. Expenditures. Expenditures claimed for projects funded previously by the grantee, such as brochures and publications, will not be allowed as match. (8-1-09)T

05. Marketing. Marketing dollars spent by a for-profit enterprise within their marketing program may not be claimed as cash match by a grantee, not to exclude approved co-op programs. (8-1-09)T

06. Audits. Funds awarded for audits are exempt from match requirements. (8-1-09)T

202. -- 220. (RESERVED).

221. GRANT APPLICATION PROCESS.

01. Meeting with Regional ITC Representative. A meeting with the regional ITC representative to discuss grant application is strongly encouraged. (8-1-09)T

02. Idaho Travel Council Presentation. Applicants for grants of fifty thousand dollars (\$50,000) or greater are strongly encouraged to present their travel and convention plan at the final ITC meeting of the fiscal year. Applicants for grants of less than fifty thousand dollars (\$50,000) may present their grant application at the same meeting. (8-1-09)T

03. Grant Application. Grant applications must be submitted on-line through the Department website www.tourism.idaho.gov. Submittal deadline will be determined by the Division of Tourism and posted on the Division website. (8-1-09)T

04. Technical Review. The following criteria are considered in the review of the application: (8-1-09)T

- a.** Application Completeness - Scope of work and budget filled out correctly. (8-1-09)T
- b.** Cash Match - Potential sources identified. (8-1-09)T
- c.** Commitment - Evidence the plan has local/regional support. (8-1-09)T
- d.** Fiscal Competency - Presence of an adequate financial management system. (8-1-09)T
- e.** Need - Addresses identified needs of the travel economy in the impacted region. (8-1-09)T
- f.** Regional Impact - Will increase local/regional awareness, encourage visitors to stay longer, or promote intra-regional travel. (8-1-09)T
- g.** Continuing Benefits - Plan has benefits beyond the grant cycle. (8-1-09)T
- h.** Plan Design - Achieving goals and objectives within a reasonable time frame. (8-1-09)T
- i.** Innovation. (8-1-09)T
- j.** Evaluation - Plan demonstrates a sound methodology for measuring achievement of the stated project objectives. (8-1-09)T
- k.** Cost Analysis - Applicant shows evidence that other resources are not available to support the plan fully, and requested funds are sufficient to accomplish plan objectives. (8-1-09)T

222. GRANT AWARD.

The ITC is responsible for the selection of applications to be awarded ITC Grants. Once the ITC has selected plans to be funded, the Department will notify all applicants, by letter, of their funding status. (8-1-09)T

01. Term of Contract. All contracts will be in effect for a period of no more than fourteen (14) months unless otherwise stipulated in the contract. (8-1-09)T

02. Special Conditions. If applicable, special conditions of funding will be outlined. (8-1-09)T

03. Effective Date. The grant will take effect upon the date of award. Grant monies cannot be obligated or expended until that date. (8-1-09)T

04. Reimbursement. No expenditures can be reimbursed until the contract is signed by the Director of the Department or his designee. (8-1-09)T

223. EXTENSIONS AND AMENDMENTS.

Extensions and amendments to ITC approved grants are discouraged. However, if the grantee can offer a compelling reason why more time is needed to complete the approved plan, or if a suitable opportunity requiring a change to the scope of work becomes available, an extension of the grant year or amendment to the approved plan or budget may be requested. (8-1-09)T

01. Extensions. An extension of up to three (3) months may be obtained from the grant manager with the Division of Tourism. However, if the grantee requires additional time to complete approved projects, beyond the three (3) months, the request will be reviewed by the ITC and must receive a majority vote of the members in order for the extension to be allowed. (8-1-09)T

02. Amendments. If the scope of any element changes or a budget shift in excess of limits set by the Council in the guidelines is requested, it will be reviewed by the ITC and must receive a majority vote of the members in order for the amendment to be allowed. (8-1-09)T

224. GRANT TERMINATION.

01. Plan, Project or Organization Loses Viability. If at any time a travel and convention promotion plan or project loses its viability, or the organization awarded the grant ceases to actively function, the grant may be terminated. This determination will be made by the ITC, the Division of Tourism staff, and may include the grantee. If such a decision is made, the Department will terminate the plan or project and the funds will be reverted to the regional pool for the next cycle grant awards. (8-1-09)T

02. Conflict of Interest. If at any time the Council becomes aware of an apparent or potential conflict of interest between a grantee and a private entity which may influence grant funds, the Council may request a meeting with the grantee's representatives. The Council may, at that meeting, terminate the grant if an inappropriate conflict of interest is found. (8-1-09)T

03. Inappropriate Use of Funds. If at any time the Council becomes aware of a grantee's inappropriate or illegal use of grant funds, or inappropriate request for reimbursement, the Council may request a meeting with the grantee's representatives. The Council may, at that meeting, terminate the grant if impropriety is found. (8-1-09)T

225. -- 999. (RESERVED).

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.41.01 - CUSTOMER RELATIONS RULES FOR TELEPHONE CORPORATIONS PROVIDING LOCAL EXCHANGE OR INTRASTATE MTS/WATS SERVICE IN IDAHO SUBJECT TO CUSTOMER SERVICE REGULATION BY THE IDAHO PUBLIC UTILITIES COMMISSION UNDER THE PUBLIC UTILITIES LAW OR THE TELECOMMUNICATIONS ACT OF 1988 (THE TELEPHONE CUSTOMER RELATIONS RULES)

DOCKET NO. 31-4101-0901

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 61-302, 61-503, 61-507, 62-605, 62-606, 62-615, and 62-616, 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 21, 2009.

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:

Enactment of federal statutes (Telecommunications Act of 1996) and state statutes (amendments to the Telecommunications Act of 1988) since the IPUC last revised its Telephone Customer Relations Rules, IDAPA 31.41.01.000 et seq., have significantly changed the regulatory objectives for telecommunications companies. The law changes are intended to encourage competition in telephone services, and the proposed rule changes are consistent with that objective by simplifying regulatory requirements and allowing companies more flexibility to respond to customers' service requests, while maintaining some service quality standards related to basic local exchange service.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted through a public workshop on July 28, 2009, and by written comments received by electronic mail. Members of the public and representatives of at least seven (7) telecommunications companies participated in the informal negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weldon Stutzman, Deputy Attorney General, at (208) 334-0318.

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 28, 2009.

DATED at Boise, Idaho this 28th day of August, 2009.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-4101-0901

**31.41.01 - CUSTOMER RELATIONS RULES FOR TELEPHONE CORPORATIONS PROVIDING
~~LOCAL EXCHANGE OR INTRASTATE MTS/WATS SERVICES~~ IN IDAHO SUBJECT TO
CUSTOMER SERVICE REGULATION BY THE IDAHO PUBLIC UTILITIES
COMMISSION ~~UNDER THE PUBLIC UTILITIES LAW OR THE~~
~~TELECOMMUNICATIONS ACT OF 1988~~**

(THE TELEPHONE CUSTOMER RELATIONS RULES)

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and the Telecommunications Act of 1988, Chapter 6, Title 62, Idaho Code, and the specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, 61-520, 62-605, 62-606, 62-612, ~~and 62-616, and 62-622~~, Idaho Code, with regard to service. (7-1-93)()

001. TITLE AND SCOPE (RULE 1).

The name of this chapter is the "Customer Relations Rules for Telephone Corporations Providing ~~Local Exchange or Intrastate MTS/WATS~~ Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission ~~Under the Public Utilities Law or the Telecommunications Act of 1988~~," (The Telephone Customer Relations Rules). For companies subject to Commission regulation under Title 62, Idaho Code, these rules apply to companies providing local exchange service as defined in Section 62-603, Idaho Code. This chapter has the following scope: These rules provide a set of fair, just, reasonable, and non-discriminatory rules to address recurring areas of disagreement between local exchange companies and ~~MTS/WATS~~ other telephone companies and customers with regard to deposits, guarantees, billing, application for service, denial of service, termination of service, complaints to telephone companies, billing for interrupted service, and provision of certain information about customers to authorities. (7-1-93)()

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

For rulemakings conducted before July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074, or by telephone at (208) 334-0300. For rulemakings conducted after July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules are published in the issues of the Idaho Administrative Bulletin proposing or adopting the rules. ~~In addition to these explanatory comments, the director of the Commission's consumer assistance staff has issued interpretive guidelines that are available by contacting the director of the consumer assistance staff in writing at the Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074, or by telephone at (208) 334-0300.~~ (7-1-93)()

003. ADMINISTRATIVE APPEALS (RULE 3).

This rule governs consideration of ~~exemptions and formal~~ complaints and requests for exemption under these rules. Any ~~person~~ telephone company or customer requesting and receiving an informal staff determination with regard to ~~an exemption or~~ complaint may formally ~~or informally~~ request the Commission to review the Staff's determination. If unusual or unreasonable hardships result from the application of any of these rules, any telephone company or customer may apply to the Commission for, or the Commission on its own motion may order, a permanent or temporary exemption. A formal complaint or request for exemption must be filed with the Commission pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)()

~~01. Exemptions From Rules. Rule 9 authorizes persons or telephone companies to request exemptions from these rules. This paragraph governs procedure for requests for exemptions.~~ (7-1-93)

~~a. Any applicant, customer or telephone company may informally request an exemption from any provision of these rules for a specific applicant or applicants or customer or customers by writing the Commission's consumer assistance staff at the Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074 or by telephoning the Commission's Consumer Assistance Staff at 334-0369 (Boise area) or 1 (800) 432-0369 (out of Boise calling area). Any such person may in writing or by telephone request the Commissioners to informally or formally review the Staff's decision. (7-1-93)~~

~~b. Any applicant, customer or telephone company may formally petition the Commission for an exemption pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)~~

~~c. Any telephone company requesting an exemption for all of its customers must formally petition the Commission pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)~~

~~02. **Complaints.** Rule 402 authorizes persons or telephone companies to file complaints under these rules. This paragraph governs procedure for filing complaints under these rules. (7-1-93)~~

~~a. Any applicant, customer or telephone company may file an informal complaint under any provision of these rules concerning a specific applicant or applicants or customer or customers by writing the Commission's consumer assistance staff at the Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074 or by telephoning the Commission's Consumer Assistance Staff at 334-0369 (Boise area) or 1 (800) 432-0369 (out of Boise calling area). Any such person may in writing or by telephone request the Commissioners to informally or formally review the Staff's decision. (7-1-93)~~

~~b. Any applicant, customer or telephone company may file a formal complaint under these rules with the Commission pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

005. DEFINITIONS (RULE 5).

The following definitions are used in this title and chapter: (7-1-93)

~~01. **Applicant.** Unless restricted by definition within a rule or a group of rules to a particular class of service, "applicant" means any potential customer who applies for a service from a telephone company. "Applicant" does not include minors not competent to contract. Telephone companies may decline to recognize minors not competent to contract as applicants and may require an adult or minor competent to contract to join a minor not competent to contract as an applicant. (7-1-99)~~

~~021. **Customer.** Unless restricted by definition within a rule or a group of rules to a particular class of service, "customer" means any person who meets the terms outlined in Subsections 005.02.a. through 005.02.d. below, and any person contractually or otherwise lawfully authorized to represent such party. If the person selecting, receiving, or canceling service is not the same person as the one assuming responsibility for payment of service, the latter is the customer for purposes of receiving refunds, etc. A "customer" is a person or entity who has requested service or currently receives service from a telephone company or has assumed responsibility for payment of service provided to another person or entity. (7-1-99)~~

~~a. Has applied for; (7-1-93)~~

~~b. Has been accepted; and (7-1-93)~~

~~c. Is currently; (7-1-93)~~

~~i. Receiving service from a telephone company; or (7-1-93)~~

- ~~ii.~~ ~~Assuming responsibility for payment of service provided to another or others.~~ (7-1-93)
- ~~d.~~ Any person whose service has been temporarily disconnected for non-payment shall continue to be a "customer" for the purposes of these rules until such time as service is permanently disconnected. (7-1-99)(____)
- ~~03.~~ ~~**Good Credit.** "Good credit" means payment by a customer for the most recent twelve (12) consecutive month period of all undisputed bills due the telephone company before temporary or permanent termination of service.~~ (7-1-93)
- ~~042.~~ ~~**Local Exchange Company (LEC).** "Local exchange company" (LEC) is a telephone company providing local exchange service to end-users. "Local exchange company" includes "incumbent telephone corporations," as defined in Section 62-603(6), Idaho Code, and telephone corporations granted a Certificate of Public Convenience and Necessity by the Commission to compete with incumbent telephone corporations.~~ (7-1-99)(____)
- ~~05.~~ ~~**MTS Company or Interexchange Carrier.** "MTS company" or "interexchange carrier" means a telephone company providing MTS service.~~ (7-1-93)
- ~~063.~~ ~~**Message Telecommunications Service (MTS).** "MTS" (commonly known as "long-distance service") means the transmission of two-way interactive switched voice communication between local exchange areas for which charges are made on a per-unit basis as defined in Section 62-603(8), Idaho Code, and wide area telecommunications service (WATS) or its equivalent.~~ (7-1-99)(____)
- ~~07.~~ ~~**Operator and Directory Assistance Services.** Operator and directory assistance services are telephone services that include (but are not limited to) intercept, call completion and assistance, and directory assistance services, whether local, MTS, or both.~~ (7-1-93)
- ~~084.~~ ~~**Other Services.** "Other services" mean all services except local exchange and MTS services provided, billed, or collected by a telephone company.~~ (1-1-95)
- ~~095.~~ ~~**Residential Telephone Service.** "Residential telephone service" means telecommunication service furnished and maintained at a dwelling primarily for personal or domestic purposes and not for business, professional or institutional purposes, i.e., service provided to residential customers as defined in Section 62-603(9), Idaho Code.~~ (7-1-99)(____)
- ~~106.~~ ~~**Small Business Telephone Service.** "Small business telephone service" means telecommunication service furnished to a business or institutional entity, whether an individual, partnership, corporation, association or other business or institutional form, for occupational, professional, or institutional purposes, to customers who do not subscribe to more than five (5) local access lines within a building, i.e., service provided to small business customers as defined in Section 62-603(11), Idaho Code.~~ (7-1-99)(____)
- ~~107.~~ ~~**Telephone Company.** Unless further restricted by definition within a rule or a group of rules, "telephone company" means any entity subject to this Commission's regulation as a provider of telecommunication services to end-users (either local exchange or MTS/WATS) under the Public Utilities Law (Idaho Code, Title 61, Chapters 1-7) or subject to this Commission's authority under the Telecommunications Act of 1988, as amended, (Idaho Code, Title 62, Chapter 6), except mutual, non-profit or cooperative telephone corporations or the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq).~~ (7-1-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~**009. EXEMPTIONS FROM RULES (RULE 9).**~~

~~If unusual or unreasonable hardships result from the application of any of these rules, any telephone company or customer may apply to the Commission for, or the Commission on its own motion may order, a permanent or temporary exemption.~~ (7-1-93)

0109. INFORMAL COMPLAINTS AND INTERPRETATION OF RULES (RULE ~~109~~).

The Commission may authorize designated staff members to make and give informal interpretations of these rules and tariffs or other filings of telephone companies on record with the Commission, and to investigate complaints made to the Commission. ~~These interpretations, which do not bind the Commission, will be distributed to telephone companies subject to these rules and interested consumer groups and be available from the director of the Commission's consumer assistance staff.~~ The Commission reserves to itself the authority to issue formal declaratory orders concerning the interpretation of these rules, telephone company tariffs or similar filings, and to resolve formal complaints. (7-1-93)(____)

0110. CONFLICT WITH TELEPHONE TARIFFS OR PRICE LISTS (RULE ~~110~~).

If a telephone company's tariff or price list on file with the Commission contains provisions that deny or restrict customers' rights protected by any of these rules, these rules supersede any conflicting tariff or price list provisions that deny or restrict any of those rights. (7-1-93)

0121. INCORPORATION BY REFERENCE -- CODE OF FEDERAL REGULATIONS (RULE ~~121~~).

Rules 701 through 703 incorporate by reference federal regulations issued by the Federal Communications Commission. The incorporated regulations are found in the Code of Federal Regulations available from the U.S. Government Printing Office, ~~Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The incorporated federal regulations are also available in electronic format at www.access.gpo.gov/nara.~~ Incorporated materials are also available for inspection and copying at the offices of the Public Utilities Commission ~~and the Idaho State Law Library.~~ (3-15-02)(____)

0132. -- 099. (RESERVED).

RESIDENTIAL AND SMALL BUSINESS DEPOSIT PRACTICES

RULES ~~1010~~ THROUGH 199

~~100. FURTHER DEFINITIONS (RULE 100).~~

~~As used in Rules 101 through 110:~~

(7-1-93)

~~01. Applicant. "Applicant" is restricted from its general definition to refer only to applicants for residential or small business service, unless further restricted by rule.~~ (7-1-93)

~~02. Customer. "Customer" is restricted from its general definition to refer only to a customer subscribing to residential or small business service, unless further restricted by rule.~~ (7-1-93)

~~03. Deposit. "Deposit" means any payment held as security for future payments or performance for service provided by that telephone company or other telephone companies for which it bills.~~ (7-1-93)

~~04. Local Exchange Company (LEC). "Local exchange company" means the telephone company providing or that would provide local exchange service to a customer or applicant.~~ (7-1-93)

~~05. MTS Company. "MTS Company" means a telephone company providing or that would provide MTS service to a customer or applicant, except that companies providing both local exchange service and MTS are considered local exchange companies for purpose of the deposit rules.~~ (7-1-93)

1010. DEPOSIT REQUIREMENTS -- LECS (RULE ~~1010~~).

01. Residential Customers. No ~~local exchange~~ company providing local exchange service shall demand or hold any deposit from any ~~current~~ residential customer ~~or applicant~~ for service without proof that the customer ~~or applicant~~ is likely to be a credit risk or to damage the property of the local exchange company or ~~MTS~~ other companies for which it bills. A history of late payment or lack of previous history with the local exchange company does not, in itself, constitute such proof. A local exchange company shall not demand or hold a deposit

under this rule as a condition of service from a residential customer ~~or applicant~~ unless one (1) or more of the following criteria applies: (7-1-93)(____)

a. The customer ~~or applicant~~ has outstanding a prior residential service account ~~with any telephone company that accrued within the last four (4) years~~ and at the time of application for service remains unpaid and not in dispute. (7-1-93)(____)

b. The customer's ~~or applicant's~~ service ~~from any telephone company~~ has been temporarily denied or terminated within the past four (4) years for one (1) or more of the following reasons: (7-1-93)(____)

i. Non-payment of any undisputed delinquent bill; (7-1-93)

~~ii. Misrepresentation of the customer's or applicant's identity for the purpose of obtaining telephone service;~~ (7-1-93)

~~iii. Failure to reimburse the telephone company for damages due to negligent or intentional acts of the customer; or~~ (7-1-93)

~~iv. Obtaining, diverting or using telephone service without the authorization or knowledge of the telephone company.~~ (7-1-93)

c. The ~~applicant~~ customer does not have verifiable previous telephone service that was in existence for a period exceeding twelve (12) months and does not pass an objective credit screen. (7-1-93)(____)

d. The telephone company has determined that ~~information provided by the applicant~~ customer is materially false or materially ~~misrepresentative of~~ misrepresents the ~~applicant's~~ customer's true status. (7-1-93)(____)

e. The ~~applicant~~ customer requests service at a residence where a prior subscriber still resides and where any balance for service to that prior subscriber incurred at that location is past due or owing. (7-1-93)(____)

02. Small Business Customers. No local exchange company providing local exchange service shall demand or hold any deposit as a condition of service from any current small business customer ~~or applicant~~ for small business service unless one (1) or more of the following criteria apply: (7-1-93)(____)

a. Any of the conditions listed in Rule 1040.01 of this rule are present. (7-1-93)(____)

b. The ~~applicant~~ customer has not had previous service with that telephone company. (7-1-93)(____)

c. The customer was delinquent in payment two (2) or more times in the previous twelve (12) months. (7-1-93)

03. Bankrupt Customers. If ~~an applicant for service or~~ a customer, either residential or a small business, has sought any form of relief under the Federal Bankruptcy Laws, has been brought within the jurisdiction of the bankruptcy court for any reason in an involuntary manner, or has had a receiver appointed in a state court proceeding, then a deposit may be demanded as allowed by the Federal Bankruptcy Act of 1978, and in particular 11 USC 366, or as directed by the state court Laws. (7-1-93)(____)

1021. OTHER DEPOSIT STANDARDS PROHIBITED (RULE 1021).

A local exchange company shall not require a deposit or other guarantee as a condition of new or continued residential telephone service based upon residential ownership or location, income level, source of income, employment tenure, nature of occupation, race, creed, sex, age, national origin, marital status, number of dependents, or any other criterion not authorized by these rules. Rules governing deposits shall be applied uniformly. If ~~an applicant for service~~ the customer, either residential or small business, selects ~~a MTS~~ another company to provide services and arranges to be billed directly by that ~~MTS~~ company, rather than through the ~~LEC~~ local exchange company, no deposit may be collected by the ~~LEC~~ local exchange company for ~~MTS~~ the services provided by the ~~MTS~~ other company. (7-1-99)(____)

~~103. (RESERVED).~~

1042. WRITTEN EXPLANATION FOR DENIAL OF SERVICE OR REQUIREMENT OF DEPOSIT -- LECS (RULE 1042).

~~Upon request of the applicant or customer, if the local exchange company must requires a cash deposit as a condition of providing service, then it shall immediately provide an written explanation to the applicant or customer stating the precise reasons why it requires a deposit or denies service is required. The applicant or customer shall be given an opportunity to rebut these reasons. The applicant or customer must be orally notified of the right to a written explanation. In the event of a dispute, the customer must be advised that an informal or formal complaint may be filed with the Commission.~~ (7-1-93)(____)

1053. AMOUNT OF DEPOSIT -- LECS (RULE 1053).

~~01. Local Exchange Service. A deposit allowed pursuant to Rule 1040 as a condition of service by a local exchange company for applicants or customers shall not exceed two (2) months' charges for local exchange service. Additional deposits for damage or other reasons independent of usage may be in reasonable amounts.~~ (7-1-93)(____)

~~02. MTS Billed by the LEC. In addition to a deposit allowed pursuant to Rule 105.01, a local exchange company providing or billing for message telecommunications service (MTS) may ask for a reasonable deposit. Deposits for customers expected to take service for short periods of time (e.g., political campaigns, conventions, fairs) may be based on expected usage during the time in service.~~ (4-5-00)

~~03. Monitoring Deposits Based on MTS Usage. The deposit may be monitored for as long as the deposit is required and may be increased when MTS usage billed by the LEC in a one-month period exceeds by fifty dollars (\$50) or more the portion of the customer's deposit covering one month's MTS usage.~~ (7-1-93)

1064. INTEREST ON DEPOSITS (RULE 1064).

~~01. Interest Payable. Interest will be payable on the deposited amounts at the rate provided by Rule 1064.02 of this rule. Interest will accrue from the date the deposit is made until the deposit is refunded or applied to the customer's bill; however, interest will not accrue on a deposit if:~~ (7-1-93)(____)

~~a. Service is terminated temporarily at the request of the customer who leaves the deposit with the telephone company for future use as a deposit; or~~ (7-1-93)

~~b. Service has been permanently terminated and the telephone company has been unsuccessful in its attempt to refund a deposit.~~ (7-1-93)

~~02. Interest Rate. On or before November 15 of each year, the Commission will determine the twelve-month average interest rate for one-year Treasury Bills for the previous November 1 through October 31, round that rate to the nearest whole percent, and notify the telephone companies of its determination of this interest rate. That rate will be in effect for the following calendar year for all deposits described in Rule 1064.01 of this rule.~~ (7-1-93)(____)

1075. RETURN OF DEPOSIT -- LECS (RULE 1075).

~~01. Former Customers. Upon termination of service, the deposit, with accrued interest, must be credited to the final bill. The balance of the deposit remaining, if any, must be returned promptly to the customer.~~ (3-30-01)

~~02. Existing Customers. The deposit, with accrued interest, must either be credited to the customer's current bill or be refunded promptly by the local exchange company when: If the customer has paid all undisputed bills and has no more than one (1) late payment during the past twelve (12) consecutive months of service, the telephone company shall promptly return the deposit (with accrued interest) by crediting the customer's current account or issuing a refund.~~ (3-30-01)(____)

~~a. The residential customer establishes and maintains good credit; or (7-1-93)~~

~~b. The small business customer maintains good credit and is not delinquent more than once in the previous twelve (12) months. (7-1-93)~~

03. Retention During Dispute. The local exchange company may retain the deposit pending resolution of a dispute over termination of service. If the deposit is later refunded to the customer, the local exchange company shall pay interest at the annual rates established in Rule 106 for the entire period over which the deposit was held. (7-1-93)

04. Early Return of Deposit. A local exchange company may refund a deposit plus accrued interest in whole or part at any time before the time prescribed in this rule. (7-1-93)

1086. TRANSFER OF DEPOSIT (RULE 1086).

Deposits shall not be transferred from one (1) customer to another customer or between classes of service, except at the customer's request. When a customer with a deposit on file transfers service to a new location within the same telephone company's service area in Idaho, the deposit and any outstanding balance shall be transferred to the account for the new location. (7-1-93)

1097. ~~RECEIPT FOR DEPOSIT~~— RECORDS OF DEPOSITS (RULE 1097).

01. Receipts. Each customer paying a deposit shall be ~~given a receipt containing or otherwise be~~ provided ~~with~~ the following information: (4-6-05)(____)

a. Name of customer and service address for which deposit is held; (7-1-93)

b. Date of payment; (7-1-93)

c. Amount of payment; and (7-1-93)

d. ~~Statement of the~~ Terms and conditions governing the return of deposits. (7-1-93)(____)

02. Retention of Records. Each telephone company shall maintain records that will enable a customer entitled to a return of a deposit to obtain a refund even though the customer may be unable to produce the receipt for the deposit. These records must include the name of each customer, the service location(s) and telephone number(s) of the customer while the deposit is retained, and the date(s) and amount(s) of the deposits. The telephone company shall retain records of deposits that have been refunded to customers for a period of three (3) years after the date of refund. The telephone company shall retain records of unclaimed deposits for a period of seven (7) years as required by Section 14-531, Idaho Code. (4-6-05)

03. Transfer of Records. Upon the sale or transfer of any telephone company or any of its operating units, the seller shall certify to the Commission that it has a list showing the names of all customers whose service is transferred and who have a deposit on file, the date the deposit was made and the amount of the deposit. (7-1-93)

~~110. DEPOSITS— MTS COMPANIES (RULE 110).~~

~~MTS companies that do not bill and collect through LECs may ask for reasonable deposits. Requests for deposits must comply with all state and federal anti-discrimination statutes. MTS companies must comply with Rules 106, 107 (except Rule 107.02), 108 and 109. (7-1-93)~~

~~1108. UNCLAIMED DEPOSITS AND ADVANCE PAYMENTS (RULE 1108).~~

01. Presumption of Abandonment. Pursuant to Section 14-508, Idaho Code, any deposit or advance payment made to obtain or maintain local exchange service, ~~message telecommunications service (MTS)~~, or other services that is unclaimed by the owner for more than one (1) year after termination of service is presumed abandoned. (4-6-05)(____)

02. Financial Assistance Program. A telephone company may apply to the Commission for approval

to pay unclaimed deposits and advance payments presumed to be abandoned to a financial assistance program which assists the telephone company's low income and disadvantaged customers with payment of utility bills. The telephone company shall remain obligated to file its report of such abandoned property as required by Section 14-517, Idaho Code, and retain records as required by Section 14-531, Idaho Code. (4-6-05)

~~14209.~~ -- 199. (RESERVED).

BILLING
RULES 200 THROUGH 299

200. FURTHER DEFINITION -- BILLING STATEMENT (RULE 200).

As used in Rules 201 through 2065, "bill" or "billing statement" refers to a written request for payment listing charges for goods and services ~~previously rendered or for flat rate services billed in advance~~ that is mailed or otherwise delivered to the customer for payment. A billing statement may be provided to the customer in an electronic format with the customer's consent. Oral notice of the amount of charges pending is not a bill. Bills include requests for payments for services rendered by other telephone companies or other entities that are not telephone companies. This rule does not apply to billings between or among telephone companies. (7-1-93)(____)

201. ISSUANCE OF BILLING STATEMENTS -- CONTENTS OF BILLS -- RESIDENTIAL AND SMALL BUSINESS SERVICE (RULE 201).

01. Local Exchange Service. Billing statements for residential and small business local exchange service ~~shall~~ must be issued on a regular basis. ~~Bills and~~ must contain the following information: (7-1-93)(____)

- a. The *billing* date the billing statement is issued; (7-1-93)(____)
- b. The time period covered by the billing statement; (7-1-93)(____)
- c. The due date ~~of the bill by which payment must be received, unless the customer has authorized automatic monthly payment. If automatic payment is authorized, the billing statement must reflect the actual or earliest possible date that funds will be withdrawn from a bank account or charged to a credit card account;~~ (7-1-93)(____)
- d. Any amounts transferred from another account; (7-1-93)
- e. Any amounts past due; (7-1-93)
- f. Any payments or credits applied to the customer's account since the last bill; (7-1-93)
- g. The total amount due; (7-1-93)
- h. Names of ~~other~~ all telephone companies or entities ~~that are not telephone companies whose providing goods and services are also being~~ for which the customer is billed, ~~identification of the sufficient information to readily identify the goods and service(s) billed provided,~~ and the amount(s) ~~of those billings charged;~~ (7-1-93)(____)
- i. The ~~mailing address(es) or~~ toll-free telephone number(s) available to customers ~~in the service territory~~ for answering inquiries and resolving complaints about ~~telephone~~ goods and services billed; (7-1-93)(____)
- j. ~~An itemization of all non-recurring charges; and~~ (7-1-93)
- k. ~~An itemization of the following recurring charges: total local exchange service bill (mileage or zone charges and charges for extended area service may be included in the total rather than as separate items), touch tone capability, custom calling features, directory listings, wire maintenance plans, equipment leases, and governmentally imposed~~ for goods and services provided to the customer and any associated fees, taxes, surcharges

or subscriber line charges. ~~All other recurring charges may be included in a miscellaneous billing category if the local exchange company explains the charges in writing pursuant to IDAPA 31.41.02.101.~~ Charges for each ~~element of packaged services, local measured service~~ good or service provided as part of a package under a single price, or ~~other~~ calling plans in which individual calls are ~~not~~ billed at a flat rate regardless of usage need not be separately itemized ~~if the local exchange company provides an explanation of those services pursuant to IDAPA 31.41.02.101.~~
(7-1-93)()

02. MTS Bills. In addition to the requirements of Rule 201.01, bills for MTS service must ~~itemize for all MTS calls~~ identify the number called and the date, time, duration, destination and charge for each call, unless the customer has selected a flat rate calling plan. For collect and third-party calls the MTS provider must also itemize the origin of the call.
(7-1-93)()

03. Billing for Other Services. No telephone company may send demand letters or initiate collection efforts for any amount owed by a customer who subscribes to or is billed for services other than local exchange service and MTS services ~~or services~~ provided by another telephone company unless the bill separately lists those services as required by this rule.
(7-1-93)()

04. Customer Request for Less Detail. Upon customer request, telephone companies may provide billing statements containing less detail than required by this rule. Telephone companies must make available without charge detailed billing information for the preceding twelve (12) months to those customers who have elected to receive less detail on monthly billing statements but subsequently request more detail.
()

202. DUE DATE OF BILLS -- DELINQUENT BILLS (RULE 202).
The telephone company may require that bills for service be paid within a specified time after the billing date. ~~Except in cases covered by Rule 305,~~ the minimum specified time after the billing date is fifteen (15) days (or twelve (12) days after mailing or delivery of a paper or electronic bill, if bills are mailed or delivered more than three (3) days after the billing date). Upon the expiration of this time without payment, the bill may be considered delinquent. With the customer's approval, automatic monthly payments made by withdrawal from a bank account or charged to a credit card account may take place prior to the normal due date if the customer has authorized such a payment.
(7-1-99)()

203. BILLING UNDER INAPPROPRIATE RATES (RULE 203).

~~**01. Rebilling Required.** If a customer was billed under an inappropriate rate, the telephone company must recalculate the customer's past billings and correctly calculate future billings based on the appropriate rate. A customer has been billed under an inappropriate rate if:~~
(7-1-93)

~~**a.** The customer was billed under a rate for which the customer was not eligible; or~~ (7-1-93)

~~**b.** The customer, who is eligible for billing under more than one (1) rate, was billed under a rate contrary to the customer's election, or the election was made based upon erroneous information provided by the telephone company.~~ (7-1-93)

~~**02. Exceptions.** The telephone company shall not be required to adjust billings when it has acted on good faith based upon available information or when the customer was given written notice of options under the telephone company's service offerings and did not make a timely election to exercise the customer's options. The telephone company may waive rebillings for underbillings in its discretion.~~ (7-1-93)

~~**03. Rebilling Period.** The period for which rebilling under this rule is allowed shall be that provided by Section 61-642, Idaho Code, (three (3) years).~~ (7-1-93)

~~**04. Refunds and Additional Payments.** The telephone company shall prepare a corrected billing indicating the refund due the customer or the amount due the telephone company. A customer who has been underbilled shall be given the opportunity to make payment arrangements under Rule 312 on the amount due. At the customer's option, the term of the payment arrangement may extend for the length of time that the underbilling accrued. The telephone company shall promptly refund amounts overpaid by the customer unless the customer consents to a credit against future bills, except overbillings not exceeding fifteen dollars (\$15) may be credited to~~

future bills.

(7-1-93)

2043. ~~INACCURATELY BILLED SERVICE BILLING ERRORS, BILLING UNDER INCORRECT RATES, OR FAILURE TO BILL SERVICE UNDER CORRECT RATES (RULE 2043).~~

01. ~~Billing Errors in Preparation — Malfunctions -- Failure to Bill.~~ Whenever the billing for telephone service was not accurately billed because of malfunction in billing equipment or error in preparation of bills, the telephone company shall prepare a corrected billing. If the telephone company has not billed a customer for service provided, the telephone company shall prepare a bill for the period in which service was provided and the customer was not billed. At its discretion, ~~the~~ telephone company may waive rebilling for ~~underbillings in its discretion~~ undercharges. (7-1-93)

02. ~~Billing Under Incorrect Rates.~~ A customer has been billed under an incorrect rate if the customer was billed under a rate for which the customer was not eligible or the customer, who is eligible for billing under more than one (1) rate, was billed under a rate contrary to the customer's election or the election was made based upon erroneous information provided by the telephone company. If a customer is billed under an incorrect rate, the telephone company must recalculate the customer's past bills and correctly calculate future bills based on the appropriate rate. The telephone company is not required to adjust bills when it has acted in good faith based upon information provided by the customer. ()

023. ~~Corrections~~ Rebilling Time Period. ()

a. If the time when the ~~error in preparation or malfunction of billing equipment~~ billing error, billing under incorrect rates, or failure to bill (collectively referred to as "billing problem") began cannot be reasonably determined to have occurred within a specified billing period, the corrected billings shall not exceed the most recent six (6) months before the discovery of the ~~error or malfunction~~ billing problem. ()

b. If the time when the ~~malfunction or error or failure to~~ billing problem began can be reasonably determined, and the telephone company determines the customer was overcharged, the corrected billings shall go back to that time, but ~~need not to exceed three (3) years from the time the billing problem occurred as provided by Section 61-642, Idaho Code~~ ~~(three (3) years).~~ (7-1-93)()

c. If the time when the billing problem began can be reasonably determined and the telephone company determines the customer was undercharged, the company may rebill for a period of six (6) months unless a reasonable person should have known of the inaccurate billing, in which case the rebilling may be extended for a period not to exceed three (3) years. The telephone company is responsible for identifying customers who have not been billed or who have been inaccurately billed. ()

034. ~~Refunds and Additional Payments.~~ The telephone company ~~shall prepare a corrected billing indicating the refund due the customer or the amount due the telephone company~~ must promptly calculate refund amounts overpaid by the customer and issue a credit within two (2) billing cycles. Any remaining credit balance shall be credited against future bills unless the customer, after notice from the telephone company, requests a refund and the amount is more than twenty-five dollars (\$25). The telephone company shall advise the customer of the option to have any remaining credit balance exceeding twenty-five dollars (\$25) refunded. ~~A customer who has been underbilled shall be given the opportunity to make payment arrangements under Rule 312 on the amount due. At the customer's option, the term of the payment arrangement may extend for the length of time that the underbilling accrued. The telephone company shall promptly refund amounts overpaid by the customer unless the customer consents to a credit against future bills, except overbillings not exceeding fifteen dollars (\$15) may be credited to future bills.~~ (7-1-93)()

05. ~~Additional Payments.~~ The telephone company must promptly prepare a corrected billing for a customer who has been undercharged, indicating the amount owed to the company. An unbilled or undercharged customer must be given the opportunity to make payment arrangements under Rule 310 on the amount due. At the customer's option, the term of the payment arrangement may extend for the length of time that the underbilling accrued or the customer was not billed. ()

2054. BILLING PROHIBITED -- BILLING DISPUTES (RULE 2054).

01. Unauthorized Charges. No ~~person~~ telephone company shall bill ~~or cause another person to bill~~ for unanswered or unaccepted telephone calls, telephone calls placed to a toll-free number, or telephone service or other goods and service(s) or merchandise not ordered or otherwise authorized by the customer of record. ~~Any charges for these services that appear on a customer's bill shall be removed from the customer's bill no later than two (2) billing cycles following notice to the telephone company. Disputed charges must be removed from the customer's bill within two (2) months of when customers notify the company that the customer has been unable to either contact or successfully resolve a dispute with the service or goods provider and that the charge is still in dispute.~~ A telephone company that unknowingly submits a bill containing charges for unanswered or unaccepted telephone calls, telephone calls placed to a toll-free number, or telephone service or other service(s) or merchandise goods not ordered or otherwise authorized by the customer of record shall ~~not~~ be considered in violation of this rule ~~if~~ unless the disputed amounts are removed from the customer's bill within two (2) billing cycles of the customer's notification to the company. (7-1-99)()

02. Billing Disputes. A telephone company that bills and collects for other telephone companies or entities is responsible for either addressing billing disputes regarding unauthorized goods and services for which it bills or advising customers how to contact the providers of those goods and services. If a customer is unable to either contact or successfully resolve a dispute about unauthorized goods and services for which the telephone company bills, a credit equal to the disputed charges must be applied to the customer's account within two (2) billing cycles of the customer's notification to the company. ()

2065. TRANSFER OF BILLS — RESIDENTIAL SERVICE RESPONSIBILITY FOR PAYMENT OF RESIDENTIAL SERVICE BILLS (RULE 2065).

01. Customer Defined. For purposes of this rule, "customer" means a person whose name appears on the telephone company's regular bill for residential service or who signed a written application for residential service or another document informing the customer that he or she was assuming an obligation for payment of service. (7-1-93)

02. Customer's Responsibility. A customer shall not be held responsible for payment of an amount not billed for the customer's own service or through use of the customer's own credit or facilities and whose own name does not appear on the current bill or application for service, unless: (7-1-93)

- a. The customer expressly accepts responsibility for payment of the other person's bill; or (7-1-93)
- b. The customer has a legal obligation to pay the other person's bill. (7-1-93)

03. Customer Notice. The telephone company shall provide written notice of its intent to add to the customer's bill for current service an amount owed for another person's bill; or service rendered at a former service location, if the lapse in service exceeds sixty (60) calendar days. The notice may be provided in an electronic format with the customer's consent. ()

034. Contents of Notice of Transfer of Bill to Another Customer. ~~No telephone company shall transfer any amount owed by a customer or former customer to another customer's account without notice to the latter. The notice must include the following information concerning the amount the telephone company is proposing to transfer:~~ (7-1-93)()

- a. The name of the customer of record who owes the bill; (7-1-93)
- b. The service location and telephone number or account number involved; (7-1-93)
- c. The time over which the ~~transferred~~ bill amount was accumulated; (7-1-93)()
- d. The amount owed; (7-1-93)
- e. The reason(s) for ~~transferring~~ adding the bill amount to the customer's ~~account~~ billing statement; (7-1-93)()

- f. Statement that payment arrangements may be made on the amount owed; (7-1-93)
- g. A statement that the customer has a right to contest ~~the transfer with~~ the telephone company's ~~or~~ proposed action by contacting the Commission; and (7-1-93)(____)
- h. The response deadline after which the bill amount will be ~~transferred~~ added to the customer's billing statement. (7-1-93)(____)
- 045. Opportunity to Respond Period.** The customer ~~is entitled to~~ must be given a minimum of seven (7) calendar days from the date of its proposed action to respond to the ~~transfer~~ telephone company notice. (7-1-93)(____)

~~05. Transfer of Bills for Customers Who Move. The telephone company is not required to notify a customer of its intent to transfer an amount owed if that customer remains a customer named on the bill and moves to another location within that telephone company's service territory and the lapse in service does not exceed sixty (60) days. (7-1-93)~~

~~207. BILLING FOR OTHER SERVICES (RULE 207). Telephone company bills for other services shall contain the mailing address(es) or toll free telephone number(s) available to customers for answering inquiries and resolving complaints about the services billed, sufficient information to readily identify the service provider, the services rendered, the associated specific charges for which the bill is tendered. Notwithstanding any contractual or regulatory provisions to the contrary, no telephone company shall be required to bill its customers on behalf of any person who fails to submit to the telephone company the information necessary to enable it to comply with this rule. (7-1-99)~~

~~2086. -- 299. (RESERVED).~~

**DENIAL, RESTRICTION, AND TERMINATION OF SERVICE
RULES 300 THROUGH ~~400~~ 399**

~~300. (RESERVED).~~

3010. REQUIREMENTS EXPLANATION FOR AND CONTENTS OF NOTICE OF DENIAL OF A SERVICE TO A CUSTOMER (RULE 3010).

If a telephone company intends to deny ~~an available~~ service to ~~an applicant~~ a customer under Rule 301, the telephone company must ~~give the applicant written~~ provide an explanation of its refusal to serve. The explanation must state: to the customer stating the reasons for the telephone company's refusal to provide service and the necessary action(s) to be taken to receive service. In the event of a dispute, the customer must be advised that an informal or formal complaint concerning denial of service may be filed with the Commission. (7-1-93)(____)

- ~~01. The Reasons for Denial of the Service. (7-1-93)~~
- ~~02. Actions of Applicant. Actions the applicant may take to receive the telephone company's service; and (7-1-93)~~
- ~~03. Filing Complaint. That an informal or formal complaint concerning denial of the service may be filed with the telephone company or the Commission. (7-1-93)~~

3021. GROUNDS FOR DENIAL OR TERMINATION OF LOCAL EXCHANGE SERVICE WITH PRIOR NOTICE (RULE 3021).

A telephone company may deny or terminate local exchange service to a customer ~~or applicant~~ without the customer's ~~or applicant's~~ permission, but only after adequate notice has been given in accordance with these rules, for one (1) or more of the following reasons: (3-30-01)(____)

- 01. Customer Did Not Pay Undisputed ~~Delinquent~~ Bills.** ~~The customer or applicant did not pay~~ With

~~respect to undisputed delinquent bills for local exchange services or paid a delinquent bill for local exchange services with any dishonored check.~~ past due bills for local exchange service, the customer: (1-1-95)()

- a.** Failed to pay: ()
- b.** Paid with a dishonored check; or ()
- c.** Made an electronic payment drawn on an account with insufficient funds. ()

02. Customer Failed to Make a Security Deposit. The customer ~~or applicant~~ failed to make a security deposit, when one is required. (3-30-01)()

03. Customer Failed to Abide by Terms. The customer ~~or applicant~~ failed to abide by the terms of a payment arrangement. (7-1-93)()

~~**04. Customer Misrepresented Identity.** The customer or applicant misrepresented the customer's or applicant's identity for the purpose of obtaining telephone service.~~ (7-1-93)

054. Customer Is Willfully Wasting or Interfering with Service. The telephone company determines as prescribed by relevant state or other applicable standards that the customer ~~or applicant~~ is willfully wasting or interfering with service through improper equipment or otherwise. (7-1-93)()

065. Customer Is Using Service(s) for Which the Customer or Applicant Did Not Apply a Minor. The customer is a minor not competent to contract as described in Sections 29-101 and 32-101, Idaho Code. (7-1-93)()

06. Obligation to Connect Service. Nothing in this rule requires the telephone company to connect service for a customer who owes money on an existing account or from a previous account if the unpaid bill is for service provided within the past four (4) years. ()

3032. GROUNDS FOR DENIAL OR TERMINATION OF A SERVICE, WITHOUT PRIOR NOTICE (RULE 3032).

A telephone company may deny or terminate a service or all services without prior notice to the customer ~~or applicant~~ and without the customer's ~~or applicant's~~ permission for ~~one (1) or more~~ any of the following reasons: (7-1-93)()

01. Dangerous Condition. A condition immediately dangerous or hazardous to life, physical safety, or property exists, or it is necessary to prevent a violation of federal, state or local safety or health codes. (7-1-93)

02. Ordered to Terminate Service. The telephone company is ordered to terminate service by any court, the Commission, or any other duly authorized public authority. (7-1-93)

03. Illegal Use of Services ~~Obtained Illegally.~~ The service(s) was (were) obtained, diverted or used without the authorization or knowledge of the telephone company. (7-1-93)()

04. Customer Unable to Be Contacted. The telephone company has tried diligently to meet the notice requirements of Rule 3043, but has been unsuccessful in its attempt to contact the customer ~~affected.~~ (7-1-93)()

~~**05. Misrepresentation of Identity.** The customer has misrepresented the customer's identity for purposes of obtaining telephone service and has no or an inadequate security deposit on file with the company and has an outstanding bill exceeding one hundred (\$100) dollars. The telephone company has determined that information provided by the customer is materially false or materially misrepresents the customer's true status.~~ (7-1-93)()

3043. REQUIREMENTS FOR NOTICE BEFORE TERMINATION OF LOCAL EXCHANGE SERVICE (RULE 3043).

01. ~~Seven-Day Initial~~ Notice. If the telephone company intends to terminate local exchange service under Rule 302~~1~~, it must send to the customer written notice of termination mailed at least seven (7) calendar days before the proposed date of termination. This written notice must contain the information required by Rule 306~~4~~.
(~~3-30-01~~)()

02. ~~Twenty-Four Hour Final~~ Notice. At least twenty-four (24) hours before actual termination, the telephone company must diligently attempt to contact the customer ~~affected~~ to apprise the customer of the proposed action and ~~the steps to~~ the customer must take to avoid or delay termination. This oral notice must contain the same information required by Rule 306~~4~~.
(~~3-30-01~~)()

03. Additional Notice. If the telephone company has not terminated service within twenty-one (21) days after the proposed termination date as specified in a written notice, the telephone company must again provide notice under Rules 304~~3~~.01 and 304~~3~~.02 if it still intends to terminate service.
(~~3-30-01~~)()

04. Failure to Pay—~~Payment with Dishonored Check.~~ No additional notice of termination is required if, upon receipt of a termination notice:
(~~3-30-01~~)()

- a. The customer makes a payment arrangement and subsequently fails to keep that arrangement; ~~or~~
(~~3-30-01~~)()
- b. The customer tenders payment with a dishonored check-; or
(~~7-1-99~~)()
- c. Makes an electronic payment drawn on an account with insufficient funds.
()

~~305. (RESERVED).~~

306~~4~~. CONTENTS OF NOTICE OF INTENT TO TERMINATE LOCAL EXCHANGE SERVICE (RULE 306~~4~~).

01. Contents of Notice. The written or oral notice of intent to terminate local exchange service required by Rule 304~~3~~ must state:
(~~1-5-95~~)()

01a. ~~The Reasons.~~ The reason(s), citing these rules, why service will be terminated and the proposed date of termination;
(~~7-1-93~~)()

02b. ~~Actions.~~ Actions the customer may take to avoid termination;
(~~7-1-93~~)()

03c. ~~Certificate of Serious Illness or Medical Emergency.~~ That a certificate notifying the local exchange company of a serious illness or medical emergency in the household may delay termination under Rule 308~~6~~;
(~~1-5-95~~)()

04d. ~~Complaint May be Filed.~~ That an informal or formal complaint concerning termination may be filed with the telephone company or the Commission, and that service will not be terminated on grounds relating to the dispute between the customer and telephone company before resolution of the complaint (the Commission's mailing address, Internet address, and telephone number must be given to the customer);
(~~7-1-99~~)()

05e. ~~Telephone Company Willing to Make Payment Arrangements.~~ That the telephone company is willing to make payment arrangements (in a written notice this statement must be in bold print); and
(~~7-1-99~~)()

06f. ~~Partial Payments.~~ What amount must be paid in order to avoid termination of local exchange service and that for purposes of disconnection, partial payments will be applied toward past due charges for local exchange service charges first, unless the customer requests otherwise, and that charges for services other than local exchange services cannot be used as a basis for disconnection.
(~~7-1-99~~)()

307~~5~~. TERMINATION OF LOCAL EXCHANGE SERVICE -- MAINTENANCE OF RECORDS (RULE 307~~5~~).

Each telephone company shall maintain for three months clear, written records of the oral notices to terminate local

exchange service required by Rule 3043.02 showing dates and telephone company employees giving the notices.
(1-5-95)()

3086. SERIOUS ILLNESS OR MEDICAL EMERGENCY (RULE 3086).

01. Medical Certificate -- Postponement of Termination of Local Exchange or MTS Long-Distance Services. A telephone company offering local exchange or MTS long-distance service between a residential customer and the customer's nearest community providing necessary medical facilities or services must postpone termination of local exchange or MTS long-distance service to a residential customer for thirty (30) calendar days from the date of receipt of a written certificate signed by a licensed physician or public health official with medical training. The certificate must contain the following information: (4-6-05)()

a. A statement that the customer, a member of the customer's family, or other permanent resident of the premises where service is provided, is seriously ill or has a medical emergency or will become seriously ill or may have a medical emergency because of termination of service; and that termination of local exchange service would adversely affect the health of that customer, member of the customer's family, or resident of the household. (4-6-05)()

b. If the customer requests that termination of MTS long-distance service be postponed, a statement that termination of MTS long-distance service would impair the customer's ability to communicate with necessary medical facilities or services. (4-6-05)()

c. The name of the person whose serious illness or medical emergency would be adversely affected by termination and the relationship to the customer. (4-6-05)

d. The name, title, and signature of the person certifying the serious illness or medical emergency. (4-6-05)

02. Restoration of Service. If local exchange or MTS long-distance service has already been terminated when the medical certificate is received, the appropriate service shall be restored as soon as possible, but no later than twenty-four (24) hours after receipt. The customer shall receive local exchange and necessary MTS long-distance services for thirty (30) calendar days from the telephone company's receipt of the certificate. (4-6-05)()

03. Second Postponement. The telephone company ~~must~~ may postpone termination of local exchange and necessary MTS long-distance service for an additional thirty (30) days upon receipt of a second certificate stating that the serious illness or medical emergency still exists, ~~unless during the period of the first certificate excessive or unwarranted MTS calls were incurred and not paid or the customer refused to enter into payment arrangements.~~ (4-6-05)()

04. Verification of Medical Certificate. The telephone company may verify the authenticity of the certificate and may refuse to delay termination of service if the certificate is a forgery or is otherwise fraudulent. (7-1-93)

05. Obligation to Pay. Nothing in this rule relieves the customer of the obligation to pay any undisputed bill. (4-6-05)

3097. MEDICAL FACILITIES -- SHELTER CARE (RULE 3097).

Where local exchange or ~~MTS is~~ long-distance services are provided to a customer known by the telephone company to be or identifying itself as a medical care facility, including a hospital, medical clinic with resident patients, nursing home, intermediate care facility or shelter care facility, notice of pending termination shall be provided to the Commission and to the State Department of Health and Welfare as well as to the customer. Upon request from the Commission, a delay in termination of no less than seven (7) calendar days from the date of notice shall be allowed so that action may be taken to protect the interests of the facility's residents. (1-1-95)()

3408. INSUFFICIENT GROUNDS FOR TERMINATION OF LOCAL EXCHANGE SERVICE (RULE 3408).

01. Termination Prohibited. No customer shall be given notice of termination of local exchange services nor shall the customer's local exchange service be terminated if the unpaid bill cited as grounds for termination is: (1-1-95)(____)

01a. ~~Less Than Fifty Dollars.~~ ~~The customer's unpaid bill cited as grounds for termination is~~ Less than fifty (\$50) dollars. (7-1-99)(____)

02b. ~~Telephone Service to any Other Customer or Former Customer.~~ ~~The unpaid bill cited as grounds for termination is~~ For telephone service provided to any other customer or former customer (unless that customer has a legal obligation to pay the other bill) or for ~~any other~~ a class of service: (business or residential) other than the one to which the customer currently subscribes; (1-1-95)(____)

03c. ~~Results From the Purchase of MTS and Other Services.~~ ~~The unpaid bill cited as grounds for termination of service results from the purchase of~~ For MTS and or other goods and services, including but not limited to: provided by the telephone company or for which the telephone company bills; (1-1-95)(____)

a. ~~Directory advertising;~~ (1-1-95)

b. ~~Information services, operator services or other services not provided by local exchange companies;~~ (1-1-95)

c. ~~Leased or purchased customer premises equipment or other merchandise; or~~ (1-1-95)

d. ~~Inside wire maintenance.~~ For service provided four (4) or more years ago unless the customer made a payment on the bill within the past four (4) years, or the customer signed a written payment agreement and then failed to pay; (3-30-01)(____)

e. ~~The subject of an informal or formal complaint filed with the Commission; or~~ (____)

f. ~~Is at issue in a case pending before a court in the state of Idaho unless termination is authorized by court order.~~ (____)

04. ~~Other Person Has an Unpaid Balance for Service.~~ ~~The customer lives at a residence where another person lives and the other person has an unpaid balance for service, except when the customer has a legal obligation to pay the other person's bill.~~ (1-1-95)

31109. RESTRICTIONS ON TERMINATION OF LOCAL EXCHANGE SERVICE -- OPPORTUNITY TO AVOID TERMINATION OF LOCAL EXCHANGE SERVICE (RULE 31109).

01. When Termination ~~Not Allowed~~ of Service is Prohibited. ~~Unless the customer affected has consented in writing, local exchange service shall not be terminated on any Friday after twelve noon or on any Saturday, Sunday, legal holidays recognized by the state of Idaho, or after twelve noon on any day immediately before any legal holiday, or at any time when the telephone company's business offices are not open for business, except as authorized by Rules 303.01 and 303.02, or for non residential customers, as authorized by any Subsection of Rule 303.2, or this rule, service provided to a customer shall not be terminated; Local exchange services may be terminated only between the hours of 8 a.m. and 4 p.m., except as authorized by Rules 303.01 and 303.02.~~ (1-1-95)(____)

a. ~~On any Friday, Saturday, Sunday, legal holidays recognized by the state of Idaho, or on any day immediately preceding any legal holiday; or~~ (____)

b. ~~At any time when the telephone company is not open for business.~~ (____)

02. ~~Personnel to Authorize Reconnection.~~ ~~Each telephone company providing local exchange service shall have personnel available after the time of termination who are authorized to reconnect service if the conditions cited as grounds for termination are corrected to the telephone company's satisfaction. Customers may be asked to pay reconnection fees before restoration of service.~~ **Times When Service May be Terminated.** Service may be terminated: (1-1-95)(____)

a. At any time when there is a dangerous condition pursuant to Rule 302.01 or the telephone company is ordered to do so pursuant to Rule 302.02; ()

b. Between the hours of 8 a.m. and 5 p.m., Monday through Thursday, for any reason authorized by Rules 301 and 302; ()

c. Between the hours of 8 a.m. and 5 p.m. on Friday for illegal use of service pursuant to Rule 302.03, or if the premises are unoccupied and service has been abandoned; or ()

d. Between the hours of 5 p.m. and 9 p.m., Monday through Thursday, if the telephone company is unable to gain access to its equipment during the normal business hours or for illegal use of service pursuant to Rule 302.03. ()

03. Service to Persons Not Customers. If local exchange service is provided to a residence and the account is in the name of one who does not reside there, the telephone company, prior to termination, shall notify the person(s) receiving service and afford the person(s) a reasonable opportunity to negotiate directly with the telephone company to purchase service in the resident's(s') own name(s). (1-1-95)

04. No Termination While Complaint Pending. Except as authorized by order of the Commission or of the Judiciary, local exchange service shall not be terminated for failure to pay amounts in dispute while a complaint over that telephone service filed pursuant to Rule 402~~1~~ is pending before this Commission or while a case placing at issue payment for that telephone service is pending before a court in the state of Idaho. (~~1-1-95~~)()

05. Customer Requested Termination. Nothing in this rule prohibits a telephone company from terminating service at any time pursuant to a customer's request. ()

3120. PAYMENT ARRANGEMENTS (RULE 3120).

01. Arrangements Allowed. When a customer cannot pay a bill in full, the telephone company may continue to serve the customer if the customer and the telephone company agree on a reasonable portion of the outstanding bill to be paid immediately, and the manner in which the balance of the outstanding bill will be paid. (7-1-93)

02. Reasonableness. In deciding on the reasonableness of a particular agreement, the telephone company will take into account the customer's ability to pay, the size of the unpaid balance, the customer's payment history and length of service, and the amount of time and reasons why the debt is outstanding. (7-1-93)

03. Application of Payment. Payments are to be applied first to the undisputed past due balance owed by the customer for local exchange services, ~~and associated installation charges, taxes, and surcharges, unless the customer designates otherwise.~~ (7-1-99)

~~**04. Notice of Allocation Procedures.** The telephone company shall notify customers of its procedures for allocating partial payments in its annual summary of these rules given pursuant to Rule 602.01 and in its written seven day notice sent pursuant to Rule 304.01. In discussing or negotiating payment arrangements, the local exchange telephone company shall advise the customer what amount of payment the customer must allocate to local exchange service or to MTS long-distance service or other goods and services in order to prevent the termination of or restriction of access to retain those goods and services. If the telephone company successfully contacts the customer pursuant to the requirements of Rule 304.02, the company shall likewise advise the customer of the amounts that the customer must allocate to local exchange service and/or MTS services or other services to avoid termination of those services.~~ (7-1-99)()

054. Second Arrangement. If a customer fails to make the payment ~~agreed upon~~ by the agreed due date ~~that it is due~~, the telephone company may, but is not obligated to, enter into a second arrangement. (~~1-1-95~~)()

065. When Arrangement Not Binding. No payment arrangement binds a customer if it requires the customer to forego any right provided for in these rules. (1-1-95)

~~313. (RESERVED)~~

314. DENIAL, RESTRICTION, MODIFICATION, OR TERMINATION OF ~~MTS~~ LONG-DISTANCE SERVICE OR OTHER SERVICES (RULE 3141).

01. Compliance. Telephone companies regulated under Title 61, Idaho Code, providing ~~MTS~~ long-distance or other services must comply with Rules 3010, 3032, Subsections 3109.03, and 3109.04, and Rule-3120 in connection with denial, restriction, modification, or termination of those services. Telephone companies providing ~~MTS~~ long-distance or other services must provide reasonable notice before terminating or restricting access to such services, except as provided by Rule 3032. Telephone companies providing ~~MTS~~ long-distance services must provide reasonable notice before modifying a customer's existing service. Nothing in this rule abrogates customers' rights under those telephone companies' tariffs or filings, written agreements with customer, or obligations otherwise imposed by statutory or common law. (7-1-99)(____)

02. Failure to Pay. A customer's failure to pay for undisputed ~~MTS~~ long-distance charges billed by the local exchange company may result in loss of 0+ or 0- and 1+ dialing access to ~~MTS~~ long-distance services until such time as the customer pays the undisputed charges and any applicable reconnection charges, if any. (7-1-99)(____)

03. Loss of Services. Customer failure to pay undisputed charges for other services may result in loss of those services. (1-1-95)

312. CESSATION OF SERVICE IN A SERVICE AREA (RULE 312).

01. Single Local Service Provider. A telephone company that intends to terminate a service regulated under Title 61, Idaho Code, and an eligible telecommunications carrier that intends to terminate its universal service obligation in an area where it is the only eligible telecommunications carrier, must comply with the following:(____)

a. Petition the Commission for authority to terminate the service at least ninety (90) days before the company intends to terminate the service. If the Commission does not deny the petition or set it for hearing within ninety (90) days after receiving the petition, it shall be deemed approved; (____)

b. Mail a notice to each affected customer and to each telecommunications provider affected by the proposed cessation no later than ten (10) days after filing its petition with the Commission. (____)

c. Include with its petition a copy of the notice to customers and the number of customers affected by the proposed cessation; (____)

d. Demonstrate that the termination will not deprive the public of necessary telephone services; (____)

e. Obtain Commission approval before transferring customers to other telecommunications providers. (____)

02. Competitive Local Service Provider. A local exchange company that intends to terminate local exchange service that is not subject to regulation under Title 61, Idaho Code, and an eligible telecommunications carrier that intends to terminate its universal service obligation in an area where it is not the only eligible telecommunications carrier, must comply with the following: (____)

a. Provide notice to the Commission and each affected customer at least forty-five (45) days prior to the proposed termination of service; (____)

b. Inform the Commission of the number of customers and the other providers affected by the proposed termination, and the company's plan to ensure that all customers served by the company will continue to be served; (____)

c. The telecommunications company may, after complying with this rule, transfer customers to

another telecommunications provider without obtaining affirmative approval from affected customers if the following conditions are satisfied: ()

i. The company terminating service has a written commitment from another provider to accept all of the exiting company's customers within the receiving company's service area; ()

ii. All affected customers are notified at least forty-five (45) days in advance that they may apply to another telecommunications company for the service that is being terminated, and that if they do not obtain service from another provider, then the exiting company will automatically transfer them to the receiving company. ()

iii. The receiving company may provide service to the terminating company's customers for up to forty-five (45) days without the affected customer applying for service from the receiving company. If the affected customers do not apply for service from or otherwise affirm an agreement to be served by the receiving company within forty-five (45) days, the receiving company may discontinue service. ()

3153. -- 400399. (RESERVED).

COMPLAINT PROCEDURE

RULES 400 THROUGH 499

4040. COMPLAINT TO TELEPHONE COMPANY (RULE 4040).

01. Subject Matter. A customer ~~or applicant~~ for service may complain to the telephone company about any deposit or guarantee required as a condition of service, billing, termination of service, quality or availability of service, or any other matter regarding telephone company services, policies or practices for local exchange service, ~~MTS, operator and directory assistance services, or~~ other services. ~~The customer or applicant may request a conference with the telephone company, but this provision does not affect any statute of limitation that might otherwise apply.~~ Complaints to the telephone company may be made orally or in writing. A complaint is considered filed when received by the telephone company. In making a complaint ~~or request for conference~~, the customer ~~or applicant~~ shall state the customer's ~~or applicant's~~ name, service address, telephone number and the general nature of the complaint. (7-1-93)()

~~**02. Obligations for Billing Disputes.** A local exchange company that bills and collects for other entities is responsible for either addressing complaints for all services and merchandise billed or for providing the customer with the mailing address(es) or toll free telephone numbers so the customer may contact the supplier of services or merchandise billed. If the customer informs the LEC that another company's charge is disputed, the LEC must stop any payment allocations to the disputed charge. The disputed charge must be permanently removed from the LEC's bill no later than two (2) billing cycles following the billing cycle during which the complaint is registered unless the customer agrees to pay the disputed bill prior to that time.~~ (7-1-93)

~~**032. Conference Company Investigation.** Upon receiving a complaint ~~or a request for conference~~, the telephone company shall promptly, thoroughly and completely investigate the complaint, confer with the customer ~~or applicant~~ when requested, and notify the customer ~~or applicant~~ of the results of its investigation and make a good faith attempt to resolve the complaint. The oral or written notification shall advise the customer ~~or applicant~~ that the customer ~~or applicant~~ may request the Commission to review the telephone company's proposed disposition of the complaint.~~ (7-1-93)()

~~**043. Service Maintained.** The telephone company shall not terminate service based upon the subject matter of the complaint while investigating the complaint or making a good-faith attempt to resolve the complaint.~~ (7-1-93)

4021. REVIEW BY COMMISSION (RULE 4021).

01. Informal Review. The Commission has authority to investigate and resolve complaints made by

subscribers to telecommunication services that concern the quality and availability of local exchange service, or whether price and conditions of service are in conformance with filed tariffs or price lists, deposit requirements for such service or disconnection of such service. If a customer ~~or applicant~~ who has complained to a telephone company is dissatisfied with a telephone company's proposed disposition of the complaint, the customer ~~or applicant~~ may request the Commission to review informally the disputed issue and the telephone company's proposed disposition of the complaint. The Commission may consider complaints regarding any telephone services, ~~whether subject to rate regulation or not~~ over which the Commission has authority. (7-1-93)(____)

02. Procedure on Review. The Commission will process these requests as informal complaints pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. Telephone service shall not be terminated nor shall termination be threatened by notice or otherwise in connection with the subject matter of the complaint while the complaint is pending before the Commission so long as the customer continues to pay all amounts not in dispute, including current telephone bills. Upon request by any party, the parties and a representative of the Commission shall be required to meet and confer. (7-1-93)

03. Rights Protected. No customer ~~or applicant~~ shall be denied the opportunity to file a complaint with the Commission. (7-1-93)(____)

04. Formal Complaints. Formal complaints may be filed according to the Commission's Rules of Procedure, IDAPA 31.01.01.000, et seq. (7-1-93)

4032. RECORD OF COMPLAINTS (RULE 4032).

01. Recordkeeping. Each telephone company must keep a record of written complaints and requests for conferences pursuant to Rules ~~4040~~ and ~~4021~~. These records must be retained for a minimum of one year at the office of the telephone company where the complaints were received ~~or conferences held~~. These written records are to be readily available upon request by the complaining customer ~~or applicant~~, the customer's ~~or applicant's~~ agent possessing written authorization, or the Commission. The records must note whether the customer was advised as required by Rule ~~4040.03~~ that the customer ~~or applicant~~ may request the Commission to review the telephone company's proposed disposition of the complaint. (7-1-93)(____)

02. Reporting. When previously ~~directed~~ requested by the Commission, a telephone company must submit a report to the Commission that states and classifies the number of complaints made to the telephone company pursuant to Rules ~~4040~~ and ~~4021~~ and the general subject matter of the complaints. (7-1-93)(____)

4043. RESPONSES TO INFORMAL COMPLAINTS (RULE 4043).

Within ten (10) business days of receiving notification from the Commission that an informal complaint involving the company has been filed with the Commission, telephone companies must either respond orally or in writing to the Commission. A telephone company will be granted an extension of time to prepare its response if it represents that it is making a good faith effort to resolve the matter in dispute. A full and complete response should be submitted to the Commission no later than thirty (30) days after receipt of notification from the Commission. (7-1-99)

4054. -- 500499. (RESERVED).

QUALITY OF SERVICE
RULES 5040 THROUGH 600599

5040. QUALITY OF SERVICE (RULE 5040).

01. Service Standards. Each telephone company providing local exchange service pursuant to Title 61 or Title 62, Idaho Code, as applicable, and each eligible telecommunications carrier (ETC) is required to employ prudent management and engineering practices to ensure that customers receive the best quality of service practicable. Each telephone company is required to adopt and pursue a maintenance program aimed at achieving efficient operation of its systems to render safe, adequate and uninterrupted service. These programs must include guidelines for keeping all plant and equipment in good repair, including the following: (7-1-93)(____)

- a. Broken, damaged or deteriorated equipment must be promptly repaired or replaced; and (7-1-93)
- b. Transmission problems (including induction, cross-talk, or other poor transmission on any line) must be promptly corrected when located or identified. (7-1-93)

02. Service Outage. If a customer's local telephone service quality deteriorates to such an extent that the customer cannot make local calls or cannot receive local calls or cannot use the service for voice grade communication because of cross-talk, static or other transmission problem, the telephone company must respond to a customer's report of such a "service outage" in accordance with Rule 50~~3~~2. Customer's bills must be appropriately and automatically credited pursuant to the terms of Rule 50~~3~~2. (~~7-1-93~~)()

50~~2~~1. RESPONSE TO SERVICE OUTAGE (RULE 50~~2~~1).

01. Receipt and Recording of Reports. Each telephone company providing local exchange service ~~pursuant to Title 61, Idaho Code,~~ shall provide for the receipt of customer trouble reports at all hours and make a full and prompt investigation of and response to all reports. The telephone company shall maintain an accurate record of trouble reports made by its customers. This record shall include accurate identification of the affected customer or service ~~affected~~, the time, date and nature of the report, the action taken to clear the trouble or satisfy the customer, and the date and time of trouble clearance or other disposition. This record shall be available to the Commission or its authorized representatives upon request at any time within two (2) years of the date of the record. (~~3-30-01~~)()

02. Repair Commitments. Commitments to customers for repair service shall be set in accordance with Rule 50~~3~~2. Each telephone company shall make every reasonable attempt to fulfill repair commitments to customers. Customers shall be timely notified of unavoidable changes. Failure to meet a repair commitment does not relieve the telephone company of the credit provisions in Rule 50~~3~~2.01, unless the customer fails to keep an appointment the customer agreed to when the original commitment was made. (~~7-1-93~~)()

50~~3~~2. REPAIR SERVICE STANDARDS (RULE 50~~3~~2).

01. Restoration of Service. When a telephone company providing local exchange service ~~pursuant to Title 61, Idaho Code,~~ is informed by a customer of a service outage as described in Rule 50~~4~~0.02, the telephone company must: (~~7-1-99~~)()

- a. Restore service within sixteen (16) hours after the report of the outage if the customer notifies the telephone company that the service outage creates an emergency for the customer; or (7-1-93)
- b. Restore service within twenty-four (24) hours after the report of the outage if no emergency exists, except that outages reported between noon on Saturday and 6 p.m. on the following Sunday must be restored within forty-eight (48) hours or by 6 p.m. on the following Monday, whichever is sooner. If the telephone company does not restore service within the times required by this Rule the telephone company must credit the customer's account for an amount equal to the monthly rate for one (1) month of basic local exchange service. (7-1-93)

02. Extenuating Circumstances. Following disruption of telephone service caused by natural disaster or other causes not within the telephone company's control and affecting large groups of customers, or in conditions where the personal safety of an employee would be jeopardized, the telephone company is not required to provide the credit referred to in Rule 50~~3~~2.01 as long as it uses reasonable judgment and diligence to restore service, giving due regard for the needs of various customers ~~and the requirements of the telecommunications service priority (TSP) program ordered in FCC Docket 88-341 (47 C.F.R. Part 64 Appendix A).~~ When a customer causes the customer's own service outage or does not make a reasonable effort to arrange a repair visit within the service restoration deadline, or when the telephone company determines that the outage is attributable to the customer's own equipment or inside wire, the telephone company is not required to provide to that customer the credit referred to in Rule 50~~3~~2.01. (~~7-1-99~~)()

03. Compliance Standard. Each month at least ninety percent (90%) of out-of-service trouble reports shall be cleared in accordance with Rules 50~~3~~2.01 and 50~~3~~2.02. The telephone company shall keep a monthly service record as described in Rule 50~~2~~1.01 and shall notify the Commission ~~whenever~~ if the record indicates the ninety

percent (90%) level has not been met for a period of three (3) consecutive months. (7-1-99)()

5043. -- 600599. (RESERVED).

MISCELLANEOUS PROVISIONS
RULES 6010 THROUGH 700699

601. DIRECTORIES AND CUSTOMER LISTINGS (RULE 601).

01. Directory Provided. Each local exchange company must annually provide to all customers without charge at least one (1) local exchange directory per access line. The directory must include: (7-1-93)

a. The name, address and telephone number of each customer subscribing to local exchange service for that directory's exchanges, excluding public pay telephones and names, addresses or telephone numbers omitted at the customer's request; (7-1-93)

b. The name, address and toll free telephone number(s) of the local exchange company; and (7-1-93)

c. The name, address and telephone number of the Commission, together with a statement that if a dispute cannot be resolved directly with the telephone company, a complaint may be filed with the Commission. (7-1-93)

02. Listing. Each customer who wishes the customer's name, address or telephone number to be listed in the white pages of the directory must be given one (1) free listing in the customer's local exchange directory for each account. (7-1-93)

6020. SUMMARY OF RULES INFORMATION TO CUSTOMERS (RULE 6020).

01. Local Exchange Companies. Each telephone company providing local exchange service is required to make available to its customers a summary of these rules approved by the Commission. This summary must be provided to customers at least once each year and provided to each new customer upon commencement of service. This summary may be included at least once a year in a regular mailing of the telephone company's bill or printed in the telephone directory in the informational section preceding the white page listings. If the summary is contained in the telephone directory, giving the customer the directory and calling the customer's attention to the summary of the rules contained in the directory satisfies this requirement. **Required Information.** Each telephone company providing local exchange service must make the following information available to its customers: (7-1-93)()

a. A summary of the general terms and conditions under which service is provided, referring to these rules as appropriate; ()

b. A clear and concise explanation of: ()

i. All the goods and services for which the customer is billed, including those goods and services provided as part of a package offered by the telephone company; ()

ii. All recurring charges associated with individual goods and services or package of goods and services for which the customer is billed; ()

iii. Any early termination fees that apply if the customer terminates service prior to the end of a service agreement or contract period; ()

iv. The telephone company's dispute resolution procedures and a statement that an informal or formal complaint may be filed with the Commission; and ()

v. If the customer subscribes to non-published service, the circumstances under which the telephone company will release information about the customer or the customer's service and to whom it will be released. ()

02. *All Telephone Companies.* *All telephone companies must make a summary of the kind described in Subsection 602.01 available in their local offices and to each of their customers requesting a summary. **When and How Information Provided.** Information must be provided to customers in writing upon initiation of service and whenever a material change in the terms and conditions of service or charges for goods and services takes place. Information provided upon initiation of service may be separately mailed or included with the paper or electronic billing statement delivered to the customer. Subsequent notices may be made by separate mailing, included with a billing statement or, with the customer's consent, by electronic notice with reference to information contained on the telephone company's website.* (7-1-93)()

6031. ACCESS TO EMERGENCY SERVICES (RULE 6031).

In counties where consolidated emergency communications systems, as defined by Section 31-4802, Idaho Code, are established, the local exchange company shall provide access to those services to all its customers. (7-1-99)

6042. REQUEST FOR TELEPHONE COMPANY RECORDS (RULE 6042).

01. General Rule. If any telephone company subject to these rules is directed by ~~legal process or otherwise~~ subpoena or court order to disclose customer records, as soon as practical, it must notify the customer what records were requested and of the company's response to the request. In no case shall the reasonable period of time under this rule exceed two (2) business days after deciding ~~whether~~ to abide by that request. (7-1-93)()

02. Exceptions. This rule does not apply: (7-1-93)

~~a. If a judge of a court of competent jurisdiction has ordered a telephone company not to disclose that it has complied with a summons court order or subpoena to turn over a customer's telephone records (the telephone company is excused from complying with this rule so long as the judicial order is in effect);~~ (7-1-93)()

~~b. If a grand jury, officers participating before a special inquiry judge or officers participating in any other investigation required by law to be secret and confidential order a telephone company not to disclose that it has complied with a summons or subpoena to turn over a customer's telephone records (the telephone company is excused from complying with this rule until it has been notified to the contrary); or~~ (7-1-93)

~~c. If federal or state law enforcement agencies or officers who have been granted the authority of summons or subpoena by statute or rule when the agency or officer certifies in writing that disclosure could impede an investigation and thereby interfere with the enforcement of the law (a certification shall be made for no more than ninety (90) days, but re-certification at the expiration of each ninety (90) day period is allowed);~~ (7-1-93)

~~03. Definition of Records.~~ *The term "records" used in this rule refers to records of message telecommunications service and local calls (if available).* (7-1-93)

6053. AUTOMATIC RECORDING (RULE 6053).

Certain federal, state or local agencies have been permitted by rule or tariff approved by or filed with the Federal Communications Commission or this Commission to automatically record all telephone conversations on certain lines of the agency. This automatic recording is allowed for security, safety or public interest purposes. Release of telephone conversations automatically recorded by such a government agency for purposes unrelated to security, safety or the public interest is expressly prohibited under the authority of rules or tariffs authorizing automatic recording of conversations. This rule does not preclude the records' release pursuant to independent judicial, executive, legislative, or other order or authorization for release of such conversations, or upon consent of all parties whose conversations were recorded. (7-1-93)

604. PUBLIC NOTICE (RULE 604).

Telephone companies must give "public notice" of all proposed changes in rates as required by Section 62-606, Idaho Code. Public notice must be reasonably designed to call affected customers' attention to the proposed changes in rates. Legal advertisements alone will not be considered adequate public notice. Individual notice to all customers

affected will always constitute public notice. Notices must be provided to individual customers at least thirty (30) days before change is effective. ()

605. TELEPHONE SOLICITATIONS (RULE 605).

Each telephone company providing local exchange service must summarize the provisions of Sections 48-1001 et seq., Idaho Code, in an annual insert in a billing statement mailed to customers or by conspicuous publication in the consumer pages of the local telephone directory. Local exchange companies may meet the requirements of this notice by publishing the following explanation or one (1) substantially similar: ()

**IMPORTANT NOTICE CONCERNING PURCHASE
OF GOODS AND SERVICES BY TELEPHONE**

You have important rights under the Idaho Telephone Solicitation Act. Under this Act it is illegal for persons attempting to sell you goods or services by telephone (telephone solicitors):

- To intimidate or harass you in connection with the attempted sale.
- To refuse to hang up and free your telephone line immediately once you request them to do so.
- To misstate the price, quality, or availability of goods or services, or to fail to reveal all material terms relating to the sale of goods or services.
- To advertise, represent or imply that they have the endorsement of any government office or agency when they do not.
- To advertise, represent or imply that they have a valid registration number with the Attorney General when they do not.
- To use any unfair method of competition or unfair or deceptive practice.

Any person not yet eighteen (18) years old who purchases goods or services pursuant to a telephone solicitation may cancel the purchase within a reasonable time after the purchase is made. No parent or legal guardian having custody of a person not yet eighteen (18) years old is liable for the purchase of goods or services by a person not yet eighteen (18) years old pursuant to telephone solicitation.

When you agree to purchase goods or services over the telephone, you may have a right to reconsider and cancel your agreement for three (3) business days after receiving a written confirmation of the sale.

A person whose rights are violated by telephone solicitors may have the right to declare a contract of purchase null and void or invoke other remedies under the Idaho Consumer Protection Act.

If you believe that a telephone solicitor has done any unlawful acts, you may contact the Attorney General's Office for assistance and information at: 1 (800) 432-3545 (toll-free) or 334-2424 (Boise area).

()

606. INFORMATION, PRICE LISTS OR TARIFFS FOR NON-LOCAL EXCHANGE SERVICE (RULE 606).

01. Information to be Filed. All telephone corporations, except mutual nonprofit or cooperative corporations, that did not on January 1, 1988, hold a certificate of public convenience and necessity issued by the Commission and that do not provide basic local exchange service are required by Section 62-604(1)(b), Idaho Code, to file a notice with this Commission before offering services in Idaho. The notice must contain the following information: ()

a. The name of the telephone corporation and the business name of the telephone corporation if it does business under an assumed business name; ()

b. The United States and electronic (if available) mailing addresses of the principal place of business of the telephone corporation, and, if there is a principal place of business in Idaho, the addresses of the principal place of business in Idaho; ()

c. An agent in Idaho for service of process by the Commission in the state of Idaho including the agent's United States and electronic (if available) mailing addresses; ()

d. A description of the telecommunication services offered by the telephone corporation and a map of the area(s) served by the telephone corporation or in which the telephone corporation offers or intends to offer service; ()

e. Address(es) and toll-free telephone number(s) for personnel responsible for handling consumer inquiries, complaints, etc., by the public; and ()

f. Name(s), United States mail and electronic (if available) addresses, and telephone number(s) of person(s) designated as a contact for the Commission Staff in resolving consumer complaints, responding to consumer inquiries, and answering matters concerning rates and price lists or tariffs. These notices must be updated at least annually, between December 1 and December 31 each year, and whenever there is a change in the telephone corporation's name, address, or agent for service of process. ()

02. Service. Notices, orders, rules, complaints and other documents issued by the Commission may be served by United States or electronic mail on the agent for service of process listed pursuant to this rule. This service constitutes due and timely notice to the telephone corporation, and no further service is necessary to bind the telephone corporation. Telephone corporations obligated by statute to file the notice required by this rule, but failing to do so, are bound by the Commission's motions, orders, rules, complaints and other documents upon their filing with the Commission Secretary. ()

607. PRICE LISTS OR TARIFF FILINGS (RULE 607).

01. Price Lists or Tariffs. All telephone corporations subject to the Telecommunications Act of 1988 are required by Section 62-606, Idaho Code, or by this Commission's implementation of Section 62-616, Idaho Code, to file for informational purposes price lists or tariffs that reflect the availability, price, terms and conditions of all telecommunication services not offered under Title 61 of the Idaho Code. The price lists or tariffs must: ()

a. Contain a title page identifying the telephone corporation; ()

b. Show on each page the name of the company, the date of issuance and an effective date for their rates; ()

c. Contain a table of contents; ()

d. Number pages and paragraphs describing the services; ()

e. Show when pages or services have been cancelled or revised; and ()

f. Provide a mechanism (e.g., page revision numbers) for tracing additions, deletions or amendments to the price list or tariff. The price lists or tariffs must include schedules of rates for each type of service generally made available to subscribers, showing the effective date of all rates and charges and listing any rules and regulations

associated with provision of the services. Surcharges, discounts, hours of availability, minimum service periods, and other conditions of service must be detailed. ()

02. Changes to Price Lists or Tariffs. When required by Section 62-606, Idaho Code, changes to price lists or tariffs are effective not less than ten (10) days after filing with the Commission and giving public notice to affected customers except for charges for non-recurring services quoted directly to the customer when an order is placed or price reductions, both of which may take effect immediately with filing. Changes to price lists or tariffs must be accompanied by a letter of transmittal stating how affected customers received notice of the changes to price lists or tariffs. See Rule 604. ()

03. Tracking Price Lists or Tariffs. Each revision to a price list or tariff must be accompanied by a cover letter summarizing the changes to the price list or tariff, specifically referring to existing tariff pages affected by the new price list or tariff and stating whether new pages replace, are in addition to, or delete existing pages. The Commission Secretary may adopt a system to number each company's changes to its price lists or tariffs. ()

608. FORM AND NUMBER OF COPIES OF PRICE LIST OR TARIFF (RULE 608).
Price lists or tariffs filed pursuant to Section 62-606, Idaho Code, or by this Commission's implementation of Section 62-616, Idaho Code, must have a blank space approximately three by one and one-half inches (3" x 1-1/2") square provided for the Commission's filing stamp in the upper right or lower right corner of each schedule filed. An original and three (3) copies of the price list or tariff must be filed with the Commission. The Commission stamps its indication that the price list or tariff has been filed in the space provided on each copy of the price list or tariff, placing the original in its files and returning one copy to the telephone corporation. ()

~~6062~~. -- ~~700699~~. (RESERVED).

SLAMMING PROVISIONS
RULES ~~7040~~ THROUGH ~~800799~~

7040. THE UNAUTHORIZED CHANGE OF A CUSTOMER'S TELEPHONE COMPANY (RULE 7040).
Local exchange companies and interexchange carriers are prohibited from submitting or executing an unauthorized change in a customer's selection of a provider of local or long distance telephone service. This practice is commonly referred to as "slamming." The Commission will administer the Federal Communications Commission's regulations regarding slamming. (3-15-02)

7021. ADOPTION OF FEDERAL SLAMMING REGULATIONS (RULE 7021).
The Commission adopts the slamming regulations promulgated by the Federal Communications Commission and found at Sections 64.1100 through 64.1170 and 64.1190, Title 47, Code of Federal Regulations (October 1, 2004). Local exchange companies and interexchange carriers shall comply with applicable provisions of the federal regulations adopted by reference except as modified in Rule 7032. (~~4-6-05~~)()

7032. STATE PROCEDURES (RULE 7032).
The federal slamming procedures incorporated by reference in Rule 7021 are modified as follows: (~~3-15-02~~)()

01. Form. Complaints regarding an unauthorized carrier change may be filed with the Commission in person, by mail, by e-mail, or by telephone. E-mail complaint forms may be found at www.puc.idaho.gov. A copy of the telephone bill(s) in dispute and other relevant evidence shall be provided to the Commission by the complaining party. The slamming complaint shall include the following information: (3-15-02)

- a. Name, address and telephone number of complainant; (3-15-02)
- b. Name/identity of the alleged slamming carrier; (3-15-02)
- c. Name of the previous authorized carrier; (3-15-02)
- d. Name of the billing entity; (3-15-02)

- e. Date the alleged slamming occurred; (3-15-02)
- f. Whether the customer has been restored to the preferred carrier; (3-15-02)
- g. Whether the customer has paid any or all of the disputed charges; (3-15-02)
- h. Efforts in attempting to resolve the alleged slamming; and (3-15-02)
- i. Whether the customer was charged for changing carrier(s). (3-15-02)

02. Procedure. The Commission's Consumer Assistance Staff shall be responsible for resolving slamming complaints under the Commission's informal complaint procedures in IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission," Rules 21 through 24. Not later than twenty-one (21) calendar days after notification of a slamming complaint, the alleged unauthorized carrier shall provide to the Consumer Assistance Staff a copy of any valid proof of verification of the carrier change and any other evidence relevant to the complaint. Use of the Commission's informal complaint procedures are mandatory. (3-15-02)

03. Written Determination. When its informal investigation is complete, the Consumer Assistance Staff shall issue a written determination to the customer, alleged unauthorized carrier, and the authorized carrier. (3-15-02)

04. Appeal of Staff Determination. A customer or carrier aggrieved by the Consumer Assistance Staff's determination of a slamming complaint may file a formal complaint with the Commission pursuant to IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission," Rule 54. An appeal of Staff's determination shall be filed with the Commission Secretary within twenty-one (21) calendar days of the Staff's written determination. An aggrieved party's failure to file a formal complaint shall constitute a waiver or abandonment of the slamming complaint. (3-15-02)

7043. -- 999. (RESERVED).

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.41.02 - INFORMATION TO CUSTOMERS OF TELEPHONE COMPANIES

DOCKET NO. 31-4102-0901 (CHAPTER REPEAL)

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 proposes to repeal its Utility Customer Information Rules. This action is authorized pursuant to Sections 61-507, 62-605, 62-606, and 62-615, 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 21, 2009.

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 concise explanatory statement of the reasons for repealing IDAPA 31.41.02. Changes in federal and state law since 1996 make it possible to eliminate some of the rules in IDAPA 31.41.02 and move the remainder to the IPUC's Telephone Customer Relations Rules, IDAPA 31.41.01 et seq.

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

There are no fees associated with this proposed rulemaking.

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

There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted through a public workshop on July 28, 2009, and by written comments received by electronic mail. Members of the public and representatives of at least seven (7) telecommunications companies participated in the informal negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the rescission of these rules, contact Weldon Stutzman, Deputy Attorney General, at (208) 334-0318.

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 28, 2009.

DATED this 28th day of August, 2009.

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

IDAPA 31.41.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.42.01 - THE IDAHO PUBLIC UTILITIES COMMISSION RULES FOR TELEPHONE CORPORATIONS SUBJECT TO THE RULES OF THE IDAHO PUBLIC UTILITIES COMMISSION UNDER THE TELECOMMUNICATIONS ACT OF 1988 (THE TITLE 62 TELEPHONE CORPORATION RULES)

DOCKET NO. 31-4201-0901 (CHAPTER REPEAL)

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 proposes to repeal its Utility Customer Information Rules. This action is authorized pursuant to Sections 61-507, 62-605, 62-606, and 62-615, 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 21, 2009.

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 concise explanatory statement of the reasons for repealing IDAPA 31.42.01. Changes in federal and state law since 1996 make it possible to eliminate some of the rules in IDAPA 31.42.01 and move the remainder to the IPUC's Telephone Customer Relations Rules, IDAPA 31.41.01 et seq.

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

There are no fees associated with this proposed rulemaking.

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

There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted through a public workshop on July 28, 2009, and by written comments received by electronic mail. Members of the public and representatives of at least seven (7) telecommunications companies participated in the informal negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the rescission of these rules, contact Weldon Stutzman, Deputy Attorney General, at (208) 334-0318.

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 28, 2009.

DATED this 28th day of August 2009.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission Street address for express delivery:
PO Box 83720
Boise, ID 83720-0074 472 W Washington
Telephone: (208) 334-0338 Boise, Idaho 83702-5918
Facsimile: (208) 334-3762

IDAPA 31.42.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

DOCKET NO. 32-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is April 30, 2009. This pending rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule and amended a temporary rule. The action is authorized pursuant to Section 57-728(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The Endowment Fund Investment Board received additional public comment and discussed the pending and temporary rule at public meetings on August 12, 2009 and August 27, 2009. After a thorough discussion, the Board determined that its fiduciary responsibilities to the Public School Endowment Fund require the Board provide a range of fees in rule so that it may rapidly adjust the fees to address investment market conditions and to allow for changes in actual administrative costs. Subsection 020.02 and Section 030 of these rules are thus revised to establish a range of fees and provide that the Board will set the applicable fee within the range in Board policy. Board policy is set at public Board meetings. EFIB staff plans to recommend the Board adopt an initial policy of a one hundred dollar (\$100) application fee and a 2 basis point guaranty fee, consistent with the original temporary rule and comments by the Board in the two recent meetings.

In addition to the above, a citation to Idaho Code is being corrected in Paragraph 020.01.a., a new Subsection 020.05 is being added to provide for submission deadlines, and Section 030 is modified to specify that guaranty fees must be deposited in the Public School Endowment Fund.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Endowment Fund Investment Board amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 125 through 128.

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. This fee or charge is being imposed pursuant to Section 57-728, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

Pursuant to Section 57-728, Idaho Code, as revised effective April 17, 2009, the rules impose an application fee calculated to reflect the overhead costs to the EFIB for processing an application. This fee allows the EFIB to more accurately allocate its overhead costs and will likely result in a minor reduction in the cost allocation to the Endowment Funds, the Judges' Retirement Fund, and the State Insurance Fund. Without the imposition of the fee, the other clients of the EFIB may bear the costs of Program administration through the EFIB's existing process of cost allocation. The rules also implement a guaranty or insurance fee authorized by the legislature as of April 17, 2009. The fee, which would be deposited in the Public School Endowment Fund, allows the Public School Endowment to benefit from the issuance of the guaranties and reinforces the holding in *Endowment Fund Investment Board v. Crane* that the Program is a permissible investment for the Fund.

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

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

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will be charged a small application fee reflecting the overhead costs of the EFIB's administration of the Program and the EFIB's other clients will see a corresponding reduction in their expenses. The Public School Endowment will receive a guarantee fee that will be reflected in the Endowment's investment returns.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Larry Johnson, Manager of Investments, (208) 334-3312.

DATED this 28th day of August, 2009.

Larry Johnson
Manager of Investments
Endowment Fund Investment Board
816 W. Bannock St., Ste. 301
P. O. Box 83720
Boise, ID 83720-0046
Phone: (208) 334-3312
Fax: (208) 334-3786

**DOCKET NO. 32-0101-0901 - ADOPTION OF PENDING RULE
AND AMENDMENT TO TEMPORARY RULE**

Substantive changes have been made to the pending rule.
Italicized text that is underscored is new text that is being added.
Italicized text that is ~~underscored and struck through~~ is codified temporary text that is being removed from the temporary rule. This is also an amendment to the pending rule text.

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

The text of the temporary/proposed rule was published in the Idaho Administrative Bulletin, [Volume 08-8, August 5, 2009, pages 125 through 128.](#)

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.

**THE FOLLOWING IS THE AMENDED TEMPORARY RULE AND THE
AMENDED PENDING RULE TEXT FOR DOCKET 32-0101-0901**

020. APPLICATION.

01. Required Materials. School Districts shall submit the following application materials to the EFIB: (4-30-09)T

a. Correspondence from the Treasurer certifying that the School District has been approved to participate in the Guaranty Program and setting forth the maximum credit enhancement amount available to the School District within the limitations set forth in Section 3-57-728(8), Idaho Code. (4-30-09)T

b. A fully completed application form as prescribed by the EFIB from time to time executed by a party authorized to bind the School District. (4-30-09)T

c. Copies of the complete audited financial statements of the School District prepared pursuant to Section 33-701, Idaho Code, for the preceding three (3) fiscal years. If the audit of the last fiscal year has not been completed, an unaudited, draft financial statement or financial summary for that year will be accepted up to six (6) months after the end of the last fiscal year. (4-30-09)T

d. Upon request of the EFIB, documentation substantiating the information set forth in the financial statements submitted pursuant to Subsection 020.01 of these rules. (4-30-09)T

02. Application and Administrative Fees. School Districts shall submit an application fee ~~of with the application materials in an amount established by EFIB policy. The application fee shall not exceed one hundred thousand~~ dollars (\$1000) ~~with the application materials.~~ The EFIB may charge the applicant an administrative fee equal to the actual charges to the EFIB for the review of application materials by outside experts, including certified public accountants. ~~(4-30-09)T~~(4-30-09)T

03. Staff Review. The EFIB may delegate review of applications to EFIB staff. The EFIB may delegate approval of applications to the EFIB's manager of investments. (4-30-09)T

04. Review Periods. The EFIB will provide written approval or denial of an application within twenty (20) days of the submission of all required materials. If the Board requests information substantiating audit materials, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating information. (4-30-09)T

05. Submission Deadlines. School Districts may submit an application at any time. (4-30-09)T

021. -- 029. (RESERVED).

030. GUARANTY FEE. School Districts shall remit to the EFIB, for deposit in the Public School Endowment Fund within five (5) days of the sale of the bonds covered under the Credit Enhancement Program, a one-time fee equal to as set forth in EFIB policy. Such fee shall not exceed ~~two five~~ one-hundredths of one percent (0.025% or ~~two five~~ basis points) of the Total Debt Service. ~~(4-30-09)T~~(4-30-09)T

IDAPA 33 - IDAHO REAL ESTATE COMMISSION
33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION
DOCKET NO. 33-0101-0901
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2007 and 54-2018(3), Idaho Code.

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

THURSDAY, OCTOBER 29, 2009 -- 10:00 a.m.

IDAHO REAL ESTATE COMMISSION
633 N. Fourth Street, Boise, 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:

Section 54-2018(3), Idaho Code, authorizes the Commission to establish the conditions for accepting a late license renewal application. The proposed rule provides that any licensee who applies to renew a license after it has expired must certify whether he or she had practiced real estate after the license expired, and, if he or she has practiced, either agree to pay the fine or request a hearing for that purpose.

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

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because interested groups participated in open meeting discussions prior to publication of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, Phone: (208) 334-3285; toll free in Idaho: (866) 447-5411; Fax: (208) 334-2050.

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 28, 2009.

DATED this 27th day of August, 2009.

Jeanne Jackson-Heim
Executive Director
Idaho Real Estate Commission
633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720-0077
Phone: (208) 334-3285
Fax: (208) 334-2050

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0101-0901

105. CONDITIONS TO RENEW EXPIRED LICENSE.

The Commission may accept a licensee's application to renew an expired license upon the following conditions:

()

01. Payment of Late Fee. The applicant must pay the late license renewal fee established by this chapter;

()

02. Renewal After Expiration of Active License. If the license expired on active license status, the licensee must complete and submit with the application, on the form approved by the Commission, one (1) of the following:

()

a. A certificate attesting that during the period the license was expired, the licensee did not do or attempt to do any acts described in the definitions of real estate broker or salesperson in Section 54-2004, Idaho Code; or

()

b. A certificate admitting that during the period the license was expired, the licensee did or attempted to do an act described in the definitions of real estate broker or salesperson in Section 54-2004, Idaho Code, and either:

()

i. Agree to pay the proposed civil fine, which amount will be in accordance with the scheduled amount approved by the Commission by motion; or

()

ii. Request a hearing to determine any fine under the procedures set forth in the Idaho Administrative Procedure Act, Chapter 52, Title 67, and the Commission's rules under IDAPA 33.01.02, "Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases."

()

03. Investigate or Discipline a Licensee. Nothing in this Section limits the ability of the Commission to investigate or discipline a licensee for violating Subsection 54-2018(3), Idaho Code, or for violating any other provision of the Real Estate License Law or the rules promulgated by the Commission.

()

1056. -- 116. (RESERVED).

IDAPA 33 - IDAHO REAL ESTATE COMMISSION
33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION
DOCKET NO. 33-0101-0902
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2007 and 54-2013, Idaho Code.

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

THURSDAY, OCTOBER 29, 2009 -- 10:00 a.m.

IDAHO REAL ESTATE COMMISSION
633 N. Fourth Street, Boise 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 proposed rule would clarify the current rule to state that a late renewal constitutes a lapse of the required errors and omissions coverage, even if coverage is later made retroactive by the carrier.

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

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because interested groups participated in open meeting discussions prior to publication of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, Phone: (208) 334-3285; toll free in Idaho: (866) 447-5411; Fax: (208) 334-2050.

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 28, 2009.

DATED this 27th day of August, 2009.

Jeanne Jackson-Heim
Executive Director
Idaho Real Estate Commission
633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
Phone: (208) 334-3285
toll free in Idaho: (866) 447-5411
Fax: (208) 334-2050

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0101-0902

121. FAILURE TO MAINTAIN INSURANCE.

Failure of a licensee to obtain and maintain insurance coverage required by Subsection 117.02 shall result in inactivation of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license. Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under Section 67-5254, Idaho Code. (4-2-03)

01. Notice of Noncompliance. Within five (5) working days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by first class mail to the licensee's business or residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) days in which to comply with the law and these rules regarding errors and omissions insurance. Failure to comply at the end of ten (10) days shall result in the license being automatically inactivated. (4-2-08)

02. Reactivation. Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of any required documents and fees. (3-15-02)

03. Failure to Maintain Insurance. ~~Any failure of a licensee to maintain errors and omissions insurance or failure of a licensee to submit or cause to be submitted a certificate of coverage as required by Section 54-2013, Idaho Code, and in accordance with these rules and while engaging in the business of real estate broker or real estate salesperson, as defined in Sections 54-2002 and 54-2004, Idaho Code while on active license status, regardless whether coverage is later obtained and made retroactive by the carrier, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in Sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines. A late renewal is considered failure to maintain insurance and constitutes a violation of the law.~~ (3-15-02)(____)

IDAPA 33 - IDAHO REAL ESTATE COMMISSION

33.01.02 - RULES OF PRACTICE AND PROCEDURE OF THE IDAHO REAL ESTATE COMMISSION GOVERNING CONTESTED CASES

DOCKET NO. 33-0102-0901

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 54-2007, Idaho Code.

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

THURSDAY, OCTOBER 29, 2009 -- 10:00 a.m.

**IDAHO REAL ESTATE COMMISSION
633 N. Fourth Street, Boise 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 proposed rule would provide that a non-Idaho attorney may represent a party and appear before the Commission in a contested case under the procedures for limited admission set forth in Idaho Bar Commission Rule 222.

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

No fee is being imposed or increased.

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 negative impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because interested groups participated in open meeting discussions prior to publication of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, Phone: (208) 334-3285; toll free in Idaho (866) 447-5411; Fax: (208) 334-2050.

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 28, 2009.

DATED this 20th day of August, 2009.

Jeanne Jackson-Heim
Executive Director
Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
Phone: (208) 334-3285; toll free in Idaho (866) 447-5411; Fax: (208) 334-2050.

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0102-0901

208. REPRESENTATION OF PARTIES AT HEARING.

01. Appearances and Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (7-1-93)

- a.** A natural person may represent himself or herself or be represented by a duly authorized employee or attorney. (7-1-93)
- b.** A partnership may be represented by a partner, duly authorized employee, or attorney. (7-1-93)
- c.** A corporation may be represented by an officer, duly authorized employee, or attorney. (7-1-93)
- d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (7-1-93)
- e.** A limited liability company may be represented by a member, a manager or a duly authorized employee or attorney. (7-1-96)

02. Out-of-State Attorneys. An attorney who is not an active member of the Idaho Bar may represent a party and appear before the agency if granted limited admission by the Idaho Bar in accordance with the procedure set forth in Rule 222 of the Idaho Bar Commission Rules, provided references in that rule to “the court” shall instead mean the agency. ()

023. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (7-1-93)

IDAPA 33 - IDAHO REAL ESATE COMMISSION
33.01.03 - RULES GOVERNING SUBDIVIDED LANDS REGISTRATION
DOCKET NO. 33-0103-0901 (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 55-1811, Idaho Code.

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

THURSDAY, OCTOBER 29, 2009 -- 10:00 a.m.

IDAHO REAL ESTATE COMMISSION
633 N. Fourth Street, Boise, 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:

This proposed rulemaking would establish a new rules chapter governing the Real Estate Commission's administration of the Subdivided Lands Act. The rule will also establish the reduction in registration fees under the Commission's proposed legislation to encourage use of the on-line documents management system.

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

No new fee or increase is being imposed. The proposed rule would provide that all registration application fees prescribed in Section 55-1809, Idaho Code, be reduced by 25% for applicants who file using the web-based document management system sponsored by the Association of Real Estate License Law Official.

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:

Revenues deposited with the treasury and credited to the Special Real Estate Fund would be reduced by an estimated \$6,000 for FY2010/11.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule seeks only to reduce fees and is non controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, Phone: (208) 334-3285; toll free in Idaho (866) 447-5411; Fax: (208) 334-2050.

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 28, 2009.

DATED this 20th day of August, 2009.

Jeanne Jackson-Heim, Executive Director
Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
Phone: (208) 334-3285; toll free in Idaho (866) 447-5411; Fax: (208) 334-2050

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0103-0901

IDAPA 33
TITLE 01
CHAPTER 02

33.01.03 - RULES OF THE IDAHO REAL ESTATE COMMISSION
GOVERNING REGISTRATION OF SUBDIVIDED LANDS

GENERAL PROVISIONS

RULES 000 THROUGH 006

000. LEGAL AUTHORITY.

The Rules of the Idaho Real Estate Commission governing registration of subdivided lands contained herein have been adopted pursuant to Section 55-1811(1), Idaho Code. Any violation of these rules, or of any provision of Chapter 18, Title 55, shall be sufficient cause for disciplinary action as prescribed in Sections 55-1811 through 55-1823, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 33.01.03, "Rules of the Idaho Real Estate Commission Governing Registration of Subdivided Lands," IDAPA 33, Title 01, Chapter 03. ()

02. Scope. These rules contain the requirements for implementation and enforcement of the Subdivided Lands Disposition Act, contained in Chapter 18, Title 55, Idaho Code. ()

002. WRITTEN INTERPRETATIONS.

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

003. ADMINISTRATIVE APPEALS.

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

004. INCORPORATION BY REFERENCE.

There are no materials incorporated by reference. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.

01. Office Hours. The office hours are 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. ()

02. Mailing Address. The mailing address is P.O. Box 83720, Boise Idaho 83720-0077. ()

03. Street Address. The Commission's street address is 633 North Fourth Street, Boise, Idaho 83702. ()

04. Telephone Numbers. The Commission can be reached by telephone at (208) 334-3285 and by fax at (208) 334-2050. A toll-free number for JTRS Relay Service (telecommunications for the hearing impaired) is 1-800-377-3529. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Public Records Act, Title 9, Idaho Code. ()

007. -- 099. (RESERVED).

APPLICATION FOR REGISTRATION

RULES 100 -- 199

100. REGISTRATION FEES.

The application fees prescribed in Section 55-1809, Idaho Code, including the maximum fee, shall be reduced by twenty-five percent (25%) for any applicant that submits the required filings using the web-based document management system sponsored by the Association of Real Estate License Law Officials. The reduction does not apply to any late fee. ()

101. -- 999. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0901

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 21, 2009.

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 is being amended to add the tax brackets for calendar year 2009, and remove the information for calendar year 2004 so only 5 years of historical data is retained in the rule. 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.

Rule 173 is being amended to include trusts and estates in the general discussion of the Idaho capital gains deduction and pass-through entities. It had been inadvertently left out from the rule.

Rule 201 is being amended to modify how a taxpayer can make the election to forego the net operating loss carryback by removing the option of attaching the federal election. This will eliminate confusion when a taxpayer has attached a federal return that includes the federal election but does not want to make the election for Idaho. The rule also clarifies that if a net operating loss is required to be carried back, if the statute of limitations has expired on the carryback year, a refund will not be allowed in the closed taxable year.

Rule 252 is being amended to provide nonresidents with general rules on how deductions should be calculated in computing Idaho adjusted gross income. This includes information for the following groups of deductions: 1) Deductions directly related to specific items of income or property, 2) Deductions allowed based on qualifying types of income, and 3) Deductions that do not relate to specific items of income or to the earning of qualifying income. Specific examples are also included.

Rule 273 is being amended to provide that the unemployment compensation for nonresidents is sourced to the state that paid it. By sourcing this income based on the state of the payor, the taxpayer will know with certainty whether or not the income is Idaho source.

Rule 450 is being amended so that the directions to taxpayers on how to make intercompany eliminations is consistent with requirements in Rules 600 and 641. Eliminating all intercompany transactions in some cases may not properly reflect the factors, so this provision is being modified.

Rule 570 is applicable to multistate corporations and is being amended to provide that commissions and fees related to the sale of another taxpayer's real property are sourced to the state where the property related to the commission and fees is located. This will be an easier determination for taxpayers and the Tax Commission than using costs of performance.

Rule 640 is being amended consistent with House Bill 3, which was passed by the 2009 Idaho Legislature. The bill amended Idaho Code section 63-3027B to clarify that one qualified corporation within the water's edge group who makes the election binds the other corporations to that election, including corporations added to the combined group in years after the initial election. The rule also clarifies the filing requirements of the election form and that a corporation that is not part of a unitary group cannot make the water's edge election.

Rule 641 is being amended to state that the filing of a protective 1120-F return by itself will not constitute the filing of a federal return for purposes of the water's edge combined report.

Rules 700 and 701 are being amended consistent with House Bill 232 as amended, which was passed by the 2009 Idaho Legislature. The bill amended Idaho Code section 63-3029 to allow a resident trust or estate an income tax credit for taxes paid to other states. Examples of the calculations for trusts and estates are being added to Rule 700. Rule 701 is being amended to add information addressing income subject to tax by both states with regard to estates and trusts.

Rule 711 is being amended to correct terms and delete obsolete information relating to the tax paid by an S corporation. A sentence clarifying the times when a lessee may claim the investment tax credit is also being added.

Rule 765 is being modified to note the reduction required to qualified investment for grants received from the rural Idaho economic development biofuel infrastructure matching grant fund.

Rule 771 is being amended to include the grocery credit amounts for 2009. These amounts are scheduled for increases each year as provided by Idaho Code section 63-3024A.

Rule 824 is being amended to correct terms and delete obsolete information relating to the tax paid by an S corporation.

Rule 874 is being amended to require all W-2s to be filed with the State Tax Commission by the last day of February. This will facilitate the state's ability to verify the information on the W-2 prior to issuing refunds.

Rules 940, 943, 944, and 945 are being amended consistent with House Bill 242, which was passed by the 2009 Legislature. The bill amended the Idaho Small Employer Incentive Act by extending the incentives through 2020.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), 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 28, 2009.

DATED this 28th day of August, 2009.

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 PROPOSED TEXT OF DOCKET NO. 35-0101-0901

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 for the latest five (5) years are identified in Subsection 075.03 of this rule. 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. (5-8-09)

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 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)

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

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$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)

eb. 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
\$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)

ec. 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)

ed. 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

(5-8-09)

e. For taxable years beginning in 2009, as calculated on April 28, 2009:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
<u>\$1</u>	<u>\$1,321</u>	<u>\$0</u>	+ <u>1.6% of taxable income</u>
<u>\$1,321</u>	<u>\$2,642</u>	<u>\$21.13</u>	+ <u>3.6% of the amount over \$1,321</u>
<u>\$2,642</u>	<u>\$3,963</u>	<u>\$68.69</u>	+ <u>4.1% of the amount over \$2,642</u>
<u>\$3,963</u>	<u>\$5,284</u>	<u>\$122.84</u>	+ <u>5.1% of the amount over \$3,963</u>
<u>\$5,284</u>	<u>\$6,604</u>	<u>\$190.21</u>	+ <u>6.1% of the amount over \$5,284</u>
<u>\$6,604</u>	<u>\$9,907</u>	<u>\$270.78</u>	+ <u>7.1% of the amount over \$6,604</u>
<u>\$9,907</u>	<u>\$26,418</u>	<u>\$505.24</u>	+ <u>7.4% of the amount over \$9,907</u>
<u>\$26,418 or more</u>		<u>\$1,727.05</u>	+ <u>7.8% of the amount over \$26,418</u>

()

(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, trust, or estate may be eligible for the Idaho capital gains deduction. The deduction is ~~claimed~~ allowed only on the return of an individual shareholder, ~~or~~ individual partner, or individual beneficiary. (3-20-97)()

b. Partnerships, ~~and~~ S corporations, ~~electing to~~ trusts, and estates that pay the tax for an electing individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction.

(4-5-00)()

02. 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)

03. Multistate Entities. A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

04. Examples. (3-20-97)

a. XYZ Farms, a multistate partnership, sold 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 173.04.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. (5-8-09)

c. Assume the same facts as in Paragraph 173.04.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 173.04.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. (5-8-09)

d. Assume the same facts as in Paragraph 173.04.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). (5-8-09)

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 173.04.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 (\$40,000 Idaho gain X 1/3 interest X 80% = \$10,667). (5-8-09)

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)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201). (7-1-99)
Section 63-3022(c), Idaho Code.

01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers. (3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

02. Adjustments to Net Operating Losses. (3-20-97)

a. Adjustments to a net operating loss shall be determined pursuant to the law applicable to the loss year. (3-20-97)

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations. (3-20-97)

03. Adjustments in Carryback and Carryover Years. (3-20-97)

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year shall be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

c. Adjustments may be made even though the year is closed due to the statute of limitations. (3-20-97)

04. Net Operating Loss Carrybacks. (3-20-97)

a. The net operating loss carryback allowed for the entire carryback period shall not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (4-5-00)

b. Except as provided in Subsection 201.04.c., the net operating loss carryback shall be applied as follows: (4-5-00)

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss carryback is applied to the third preceding taxable year and if not absorbed, the difference applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss carryback is applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (4-5-00)

c. If the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.b. shall not apply and the net operating loss carryover shall be applied as follows: (5-3-03)

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

d. If the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback shall not result in a refund for the closed taxable year. ()

05. Timing and Method of Electing to Forego Carryback. (3-30-01)

a. Net operating losses incurred in taxable years beginning ~~prior to~~ on or after January 1, 2001. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (3-30-01)()

i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)

iii. The amount of the net operating loss. (3-20-97)

~~b. Net operating losses incurred in taxable years beginning on or after January 1, 2001. The election must be made by the due date of the Idaho loss year return, including extensions. Once the completed Idaho return is filed, the extension period expires. The election shall be made by either a~~ Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss ~~or following the requirements of Subsection 201.05.a shall not constitute an election for Idaho purposes.~~ (3-30-01)()

c. If the election is made on an amended or original return filed subsequent to the time allowed in Subsections 201.05.a. ~~and 201.05.b.~~, it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.04.b. (3-30-01)()

06. Order in Which Losses Are Applied in a Year. Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

07. Documentation Required When Claiming a Net Operating Loss Deduction. A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

08. Conversion of C Corporation to S Corporation. A net operating loss carryback or carryover

from a taxable year in which a corporation is a C corporation cannot be carried to a taxable year in which the corporation is an S corporation. However, an S corporation subject to the tax on built-in gains is allowed to deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).

Section 63-3026A(6), Idaho Code.

(3-20-97)

01. ~~Payments to an Individual Retirement Account (IRA).~~ ~~To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. Multiply the deduction allowed for federal purposes by the percentage. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(e)(1). Idaho compensation is determined pursuant to Rule 270 of these rules.~~ **In General.** Deductions allowed in computing adjusted gross income shall be allowed in computing Idaho adjusted gross income unless specifically denied by Idaho law. The amount allowed shall be computed as provided in this rule. Each computation in this rule shall include the amounts reported for the taxable year unless otherwise indicated. (3-30-01)()

02. ~~Payments to a Keogh Retirement Plan, Simplified Employee Pension (SEP) Plan, Self-Employment Tax, and Self-Employment Health Insurance.~~ ~~To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. Multiply the self-employment deductions allowed for federal purposes by the percentage.~~ **Deductions Directly Related to Specific Items of Income or Property.** If the deduction directly relates to a specific item of income or property, the allowable deduction shall be computed by dividing the amount of related income reported in Idaho income by the total of such related income reported in federal income. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. If the deduction is related to property that did not generate income during the taxable year, the deduction shall be allowed in the proportion that the property to which the deduction relates was located in Idaho. Examples of some of these deductions include the following: (3-20-97)()

03a. ~~Penalty on early withdrawal of savings.~~ ~~To determine the allowable adjustment, calculate a percentage deduction shall be computed by dividing the interest income of the time savings deposit subject to the penalty that is required to be included as in Idaho income by the total interest income of the time savings deposit. Multiply included in federal income. This percentage is multiplied by the penalty deduction allowed for federal purposes by the percentage.~~ (3-20-97)()

b. Certain business expenses of reservists, performing artists, and fee-basis government officials. ()

c. Domestic production activities deduction. The allowable deduction shall be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. ()

d. Jury duty pay remitted to an employer. ()

e. Deductible expenses related to income from the rental of personal property engaged in for profit. ()

f. Reforestation amortization and expenses. The allowable deduction shall be computed by dividing the income from the related timber operations included in Idaho income by the total income from the related timber operations. If there is no income from the related timber operations for the year of the deduction, the allowable

deduction shall be computed based on the percentage of property in Idaho to total property to which the reforestation amortization and expenses relate. This percentage is multiplied by the reforestation amortization and expense deduction allowed for federal income tax purposes. ()

g. Repayment of supplemental unemployment benefits. The allowable deduction shall be computed by dividing the supplemental unemployment benefits included in Idaho income by the total supplemental unemployment benefits reported in federal income. This percentage is multiplied by the repayment deduction allowed for federal purposes. ()

h. Attorney fees and court costs. The allowable deduction shall be computed by dividing the total income related to the attorney fees and court costs included in Idaho income by the total income from such actions. This percentage is multiplied by the attorney fees and court costs allowed for federal purposes. ()

03. Deductions Allowed Based on Qualifying Types of Income. If the deduction is dependent on the taxpayer earning a qualifying type of income, the allowable deduction shall be computed by dividing the amount of the qualifying income reported in Idaho income by the total of such qualifying income reported. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. ()

a. Payments to an individual retirement account (IRA), federal health savings or medical savings account, or Section 501(c)(18)(D) retirement plan. The allowable deduction shall be computed by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. This percentage is multiplied by the deduction allowed for federal purposes. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. ()

b. Payments to a Keogh retirement plan, simplified employee pension (SEP) Plan, SIMPLE Plan, self-employment tax, and self-employment health insurance. The allowable deduction shall be computed by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. This percentage is multiplied by the self-employment deductions allowed for federal purposes. ()

04. Other Deductions. Deductions that do not relate to specific items of income or to the earning of qualifying income shall be allowed in the proportion that Idaho total income bears to total income. Such deductions include the following: ()

~~**04a.** Alimony payments. *The deduction for alimony payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income.* (3-15-02)()~~

~~**05b.** Moving expenses. *The deduction for moving expenses allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income.* (3-15-02)()~~

~~**06. Payment to a Federal Medical Savings Account.** *To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. Multiply the deduction allowed for federal purposes by the percentage. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules.* (3-30-01)~~

~~**07c.** Student loan interest payments. *The deduction for student loan interest payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income.* (3-15-02)()~~

d. Tuition and fees deduction. ()

(BREAK IN CONTINUITY OF SECTIONS)

273. IDAHO COMPENSATION -- UNEMPLOYMENT COMPENSATION (RULE 273).

Section 63-3026A(3), Idaho Code.

(5-8-09)

~~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. Unemployment compensation benefits are Idaho source income if the benefits are received by the taxpayer from the state of Idaho, even though the benefits may relate to wages earned in Idaho and another state. Unemployment compensation benefits received from another state shall not constitute Idaho source income even though the calculation of the benefits may be based in part on wages earned in Idaho.~~

(5-8-09)()

~~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).~~

(5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

450. APPORTIONMENT FORMULA (RULE 450).

Section 63-3027(i), Idaho Code.

(3-20-97)

01. **Apportionment Factors.** All of a taxpayer's business income shall be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(i), Idaho Code. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor.

(3-20-97)

02. **Intercompany Transactions.** ~~All~~ Intercompany transactions shall be eliminated ~~when computing to the extent necessary to properly compute~~ the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report.

(3-20-97)()

03. **Rounding.** The individual factors and the average apportionment factor shall be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped.

(3-20-97)

04. **Verification of Factors.** The taxpayer shall make available the fifty-one (51) state apportionment factor detail when requested by the Tax Commission. Failure to do so may justify the imposition of the negligence penalty provided by Section 63-3046(a), Idaho Code.

(7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

570. SPECIAL RULES -- SALES FACTOR (RULE 570).

Section 63-3027(s), Idaho Code. (3-20-97)

01. De Minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho. (3-20-97)

02. Gross Receipts from Intangibles. (3-20-97)

a. If the income producing activity in respect to business income from intangible personal property can be readily identified, the gross receipts shall be included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. (4-11-06)

b. If business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the gross receipts shall be excluded from the denominator and numerator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest shall be excluded from the denominator and numerator of the sales factor. (4-11-06)

c. Subsection 570.02 of this rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. (4-11-06)

03. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses shall be treated as provided in Subsection 570.03 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.03 of this rule, each treasury function shall be considered separately. (4-11-06)

a. For purposes of Subsection 570.03 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. (4-11-06)

b. For purposes of Subsection 570.03 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. (4-11-06)

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. (4-5-00)

d. Examples. (4-5-00)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (4-5-00)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.03 of this rule does not operate to classify those sales as attributable to a treasury function. (4-11-06)

04. Commissions and Fee Income Related to the Sale of Another Taxpayer's Real Property.
Notwithstanding the provisions of Rule 550 of these rules, gross receipts from commissions or fees arising as a result of the personal services and activities associated with the selling of another taxpayer's real property shall be sourced to the state where the real property is located. ()

(BREAK IN CONTINUITY OF SECTIONS)

640. WATER'S EDGE -- MAKING THE ELECTION (RULE 640).
Section 63-3027B, Idaho Code. (3-20-97)

01. In General. Rules 640 through 649 of these rules apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules pursuant to this Act, Rules 640 through 649 of these rules control. (3-20-97)

02. The Election. The water's edge election is made for purposes of determining which corporations are included in a combined ~~report~~ group for Idaho income tax purposes. If a corporation is not part of a unitary group for which a combined report is required, the corporation cannot make the water's edge election. The election must be made in accordance with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. (3-20-97)()

a. The election ~~can~~ may be made for a year beginning on or after January 1, 1993. The election must be filed with the original tax return for the first year of the election. If the water's edge group changes in a subsequent year through the acquisition or disposition of a corporation with an Idaho filing requirement, a copy of the election shall be attached to the tax return for such taxable year and the changes to the water's edge group shall be noted on the form. See Rule 643 of these rules for Change of Election. (3-20-97)()

b. ~~All taxpayers required to file an Idaho return and included in the water's edge combined group must make the election.~~ Any corporation included in the unitary group that files with Idaho a consent to the reasonable production of documents may make the election on behalf of the group. An election made by any member of a unitary group binds all other members regardless of any changes in the unitary group in later taxable years. ()

c. The election must be made on a form provided by the Tax Commission. ~~If the group makes a joint election, and include~~ a list of each corporation required to file ~~must be provided~~ an Idaho income tax return. ~~A joint~~ The election must be signed by an individual authorized to bind all companies to the election. (3-20-97)()

ed. Idaho taxpayers having a valid water's edge election shall compute Idaho taxable income in accordance with Sections 63-3027 and 63-3022, Idaho Code, except as modified by Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. (3-20-97)

03. Failure to Include Election. Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022,

Idaho Code.

(3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

641. WATER'S EDGE -- ELEMENTS OF A COMBINED REPORT (RULE 641).

Section 63-3027B, Idaho Code.

(3-20-97)

01. Income. Income for the water's edge combined group is computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the water's edge combined group shall be eliminated to the extent necessary to properly reflect combined income. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included in the computation of the income of the water's edge combined group. (4-2-08)

02. Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group shall be determined pursuant to Section 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the group shall be eliminated to the extent necessary to properly compute the apportionment factors of the water's edge combined group. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, shall be included in the sales factor computation. (4-2-08)

03. Foreign Corporations Filing Protective Returns. A foreign corporation filing a protective Form 1120-F return shall not be deemed to be filing a federal income tax return for purposes of taking into account the income and apportionment factors of affiliated corporations in a unitary relationship with the taxpayer solely on the basis of filing this federal return. If subsequent to the filing of the protective 1120-F return it is determined that the foreign corporation had income effectively connected with the United States and was required to file a federal income tax return, the income and apportionment factors of the foreign corporation shall be required to be included in the combined report of the unitary group for such taxable year and an Idaho return or amended return may be required. ()

(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, estates, and trusts. (5-8-09)()

a. The credit is allowed to resident individuals who are domiciled in Idaho at the time the income was earned in another state. (5-8-09)

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. (5-8-09)

c. The credit is allowed to an estate or trust that is an Idaho resident at the time the income was earned in another state. ()

ed. Income earned in another state shall be determined under Section 63-3026A, Idaho Code, and related rules. (5-8-09)

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, estate, 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. (~~5-8-09~~)()

03. Taxes Not Eligible for the Credit. If Any tax or portion thereof is imposed on capital stock, retained earnings, stock values, or a basis other than income, the tax is not eligible for the credit. The credit shall not be allowed for income taxes imposed by another state on income not taxed by Idaho. (~~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, estate, 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. ()

i. 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 ($\$12,000/\$50,000 = 24\% \times \text{tax paid to Idaho}$). (~~3-30-07~~)()

ii. See Rule 701 of these rules for information related to part-year residents. ()

d. The credit allowed to an estate or trust may not exceed the proportion of the tax otherwise due to Idaho that the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. ()

i. Federal total income of the estate or trust derived from sources in the other state shall be determined using the Idaho sourcing rules applicable to nonresidents found in Section 63-3026A, Idaho Code and related rules. Income derived from the ownership or disposition of any interest in real or tangible personal property located in the other state shall be considered to be income derived from sources in the other state. Interest income earned on a bank account generally would not be income derived from sources in the other state as provided in Rule 266 of these rules. ()

ii. For example, if a trust sells Oregon property at a gain of thirty-six thousand dollars (\$36,000), which is the only income derived from sources in the other state, and the trust's federal total income is ninety thousand dollars (\$90,000), the credit cannot exceed forty percent (40%) of the tax paid to Idaho ($\$36,000/\$90,000 = 40\% \times$ tax paid to Idaho.) ()

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. ()

a. Individuals. 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~~ an individual 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 when the taxpayer individual was not domiciled or residing in Idaho does not qualify. (5-8-09)()

b. Estates and Trusts. If an estate or trust is determined to be a part-year resident, income subject to tax by both states shall mean the total amount of income the estate or trust receives from sources outside of Idaho during the portion of the year the estate or trust is a resident of Idaho. Income received during the portion of the year when the estate or trust was not a resident of Idaho does not qualify. ()

c. Both the source state and Idaho must impose an income tax on the income for the income to be subject to tax by both states. ()

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 ($6 \text{ months} / 12 \text{ months} = 1/2$) 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 income earned during the year since he is domiciled in California. Idaho will tax only the income he earned while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California on his Idaho wages because 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. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

711. IDAHO INVESTMENT TAX CREDIT -- TAXPAYERS ENTITLED TO THE CREDIT (RULE 711).
Section 63-3029B, Idaho Code. (3-20-97)

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment 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 investment tax credit to the extent allowable against its tax liability. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. 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. (3-15-02)

02. Conversion of C Corporation to S Corporation. (3-20-97)

a. An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on net recognized built-in gains, ~~net capital gains~~, and excess net passive income. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. (~~3-20-97~~)()

b. The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation shall be liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. (3-20-97)

03. Agricultural Cooperatives. The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year shall be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. (3-20-97)

a. The distribution to members is made as provided in Rule 785 of these rules. (3-15-02)

b. The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. (3-20-97)

04. Leased Property. Generally the credit for qualified investments in leased property is claimed by the lessor. A lessee may claim the investment tax credit on leased property only as provided in Paragraphs 711.04.a. and 711.04.b. of this rule. (~~3-20-97~~)()

a. If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit shall be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. (3-20-97)

b. If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

765. BIOFUEL INFRASTRUCTURE INVESTMENT TAX CREDIT -- IN GENERAL (RULE 765).
Section 63-3029M, Idaho Code. (4-2-08)

01. Credit Allowed. The biofuel infrastructure investment tax credit allowed by Section 63-3029M,

Idaho Code, may be earned during taxable years beginning on and after January 1, 2007, and before December 31, 2011. It applies to qualified investment placed in service after July 1, 2007. (4-2-08)

a. Qualified investment placed in service on or before July 1, 2007, does not qualify for the biofuel infrastructure investment tax credit. The investment may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if pumps to be used for biofuel are placed in service in Idaho on May 15, 2007, the biofuel pumps do not qualify for the biofuel infrastructure investment tax credit since they were not placed in service after July 1, 2007. The biofuel pumps will qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (4-2-08)

b. Qualified investment placed in service after July 1, 2007, during a taxable year beginning before January 1, 2007, does not qualify for the biofuel infrastructure investment tax credit. The investment may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if pumps to be used for biofuel are placed in service in Idaho on August 1, 2007, during a taxable year that begins on October 1, 2006, the biofuel pumps do not qualify for the biofuel infrastructure investment tax credit since they were not placed in service in a taxable year beginning on or after January 1, 2007, and before December 31, 2011. The biofuel pumps will qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (4-2-08)

02. Qualified Investment. For purposes of the biofuel infrastructure investment tax credit, qualified investment includes the following: (4-2-08)

a. New fueling infrastructure dedicated to the purpose of selling or offering for sale biofuel. New fueling infrastructure shall mean investment in fueling infrastructure that: (4-2-08)

i. Is constructed or erected by the taxpayer, or (4-2-08)

ii. 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 infrastructure. (4-2-08)

b. Costs to upgrade existing fueling infrastructure that was previously incompatible to enable it to offer biofuel. Such costs include expenses related to the cleaning of existing fuel storage tanks, trucks, or other equipment for the purpose of providing biofuels. (4-2-08)

c. Fueling infrastructure means necessary tanks, piping, pumps, pump stands, hoses, monitors, blending equipment, meters, rack injection systems, or any other equipment and the costs to install the equipment that is necessary for a fuel distributor or a retail fuel outlet to offer biofuel for sale. (4-2-08)

03. Reduction to Qualified Investment for Biofuel Infrastructure Grants. Each taxpayer who receives a biofuel infrastructure grant as allowed by Section 42-1806, Idaho Code, shall reduce the amount of qualified investment computed under Section 63-3029M, Idaho Code, by the amount of the biofuel infrastructure grant received during the taxable year. ()

034. Limitations. Regardless of whether the biofuel infrastructure investment tax credit available in a taxable year results from a carryover earned in prior years, credit earned in the current year, or both, the biofuel infrastructure investment tax credit allowable in any taxable year shall be limited as follows: (4-2-08)

a. Tax liability. The biofuel infrastructure investment tax credit claimed during a taxable year may not exceed the lesser of: (4-2-08)

i. Fifty percent (50%) of the tax; or (4-2-08)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the biofuel infrastructure investment tax credit. See Rule 799 of these rules for the priority order for nonrefundable credits. (4-2-08)

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 biofuel infrastructure investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (4-2-08)

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. (4-2-08)

045. **Carryovers.** The carryover period for the biofuel infrastructure investment tax credit is five (5) years. (4-2-08)

056. **Taxpayers Entitled to the Credit.** The biofuel infrastructure investment tax credit is allowed to fuel distributors and retail fuel dealers. Rule 711 of these rules shall apply to the biofuel infrastructure investment tax credit, except that limitations referenced in Subsection 711.01 of these rules shall be those limitations as provided in Section 63-3029M, Idaho Code. (4-2-08)

067. **Pass-Through Entities.** The credit 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 credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (4-2-08)

078. **Coordination With Investment Tax Credit and Property Tax Exemption in Lieu of the Investment Tax Credit.** (4-2-08)

a. A taxpayer who elects to claim the biofuel infrastructure investment tax credit on qualified investment may not claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. A taxpayer may, however, claim the investment tax credit on property for which he is not claiming the biofuel infrastructure investment tax credit. (4-2-08)

b. A taxpayer who elects to claim the property tax exemption in lieu of the investment tax credit allowed by Section 63-3029B, Idaho Code, may not claim the biofuel infrastructure investment tax credit on the same property. (4-2-08)

c. A taxpayer may claim the investment tax credit, the property tax exemption in lieu of the investment tax credit, and the biofuel infrastructure investment tax credit in the same taxable year. However, only one (1) of the incentives may be claimed on any one (1) property. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

771. GROCERY CREDIT -- TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).

Section 63-3024A, Idaho Code. (5-8-09)

01. Residents. (5-8-09)

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:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<u>2009</u>	<u>\$60</u>	<u>\$40</u>
2008	\$50	\$30

~~(5-8-09)~~()

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

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. (5-8-09)

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: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

04. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

05. Illegal Residents. An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

06. Members of the Armed Forces. A member of the United States Armed Forces who is: (5-8-09)

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

07. 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. (5-8-09)

08. Claiming the Credit. (5-8-09)

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. (5-8-09)

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. (5-8-09)

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. (5-8-09)

09. 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. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

824. CORPORATE ESTIMATED PAYMENTS -- MISCELLANEOUS PROVISIONS (RULE 824).

Section 63-3036A, Idaho Code. (3-20-97)

01. Unitary Groups Filing Group Returns. (3-20-97)

a. Each corporation included in a group return that is required to make estimated payments shall separately compute its estimated tax. (3-20-97)

b. Estimated payments shall be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. (3-20-97)

02. S Corporations. An S corporation is subject to Section 63-3036A, Idaho Code, limited to its taxes on net recognized built-in gains, ~~capital gains~~, excessive net passive ~~investment~~ income, and from recapture of ~~investment~~ Idaho income tax credits. (3-20-97)(____)

03. Tax-Exempt Organizations. A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. (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 W-2s electronically by Section 6011, Internal Revenue Code, shall file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file 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. (5-8-09)

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. (5-8-09)

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)

940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- DEFINITIONS (RULE 940).

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 946 of these rules, the following definitions apply: (3-30-07)

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. (3-30-07)

02. New Plant and Building Facilities. New plant and building facilities are facilities where employees are physically employed. (3-30-07)

03. Investment in New Plant. Investment in new plant shall mean new plant and building facilities: (3-30-07)

a. That are constructed or erected by the taxpayer, or (3-30-07)

b. That are 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. (3-30-07)

c. That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. (3-30-07)

04. 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. (3-30-07)

05. 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. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. (3-30-07)

06. Project Period. The project period is a period of time that begins and ends as follows: (3-30-07)

a. The project period may ~~not~~ begin on one (1) of the following dates, but not prior to January 1, 2006. ~~It shall begin the earlier of:~~ (3-30-07)(____)

i. The date of a physical change to the project site; or (3-30-07)

- ii. The date new employees begin providing personal services at the project site. (3-30-07)
- b. The project period shall end at the earliest of: ~~(3-30-07)~~(____)

 - i. The conclusion of the project~~or~~, ~~(3-30-07)~~(____)
 - ii. Ten (10) years after the beginning of the project; or (____)
 - iii. December 31, 20~~12~~20. ~~(3-30-07)~~(____)

07. 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) contiguous site. (3-30-07)

08. Small Employer Investment Tax Credit. Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. (3-30-07)

09. 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. (3-30-07)

10. 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. (3-30-07)

11. 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 942 of these rules for more information. (3-30-07)

12. Small Employer Tax Incentives. Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

943. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 943). Sections 63-4403 and 63-4406, Idaho Code. (3-30-07)

01. Credit Allowed. (3-30-07)

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, 2006 and before December 31, 20~~12~~20. ~~(3-30-07)~~(____)

b. The credit applies to qualified investments 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, 2005, but in a fiscal year beginning in 2005, 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. (3-30-07)

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. (3-30-07)

03. Qualified Investments. (3-30-07)

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 63-4403, Idaho Code, and related rules to qualify as qualified investments. (3-30-07)

b. Qualified investments must be placed in service in Idaho, but may be located in or outside the project site to qualify. (3-30-07)

04. Limitations. The small employer investment tax credit allowable in any taxable year shall be limited as follows: (3-30-07)

a. The small employer investment tax credit claimed during a taxable year may not exceed the lesser of: (3-30-07)

i. Seven hundred fifty thousand dollars (\$750,000); or (3-30-07)

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. (3-30-07)

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. (3-30-07)

05. Carryovers. The carryover period for the small employer investment tax credit is fourteen (14) years. (3-30-07)

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 investments 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. (3-30-07)

944. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 944). Sections 63-4404 and 63-4406, Idaho Code. (3-30-07)

01. Credit Allowed. (3-30-07)

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, 2006 and before December 31, 20~~20~~²⁰. (~~3-30-07~~)()

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, 2005, but in a fiscal year beginning in 2005, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit. (3-30-07)

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. (3-30-07)

03. Buildings and Structural Components of Buildings. (3-30-07)

a. To qualify for the small employer real property improvement tax credit, buildings and structural

components of buildings must meet the following requirements: (3-30-07)

i. The buildings and structural components of buildings must be new as defined in Subsection 940.03 of these rules. Structural components placed in service as part of a renovation of an existing building do not qualify. (3-30-07)

ii. The buildings and structural components of buildings must be placed in service at the project site. (3-30-07)

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. (3-30-07)

04. Limitations. The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows: (3-30-07)

a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of: (3-30-07)

i. One hundred twenty-five thousand dollars (\$125,000); or (3-30-07)

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. (3-30-07)

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. (3-30-07)

05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years. (3-30-07)

945. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 945). Sections 63-4405 and 63-4406, Idaho Code. (3-30-07)

01. Credit Allowed. (3-30-07)

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, 2006 and before December 31, 20~~10~~20. (~~3-30-07~~)()

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, 2005, but in a fiscal year beginning in 2005, 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. (3-30-07)

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. (3-30-07)

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. (3-30-07)

03. Calculating Number of Employees. (3-30-07)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(e) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year.

Such requirements include the following: (3-30-07)

- i. The employee must have worked primarily within the project site for the taxpayer. (3-30-07)
- ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. (3-30-07)
- iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. (3-30-07)
- iv. The employee must have been subject to Idaho income tax withholding. (3-30-07)
- v. The employee must have been covered for Idaho unemployment insurance purposes. (3-30-07)
- 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. (3-30-07)
- 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. (3-30-07)

b. Idaho Department of Labor Reports. The taxpayer should begin with his Idaho Department of 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. (3-30-07)

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. (3-30-07)

04. Calculating the Number of New Employees. (3-30-07)

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: (3-30-07)

- i. The number of employees for the prior taxable year; or (3-30-07)
- ii. The average of the number of employees for the three (3) prior taxable years. (3-30-07)

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 945.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 945.04.a.i., and 945.04.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. (3-30-07)

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. (3-30-07)

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. (3-30-07)

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). (3-30-07)

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). (3-30-07)

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). (3-30-07)

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). (3-30-07)

06. Limitations. The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: (3-30-07)

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. (3-30-07)

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. (3-30-07)

07. Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. (3-30-07)

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. (3-30-07)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635, and 63-3039.

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 21, 2009.

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 012 is being amended to state specifically that contractors who install materials into real property are consumers of the property. Also to add a specific statement that material suppliers who do not install building materials are retailers and are required to collect sales tax on the sales price of the materials.

Rule 037 is being amended to provide the definition of "transportation of freight or passengers" and to adopt the statutory language requiring that the aircraft buyer must provide services indiscriminately to the public and that the aircraft is used to transport people or property from one location on the ground or water to another. This will bring the rule into conformity with the changes that HB 10 made to Section 63-3622GG, Idaho Code, in 2009.

Rule 094 is being amended to strike the words "zoos and museums" as admissions to nonprofit zoos and museums are exempt from tax under Section 63 3622O(1)(1), Idaho Code.

Rule 107 is being amended to strike the tire pressure requirement for ATVs and to clarify that the new resident exemption applies not only to motor vehicles but to privately owned aircraft and off-road vehicles. This brings the rule into conformity with the 2009 legislative changes that HB 10 made to Section 63-3621, Idaho Code, and SB 1098 made to Section 49-102, Idaho Code.

Rule 128 is being amended to state that the seller has no duty or obligation to collect sales or use taxes in regard to any sale for which he has a valid certificate regardless of whether the purchaser properly or improperly claimed the exemption, unless the sale can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. The amendment would include a definition of "taxable as a matter of law" to provide guidance both to retailers and the Commission's staff. Also, to provide examples of valid certificates and examples of certificates that are filled out incorrectly.

Rule 136 is being amended to state that after a developer has identified the location and boundaries of the center, identified the qualifying retailers, and has met the expenditure requirements the Commission will start depositing 60% of the sales tax revenue from the center into the Demonstration Pilot Project Fund. Also to change the language and expenditure requirements to conform to the new statute.

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: NA

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 proposed rule, contact Jim Husted (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 28, 2009.

DATED this 28th day of August, 2009.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-0901

012. CONTRACTORS IMPROVING REAL PROPERTY (RULE 012).

01. In General. This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable. (7-1-93)

a. Contractors include bricklayers, plumbers, heating specialists, painters, sheet metal workers, carpet layers, electricians, land levelers, well drillers, landscapers, and all others who do contract work on real property. Unless these persons are employees of a contractor, they are acting as contractors and are consumers just as other contractors. (7-1-93)

b. Persons doing residential repairs, such as plumbers and electricians, as well as those who both sell and install carpet, also are contractors improving real property. Such contractors are defined as the consumers of the materials they install and are required to pay sales or use tax on their cost for the materials. They do not charge sales tax to their customers unless they make a sale of materials only, with no installation. (7-1-93)

c. The terms "contractor" and "subcontractor" are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property. ()

02. Contract. A contract to improve real property may be in any of the following forms. (7-1-93)

a. Lump Sum Contract. A lump sum contract is an agreement to furnish materials and services for a lump sum. (7-1-93)

b. Cost-plus Contract. A cost-plus contract is an agreement to furnish materials and services at the contractor's cost plus a fixed sum or percentage of the cost. (7-1-93)

c. Guaranteed Price Contract. A guaranteed price contract is an agreement to furnish materials and services with a guaranteed price which may not be exceeded. (7-1-93)

d. Time and Material Contract. A time and material contract is an agreement to sell a specific list of materials and supplies at retail or an agreed price and to complete the work for an additional agreed price or hourly

rate for services rendered. (7-1-93)

e. The contractor or repairman who affixes or installs the personal property into real property is the consumer of tangible personal property regardless of the type of contract entered into, whether it is a lump sum, time and material, or a cost-plus contract. ()

03. Use. As used in this rule, the term use includes exercising any right or power over tangible personal property in performing a contract to improve real property, regardless of who owns the material or if the material is leased. (7-1-93)

04. Real Property. See Rules 010 and 067 of these rules. (3-15-02)

05. Use Tax Reporting Number. Contractors need a use tax number if they make purchases on which sales tax has not been charged. In this case, they are required to report and pay the Idaho use tax to the state. If a contractor pays sales tax to his vendors on ALL purchases, he does not have to obtain a use tax number. (7-1-93)

06. Purchases by Contractors. Contractors are consumers of equipment they use in their business such as trucks, tractors, road graders, scaffolding, pipe cutters, trowels, wrenches, tools in general, oxygen, acetylene, oil, and similar items. They must pay the sales or use tax on their purchase of equipment, tools, and supplies. They must also pay tax on their purchase of building materials and fixtures. Fixtures include items such as lighting fixtures, plumbing fixtures, furnaces, boilers, heating units, air-conditioning units, refrigeration units, elevators, hoists, conveying units, awnings, blinds, vaults, cabinets, counters, and lockers. (7-1-93)

07. Fuels. A contractor must pay tax on fuels used in off-road equipment unless on-road fuels excise taxes have been paid. (7-1-93)

08. Custom-Made Goods. Sales tax applies to the entire price charged for custom-made goods sold by the maker. If a contractor orders fabricated steel from a steel company, he must pay sales tax on the entire price of the fabricated item, including the cost of the labor involved. On the other hand, if the contractor buys the steel and fabricates it himself for the job, he pays a tax only on the materials he buys. (7-1-93)

09. Value. The contractor owes use tax on the value of the job materials at the time he exercises right or power over them. Value, as used in Section 63-3621, Idaho Code, means: (7-1-93)

a. When a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor, with a contract to furnish and install goods, fabricates the goods and hires a subcontractor to do the installation, the amount subject to tax is the cost of material to the contractor who fabricated the goods. (7-1-93)

b. When a contractor who is also a retailer fabricates tangible personal property, puts it in his resale inventory, and later withdraws it for a job, tax applies to the fully fabricated value. This is true regardless of whether the fabricator installs the property himself or through an agent or subcontractor. (7-1-93)

10. Materials Provided by Project Owner. (7-1-93)

a. If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he must pay sales or use tax when he buys the material. If the owner does not pay tax on the materials, the contractor may be held liable for the tax. (7-1-93)

b. If material needed for a contract is purchased or supplied by an owner who is exempt from sales and use taxes, then the use by the contractor is subject to use tax. This is true even if the property is owned by an exempt entity such as the federal government or a state government agency. For example, if a contractor has a public works contract to build a structure using materials owned and supplied by the government, whether federal, state, or local, he is the consumer of the materials and is subject to a use tax on their value. This tax falls directly upon the contractor and not the owner of the property. (7-1-93)

c. A contractor who buys tangible goods cannot avoid tax just because the goods will be built in to a

structure which will belong to, or be used by an exempt entity. Contractors and subcontractors may not avoid paying sales or use tax due to a contract which allows invoices to be made out in the name of the exempt entity, such as the U.S. Government, and designate the contractor or subcontractor as an agent of the exempt entity. In this case, the contractor or subcontractor is the user or consumer of the material and its use, while it is in his possession and subject to his labor, is taxable. (7-1-93)

11. Subcontractor. In general, a subcontractor is treated the same as a general contractor. Whether his contract is with the owner or the general contractor, the subcontractor pays tax on materials he buys to improve real property. Like any contractor, the subcontractor could be employed to work on or with material purchased by the general contractor or the owner, with one or the other paying tax on the material purchased. These services rendered by the subcontractor are not taxable. His relationship with the owner or general contractor is no different than the relationship between the contractor and owner. However, the provisions of Subsection 011.10 of this rule apply equally to a subcontractor. (6-23-94)

12. Land Leveling. Persons who contract to level land are improving real property and are contractors under this rule. Accordingly, they are subject to tax on equipment, material, and supplies purchased for land leveling. (7-1-93)

13. Exempt Purchases by Contractors. A contractor can buy materials tax exempt, provided that he will install them into real property in a state that does not have a sales tax, such as Oregon, Montana, or Alaska. This exemption also applies to a contractor improving real property in Washington if he will not owe a sales or use tax for his activity there, even though a sales or use tax may be owed by a third party. Prior to July 1, 1993, this exemption was extended only to Idaho resident contractors. In order to grant this exemption the retailer must have a properly completed exemption certificate on file. See Rule 128 of these rules. Idaho tax applies to materials purchased or withdrawn from inventory for use in a contract to improve real property in states with a sales tax, such as Nevada, Utah, or Wyoming. (3-15-02)

- 14. Cross-References.** (7-1-93)
- a.** Road and paving contractors, see Rule 013 of these rules. (3-15-02)
 - b.** Contractor/retailers, see Rule 014 of these rules. (3-15-02)
 - c.** Well drillers/pump installers, see Rule 015 of these rules. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

- 01. Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)
- a. Recreational Flight.** The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)
 - b. Freight.** Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)
 - c. Transportation of Passengers.** The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

- d.** Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)
- e.** Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-20-04)
- f.** Day. For the purpose of this rule any part of a day is a day. (7-1-94)
- g.** Transportation of freight or passengers for hire. ~~For the purposes of this rule, “~~Transportation of freight or passengers for hire” means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. ~~(3-30-07)(_____)~~
- 02. Sales of Aircraft.** Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)
- a.** Primarily used to transport passengers or freight for hire; (2-18-02)
- b.** Primarily used for emergency transportation of sick or injured persons; or (2-18-02)
- c.** Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)
- i.** The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)
- ii.** The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)
- 03. Federal Law Prohibits States From Taxing Sales of Air Transportation.** See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)
- 04. Rentals and Leases of Aircraft.** The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)
- 05. Aerial Contracting Services.** Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)
- a.** Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (7-1-94)
- b.** When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)
- 06. Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)
- 07. Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

- a.** Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)
- b.** When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)
- 08. Recreational Flights.** Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)
- 09. Aircraft Held for Resale.** Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)
- a.** Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)
- b.** When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)
- c.** Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)
- 10. Fuel.** The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

094. EXEMPTIONS ON PURCHASES BY POLITICAL SUBDIVISIONS, SALES BY THE STATE OF IDAHO, ITS DEPARTMENTS, INSTITUTIONS, AND ALL OTHER POLITICAL SUBDIVISIONS (RULE 094).

- 01. In General.** This rule governs application of the sales and use tax to governmental instrumentalities. As used herein, the term governmental instrumentalities means the state of Idaho, its agencies, departments or institutions and all political subdivisions of the state of Idaho; but does not include other states, their agencies, departments, or institutions and political subdivisions. (7-1-93)
- 02. Extent of Exemptions.** The state and all its agencies, departments and institutions are exempt from the sales and use tax. This exemption does not extend to corporations, the stock of which is owned in whole or in part by the state, nor does it extend to private agencies to which the state contributes funds. The exemption only applies in the case of purchases made directly by the state, its agencies, departments, and institutions. (7-1-93)
- 03. Political Subdivisions.** Political subdivisions of this state are also exempt from payment of the sales and use tax. A political subdivision is a governmental organization which embraces a certain territory organized for public advantage and not in the interest of private individuals or classes to which has been delegated certain functions of state government. In addition to this, a political subdivision has the power to levy taxes. Included within the definition of political subdivisions would be all counties, municipalities, townships, towns and villages, public school districts, cemetery maintenance districts, fire protection districts, local improvement districts and irrigation districts. Canal companies and ditch companies do not come within the scope of this exemption. (7-1-93)
- 04. Purchases by Contractors.** Contractors are consumers under Idaho tax law. Purchases made by contractors are subject to tax even though they are to be applied to use on a state or political subdivision construction project. (7-1-93)

05. Sales by Political Subdivisions. Sales by the state, its departments or institutions, counties, cities, school districts or any political subdivision are subject to sales tax which is to be collected by the political subdivision. If taxable sales are made, a permit is required. This permit is to be obtained by each sales outlet or by the office at which regular and current sales records are maintained. Examples of taxable sales are all sales of tangible personal property, admission charges, fees to use recreational facilities, recreational program fees, copies of documents for which a fee is not set by Idaho Code and garbage service when receptacles or dumpsters are provided by the service and part of the fee represents rental of the receptacle. (7-1-93)

a. Taxable sales. Taxable sales of tangible personal property will include sales of: code books; books sold by library, book fairs, etc.; maps; crime prevention signs; calendars; cafeteria sales to employees or the public; office supplies or any sale to employees; concession stands; trees, shrubs, or bedding plants; items sold to prisoners, such as cigarettes, candy, pop, etc., through vending machines (tax is to be computed on one hundred seventeen percent (117%) of acquisition cost if the machine is operated by the political subdivision); chemicals for noxious weeds; unclaimed property; chemicals for pest control; surplus property-assets; gravel, culverts, or pipe; uniforms to employees; equipment rentals with no operator; grave markers; rental of other property, golf carts, swimsuits; and nonresident or resident library cards. See ISTC Rule 058. (7-1-93)

b. Admission charges. Taxable admission charges will include those fees for using golf courses and swimming pools, for attending athletic events, concerts, fireworks displays, and fund raising events ~~and admission to zoos or museums operated by any political subdivision.~~ (7-1-93)(____)

c. Use of facilities for recreation. Taxable use of facilities for a recreational purpose will include receipts from the use of park structures, picnic tables, fair grounds, rodeo grounds, gymnasiums, ball parks, snowmobile areas and campground areas. Exception: If an individual or organization rents or leases one of these facilities and charges admission to each person using the facility, tax will not be required on its rental or lease of the facility. However, the individual or organization will be required to register and apply for a seller's permit number, under which the tax on the admission will be reported and paid. See ISTC Rule 030. (7-1-93)

d. Recreation program fees. Fees to participate in recreational programs are taxable. Some examples of these programs are city recreational programs in softball, baseball, basketball and football. If instruction is included in such activities as tennis, golf or swimming, the tax will not be due on the separately stated instructional portion of the total fee. If not separately stated, the entire fee is taxable. (7-1-93)

e. Garbage service. Garbage service is taxable on that portion of the total charge which is the rental of the receptacle such as a dumpster. If the statement for service includes the rental of the dumpster or other receptacle but the rental charge is not separately stated, the entire cost of the service is taxable. (7-1-93)

f. The examples cited above are not inclusive. (7-1-93)

06. Federal Government. Sales to and purchases by the federal government and its instrumentalities are not subject to Idaho sales or use taxes except as provided by federal laws or regulations. (7-1-93)

07. Other States. Sales to and purchases by states OTHER than Idaho and their political subdivisions are subject to the tax if delivery occurs in this state. (7-1-93)

(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, vessels, and aircraft if they are personally owned and 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 and aircraft owned by an individual. A privately owned ~~motor~~ vehicle or aircraft is one that 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 nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, ~~and traveling on low pressure tires of ten (10) psi, or less,~~ has handlebar steering, and a seat designed to be straddled by the operator. ~~(5-8-09)()~~

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)

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).

01. In General. This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. Burden of Proof. All sales made within Idaho are presumed to be subject to sales tax unless ~~an exemption is established.~~ The seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax is upon the seller. The seller may overcome the presumption by ~~obtaining a written statement from the purchaser on a form approved by the State Tax Commission. When establishing the facts giving rise to the exemption.~~ If the seller obtains a valid certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (~~3-6-00~~)(____)

03. Qualified Buyers for Purposes Other Than Resale. Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622AAUU, Idaho Code, completing, and providing the required form to the seller. (~~3-6-00~~)(____)

04. Qualified Buyers for Purposes of Resale. The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

a. A retailer or wholesaler doing business in Idaho who holds an Idaho seller's permit number. An Idaho seller's permit number has nine (9) digits followed by an "S." Example: 000123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid. (3-6-00)

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

05. Description and Proper Execution of Approved Forms. In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. They must comply with any additional requirements provided in ~~this~~ these rules ~~or on the form in question.~~ (3-6-00)()

a. To claim a resale exemption ~~on or after July 1, 2000~~, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. ~~Form ST-103, Certificate of Purchase for Resale, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000 and complies with that form's instructions.~~ The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for and the nature of the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include a seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (3-6-00)()

i. Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. ()

ii. Example. A lawn and garden store occasionally sells bar-b-que grills as promotional items. Even though it describes lawn and garden items as the types of products it sells it can buy the grills for resale. ()

iii. Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. ()

b. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a travelling government employee nor for any other reasons enumerated on the form. (3-6-00)

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or local government agency employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-6-00)

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

f. Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption

from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-6-00)

h. Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

i. Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

~~**j.** Sales Tax Resale and Exemption Certificate, Form ST-101, is required on or after July 1, 2000 for tax free purchases claimed under the production exemption. Form ST-104, Sales Tax Exemption Certificate, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000, and complies with that form's instructions. In lieu of Forms ST-101 or ST-104, retailers may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-6-00)~~

~~I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating or farming or as a repair part for equipment used primarily as described above.~~

~~This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.~~

~~Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.~~

NATURE OF BUSINESS

BUYER'S SIGNATURE

~~The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 or ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection. (3-6-00)~~

j. Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. ()

06. Seller's Responsibility -- Purchases for Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, ~~or a Form ST-103, Certificate of Purchase for Resale, properly executed prior to July 1, 2000~~; if the customer intends to resell the items in the regular course of business. ~~The general character of the goods purchased for resale must be those displayed on the certificate given to the retailer.~~ The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the

narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-6-00)()

a. Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-6-00)()

c. Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. ()

07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received, ~~or a Form ST-104, Sales Tax Exemption Certificate properly executed prior to July 1, 2000,~~ if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-6-00)()

a. A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- i. Hand tools with a unit price not in excess of one hundred dollars (\$100); (3-6-00)
- ii. Maintenance and janitorial equipment and supplies; (3-6-00)
- iii. Office equipment and supplies; (3-6-00)
- iv. Selling and distribution equipment and supplies; (3-6-00)
- v. Property used in transportation activities; (3-6-00)
- vi. Equipment or other property used to make repairs; (3-6-00)
- vii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- viii. Licensed motor vehicles; (3-6-00)
- ix. Aircraft; and (3-6-00)

x. Recreational vehicles. (3-6-00)

b. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars (\$100) or less is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (4-11-06)

c. Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)

d. A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

e. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

f. In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: ()

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

NATURE OF BUSINESS

BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. ()

g. Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify

the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the buyer is certifying that the purchase qualifies for an exemption from tax. ()

08. Purchaser's Responsibility. A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. ()

a. Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. ()

b. Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624 Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. ()

089. Timely Acceptance of Certificates. A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

a. Certificates obtained by a seller at a time subsequent to but not within a reasonable time after the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established, ~~by clear and convincing evidence,~~ that a sales tax transaction is exempt from tax. ~~For the purposes of this rule, evidence is clear and convincing when it shows that the truth of the facts asserted is highly probable. Evidence which indicates that it is more likely than not the fact is true is not sufficient to establish clear and convincing evidence.~~ (3-6-00)()

b. Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is ~~clear and convincing~~ evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer ~~is in a business which sells the type of goods purchased from the retailer. Even if it is more likely than not that the customer intended to resell the goods, the retailer has not established, solely by the existence of the seller's permit number, that it is highly probable that the goods were for resale~~ bought the goods for resale. The retailer is liable for the tax on the sale. (3-6-00)()

c. Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish ~~clear and convincing evidence~~ that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. ~~Although it is more likely than not that the customer is a farmer, the retailer has not provided clear and convincing evidence that the hay was purchased for use in a farming operation.~~ The retailer is liable for the tax on the sale. (3-6-00)(____)

d. When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

(BREAK IN CONTINUITY OF SECTIONS)

136. REBATES PAID TO CERTAIN REAL ESTATE DEVELOPERS (RULE 136).

01. **Rebate of Sales Tax.** Section 63-3641, Idaho Code, provides for a rebate of sales taxes to be paid to real estate developers who build a qualifying retail complex at a cost of four million dollars (\$4,000,000) or more and who expend more than ~~eight~~ six million dollars (\$~~8~~6,000,000) for the installation of a highway interchange or for ~~freeway interchange~~ improvements on an ~~interstate~~ highway. For the purposes of this rule, the term "qualifying shopping center" shall mean a qualifying retail complex as specified by Section 63-3641, Idaho Code. (4-2-08)(____)

02. **Qualifying Shopping Center Location.** Qualified ~~R~~retailers that are located in a qualifying shopping center must apply for a separate sellers' permit and ~~file a separate sales tax return for that location~~ report sales separately for that location. For instance, if a retailer has multiple stores in Idaho, it must file a separate return for any store located in a qualifying shopping center. A retailer who ceases operation in a qualifying shopping center must notify the Tax Commission and cancel the sellers' permit for that location. (4-2-08)(____)

03. **Confidential Information.** Information about an individual store's sales or aggregate sales for stores located in a qualifying shopping center is confidential and may not be released to the public. (4-2-08)

04. **Developer Responsibilities.** The developer of a qualifying shopping center must provide the names and taxpayer identification numbers of the stores located in the shopping center to the Tax Commission. The developer must also notify the Tax Commission whenever a new retailer begins operation or when a retailer ceases operations in a qualifying shopping center. (4-2-08)

05. **Certifying Expenditures Prior to Rebate Payment.** No rebate will be paid unless the Idaho Department of Transportation or an appropriate political subdivision of the state of Idaho has certified as to the amounts actually expended and that the expenditures were made for the purpose of constructing ~~a highway interchange or for freeway interchange~~ approved transportation improvements. (4-2-08)(____)

06. **Disposition of Revenue from a Qualifying Shopping Center.** Once the Commission has accepted a valid claim from a developer of a qualifying shopping center, the Commission will deposit sixty percent (60%) of the sales and use tax reported by qualifying retailers in the demonstration pilot project fund. No tax revenue will be deposited into the fund unless the developer provides certification of the amount expended from the Idaho Transportation Department or an appropriate political subdivision. (____)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-0902
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 21, 2009.

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 updates 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 and updates the dates of guides and standards used as reference.

Rule 126 amends the property tax certification program to clarify that candidates must pass at least two of the appraisal courses listed in the rule. The certification requirement for the property tax appraiser candidate is not clear in existing Rule 126.

Rule 217 is being restored to address market value without reference to section 42 low income properties. Assessment procedures for section 42 low income housing properties are being written in Rule 220.

Rule 220 is new rule that explains how to appraise section 42 properties including the role of the Tax Commission in the gathering of information and the cap rate determination.

Rule 225 is being amended to require the Tax Commission to notify the urban renewal agency of the pending dissolution of a revenue allocation area.

Rule 302 is being amended to explain that eligibility has to have been established if the property declaration list (application for exemption) has been filed the previous year and requires the affidavit to include the aggregate value of the personal property so that an amount to be paid by the state may be determined

Rule 317 makes January 1 the date for establishing market value for determining the occupancy value upon which the tax is based.

Rule 609 is being amended to require the Assessor to notify the Tax Commission of those who have erroneously claimed the homeowner's exemption.

Rule 626 is being amended to provide the reporting process to be used by the taxpayer as a result of HB 83 which enables the taxpayer to file an affidavit rather than a personal property declaration each year.

Rule 802 is being amended to state that when a taxing district annexes parcels, the annexation value may be included on the new construction roll, but the new construction roll can not include the value of new construction that has been included in the annexation value.

Rule 988 is being amended to require that the personal property declaration form be filed for taxpayers who are eligible for and expect to receive the benefit of the QIE.

Rule 989 is being amended to define the due date as irrespective of any income tax extensions that may have been granted.

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: NA

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 28, 2009.

DATED this 21st day of August, 2009.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
PO Box 36
Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0103-0902

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. (5-8-09)

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 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~~ June 18, 2008. (5-8-09)(____)

b. "Recreation Vehicle Guide of the National Automobile Dealers Association" published in 2008~~9~~ for the September through December period by the National Appraisal Guides Incorporated. (5-8-09)(____)

c. "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" published in 2008~~9~~ for the September through December period by the National Appraisal Guides Incorporated. (5-8-09)(____)

- d.** “Official Railway Equipment Register” published for the last three (3) quarters in 2008~~9~~ and the first quarter in 2009~~10~~ by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. (5-8-09)(____)
- 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)

126. PROPERTY TAX APPRAISER CERTIFICATION PROGRAM (RULE 126).

Section 63-105A, Idaho Code. (5-8-09)

01. Application for Certification. The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. (5-8-09)

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: (5-8-09)

- i.** The name and address of the applicant, (5-8-09)
- ii.** The applicant’s employer, and (5-8-09)
- iii.** The courses completed. (5-8-09)

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. (5-8-09)

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. (5-8-09)

02. Certification Requirements. An applicant for certification must ~~have passed~~ at least two (2) appraisal courses; 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. (5-8-09)(____)

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. (5-8-09)

b. Equivalent courses may be approved by the education director and the examination committee. (5-8-09)

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. (5-8-09)

03. Maintaining Property Tax Appraisal Certification. (5-8-09)

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. (5-8-09)

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. (5-8-09)

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. (5-8-09)

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. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

217. RULES PERTAINING TO MARKET VALUE DUTY OF COUNTY ASSESSORS (RULE 217).
Section 63-208 Idaho Code. (3-30-07)

01. Market Value Definition. Market value is the most probable amount of United States dollars or equivalent for which a property would exchange hands between a knowledgeable and willing seller, under no compulsion to sell, and an informed, capable buyer, under no compulsion to buy, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. (7-1-97)

a. The assessor shall value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions shall be subtracted. (7-1-97)

b. Personal property shall be valued at retail level. (7-1-93)

02. Appraisal Approaches. Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are: (3-30-07)

- a. The sales comparison approach; (3-30-01)
- b. The cost approach; and (3-30-01)
- c. The income approach. (3-30-01)

03. Appraisal Procedures. Market value for assessment purposes shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. (3-30-07)

~~a.~~ The appraisal procedures, methods, and techniques using the income approach to determine the market value for assessment purposes of income producing properties, ~~except those described in Paragraph 217.03.b. of this rule,~~ must use market rent, not contract rent. (3-30-07)()

~~b.~~ ~~When considering all three approaches to value, the appraisal procedures, methods, and techniques, using the income approach to determine the market value for assessment purposes of low income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, must use actual rent plus the monetary benefit of any income tax credits.~~ (3-30-07)

~~04. Cross Reference.~~ ~~For clarification of the income to include when using the income approach to value low income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006).~~ (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

220. RULES PERTAINING TO ASSESSMENT OF INTERNAL REVENUE CODE (IRC) SECTION 42 LOW-INCOME PROPERTIES (RULE 220).
Section 63- 205A Idaho Code. ()

01. Definitions. The following definitions apply to the appraisal of IRC section 42 low-income properties as used in Section 63-205A, Idaho Code, and in this rule. ()

a. Amount of Housing Tax Credits. The “Amount of Housing Tax Credits” is the Housing Tax Credits divided by the number of years of the term of the Tax Credit Regulatory Agreement. ()

b. Asset Management Fee. “Asset Management Fee” is an annual fee paid to the limited partner for property management oversight, tax credit compliance monitoring, and related services. ()

c. Audit Fee. “Audit Fee” is the fees and costs that may be charged by accountants for preparation and review of financial statements on behalf of the owner or investor. ()

d. Compliance Fee. “Compliance Fee” is the fees and costs, if any, that may be charged by the Idaho Housing Financing Association (IHFA), or its agent, for review and inspection of the owner’s records, or the physical inspection of the project, as are required by the Regulatory Agreement or federal law. ()

e. Existing Section 42 Project. An “Existing Section 42 Project” is a Section 42 low-income project for which Housing Tax Credits were entirely distributed before January 1, 2009. ()

f. Federal Project Based Assistance. “Federal Project Based Assistance” means: ()

i. Rental assistance of any kind provided by the Department of Housing and Urban Development or other agencies of the United States federal government which allow for rental assistance payments to the owner on behalf of the project and not on behalf of any individual tenant; or ()

ii. Apartment projects that have federal financing at below market terms at the time when the financing was put in place, which financing is transferable without change in terms and conditions to subsequent transferees; or ()

iii. Apartment projects that receive financing from the federal Hope VI programs administered under 42 USC section 1437v. ()

g. Financial Statements. "Financial Statements" are profit and loss statements, or equivalent reports, that include a detailed schedule showing income and expense line items, the project's rent roll showing the rent charged for each unit, and a copy of the IHFA's Annual Occupancy Report that is submitted annually by each project's owner or agent to the IHFA. ()

h. General Partner Fee. "General Partner Fee" is the portion of cash flow that is paid to the general partner to compensate the general partner for managing the partnership's operating assets and coordinating the preparation of the required IHFA's, federal, state, and local tax and other required filings and financial reports.()

i. Housing Tax Credits. The "Housing Tax Credits" are the final total federal income tax credits as shown on the first year's form 8609 and allocated by the IHFA to the project either in an original allocation or a new allocation and reported to the Tax Commission by the IHFA. ()

j. Tax Credit Regulatory Agreement. The "Tax Credit Regulatory Agreement" means the original agreement, or the extended agreement, between the section 42 project owner and the IHFA. ()

02. Appraisal Approaches. The cost approach, the sales comparison approach, and the income approach will be considered when appraising section 42 properties. The individual values produced by each approach will be correlated into a single property value. ()

a. The Cost Approach. The cost approach shall be adjusted for any economic obsolescence caused by rent restrictions imposed by the Tax Credit Regulatory Agreement. Following are three (3) examples illustrating analysis of economic obsolescence. In these examples intermediate step calculation results are rounded to the nearest dollar. ()

i. Example 1: This example illustrates analysis of economic obsolescence in a market that supports construction of market rent apartments. In this example, the annual difference between market rent and the restricted rent of a tax credit project is capitalized. Market rent must consider any adjustments due to physical characteristics of the subject.

Assumptions	
Number of Units	- 24
Age	- 3 Years
Monthly Market Gross Rent Per Unit	- \$550
Monthly Subject Gross Restricted Rent Per Unit	- \$475
Market Derived Capitalization Rate	- 7.00%

REPLACEMENT COST NEW (RCN)	\$1,401,961
DEPRECIATION %	
PHYSICAL	8.00% \$112,157

FUNCTIONAL & ECONOMIC	See Below	\$308,571
TOTAL DEPRECIATION		\$420,728
DEPRECIATED REPLACEMENT COST		\$981,233
LAND VALUE		\$35,000
TOTAL COST APPROACH		\$1,016,233

Example 1 Economic Obsolescence Calculation

<u>Step</u>	<u>Description</u>	<u>Calculations</u>
1	Monthly Market Gross Rent Per Unit	\$550
2	Monthly Subject Gross Restricted Rent Per Unit	\$475
3	Difference	Subtract Step 2 from Step 1 \$550 - \$475 = \$75
4	Number of Units	24
5	Monthly Rent Loss	Multiply Step 3 by Step 4 \$75 x 24 = \$1,800
6	Annual Rent Loss	Multiply Step 5 by 12 Months \$1,800 x 12 = \$21,600
7	Market Derived Capitalization Rate	7.00%
8	Economic Obsolescence	Divide Step 6 by Step 7 \$21,600 / .07 = \$308,571

()

ii. Example 2: This example illustrates analysis of economic obsolescence in a market that does not support construction of market rate apartments. The difference between the subject gross restricted rent and the feasible gross monthly rent is capitalized, and the resulting calculation shows the total economic obsolescence. Feasible gross monthly rent is calculated by adding the physically depreciated cost plus land value and dividing it by a gross income multiplier, which is found by analyzing sales of similar market rate apartments. The result is the market rent required to support the cost of the subject apartment project.

Assumptions
Number of Units - 24
Age - 3 Years
Monthly Market Gross Rent Per Unit - \$550
Monthly Subject Gross Restricted Rent Per Unit - \$475
Market Derived Capitalization Rate - 7.00%

REPLACEMENT COST NEW (RCN)		\$1,401,961
DEPRECIATION %		
PHYSICAL	8.00%	\$112,157
FUNCTIONAL & ECONOMIC	See Below	\$271,543
TOTAL DEPRECIATION		\$383,700
DEPRECIATED REPLACEMENT COST		\$1,018,261
LAND VALUE		\$35,000
TOTAL COST APPROACH		\$1,053,261

Example 2 Economic Obsolescence Calculation

Step	Description	Calculations
1	Physically Depreciated Cost Plus Land Value	$\begin{aligned} & \$1,401,961 - \\ & \$112,157 + \\ & \$35,000 = \\ & \$1,324,804 \end{aligned}$
2	Market Gross Income Multiplier	8.5
3	Annual Feasible Gross Rent	$\begin{aligned} & \$1,324,804 / 8.50 = \\ & \$155,859 \end{aligned}$
4	Monthly Feasible Gross Rent	$\begin{aligned} & \$155,859 / 24 = \\ & \$6,494 \end{aligned}$
5	Monthly Feasible Gross Rent Per Unit	$\begin{aligned} & \$6,494 / 12 = \\ & \$541 \end{aligned}$
6	Monthly Subject Gross Restricted Gross Rent Per Unit	475
7	Monthly Per Unit Rent Loss	$\begin{aligned} & \$541 - \$475 = \\ & \$66 \end{aligned}$
8	Monthly Project Rent Loss	$\begin{aligned} & \$66 \times 24 = \\ & \$1,584 \end{aligned}$
9	Annual Project Rent Loss	$\begin{aligned} & \$1,584 \times 12 = \\ & \$19,008 \end{aligned}$
10	Capitalization Rate	0.07
11	Depreciation (Economic/Functional)	$\begin{aligned} & \$19,008 / 0.07 = \\ & \$271,543 \end{aligned}$

()

iii. Example 3: This example illustrates that when subject gross restricted rents are at or above market gross rental rates, and the feasible gross rent per unit is less than the subject gross restricted rent, no economic obsolescence is found. ()

Assumptions	
Number of Units	- 24
Age	- 15 Year
Monthly Market Rent Per Unit	- \$475
Monthly Subject Restricted Rent Per Unit	- \$475
Market Derived Capitalization Rate	- 7.00%

REPLACEMENT COST NEW (RCN)		\$1,401,961
DEPRECIATION %		
PHYSICAL	20.00%	\$280,392
FUNCTIONAL & ECONOMIC	See Below	\$0
TOTAL DEPRECIATION		\$280,392
DEPRECIATED REPLACEMENT COST		\$1,121,569
LAND VALUE		\$35,000
TOTAL COST APPROACH		\$1,156,569

Step	Calculations
1	Physically Depreciated Cost Plus Land Value $\$1,401,961 - \$280,392 + \$35,000 =$ \$1,156,569
2	Market Gross Income Multiplier 8.5
3	Annual Feasible Gross Rent $\$1,156,569 / 8.50 = \$136,067$
4	Monthly Feasible Gross Rent $\$136,067 / 12 = \$11,339$
5	Monthly Feasible Gross Rent Per Unit $\$11,339 / 12 = \945
6	Monthly Subject Gross Restricted Gross Rent Per Unit $\$475$
7	Monthly Per Unit Rent Loss $<-\$3>$

<u>Step</u>	<u>Calculations</u>
<u>8</u> <u>Monthly Project Rent Loss</u>	
<u>9</u> <u>Annual Project Rent Loss</u>	
<u>10</u> <u>Capitalization Rate</u>	<u>0.07</u>
<u>11</u> <u>Depreciation (Economic/Functional)</u>	

()

b. The Sales Comparison Approach. When available, sales of section 42 low-income properties that are similar and comparable shall be used. When non-section 42 comparable sales are used in this approach, the sales must be adjusted for the appropriate property attributes. ()

c. The Income Approach. The application of the income approach shall include the following procedures and provisions: ()

i. Market rents of section 42 properties and normalized expenses of section 42 properties must be used to determine net income unless the taxpayer fails to provide the Financial Statements in accordance with Subsection 220.03 of this rule. If the Financial Statements are not provided, the assessor may use market rents of non-section 42 properties and normalized expenses of non-section 42 properties to determine net income. If Financial Statements are not provided, the Amount of Housing Tax Credits shall not be added to the capitalized net income. ()

ii. The Amount of Housing Tax Credits shall not be used in the appraisal of Existing Section 42 Projects. ()

iii. The Amount of Housing Tax Credits shall, for the duration of the Tax Credit Regulatory Agreement, be included in the appraisal of section 42 properties that have received or will receive an allocation of Housing Tax Credits after January 1, 2009. ()

iv. The Amount of Housing Tax Credits, when applicable to the appraisal, shall not be included in the net income capitalized to value but shall be added to the capitalized net income. ()

v. The Tax Commission's determination of capitalization rates derived from sales shall not preclude the use by the assessor of other methods for determining the capitalization rate, provided however, such other methods are consistent with Section 63-205A, Idaho Code, and this rule. ()

03. Financial Statements to be Provided by the Owners. The owners of section 42 properties shall, by April 1 of each year, provide to the Tax Commission the prior year's Financial Statements. Failure to provide the Financial Statements by April 1 shall result in the appraisal of the section 42 property as if it were an unrestricted rent, non-section 42 property. The Tax Commission shall forward to the assessor all Financial Statements received from the owners of section 42 properties and the information received from the IHFA by April 15. The assessor shall use the Financial Statements to develop normalized income and expense information to be used in the appraisal of section 42 properties. ()

04. Tax Commission to Provide Information on Section 42 Property Sales. The Tax Commission shall gather information from sale transactions of section 42 properties and shall compute the capitalization rate for each sale. The Tax Commission shall, for sales acquired during the immediate prior year, send capitalization rates and all information used to determine these rates to each county assessor by April 15. If information from three (3) or more comparable sale transactions of section 42 properties is sent to the assessors, the assessors will consider these sales' capitalization rates in their determination of the capitalization rate to be used in appraising the particular section 42 property or group of section 42 properties. ()

05. Cross Reference. For an explanation of why income tax credits should be allowed in section 42 assessments, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). ()

~~2201~~. -- 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)

(2) References to cardinal directions, government survey distances, and section or aliquot part corners; or (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. (5-8-09)

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., through 225.02.c., of this rule. (5-8-09)

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)

d. Within thirty (30) days of the date as of which an RAA has been in existence for twenty-three (23) years, the State Tax Commission will notify the urban renewal agency of the date by which the RAA will be considered dissolved. Such notice shall include a statement indicating that the RAA may remain in existence if necessary to pay off existing bonded indebtedness, provided that, within thirty (30) days of receipt of this notice, the urban renewal agency notifies the State Tax Commission of such bonded indebtedness. Failure to provide notice of the dissolution date by the State Tax Commission to the urban renewal agency does not negate the statutory requirement for the urban renewal agency to dissolve.

()

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. (5-8-09)

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)

302. LIST OF TAXABLE PERSONAL PROPERTY (RULE 302).

Sections 63-302 and 63-602KK, Idaho Code. (5-8-09)

01. Application for Exemption Required. Except as provided in Subsection 302.04 of this rule, 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: (5-8-09)()

a. Name of the applicant; and (5-8-09)

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. (5-8-09)

02. Designation of Personal Property Eligible for Exemption. When required, 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.~~ (5-8-09)()

03. Failure to File the List. Except as provided in Subsection 302.04 of this rule, the taxpayer must file the list of taxable personal property as required by Section 63-302, Idaho Code. If the list is otherwise required and 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. (5-8-09)()

04. Affidavit in Lieu of Application for Exemption. The "Affidavit in Lieu of Application for Exemption" permitted in Section 63-602KK, Idaho Code, shall be identified as the "personal property affidavit." Except as provided in Subsection 302.05 of this rule, a taxpayer may submit a personal property affidavit in lieu of the list of personal property required by Section 63-302, Idaho Code, and this affidavit will constitute a valid substitute application for the exemption provided in Section 63-602KK, Idaho Code, provided that the taxpayer complies with Subsections 302.04.a. and 302.04.b. of this rule. ()

a. The list(s) required by Section 63-302, Idaho Code, was (were) submitted the first year during which the exemption applies to personal property for that taxpayer. ()

b. The personal property affidavit includes an estimate of the current market value of the taxpayer's property upon which application for the exemption in Section 63-602KK, Idaho Code, is being made. This estimate of current market value may be in aggregate for all property otherwise required to be listed under the provisions of Section 63-302, Idaho Code. ()

c. The aggregate estimate of current market value included on the personal property affidavit shall be used by the assessor to fulfill the requirements of Section 63-301, Idaho Code, to determine the market value for assessment purposes of the taxpayer's personal property. ()

d. The personal property affidavit shall be permitted provided that the value reported by the taxpayer for property otherwise required to be listed under Section 63-302, Idaho Code, does not exceed one hundred thousand dollars (\$100,000). ()

e. If the current market value of the taxpayer's property required to be listed under Section 63-302, Idaho Code, exceeds one hundred thousand dollars (\$100,000), the taxpayer must list all property otherwise required to be listed under Section 63-302, Idaho Code, not just the property or value exceeding one hundred thousand dollars (\$100,000). ()

f. A taxpayer with multiple parcels for which separate lists have been filed previously and otherwise subject to the filing requirements in Section 63-302, Idaho Code, may file the personal property affidavit provided that the total current market value of all otherwise reportable personal property for all of the parcels owned by that taxpayer in a county does not exceed one hundred thousand dollars (\$100,000). ()

05. Qualified Investment Exemption Participants Not Eligible to File the Affidavit. Taxpayers who have elected to designate property to be included in the exemption provide for in Section 63-3029B, Idaho Code, shall not be eligible to file the personal property affidavit otherwise permitted in Subsection 302.04 of this rule. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

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 Market Value Monthly. The market value for occupancy tax purposes shall be the full market value on January 1 and shall be prorated at least monthly from the occupancy date to the end of the year. ~~(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~~2~~. ~~For years after 2006,~~ Each year 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 x 11/12 = \$275,000
Taxable Value - $\$275,000 - \$75,000$ 104,471 (HO) = \$200,000 170,529

(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 x 3/12 = \$30,000
Taxable Value - \$30,000 - \$15,000 (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 distributed to 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. (5-8-09)

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)

609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609). Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (3-30-07)

01. Homestead Exemption. The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. (3-30-07)

02. Idaho Annual Housing Price Index Change. Annually, the State Tax Commission shall calculate the maximum dollar-value limit for the homeowner's exemption based on the change in the Idaho annual housing price index published by the United States office of federal housing enterprise oversight. The following procedure shall be used: (3-30-07)

a. Step 1. Calculate the average Idaho housing price index of the four (4) most recently available quarters as of September 15. (3-30-07)

b. Step 2. Calculate the average Idaho housing price index of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (3-30-07)

c. Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (3-30-07)

d. Step 4. Multiply the factor determined in Step 3 by the current maximum dollar-value limit on the homeowner's exemption to produce the new dollar-value limit. (3-30-07)

03. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.03.a., of this rule unless the owner-occupant provides documented evidence of a different ownership interest in the improvement. See Examples 2, 3, and 4 in Paragraphs 609.03.b., 609.03.c., and 609.03.d. of this rule for additional partial ownership guidance. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b. of this rule. (4-2-08)

a. Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Occupied by Mr. Smith
Prorated Ownership Interest (land and improvement)	\$62,000	Mr. Smith's interest
Homeowner's Exemption	\$31,000	For Mr. Smith as owner occupant
Residential Improvement	\$67,000	Occupied by Mr. Anderson
Prorated Ownership Interest (land and improvement)	\$54,500	Mr. Anderson's interest
Homeowner's Exemption	\$27,250	For Mr. Anderson as owner occupant

(3-30-07)

b. Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

Item Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	\$51,500	For Mr. Smith
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	\$44,000	For Mr. Anderson

(3-30-07)

c. Example 3. Tom Johnson and Marie Johnson, husband and wife, and June Smith jointly own a property and occupy one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 66.67%)	\$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2007 (\$89,325 X 66.67%)	\$59,550	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 33.33%)	\$103,323	Ms. Smith's interest
Homeowner's Exemption Maximum for 2007 (\$89,325 X 33.33%)	\$29,775	Ms. Smith's Homeowner's Exemption

(4-2-08)

d. Example 4. John and Susan Doe, husband and wife, and Mike Person jointly own a property, and Mr. and Mrs. Doe occupy the one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$65,000	
Residential Improvement	\$195,000	
Land and Improvement	\$260,000	
Prorated ownership interest (land and improvement) (\$260,000 X 66.67%)	\$173,342	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 2007 is 50% up to \$89,325)	\$86,671	Mr. & Mrs. Doe's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$260,000 X 33.33%)	\$86,658	Mr. Person's interest
Homeowner's Exemption	\$0	Mr. Person does not qualify for a homeowner's exemption on this property.

(4-2-08)

04. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. (4-11-06)

05. Notification of Erroneous Claims. When it is determined that an exemption granted under this Section to a taxpayer who has also received property tax relief under Chapter 7, Idaho Code, should not have been granted, the county assessor shall notify the State Tax Commission of the determination. ()

(BREAK IN CONTINUITY OF SECTIONS)

626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).

Sections 63-105(A), 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code.

(~~5-8-09~~)()

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 ~~2008~~ 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~~10, have exceeded the ~~previous~~ receipts for fiscal year ~~2008~~ by five percent (5%) or more, then this exemption would take effect on January 1, ~~2009~~11. Once this exemption takes effect, it will remain in effect continuously.

(~~5-8-09~~)()

02. Application Required to Establish Initial Eligibility for Exemption.

(~~5-8-09~~)()

a. In order to ~~be eligible~~ establish initial eligibility for this exemption, the taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code, and, if applicable, the list required for transient personal property as required by Section 63-313, Idaho Code. The filing of said list(s) shall constitute the filing of an application for exemption. The application will be deemed valid provided the exemption provided in Section 63-602KK, Idaho Code, is granted and not later deemed improperly claimed. If the applicable list is not filed by the taxpayer to initiate the exemption, or if in any subsequent year the taxpayer fails to file either the applicable list(s) or, if permitted, the affidavit provided in Section 63-602KK(6), Idaho Code, 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.

(~~5-8-09~~)()

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.

(5-8-09)

03. Procedure During Years Following Year of Initial Eligibility for Exemption.

()

a. Unless the exemption has been deemed improper, for all years following the initial establishment of eligibility for the exemption, the taxpayer may continue to file the lists required by Sections 63-302, 63-313, and 63-602Y, Idaho Code, or, if applicable, for property otherwise reportable as required by Section 63-302, Idaho Code, may file the affidavit provided in Section 63-602KK(6), Idaho Code. If the taxpayer chooses to file the affidavit, such filing must conform to the filing date provided in Section 63-302, Idaho Code.

()

b. If, after receiving the exemption, the taxpayer fails in any subsequent year to timely file the required lists of personal property or, if applicable, the affidavit provided in Section 63-602KK(6), Idaho Code, the taxpayer can re-establish future eligibility for the exemption by means of filing the lists required by Sections 63-302, 63-313 and 63-602Y, Idaho Code.

()

c. For the duration of the period during which recapture could apply, the affidavit option shall not be available for taxpayers who elect to designate property to be included in the exemption provided for in Section 63-3029B, Idaho Code.

()

034. 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. If a taxpayer with personal property located in multiple places within the county files one (1) affidavit provided in Section 63-602KK(6), and fails to elect where to apply the exemption, the county shall prorate the exemption to the last known locations of the eligible property based on last lists filed.

(~~5-8-09~~)()

045. 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. The information shown on the valuation assessment notice may reflect the aggregate value reported by the taxpayer on an affidavit submitted in lieu of the lists required under Section 63-302, Idaho Code. If the items of personal property cannot be identified to the extent necessary to assign them to another of the categories provided in Rule 512 of these rules, the personal property shall be listed in secondary category 68. If the affidavit fails to provide an estimate of value, the assessor shall determine current market value of the property which shall not then be eligible for the exemption provided in Section 63-602KK, Idaho Code. (5-8-09)(____)

056. Preliminary and Final Personal Property Tax Reduction Lists. (5-8-09)

a. Except as provided in Paragraph 626.06.e. of this rule, ~~the~~ preliminary personal property tax reduction list shall include the following information pertaining to the personal property accounts to receive the exemption: (5-8-09)(____)

- 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; (5-8-09)
- ii. The description of the property item(s) subject to exemption or partial exemption; (5-8-09)
- iii. The location(s) of the property item(s) showing the tax code area; and (5-8-09)
- iv. The assessed value of the property item(s) listed as equalized by the county board of equalization. (5-8-09)(____)

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, or the affidavit permitted by Section 63-602KK, Idaho Code. ~~The owners of~~ Transient personal property will not be listed on the preliminary list. (5-8-09)(____)

c. Except as provided in Paragraph 626.06.e. of this rule, ~~the~~ final personal property tax reduction list shall include, in addition to the items listed in Paragraph 626.056.a. of this rule, the following information pertaining to the personal property accounts to receive the exemption: (5-8-09)(____)

- i. The tax levy applicable to the personal property; (5-8-09)
- ii. The tax before the exemption; (5-8-09)
- iii. The tax after the exemption; (5-8-09)
- iv. The amount of the exemption; (5-8-09)
- v. The aggregate total of the tax exempted; and (5-8-09)
- vi. The aggregate total of the tax exempted within each taxing district and each revenue allocation area. (5-8-09)

d. This final personal property tax reduction list ~~shall~~ may include transient personal property and may include personal property otherwise assessable under Section 63-602Y, Idaho Code. 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. (5-8-09)(____)

e. If a taxpayer has filed the affidavit permitted by Section 63-602KK(6), Idaho Code, in lieu of the list required by Section 63-302, Idaho Code, some of the information otherwise required to be included on the preliminary and final personal property tax reduction lists may not be available. For any taxpayer for which complete information is not available because of the filing of such an affidavit, requirements found in Subparagraphs

626.06.a.ii., and 626.06.a.iv. for the description and value of items of property shall be waived. In lieu of these requirements, the preliminary and final personal property tax reduction lists must indicate the aggregate equalized value of the taxpayer's property in the county that is eligible for the exemption provided in Section 63-602KK, Idaho Code. For transient personal property and personal property subject to listing under Section 63-602Y, Idaho Code, the prorated value shall be used to fulfill the requirements of Subparagraph 626.06.a.iv. of this rule. ()

067. 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. (5-8-09)

078. Cross Reference. For more information on the lists ~~of personal property that must be filed and affidavit option~~, see Rule 302 of these rules. For information on transient personal property see Rule 313 of these rules. (~~5-8-09~~)()

(BREAK IN CONTINUITY OF SECTIONS)

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code. (5-8-09)

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. (5-8-09)

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 Limitation on Annexation to Exclude~~ and New Construction Roll Value. *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. For any taxing district annexing property in a given year, the new*

construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (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)

(BREAK IN CONTINUITY OF SECTIONS)

988. QUALIFIED PROPERTY FOR EXEMPTION (RULE 988). Sections 63-302, 63-313, 63-404, and 63-3029B, Idaho Code. (4-6-05)

01. Definitions. The following definitions apply for the purposes of the property tax exemption under Section 63-3029B, Idaho Code, and do not decide investment tax credit eligibility for Idaho income tax purposes. (3-20-04)

a. Year in which the investment is placed in service. “Year in which the investment is placed in service” means the calendar year the property was put to use or placed in a condition or state of readiness and availability for a specifically assigned function in the production of income. (4-6-05)

b. Operator’s Statement. The “operator’s statement” is the annual statement listing all property subject to assessment by the State Tax Commission and prepared under Section 63-404, Idaho Code. (3-20-04)

c. Personal Property Declaration. A “personal property declaration” is any form required for reporting personal property or transient personal property to the county assessor under Sections 63-302 or 63-313, Idaho Code, respectively. (3-20-04)

d. Qualified Investment. “Qualified investment” means property that would have otherwise been taxable for property tax purposes and is eligible or qualified under Section 63-3029B, Idaho Code, provided that property is reported on the personal property declaration or operator’s statement and is designated as exempt from property tax for two (2) years on Form 49E. (3-20-04)

e. Qualified Investment Exemption. The “qualified investment exemption” (QIE) referred to in this rule is the property tax exemption under Section 63-3029B, Idaho Code. (3-20-04)

02. Designation of Property for Which Exemption Is Elected. The owner shall designate the property on which the QIE is elected. The owner shall make this designation on Form 49E and attach it to a timely filed personal property declaration or, for operating property, the timely filed operator’s statement. Owners who designate property on which the QIE is elected may not file the annual affidavit provided for in Section 63-602KK(6), Idaho Code, but must file the personal property declaration. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code. The description of the property on Form 49E must be adequate to identify the property to be granted the exemption. In addition to all other steps required to complete the personal property declaration or operator’s statement, the owner must provide on the personal property declaration or operator’s statement the date the item elected for the QIE was placed in service. (4-6-05)()

03. Election for Investments Not Otherwise Required to Be Listed on the Personal Property Declaration. For investments, like single purpose agricultural or horticultural structures, that are not otherwise required to be listed on the personal property declaration, the owner must list that property to elect the QIE. As with any property designated for the QIE, the owner must attach Form 49E to the personal property declaration. (3-20-04)

04. Continuation of Listing. For all property designated for QIE, even though that property is exempt

for two (2) years, the owner must list that property on the personal property declaration or operator's statement in the initial year for which the QIE is claimed and the following four (4) consecutive years, unless that property has been sold, otherwise disposed of, or ceases to qualify pursuant to Section 63-3029B, Idaho Code. (3-20-04)

05. Period of QIE. The QIE shall be granted for the two (2) calendar years immediately after the end of the calendar year in which the property acquired as a qualified investment was first placed in service in Idaho. (3-20-04)

06. Election Specificity. The QIE election provided by Section 63-3029B, Idaho Code, shall be specific to each qualified item listed on the personal property declaration or operator's statement. An item that is a qualified investment, but for which there is no QIE election during the year after the "year in which the investment is placed in service" in Idaho, is not eligible for the QIE. (4-6-05)

07. Notification by Assessor. (4-6-05)

a. Upon Receipt of Form 49E or a Listing. Upon receiving Form 49E or any listing provided to comply with Subsection 988.08 or 988.12 of this rule, the county assessor shall send a copy of this form or listing to the State Tax Commission. (4-6-05)

b. Upon Discovery of Changes. Upon discovering that property granted the QIE was sold, otherwise disposed of, or ceased to qualify under Section 63-3029B, Idaho Code, within the five (5) year period beginning with the date the property was placed in service, the county assessor shall notify the State Tax Commission and the taxpayer immediately. The county assessor shall also provide this notification upon discovery that the owner first claiming the QIE failed to list the item on any personal property declaration or failed to file a personal property declaration in any year during this five (5) year period. This notice shall include: (4-6-05)

i. Owner. Name of the owner receiving the QIE. (4-6-05)

ii. Property description. A description of the property that received the QIE. (4-6-05)

iii. New or used. State whether the individual item was purchased new or used. (4-6-05)

iv. Date placed in service. The date the owner reported the item was first placed in service in Idaho. (4-6-05)

v. First year value of QIE. For each item, the amount of exempt value in the first year the QIE was elected and an identification of the year. (4-6-05)

vi. Second year value of QIE. For each item, the amount of exempt value in the second year after the QIE was elected. (4-6-05)

vii. Tax code area number. For each item, the number of the tax code area within which that item was located. (4-6-05)

08. Moved Personal Property. In order to provide unmistakable identification of the property, certain taxpayers must send written notification by the date provided in Section 63-302, 63-313, or 63-404, Idaho Code, when moving property that previously received the QIE. This notification: (3-20-04)

a. Is required of taxpayers moving locally assessed property between counties in Idaho during the five (5) year period beginning the date that property was placed in service; (4-6-05)

i. The taxpayers send this notification to the assessor in the county that granted the QIE and the assessor in any Idaho county to which the property has been moved. (4-6-05)

ii. The taxpayers must include a listing which describes the property exactly as it was described on the original Form 49E or cross references the property originally listed on Form 49E. (4-6-05)

b. Is not required of taxpayers when the property is State Tax Commission assessed nonregulated operating property. (4-6-05)

09. Notification Regarding Transient Personal Property. For transient personal property elected for the QIE, the definition of home county in Section 63-313, Idaho Code, and Rule 313 of these rules, applies. When a home county receives information of an election for QIE and a notice that the exempt property was used in another county in Idaho, the home county must forward information identifying that property to the other county(ies) in accordance with procedures in Section 63-313, Idaho Code. Also, the home county assessor shall send a copy of this notice to the State Tax Commission. (3-20-04)

10. Partial-Year Assessments. Property assessed based on a value prorated for a portion of the year in which the property is first placed in service may still be eligible for the QIE in the subsequent two (2) calendar years, provided the QIE is elected. (3-20-04)

11. Limitation on Amount of Exemption. (3-20-04)

a. New Property. The QIE shall be for the full market value for assessment purposes for new property that is a qualifying investment. (3-20-04)

b. Used Property. The QIE for used property placed in service during a taxable year for income tax purposes shall be limited. For each taxpayer, the QIE shall be the lesser of the QIE cost or the current year's market value in accordance with the following procedure: (4-6-05)

i. QIE cost shall be determined for each item of used property upon which the QIE is claimed. QIE cost is the lesser of an item's cost or one hundred fifty thousand dollars (\$150,000); provided, however, that the QIE cost for all elected used property shall not exceed one hundred fifty thousand dollars (\$150,000) in a taxable year (See Example B in Subparagraph 988.11.c.ii., of this rule). In the event the cost of one (1) or more items of used property exceeds one hundred fifty thousand dollars (\$150,000), QIE cost shall reflect the reduction necessary to stay within the one hundred fifty thousand dollar (\$150,000) limit (See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719 for information on the selection of items of used property). (4-6-05)

ii. For each item purchased used, the QIE shall be limited to the lesser of the QIE cost or the current year's market value (See Example B in Subparagraph 988.11.c.ii., of this rule). (4-6-05)

c. Examples. In the following examples, all of the property is owned by the same taxpayer and is a qualified investment. (4-6-05)

i. Example A. In Example A, 2004 is the first year during which the qualified investment receives the QIE. The taxpayer may decide which of the used items placed in service in 2003 is considered first for the exemption. In this example, computer 1 has been given the exemption first. Since the limitation is based on cost, the remaining used property exemption cannot exceed one hundred thirty thousand dollars (\$130,000) and the QIE cost is determined accordingly. The conveyor belt is a new investment, first eligible for the QIE in 2005. In 2006, the assembly line, computer 1, and computer 2 would be fully taxable at the market value as of January 1, 2006.

Example A										
Property Description (same taxpayer)	Year Placed in Service	Cost	New or Used	QIE Cost	2004 Market Value	2004 Exempt Value	2004 Taxable Value	2005 Market Value	2005 Exempt Value	2005 Taxable Value
Computer 1	2003	\$20,000	Used	\$20,000	\$12,000	\$12,000	\$0	\$8,000	\$8,000	\$0
Assembly line	2003	\$160,000	Used	\$130,000	\$140,000	\$130,000	\$10,000	\$110,000	\$110,000	\$0
Computer 2	2003	\$50,000	New	N/A	\$40,000	\$40,000	\$0	\$30,000	\$30,000	\$0

Example A										
Property Description (same taxpayer)	Year Placed in Service	Cost	New or Used	QIE Cost	2004 Market Value	2004 Exempt Value	2004 Taxable Value	2005 Market Value	2005 Exempt Value	2005 Taxable Value
Conveyor belt	2004	\$200,000	Used	\$150,000	N/A	N/A	N/A	\$200,000	\$150,000	\$50,000

(4-6-05)

ii. Example B. In Example B, the property was purchased at auction for a cost much less than its market value.

Example B										
Property Description	Year Placed in Service	Cost	New or Used	QIE Cost	2006 Market Value	2006 Exempt Value	2006 Taxable Value	2007 Market Value	2007 Exempt Value	2007 Taxable Value
Construction Equipment	2005	\$20,000	Used	\$20,000	\$80,000	\$20,000	\$60,000	\$70,000	\$20,000	\$50,000

(4-6-05)

d. Used Property Placed in Service by Fiscal Year Taxpayer. If a taxpayer had a fiscal year beginning July 1, 2004, and placed one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on May 15, 2004, and an additional one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on August 1, 2004, the taxpayer would qualify for an exemption of up to three hundred thousand dollars (\$300,000) on this used property in 2005 and 2006. The exempt value in the second year of the exemption could not exceed the lesser of three hundred thousand dollars (\$300,000) or the (depreciated) market value of this used property. (4-6-05)

12. Multi-County Taxpayers. (3-20-04)

a. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased new must indicate on Form 49E the county where each property is located or must complete a separate Form 49E and attach it to the personal property declaration submitted to each county. (3-20-04)

b. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased used must attach any Form 49E listing property purchased used to the personal property declaration sent to each county. A Form 49E listing only property purchased used may be provided to comply with this requirement. (3-20-04)

c. Any taxpayers electing QIE for property that is State Tax Commission assessed nonregulated operating property and purchased new or used must indicate on Form 49E each county where each property is located and attach it to the operator's statement. (4-6-05)

d. If multiple Form 49Es are submitted to one (1) or more assessors, a copy of each Form 49E must be attached to the correct year's income tax return. (3-20-04)

13. Special Provisions for Nonregulated Operating Property. (4-6-05)

a. For nonregulated operating property, the market value of the QIE is calculated by multiplying the depreciated original cost of the property times the ratio of the correlated value determined under Subsection 405.08 of

these rules to the cost approach value determined under Subsection 405.02 of these rules. (4-6-05)

b. The following special provisions apply for the reduction in market value of nonregulated operating property resulting from QIE being elected. (4-6-05)

i. Reduction in Idaho value. For nonregulated operating property except situs property, the reduction in market value will be made by subtracting the market value of the QIE from the allocated Idaho value before apportionment to any taxing district or unit. (4-6-05)

ii. Reduction in market value of situs property owned by nonregulated operating property companies. For situs property owned by nonregulated operating property companies, the reduction in market value will be made by subtracting the market value of the specific investment in the specific location. (4-6-05)

14. Denial of QIE. If the QIE is denied for all or part of the market value of any item for which the QIE had been claimed, the assessor shall notify the taxpayer electing the QIE and shall identify the basis for the denial. (3-20-04)

15. Public Records and Exemption of Certain QIE Information from Disclosure. Public records are presumed to be open to the public. Records containing certain information pertaining to private businesses (such as trade secrets and other proprietary information) may be exempt from public disclosure (See Section 9-340D, Idaho Code) and may be protected from disclosure by the Idaho Trade Secrets Act, Chapter 8, Title 48, Idaho Code, and other laws. A taxpayer who submits information to the State Tax Commission or to a county assessor or Board of Equalization in accordance with this rule may designate all or part of the information as confidential. The designation must be made in writing and clearly identify the particular information deemed confidential. In addition, the front page of the submission must prominently state that the document contains information designated as confidential. The State Tax Commission, the county assessor and Board of Equalization shall treat the designated information as confidential, exempt from disclosure under Section 9-340D, Idaho Code and as subject to the Idaho Trade Secrets Act (see Chapter 8, Title 48, Idaho Code). Nothing in this paragraph limits exchanges of information between or among the State Tax Commission and county officials otherwise authorized by law. (3-20-04)

16. Cross Reference. For more information relating to procedures and requirements for QIE, refer to Section 63-3029B, Idaho Code, and IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719. For information relating to recapture of QIE, refer to Rule 989 of these rules. (4-6-05)

989. QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989). Section 63-3029B, Idaho Code. (4-6-05)

01. In General. If a taxpayer has elected the property tax exemption (also known as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property tax benefit shall be subject to recapture. (~~4-6-05~~)(____)

02. Notification by Taxpayer That Property Ceases to Qualify. If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the due date of that taxpayer's income tax return, irrespective of any income tax extensions of the income tax payment, for the income taxable year in which such event occurs. ~~If no personal property declaration or operator's statement is required, the notification must be filed by the following March 15.~~ Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following: (~~3-30-07~~)(____)

a. A description of the item that ceases to qualify, (4-6-05)

b. The county where the item was located, (4-6-05)

c. The date the item was placed in service, (4-6-05)

- d. The date the item was no longer qualified for the QIE, (4-6-05)
- e. The amount of value exempted from property tax each year, and (4-6-05)
- f. The amount of the property tax benefit recapture. (4-6-05)

03. Notification in Case of Failure by Taxpayer to File Form 49ER. If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. (4-6-05)

04. Protest of Recapture. If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. (4-6-05)

05. Property Tax Benefit Subject to Recapture. For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than one (1) year	100%
Equal to one (1) year but less than two (2) years	80%
Equal to two (2) years but less than three (3) years	60%
Equal to three (3) years but less than four (4) years	40%
Equal to four (4) years but less than five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. (3-30-07)

06. County Average Property Tax Levy -- Locally Assessed Property Located in One County or Nonapportioned Centrally Assessed Property. For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. (4-6-05)

a. Property Tax Budget Summation. For each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. (4-6-05)

b. Average Property Tax Levy. The average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a., of this rule by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. (4-6-05)

c. Notice to Each County Auditor. The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. (4-6-05)

07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property. For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in December each year. (4-6-05)

08. Noticing Remittance for the Recapture of the Property Tax Benefit. When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: (4-6-05)

a. Owner. Name of the owner receiving the QIE; (4-6-05)

b. Property Description. A description of the property that received the QIE; (4-6-05)

c. First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year; (4-6-05)

d. Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; (4-6-05)

e. Tax Code Area Number. The number of the tax code area within which that item was located; and (4-6-05)

f. Amount Remitted. The amount of money remitted for any item. (4-6-05)

09. No Allocation of Remittances to Urban Renewal Agencies. Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. (4-6-05)

10. Penalty and Interest. Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. (4-6-05)

11. Cross Reference. For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. (4-6-05)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0903

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 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 21, 2009.

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 801 is being amended to provide and explain the formula to compute the voter test which is the sum of the COSA's first year amount divided by last year's market value for assessment purposes and the amount of the existing plant facilities fund levy divided by last year's market value for assessment purposes. The proper handling of urban renewal increment value is also explained in the rule.

Rule 804 is being amended to include school longer than two year temporary supplemental funds and the Cooperative Service Agency funds in the list of funds to be left in the base when computing levies for taxing districts encompassing urban renewable revenue allocation areas.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226, 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: 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: No fiscal impact.

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 temporary and proposed rule, contact Alan Dornfest (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 28, 2009.

DATED this 28th day of August, 2009.

Alan Dornfest, Tax Policy Supervisor
State Tax Commission
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 35-0103-0903

801. LIMITATION ON BUDGET REQUESTS -- SPECIAL PLANT FACILITIES FUND LEVY PROVISIONS (RULE 801).

Sections 63-802, 33-804, ~~and 33-317A,~~ and 33-909, Idaho Code. ~~(3-30-07)(7-1-09)T~~

01. Limits on Plant Facilities Funds. For any school or library district with a plant facilities fund created pursuant to Section 33-804, Idaho Code, the amount of property tax to be budgeted for said fund in any year cannot exceed four tenths of one percent (0.4%) multiplied by the market value for assessment purposes of the taxing district as of December 31 of the year prior to the first year in which a plant facilities fund levy is made. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code, or to any cooperative service agency school plant facility levy established under Section 33-317A, Idaho Code. ~~(3-30-07)(7-1-09)T~~

02. No Additional Plant Facilities Fund Permitted. Any school or library district with an existing plant facilities fund is not allowed to levy for an additional plant facilities fund in any tax year until the period of the existing plant facilities fund has expired. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code or the cooperative service agency school plant facility levy established under Section 33-317A, Idaho Code. ~~(3-30-07)(7-1-09)T~~

03. Plant Facilities Fund Extensions or Increases. ~~Except for increases related to cooperative service agency school plant facility levies,~~ Any school or library district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-804, Idaho Code. For the purpose of such increase, the "total levy for school or library plant facilities and bonded indebtedness" shall be computed as follows. ~~(3-15-02)(7-1-09)T~~

a. For the first year in which the increased or extended plant facilities fund levy is to be made, sum of the amount to be levied for the plant facilities fund and for any bond fund in existence prior to the new plant facilities fund. (3-15-02)

b. Divide the sum computed in Subsection 801.03.a. by the district's actual market value for assessment purposes as of December 31 of the year immediately preceding the year in which the increased or extended plant facilities fund is to be levied. (3-15-02)

c. The value used for this calculation shall include any portion of increment value in any Revenue Allocation Area in the district, provided that property tax revenue resulting from the levy of the plant facilities fund against such increment value is allocated to the school district and not to any urban renewal agency. For example, an existing plant facilities fund levy raises one hundred thousand dollars (\$100,000) per year. The district wishes to increase this by fifty thousand dollars (\$50,000) per year. The "total levy" would be computed excluding the increment value for the one hundred thousand dollars (\$100,000) portion, but including the increment value for the fifty thousand dollars (\$50,000) new portion of the amount to be levied. (7-1-09)T

d. Any plant facilities fund levy that is extended, pursuant to Section 33-804, Idaho Code, will be considered passed after December 31, 2007 for the purposes of section 50-2908, Idaho Code, and increment value will be included in the calculation of the "total levy" and the actual levy. (7-1-09)T

04. Cooperative Service Agency School (COSA) Plant Facility Fund Increases. Any school district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-317A. For the purpose of determining whether the increase has been approved by the electors, the "total levy for school plant facilities" shall be computed as follows. (7-1-09)T

a. The first year's dollar amount of the proposed COSA plant facility levy shall be divided by the school district's actual market value for assessment purposes, including any increment value in any Revenue Allocation Area in the district, as of December 31 of the year immediately preceding the first year in which the COSA plant facility levy is to be made. (7-1-09)T

b. The dollar amount most recently certified by the school district for an existing plant facilities fund levy shall be divided by the district's actual market value for assessment purposes as of December 31 of the year immediately preceding the first year in which the COSA plant facility levy is to be made. The value used for this calculation shall include any portion of increment value in any Revenue Allocation Area in the district, provided that property tax revenue resulting from the levy of the plant facilities fund against such increment value is allocated to the school district and not to any urban renewal agency. (7-1-09)T

c. The quotients computed in Paragraphs 801.04.a. and 801.04.b. shall be summed. (7-1-09)T

045. Maximum Amount of Increased Plant Facilities Fund. Except as provided in Subsection 801.04, when any district increases its plant facilities fund amount to be levied, the maximum amount shall not in any year exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the year immediately preceding the first year the increased fund is to be levied. This limitation shall not apply to Cooperative Service Agency school plant facility levies, which, in any year, shall not exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the immediate prior year. (3-15-02)(7-1-09)T

056. Special Reporting Requirements for State-Authorized Plant Facilities Levy. When the state Department of Education certifies a state-authorized plant facilities levy to any county under Section 33-909, Idaho Code, the county clerk shall forward a copy of such certification to the State Tax Commission as an attachment to the L-2 Form described in Rule 803 of these rules and submitted for the affected school district. (3-30-07)

07. Special Reporting for COSA and Increased Plant Facilities Levies. Any COSA plant facilities levy shall be reported on a separate line on the L-2 Form defined in Rule 803 of these rules. In addition, the increased amount of a plant facilities levy originally approved on or before December 31, 2007 shall be reported on a separate line on the L-2 Form. (7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

804. TAX LEVY -- CERTIFICATION -- URBAN RENEWAL DISTRICTS (RULE 804). Section 50-2908, 63-803, and 63-811, Idaho Code. (5-8-09)

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: (5-8-09)

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 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 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). (5-8-09)

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). (5-8-09)

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. (5-8-09)

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. (5-8-09)

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

<div style="text-align: center;"> <p>School District Area \$500 M base</p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <p>2008 RAA Annexation (B) \$10 M Increment</p> </div> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 90%;"> <p>Pre 2008 RAA (A) Boundaries \$40 M Increment</p> </div> </div>	2009 School Levies	
	Fund	Value for Setting Levies \$ Millions
	Tort	500
	2001 Plant	510
	2008 Bond (Passed and first levied in 2008)	550
2009 Override	550	

(5-8-09)

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. (5-8-09)

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; (5-8-09)

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.; (5-8-09)

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.; (5-8-09)

d. Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; ~~for up to two (2) years;~~ or ~~(5-8-09)~~(7-1-09)T

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; ~~(5-8-09)~~(7-1-09)T

f. Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (7-1-09)T

06. 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

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0902

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 63-105, 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 21, 2009.

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 is being amended to remind motor fuels distributors that ethanol must be reported as a receipt on the motor fuels distributors report when it is blended with gasoline and to notify motor fuels distributors pursuant to House Bill 338 that deductions on the monthly motor fuel distributor report for ethanol and biodiesel cannot be claimed for periods before June 1, 2009.

Rule 131 was created pursuant to House Bill 11 which provided that the State Tax Commission may by rule require a motor fuels distributor who reports at least 25 receipts or disbursements of motor fuel on its monthly fuel tax return to file electronically. To provide for an exemption from the electronic filing requirement that takes into account, among other relevant factors, the ability of the distributor to comply, at a reasonable cost, with the requirements of this rules.

Rule 135 is being amended pursuant to House Bill 9 to exempt persons who produce 5,000 gallons or less of biodiesel fuel in a calendar year for their personal consumption from paying the 1¢ per gallon petroleum transfer fee.

Rule 170 is being amended by adding a reference to Idaho Code section 63-2425 to inform consumers of new penalties for using dyed diesel fuel for an illegal purpose and to remove unrelated subject matter.

Rule 171 is being created to include information deleted from Rule 170 concerning sale and use tax on motor fuels.

Rule 421 is being amended to delete the recordkeeping requirements for carriers registered under the Full Fee Plan and to place them in a new Rule 422.

Rule 422 is being created to show the recordkeeping requirements for carriers registered under the Full Fee 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: NA

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 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 28, 2009.

DATED this 21st day of August, 2009.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0105-0902

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 includes ethanol blended with motor fuel 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 (This Subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009; ~~(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.** Exemption from Licensing and Monthly Reporting. See Rule 135 for exemptions from obtaining a motor fuels distributor license and filing monthly reports. (____)
- 023.** **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. (5-8-09)
- 034.** **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)
- 045.** **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)
- 056.** **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)

067. Motor Fuels Receipts. All gasoline, 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. (5-8-09)

131. REQUIREMENT TO FILE MOTOR FUELS DISTRIBUTOR REPORTS ELECTRONICALLY (RULE 131).

01. Electronic Filing Requirement. A motor fuels distributor who reports twenty-five (25) or more receipts or disbursements of motor fuels on its monthly distributor report is required to file the distributor report electronically. ()

02. Failure to File Report Electronically. A motor fuels distributor who is required to file its distributor report electronically but does not file the report electronically will be treated as if the distributor did not file the monthly report. ()

03. Waiver from Requirement to File Report Electronically. A motor fuels distributor can request a waiver from the requirement to file motor fuel distributor reports electronically. The distributor making the request for waiver must show that the cost to comply with this rule is unreasonable. The Commission will review each request for waiver and issue a determination. ()

~~132.~~ -- 134. (RESERVED).

135. EXEMPTION FROM OBTAINING A MOTOR FUELS DISTRIBUTOR LICENSE AND MONTHLY ALTERNATE REPORTING FOR PERSONS WHO PRODUCE ~~MOTOR FUELS~~ BIODIESEL 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, except dyed diesel, and the 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, still 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 a ~~monthly~~ Idaho Motor Fuels Distributor Report ~~on a monthly basis~~. (5-8-09)()

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)

a. A qualified consumer is not required to pay the transfer fee on the biodiesel he produces. ()

03. Qualifications. To be a qualified consumer under this rule, a person must: (7-1-99)

a. Use the produced biodiesel or imported motor fuel only in its own aircraft, motor vehicles, or equipment; and (5-8-09)()

or **b.** Import into Idaho one-hundred thousand (100,000) gallons or less of motor fuel in a calendar year; (5-8-09)

c. Produce in Idaho five thousand (5,000) gallons or less of ~~motor fuel~~ biodiesel in a calendar year. (~~5-8-09~~)(____)

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)

170. ~~ADDITIONAL~~ INFORMATION ON DYED & UNDYED DIESEL FUEL (RULE 170).

01. Undyed Diesel Fuel Used for Heating Purposes. The consumer must apply directly to the State Tax Commission for a refund of the special fuels taxes included in the purchase price on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: (4-2-08)

a. Properly documenting information on the sales invoice; and (7-1-98)

b. Providing the customer with a Form ~~75-HF~~ "Heating Fuel Only." (~~7-1-98~~)(____)

02. Red-Dyed Low-Sulfur and Ultra Low-Sulfur Fuel. It is illegal to use red-dyed low-sulfur and ultra low-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state unless the type of user is listed in Subsection 170.03 of this rule. Penalties for illegal use of red-dyed low-sulfur and ultra low-sulfur fuel in a motor vehicle are found in Section 63-2425, Idaho Code. (~~4-2-08~~)(____)

03. Red-Dyed Low-Sulfur and Ultra Low-Sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur and ultra low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur and ultra low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur and ultra low-sulfur diesel fuel may be used: (4-2-08)

a. By state and local governments (political subdivisions of the state) for their exclusive use; (7-1-98)

b. In the engine of a train; (7-1-98)

c. In a school bus while the bus is engaged in the transportation of students and school employees; (7-1-98)

d. In a vehicle (such as a ground servicing vehicle for aircraft) owned by an aircraft museum; (4-11-06)

e. In a highway vehicle that is not registered (and is not required to be registered) for highway use

under the laws of any state or foreign country and is used in the operator's trade or business or for the production of income; (4-11-06)

f. In a highway vehicle owned by the United States that is not used on a highway; (4-11-06)

g. Exclusively by a nonprofit educational organization as defined in Internal Revenue Code Section 4221 (d)(5). (4-11-06)

04171. MOTOR FUELS EXEMPTION FROM SALES TAX (RULE 171).

Any sale of motor fuels by any fuel distributor that is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If such purchases are later included in credits or refunds for motor fuels tax paid and not subject to taxes imposed by Title 63, Chapter 24, Idaho Code, and no other exemption applies, sales and use taxes will be applicable. ~~If fuel, including dyed diesel fuel, is products are sold without the motor fuels tax, the sale is subject to the Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of dyed fuel delivered into bulk storage tanks, where that do not include the motor fuels tax is not charged,~~ are exempt from Idaho sales tax only if the ~~distributor~~ seller has taken from the purchaser a sales tax exemption certificate in the manner required by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 128. However, if the dyed fuel product delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. (5-3-03)()

1742. -- 179. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

421. DOCUMENTATION FOR IDAHO INTERNATIONAL REGISTRATION PLAN ~~AND FULL FEE REGISTRANTS (RULE 421).~~

Records Required For Idaho International Registration Plan ~~and Full Fee~~ Registrants. Registrants must keep records to verify the accuracy of any Idaho International Registration Plan (IRP) ~~or Full Fee registration~~ application submitted to the Idaho Transportation Department. Registrants must keep the records required by Rule 420 of these rules for all IRP registered vehicles, ~~except for Full Fee vehicles registered at less than sixty-two thousand (62,000) lbs. GVW or those registered at the maximum tier, which is more than fifty thousand (50,000) miles per year.~~ Also, registrants must keep individual vehicle records by registered fleet for each application reporting period of July 1st through June 30th. (4-6-05)()

422. DOCUMENTATION FOR IDAHO FULL FEE REGISTRANTS (RULE 422).

01. Records Required For Idaho Full Fee Registrations. Registrants must keep records to verify the accuracy of any Idaho Full Fee registration application submitted to the Idaho Transportation Department. These records must include all summaries and source documents for all registered vehicles, except for full fee vehicles registered at less than sixty-two thousand (62,000) lbs. gvw or those registered at the maximum tier, which is more than fifty thousand (50,000) miles per year. To provide primary and secondary source verification of the distance reported on the application, registrants must keep records by individual vehicle for each reporting period of July 1st through June 30th using two (2) of the following recordkeeping options: ()

a. Distance Measuring Devices. Odometer, hubometer, GPS or perpetual life-to-date readings must be supported by a second source of documentation such as fuel purchases, trip logs, or daily logs. ()

b. Trip Logs. Daily trip logs should show date of travel, origin and destination of the trip, and number of miles traveled. Daily trip sheets should be supported by load tickets, billing invoices, or other original source documents that can be used as verification of miles traveled. ()

c. Number of Trip/Round Trip Miles. This method is used by registrants making numerous short trips from the same origin to the same destination. Computations should be supported by scale tickets, load tickets, or a Commission approved trip analysis. ()

d. Fuel Purchases. Records of fuel purchases must be supported by fuel invoices that show date, location, quantity, and type of fuel purchased. Fuel purchase records should include the usage per unit. If fuel purchases are used to determine miles, the records should contain documentation of how the average miles-per-gallon (MPG) was calculated. ()

02. Credit For Off-Road Miles And Documentation Required. Credit for off-road miles may be given for roads not maintained by a government entity or roads built or maintained by the registrant pursuant to a contract, according to Subsection 292.03 of these rules. These include roads on private property, roads under construction but not open to the public, and may include designated Forest Service roads. Off-road miles must be documented by using odometer readings, maps, contracts, GPS readings, or a Commission approved trip analysis. ()

4223. -- 499. (RESERVED).

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.09 - IDAHO COUNTY OPTION KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0109-0901

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 63-105 and 23-1323.

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 21, 2009.

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 016 is being amended to allow for quarterly, semiannual, and annual returns for distributors and wine direct shippers who are remitting small amounts (less than \$600 per reporting period) of tax. Reporting period other than monthly became permissible when HB 012 was enacted in 2009.

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: NA

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 proposed rule, contact Jim Husted (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 28, 2009.

DATED this 28th day of August, 2009.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0109-0901

016. WINE TAX RETURNS AND REPORTS (RULE 016).

01. Due Date of Reports. Every person liable for the payment of taxes on wine and every person responsible for making reports to the ~~State Tax~~ Commission shall, on or before the 15th day of ~~each~~ the month following the end of the reporting period, file a written report with the ~~State Tax~~ Commission showing all sales of wine for use or delivery within Idaho during the immediately preceding ~~calendar month~~ reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. (3-30-07)()

a. Monthly Filing Generally Required. All persons who pay wine 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 wine tax due from the first through the last day of the preceding calendar month. ()

b. Request to File Quarterly or Semiannually. Distributors or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the wine tax may request permission to file quarterly or semiannually instead of monthly. ()

c. Request to File Annually. Wine direct shippers, distributors, or persons who have seasonal activities 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. ()

d. Final Report. Whenever a taxpayer who is required to file returns under the Wine Tax Act or these rules stops doing business, he must mark cancel on the last report he files. This report ends the taxable year for wine tax purposes and constitutes the taxpayer's final report of wine tax liabilities. The taxpayer must enclose his 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 Wine Tax Act and these rules. ()

02. Weekend or Holiday Due Date. For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (7-1-93)()

03. Prescribed Forms. (7-1-93)

a. All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms either provided by or approved by the Commission. (7-1-93)()

b. Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

c. Out-of-state wineries, vintners, producers or manufacturers of wine shall use importer's reporting forms to report sales to distributors. (7-1-93)

d. In-state distributors, wineries, vintners, producers or manufacturers shall use Form 1752 and related forms to report withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by the winery are subject to tax at the time of withdrawal from the winery's inventory. (3-30-07)

e. All persons liable for wine tax must file a wine tax returns provided by the State Tax Commission. The returns must show the relevant information required for computing the amount of tax due, including: (3-30-07)

i. The name, address, telephone number and permit number of the taxpayer. (3-30-07)

ii. Beginning and ending inventories. (3-30-07)

iii. Wine purchases made during the reporting period. (3-30-07)

iv. Exempt sales and transfers including sales to in-state and out-of-state wholesales and sales to military or liquor dispensaries. (3-30-07)

- v. Purchases and sales of wine in odd size containers. (3-30-07)
- vi. Spoilage. (3-30-07)
- vii. Total taxable gallons. (3-30-07)
- viii. Credits from previous periods, if any. (3-30-07)
- ix. Total tax due. (3-30-07)
- x. Penalty and interest due, if any. (3-30-07)

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1322, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and the State Tax Commission Administration and enforcement rules, IDAPA 35.02.01, "Sales and Use Tax Rules." (3-30-07)

a. All wine tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the wine tax return form. (7-1-93)

b. All wine tax returns or other documents filed by the taxpayer must include his wine tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A wine tax return that does not provide sufficient information to compute a tax liability does not constitute a valid wine tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required it must be on the proper form, as prescribed by the State Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-30-07)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0112-0901

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 63-105, 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 21, 2009.

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 017 is being amended to allow for quarterly, semiannual, and annual returns for beer wholesalers who are remitting small amounts (less than \$600 per reporting period) of tax. Reporting period other than monthly became permissible when HB 012 was enacted in 2009.

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: NA

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 Jim Husted (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 28, 2009.

DATED this 28th day of August, 2009.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0112-0901

017. BEER TAX RETURNS AND REPORTS (RULE 017).

01. Due Date of Reports. Every person liable for the payment of taxes on beer and every person responsible for making reports to the Commission shall, on or before the fifteenth day of ~~each~~ the month following the end of the reporting period, file a written report with the Commission showing all sales of beer for use or delivery within Idaho during the immediately preceding ~~calendar month reporting period~~. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefore, at the time such report is filed.

(7-1-93)()

a. Monthly Filing Generally Required. All persons who pay beer 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 beer tax due from the first through the last day of the preceding calendar month. ()

b. Request to File Quarterly or Semiannually. Wholesalers or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the beer tax may request permission to file quarterly or semiannually instead of monthly. ()

c. Request to File Annually. Wholesalers or persons who have seasonal activities 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. ()

d. Final Report. Whenever a taxpayer who is required to file returns under the Beer Tax Act or these rules stops doing business, he must mark cancel on the last report he files. This report ends the taxable year for beer tax purposes and constitutes the taxpayer's final report of beer tax liabilities. The taxpayer must enclose his 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 Beer Tax Act and these rules. ()

02. Weekend or Holiday Due Date. For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (7-1-93)()

03. Forms Provided or Approved by Tax Commission. All dealers engaged in the sale or other disposition of beer imported into Idaho shall report all sales and dispositions of beer on forms either provided or approved by the Commission. (7-1-93)()

04. Inventory Reporting Methods. Wholesalers of beer must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on Wholesaler Beer Tax Returns provided by the Commission. (7-1-93)

05. Out-of-State Brewers. Out-of-state brewers of beer shall use dealer's reporting forms to report sales to wholesalers. (7-1-93)

06. In-State Brewers. In-state brewers of beer shall use wholesaler's beer tax returns to report all withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by a brewery are subject to tax at the time of withdrawal from the brewer's inventory. (7-1-93)

07. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1051, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

a. All beer tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the beer tax return form. (7-1-93)

b. All beer tax returns or other documents filed by the taxpayer must include his beer tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A beer tax return that does not provide sufficient information to compute a tax liability does not constitute a valid beer tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; and it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0901

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 21, 2009.

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

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

Rule 005 is being amended to correct the address of the new Twin Fall's field office.

Rule 200 is being repealed and replaced with new Rules 200, 201, 202, 203, and 204. Negotiated rulemaking was undertaken to modify the rule that addressed the examination of books, witnesses, and discovery. The new rules basically incorporate the Federation of Tax Administrators' model recordkeeping and retention regulation and some of Oregon's rules on providing copies of documents. Rule 201 also retains Subsection 200.02, Failure to Comply and Subsection 200.04, Cost Reimbursement to a Third-Party.

Rule 310 is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2010 to the table that identifies this information by year.

Rule 320 is being amended to clarify what a perfected protest is and to define "unperfected protest."

Rule 500 is being amended to address "settlements" rather than "compromises," defines "disputed liability," "doubt as to collectability" and "economic hardship" based on language in Rev. Proc, 2003-71. Rule 500 also adds "promotion of effective tax administration" as an additional ground

Rule 704 is being amended to add the Alcohol Beverage Control Bureau of the Idaho State Police to the list of disclosure agreements and Section 23-907, Idaho Code to the title of the rule.

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: NA

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 28, 2009.

DATED this 28th day of August, 2009.

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 PROPOSED TEXT OF DOCKET NO. 35-0201-0901

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. The telephone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is "taxrep@tax.idaho.gov." All offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays. (3-15-02)

02. Regional Field Offices. The address and phone number for each regional field office is listed in Subsections 005.02.a. through 005.02.e. (3-15-02)

a. Coeur d'Alene Field Office. 1910 Northwest Blvd., Suite 100, Coeur d'Alene, Idaho 83814-2615. The telephone number is (208) 769-1500. The facsimile number is (208) 769-1505. (3-15-02)

b. Lewiston Field Office. 1118 F Street, P.O. Box 1014, Lewiston, Idaho 83501-1014. The telephone number is (208) 799-3491. The facsimile number is (208) 799-5053. (3-15-02)

c. Idaho Falls Field Office. 150 Shoup Avenue, Suite 16, Idaho Falls, Idaho 83402-3653. The telephone number is (208) 525-7116. The facsimile number is (208) 525-7154. (3-15-02)

d. Pocatello Field Office. 611 Wilson Avenue, Suite 5, Pocatello, Idaho 83201-5029. The telephone number is (208) 236-6244. The facsimile number is (208)233-6134. (3-15-02)

e. Twin Falls Field Office. ~~Suite C, 1038 Blue Lakes Blvd. N., P.O. Box 5227~~ 440 Falls Avenue, Twin Falls, Idaho 83303-~~5227~~ 3320. The telephone number is (208) 736-3040. The facsimile number is (208) 736-3043. (3-15-02)()

03. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1-800-377-3529. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

~~**200. EXAMINATION OF BOOKS AND WITNESSES AND DISCOVERY (RULE 200).**~~
~~Sections 63-3042 and 63-3043, Idaho Code.~~ (3-20-97)

~~**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. **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)~~

~~03. **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)~~

~~04. **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 (\$0.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons. (3-20-97)~~

200. EXAMINATION OF RECORDS -- DEFINITIONS (RULE 200).
Sections 63-3042 and 63-3043, Idaho Code. For purposes of Rules 200 through 204, the following definitions apply: ()

01. Books and Papers. Books and papers shall mean and include any kind of written, printed, typed, or recorded matter of any kind or nature, however produced or reproduced including, but not limited to: all mechanical, electronic, sound or video recordings or their transcripts; microfilm and microfiche records; papers; service orders; repair orders; agreements; contracts; notes; memoranda; correspondence; letters; telegrams; statements; books; reports; studies; minutes; records; accounting books; maps; plans; drawings; diagrams; photographs; analyses or studies; and all drafts prepared in connection with such items. "Books and papers" also include electronic files and computer stored data. ()

02. Database Management System. Database Management System means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database. ()

03. Electronic Data Interchange or EDI Technology. Electronic data interchange or EDI technology means the computer-to-computer exchange of business transactions in a standardized structured electronic format. ()

04. Hard Copy. Hard copy means any documents, records, reports or other data printed on paper. ()

05. Machine-Sensible Record. Machine-sensible record means a collection of related information in an electronic format. 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. ()

06. Photocopy (Photocopied). Photocopy (photocopied) means a copy or reproduction of an original document including books and papers; to make a photographic reproduction of any document, printed, pictorial, or other medium of information or recordkeeping. ()

07. Records. Records, as used in this rule, has the same meaning as "books and papers." ()

08. Storage-Only Imaging System. Storage-only imaging system means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper.

It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image. ()

~~201. -- 204.~~ (RESERVED).

201. EXAMINATION OF RECORDS -- RECORDKEEPING AND PRODUCTION REQUIREMENTS (RULE 201).

Sections 63-3042 and 63-3043, Idaho Code. ()

01. In General. ()

a. A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. Required records must be made available on request by the Tax Commission or its authorized representatives. The time and place for production shall be reasonable and shall occur during regular business hours. When books and papers are requested they will be relevant and reasonable documentation for the issues under examination. The request for information is relevant if it is germane to or applicable to an audit issue. ()

b. Books and papers must 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 purposes of administering and verifying compliance with the tax laws. Photocopying is a benefit to both the Tax Commission and the taxpayer as the photocopy provides objective evidence supporting a tax position and allows for expediting the audit. ()

c. All books and papers that are acquired during an audit or examination are confidential. ()

d. If the requirement to produce records creates a hardship for a taxpayer, the auditor or agent will work with the taxpayer to come to a reasonable solution for both parties. ()

e. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Tax Commission in machine-sensible format upon request of the Tax Commission. ()

f. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media. However, this subsection shall not relieve the taxpayer of the obligation to comply with Paragraph 201.01.e. of this rule. ()

02. Machine-Sensible Records. ()

a. General Requirements. ()

i. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Tax Commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met. ()

ii. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. ()

iii. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes. ()

b. Electronic Data Interchange Requirements. ()

i. Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an

acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Tax Commission to interpret the coded information. ()

ii. The taxpayer may capture the information necessary to satisfy Subparagraph 201.02.b.i. of this rule at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the Tax Commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes. ()

c. Electronic Data Processing Systems Requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule. ()

d. Business Process Information. ()

i. Upon the request of the Tax Commission, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records. ()

ii. The taxpayer shall be capable of demonstrating: ()

(1) The functions being performed as they relate to the flow of data through the system; ()

(2) The internal controls used to ensure accurate and reliable processing; and ()

(3) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records. ()

iii. The following specific documentation is required for machine-sensible records retained pursuant to this rule: ()

(1) Record formats or layouts; ()

(2) Field definitions (including the meaning of all codes used to represent information); ()

(3) File descriptions (e.g., data set name); and ()

(4) Detailed charts of accounts and account descriptions. ()

03. 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 (\$0.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons. ()

04. 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: ()

a. The disallowance of claimed deductions, credits, or exemptions to which the requested information relates: ()

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. ()

202. EXAMINATION OF RECORDS -- ACCESS TO MACHINE-SENSIBLE RECORDS (RULE 202).
Sections 63-3042 and 63-3043, Idaho Code. ()

01. In General. The manner in which the Tax Commission is provided access to machine-sensible records as required by Rule 201 may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer. ()

02. Access Alternatives. Such access will be provided in one (1) or more of the following manners: ()

a. The taxpayer may arrange to provide the Tax Commission with the hardware, software and personnel resources to access the machine-sensible records. ()

b. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records. ()

c. The taxpayer may convert the machine-sensible records to a standard record format specified by the Tax Commission, including copies of files, on a magnetic medium that is agreed to by the Tax Commission. ()

d. The taxpayer and the Tax Commission may agree on other means of providing access to the machine-sensible records. ()

203. EXAMINATION OF RECORDS -- RECORDS MAINTENANCE (RULE 203).
Sections 63-3042 and 63-3043, Idaho Code. ()

01. Requirements. ()

a. The Tax Commission recommends, but does not require, that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. [The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, edition.] ()

b. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records. ()

02. Taxpayer Responsibility and Discretionary Authority. ()

a. In conjunction with meeting the requirements of Rule 201, a taxpayer may create files solely for the use of the Tax Commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of Rule 201. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records. ()

b. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this rule. ()

03. Effect on Hard-Copy Recordkeeping Requirements. ()

a. Except as otherwise provided in this section, the provisions of these rules do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on a recordkeeping medium as provided in Rule 204 of these rules. ()

b. If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created. ()

c. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. Such details include those listed in Paragraph 201.02.b. ()

d. Computer printouts that are created for validation, control, or other temporary purposes need not be retained. ()

e. Nothing in this section shall prevent the Tax Commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination. ()

204. EXAMINATION OF RECORDS -- ALTERNATIVE STORAGE MEDIA (RULE 204).
Sections 63-3042 and 63-3043, Idaho Code. ()

01. In General. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda. ()

02. Requirements of Storage-Only Imaging Systems. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements: ()

a. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance. ()

b. Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available. ()

c. Upon request by the Tax Commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system. ()

d. When displayed on such equipment or reproduced on paper, the documents 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. ()

e. All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record. ()

f. There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity. ()

(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
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29

(5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

320. NOTICE OF DEFICIENCY -- FILING A PROTEST (RULE 320).

Section 63-3045, Idaho Code.

(3-20-97)

01. In General. If a taxpayer does not agree with a deficiency determination, the taxpayer may file a protest with the Tax Commission to request a redetermination of the deficiency. The protest must be in writing and filed within sixty-three (63) days from the date the Notice of Deficiency is mailed. *The protest must contain the*

~~following information to be perfected:~~

~~(3-20-97)()~~

02. Perfected Protest. The protest must contain the information in Paragraphs 320.02.a. through 320.02.d. of this rule to be perfected. A protest meets the requirements of Paragraphs 320.02.c. and 320.02.d. of this rule if the allegations of fact or contentions of law, viewed in the light most favorable to the taxpayer, raise factual or legal issues that, if correct, would entitle the taxpayer to relief. ()

a. Name, address and pertinent identification number; (3-20-97)

b. The period to which the deficiency relates; (3-20-97)

c. The specific item or items in the Notice of Deficiency to which the taxpayer objects; and (3-20-97)

d. The factual or legal basis for the objections made. (3-20-97)

023. Receipt of Protest. Once a protest is received by the Tax Commission, the sixty-three (63) day period ends. (3-20-97)

034. Unperfected Protest. (3-20-97)

a. ~~If the Tax Commission determines the A~~ protest is unperfected if it does not include all the items required by this rule; ~~If the Tax Commission determines the protest is unperfected,~~ the Tax Commission shall notify the taxpayer of the items needed to perfect the protest. The taxpayer has twenty-eight (28) days from the date the notice is mailed to provide the information. ~~(3-20-97)()~~

b. Example. A Notice of Deficiency is mailed to a taxpayer on August 31. He has sixty-three (63) days from August 31 to protest his deficiency determination. The Tax Commission receives his protest on September 10. The sixty-three (63) day period stops on September 10. The Tax Commission determines the protest is not perfected and mails notification to the taxpayer on September 15. The taxpayer has twenty-eight (28) days or through October 13 to perfect the protest. After October 13, he may no longer perfect his protest or submit a new protest even though the original sixty-three (63) day period would have run through November 2. (3-20-97)

045. Failure to Timely Perfect a Protest. Failure to perfect a protest within twenty-eight (28) days is treated the same as if no protest had been filed, pursuant to Section 63-3045(5), Idaho Code. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

500. ~~ADJUSTED OR COMPROMISED CASES — CLOSING AGREEMENTS SETTLEMENTS~~ (RULE 500).

Sections 63-3047 and 63-3048, Idaho Code.

~~(3-20-97)()~~

01. Grounds for ~~Compromise~~ Settlement. The Tax Commission may ~~compromise~~ settle the tax liability, penalties, or both, of a case if one (1) or more of the following circumstances exist: ~~(3-20-97)()~~

a. ~~Doubt as to~~ Disputed liability; ~~(3-20-97)()~~

i. A disputed liability exists where there is a reasonable disagreement as to the existence or amount of the correct tax liability under the law. A disputed liability does not exist where the liability has been established by a final court judgment concerning the existence of the liability. ()

ii. An offer to settle a disputed liability generally will be considered acceptable if it reasonably reflects the likelihood the Commission could expect to collect through litigation. This analysis includes consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the Commission. ()

- b. Doubt as to collectibility; ~~or~~ (3-20-97)()
- i. Doubt as to collectibility exists in any case where the taxpayer's assets and income may not satisfy the full amount of the liability. ()
- ii. An offer to settle based on doubt as to collectability generally will be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the Commission could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the Commission will take into account the taxpayer's reasonable basic living expenses. In some cases, the Commission may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances. ()
- c. Extreme Economic hardship of the taxpayer. (3-20-97)()
- i. The Commission may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses. ()
- ii. An offer to settle based on economic hardship generally will be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the Commission can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's individual facts and circumstances. ()
- d. Promotion of effective tax administration. ()
- i. The Commission may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this paragraph will be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid his liability in full. ()
- ii. The State Tax Commission may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws. ()
- ~~02. **Final Judgments.** The Tax Commission may not compromise the tax liability if the liability has been established by a final judgment of a court, and no doubt exists as to the taxpayer's ability to pay or the state's ability to collect the amounts owing.~~ (3-20-97)
- 032. Agreement Final.** A ~~compromise settlement~~ agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer shall be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact or as provided in the agreement. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. (3-20-97)()
- 043. Form of ~~Compromise Settlement~~.** The taxpayer must submit an offer ~~of compromise to settle~~ in writing. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission shall promptly notify the taxpayer. (3-30-07)()
- 054. Withdrawal of Offer.** A taxpayer may withdraw his offer ~~in compromise to settle~~ at any time prior to its acceptance by the Tax Commission. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).

Sections ~~23-907~~, 39-8405, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3634A, and 67-4917C, Idaho Code. ~~(3-30-07)~~(____)

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange of Information. Information may be exchanged between the Tax Commission and: (4-5-00)

a. The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)

b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)

c. County assessors, limited to: (3-20-04)

i. Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)

ii. Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)

d. Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)

e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)

f. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)

g. Idaho Transportation Department, relating to: (3-20-04)

i. Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)

ii. Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)

h. Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)

i. Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)

j. Department of Fish and Game, limited to information relating to an individual's place of residence

- or domicile, Section 63-3077C, Idaho Code; (5-3-03)
- k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
 - l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
 - m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
 - n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
 - o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)
 - p.** The Alcohol Beverage Control Bureau within the Idaho State Police, as provided in Section 23-907, Idaho Code. ()

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0902

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 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 21, 2009

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 501 is being proposed to detail the procedures the State Tax Commission will follow to comply with the requirements and controls necessary when the Commission settles an administrative proceeding ("a tax protest") in which the amount in dispute exceeds \$50,000.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(2), 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: 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: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed rule changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ted Spangler 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 28, 2009.

DATED this 28th day of August, 2009.

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 TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 35-0201-0902

501. PROCEDURES ON SETTLEMENTS OVER FIFTY THOUSAND DOLLARS (RULE 501).

Section 63-3048, Idaho Code.

(7-1-09)T

01. Signatures for Settlement. For settlement agreements where the amount in issue equals or exceeds fifty thousand dollars (\$50,000), the signature of two (2) commissioners is required on the settlement agreement to make it binding and complete. One of the commissioners signing must be delegated the responsibility for oversight of the tax type subject to the settlement.

(7-1-09)T

02. Amount in Issue. The amount in issue is defined as the Notice of Deficiency amount, plus or minus any adjustments previously communicated in writing to the taxpayer, minus the proposed settlement amount.

(7-1-09)T

a. Example 1. The audit staff issues a Notice of Deficiency to the taxpayer for one hundred fifty thousand dollars (\$150,000). The taxpayer then submits documentation for additional examination by the Commission or its staff. As a result of the examination, the amount claimed due is reduced to one hundred twenty thousand dollars (\$120,000), and the taxpayer is notified in writing. The taxpayer then submits an offer to settle for eighty thousand dollars (\$80,000). The amount in issue is forty thousand dollars (\$40,000).

(7-1-09)T

b. Example 2. Same facts as in Paragraph 501.02.a., except the taxpayer makes the offer to settle before the Commission communicates the reduction in the amount claimed due based on the additional documentation. In this case, the amount in issue is seventy thousand dollars (\$70,000) (NOD amount of \$150,000 - settlement offer of \$80,000 = \$70,000), because the Commission has not communicated the allowance of the deduction to the taxpayer, and the taxpayer is not aware of the adjustment at the time he made the offer.

(7-1-09)T

c. Example 3. The taxpayer files a refund claim of one hundred thousand dollars (\$100,000). The audit staff reviews the claim and determines the taxpayer is entitled to a refund of twenty thousand dollars (\$20,000). The taxpayer protests the denial of the remaining eighty thousand dollars (\$80,000). The taxpayer makes an offer to settle by proposing a refund of seventy-five thousand dollars (\$75,000). The amount in issue is fifty-five thousand dollars (\$55,000), which is the difference between the refund allowed and the proposed settlement amount. The calculation is as follows:

Audit staff NOD amount	(\$20,000)
Less settlement offer	-\$75,000
Amount in issue	(\$55,000)

(7-1-09)T

d. Example 4. The taxpayer files a refund claim of one hundred thousand dollars (\$100,000). The audit staff reviews the claim and determines the taxpayer is not entitled to a refund and instead owes fifty thousand dollars (\$50,000). The audit staff issues a Notice of Deficiency for fifty thousand dollars (\$50,000) and a denial of the refund claim. The taxpayer submits additional documentation for examination by the Commission or its staff. After review, the amount claimed due is reduced to thirty thousand dollars (\$30,000), and this is communicated to the taxpayer in writing. The taxpayer then offers to settle by proposing a refund of forty thousand dollars (\$40,000). The amount in issue is seventy thousand dollars (\$70,000). The calculation is as follows:

Audit staff NOD amount	\$50,000
Less adjustment submitted to taxpayer	-\$20,000
Amount claimed due	\$30,000
Less settlement offer	-\$40,000

Amount in issue	\$70,000
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(7-1-09)T

e. For purposes of the amount in issue, interest will be updated to the date of the offer. (7-1-09)T

03. Final Review. When considering a proposed settlement, and the amount in issue equals or exceeds fifty thousand dollars (\$50,000), the Commission will hold a final review before deciding to finalize the settlement. The meeting on the final review will be attended by at least two (2) commissioners, a tax policy specialist, a deputy attorney general, and a representative from the division in which the Notice of Deficiency originated. The representative shall be either the division administrator or the bureau chief. One of the commissioners must be the commissioner delegated oversight responsibility for the tax at issue, and the other commissioner signing the settlement agreement must attend the final review. The purpose of the final review is to evaluate the merits of the proposed settlement. (7-1-09)T

04. Written Summary. The deputy attorney general or tax policy specialist at the final review shall prepare a written summary of the proposed settlement. The summary shall include recommendations of the audit staff as well as recommendations of the preparer. The summary shall be provided to those attending the review. This summary does not preclude the Commission from seeking a separate analysis from other agents of the Commission. A copy of the summary, along with a copy of the related settlement agreement, shall be maintained in separate files of the Commission. Such files may not be disclosed or inspected under the public records law. (7-1-09)T

05. Final Review When the Offer to Settle is Based on Inability to Pay. If the taxpayer's offer is based on inability to pay, a representative of the Field Services Bureau will be provided a copy of the Written Summary and given an opportunity to participate in the final review. The representative attending the final review on behalf of the Field Service Bureau will be the division administrator or the bureau chief. (7-1-09)T

06. Annual Summary. The Commission shall submit an annual report to the governor and legislature by March 1 of each year summarizing all settlement agreements entered into during the previous calendar year in which the amount in issue equals or exceeds fifty thousand dollars (\$50,000). The annual summary shall be based on the written summary for all applicable cases. The annual summary shall not contain any confidential taxpayer information but shall include a brief general description of each settlement. The annual summary shall be a public record subject to disclosure and inspection. (7-1-09)T

07. Applicable Settlements. This rule applies to those matters when a protest has been timely filed pursuant to Section 63-3045, Idaho Code, and before the tax has been assessed, and to cases in which a decision of the Tax Commission has been appealed to the Board of Tax Appeals or to a court. However, this rule shall not apply to settlements where the amount in issue is less than fifty thousand dollars (\$50,000). (7-1-09)T

~~5042.~~ -- 599. (RESERVED).

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.03.01 - RULES GOVERNING GROUP INSURANCE

DOCKET NO. 38-0301-0901 (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 Section 67-5761(1)(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 new Group Insurance rules will establish State employee and retired State employee eligibility requirements and the two year supplemental reimbursement for individuals in the Medicare prescription drug gap.

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

There are no fees or charges being imposed through this rulemaking.

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

The cost of the 2-year supplemental reimbursement for individuals in the Medicare prescription drug gap will be \$400,000 per year (for a total of \$800,000), plus administrative expenses related to handling claims for reimbursement. It is estimated that the change to requiring part-time employees to work 20 hours per week or more for five (5) consecutive months will save the State approximately \$150,000 per year. These rules also incorporate recent legislative changes regarding the retiree eligibility and recent plan design changes which achieve an estimated savings of \$9.9 million per year; plus the pro-rata contribution changes for part-time employees, effective in November 2009, which will further save the State approximately \$5.9 million per year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to implement the statutory requirements of 67-5761(1)(b), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Ness, Employee Benefits Program Manager, Office of Group Insurance, Department of Administration at (208) 332-1865.

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 28, 2009.

DATED this 28th day of August, 2009.

Melissa Vandenberg
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, ID 83720-0003
Ph: (208) 332-1832
Fax: (208) 334-2307

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0301-0901

IDAPA 38
TITLE 03
CHAPTER 01

38.03.01 - RULES GOVERNING GROUP INSURANCE

000. LEGAL AUTHORITY.

The following rules are promulgated in accordance with Sections 67-5761(1)(b), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.03.01, "Rules Governing Group Insurance." ()

02. Scope. Pursuant to Section 67-5761, Idaho Code, these rules set forth eligibility for the state of Idaho's group insurance, and eligibility and procedures for reimbursing a Medicare-eligible retiree for his out-of-pocket expenses for prescription medications when he has exceeded the initial Medicare prescription medication coverage amount. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department of Administration may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. Any such documents are available for public inspection and copying at the office of this agency, with the exception of those documents that are exempt from disclosure pursuant to Section 9-340, et. seq., Idaho Code, and the Health Insurance Portability Accountability Act. ()

003. ADMINISTRATIVE APPEALS.

The provisions found in Section 040 of these rules shall govern administrative appeals of the director's denial to the Group Insurance Advisory Committee. ()

004. EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

Pursuant to Section 67-5206(5), Idaho Code, except as provided in these rules, the procedures contained in Subchapter B, "Contested Cases," of the rules promulgated by the attorney general as IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." Sections 100 through 799, do not apply to appeals from denied petitions. ()

005. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

To prevent unnecessary delays and increased costs in the determination of whether a Medicare-eligible retiree or his Medicare-eligible dependent is eligible to receive reimbursement of out-of-pocket expenses for prescription medications, the rules of procedure in this chapter are adopted to promote the speedy resolution of appeals from denied petitions. ()

006. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

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

The Office of Group Insurance is located at 650 W. State Street, Boise, Idaho 83702-5936. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0035. Office hours are 8 a.m. to 5 p.m., Monday through Friday. ()

008. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

009. -- 010. (RESERVED).

011. DEFINITIONS.

01. Child. Child includes a natural child, stepchild, adopted child or child in the process of adoption from the time placed with the eligible active employee or eligible retiree. The term also includes a child legally dependent upon the eligible active employee, the eligible active employee's spouse, the eligible retiree or the eligible retiree's spouse for support where a normal parent-child relationship exists with the expectation that the eligible active employee or eligible retiree will continue to rear that child to adulthood. The definition does not include a child where one or both of that child's natural parents live in the same household with the eligible active employee or eligible retiree, as a parent-child relationship is not deemed to exist even though the eligible active employee, eligible retiree or their spouses provide support. ()

02. Date of Hire. The first day an individual begins work for the state or his employer. ()

03. Director. The director of the Department of Administration. ()

04. Eligible Active Employee. An officer or employee of a state agency, department or institution, including a state official, elected official or employee of another governmental entity which has contracted with the state of Idaho for group insurance coverage, who is working twenty (20) hours or more per week, and whose term of employment is expected to exceed five (5) consecutive months. ()

05. Eligible Dependent of an Eligible Active Employee. An eligible dependent of an eligible active employee who is enrolled in group insurance, is a person who is any of the following: ()

a. The spouse of an eligible active employee. ()

b. An unmarried child under the age of twenty-one (21) of an eligible active employee or an eligible active employee's spouse. ()

c. An unmarried child under the age of twenty-five (25) who is legally dependent upon the eligible active employee or the eligible active employee's spouse for support where a normal parent-child relationship exists with the expectation that the eligible active employee will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible active employee's most recent United States Individual Income Tax return. ()

06. Eligible Dependent of an Eligible Retiree. An eligible dependent of an eligible retiree who is enrolled in group insurance, is a person who is any of the following: ()

a. The non-Medicare-eligible spouse of an eligible retiree. ()

b. An unmarried child under the age of twenty-one (21) of an eligible retiree or an eligible retiree's spouse. ()

c. An unmarried child under the age of twenty-five (25) who is legally dependent upon the eligible retiree or the eligible retiree's spouse for support where a normal parent-child relationship exists with the expectation that the eligible retiree will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible retiree's most recent United States Individual Income Tax return. ()

07. Eligible Retiree. A person who is any of the following: ()

a. An officer or employee of a state agency, department or institution, including state and elected

officials, who retired on or before June 30, 2009, and who is not Medicare eligible. ()

b. An officer or employee of a state agency, department or institution, including state and elected officials, who meets all of the following: ()

i. He retires after June 30, 2009, and retires directly from state employment. ()

ii. He is not Medicare eligible. ()

iii. He was hired on or before June 30, 2009, or has at least twenty thousand eight hundred (20,800) credited state service hours on or before June 30, 2009, is reemployed, reelected or reappointed after June 30, 2009, and accrues an additional six thousand two hundred forty (6,240) continuous credited state service hours. ()

c. A person receiving benefits from a state of Idaho retirement system who has at least ten (10) years or twenty thousand eight hundred (20,800) credited state service hours in a state of Idaho retirement system, and who is not Medicare eligible. ()

08. Group Insurance. Medical, dental, vision, life, disability and other types of insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide such insurance to eligible active employees, eligible retirees and their dependents. ()

09. Health Care Coverage. Medical insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide medical insurance to eligible active employees, eligible retirees and their dependents. ()

10. Medicare Coverage Gap. Under a Medicare-supplement plan, there is a gap in coverage for prescription medications between the initial coverage limit (two thousand seven hundred dollars [\$2,700] in 2009) and the catastrophic coverage threshold (four thousand three hundred fifty dollars [\$4,350] in 2009). Within this gap, the Medicare recipient pays one hundred percent (100%) of the cost of prescription medications before catastrophic coverage begins. ()

11. Medicare Eligible. A person who is age sixty-five (65) or older and qualifies to receive Medicare. ()

012. -- 019. (RESERVED).

020. ELIGIBILITY FOR GROUP INSURANCE.

01. Group Insurance Eligibility. The following individuals who meet the eligibility criteria are qualified to apply for and receive group insurance coverage from the state of Idaho: ()

a. Eligible active employees. ()

b. Eligible dependents of an eligible active employee. ()

02. Health Care Coverage Eligibility. The following individuals who meet the eligibility criteria are qualified to apply for and receive health care coverage from the state of Idaho. ()

a. Eligible retirees. ()

i. An eligible retiree must enroll in health care coverage from the state of Idaho within sixty (60) calendar days of the date of retirement to be eligible for continuous health care coverage. ()

b. Eligible dependents of an eligible retiree. ()

03. Eligible Retiree or Eligible Retiree's Dependent as Late Enrollee. If an eligible retiree does not enroll in health care coverage from the state of Idaho within sixty (60) calendar days of the date of his retirement, or

does not enroll his dependent in health care coverage from the state of Idaho within sixty (60) calendar days of the date of his retirement, the eligible retiree or his dependent may be eligible for health care coverage as a late enrollee. Late enrollees are not eligible for continuous health care coverage. ()

04. Other Eligibility. All other eligibility criteria not found in these rules are set forth in the contracts between the Office of Group Insurance and the group insurance carriers. An individual is not eligible for group insurance or health care coverage unless he meets the eligibility criteria set forth in these rules and the eligibility criteria set forth in the contract between the respective carrier and the Office of Group Insurance. ()

021. -- 029. (RESERVED).

030. EXCEPTIONS TO ELIGIBILITY.

01. Dual Eligibility. Neither an eligible active employee's spouse nor an eligible retiree's spouse is eligible for group insurance or health care coverage if that spouse is an eligible active employee or an eligible retiree and is enrolled in group insurance or health care coverage. ()

02. Dual Eligibility of a Dependent Child. An eligible dependent child is eligible for group insurance under one or the other parent's group insurance policy, but not both, where both parents are eligible active employees, eligible retirees or are an eligible active employee and an eligible retiree. ()

031. EFFECTIVE DATE OF COVERAGE.

Once the eligible active employee or eligible retiree has enrolled himself and his dependents in group insurance and eligibility has been established, the effective dates of group insurance coverage is governed by the contracts between the respective carrier and the Office of Group Insurance. ()

032. LOSS OF ELIGIBILITY.

01. Eligible Active Employee Separation. An eligible active employee and his dependents are no longer eligible for group insurance when the employee separates employment. An employee or former employee may be qualified to extend group insurance coverage after separation under provisions of federal and state law. ()

02. Unmarried Dependent Child At or Over Age Twenty-Five. An unmarried child under the age of twenty-five (25) who is legally dependent upon the eligible active employee or eligible retiree for support where a normal parent-child relationship exists with the expectation that the eligible employee or eligible retiree will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible active employee's or eligible retiree's most recent United States Individual Income Tax return, is no longer eligible for group insurance at the end of the calendar month the child becomes twenty-five (25) years old. ()

03. Retiree Becomes Medicare Eligible. A retiree is no longer eligible for health care coverage when the retiree becomes Medicare eligible. A Medicare-eligible retiree's dependent spouse, who is not Medicare eligible, and eligible dependent children, remain eligible for health care coverage until the spouse becomes Medicare eligible. ()

04. Retiree's Dependent Spouse Becomes Medicare Eligible. A retiree's dependent spouse and other dependents are no longer eligible for health care coverage when the retiree's dependent spouse becomes Medicare eligible. ()

033. ELIGIBILITY FOR RETIREE SUBSIDY OF ONE HUNDRED FIFTY-FIVE DOLLARS.

01. Eligible Retiree Monthly Subsidy. An eligible retiree enrolled as a retiree for health care coverage and who is not Medicare eligible, shall receive a one hundred fifty-five dollars (\$155) subsidy per month toward his health care coverage premiums at the end of the month the eligible retiree becomes Medicare eligible. ()

a. An eligible retiree enrolled as a dependent is not entitled to receive a one hundred fifty-five dollars (\$155) subsidy per month. ()

b. The subsidy will be paid by the state of Idaho to the Office of Group Insurance to offset the cost of the monthly premiums charged to the eligible retiree for health care coverage, and at no time will the subsidy be paid directly to the eligible retiree. ()

034. -- 039. (RESERVED).

040. MEDICARE PRESCRIPTION MEDICATION REIMBURSEMENT PROGRAM.

Effective January 1, 2010 through December 31, 2011, any Medicare-eligible retiree or his Medicare-eligible dependent spouse, who is no longer eligible for health care coverage due to Medicare eligibility, may petition the director for reimbursement of prescription medications up to, but not to exceed, two thousand dollars (\$2,000) per calendar year, per Medicare-eligible retiree and per Medicare-eligible dependent spouse. ()

01. Eligibility for Medicare Prescription Medication Reimbursement. If an eligible retiree or his eligible dependent spouse meet the following conditions, he can request reimbursement for his respective out-of-pocket expenses for prescription medications. Each individual must meet all criteria each calendar year: ()

a. The Medicare-eligible retiree or his Medicare-eligible dependent spouse has met or exceeded the initial Medicare coverage limit for prescription medication expenses under his Medicare-supplement plan. ()

b. The Medicare-eligible retiree or his Medicare-eligible dependent spouse is in the Medicare coverage gap, and has paid two thousand dollars (\$2,000) or more out of pocket for prescription medications. ()

c. The Medicare-eligible retiree's or his Medicare-eligible dependent spouse's total out-of-pocket prescription medication expenses have not exceeded the Medicare catastrophic coverage threshold. ()

02. Deadline to Request Reimbursement from the Director. A Medicare-eligible retiree or his Medicare-eligible dependent spouse must submit a petition and a request for reimbursement to the director on or before March 31 of each year for the petition and request to be considered timely. ()

a. All reimbursement requests for 2010 out-of-pocket prescription medication expenses must be received on or before March 31, 2011, and requests for 2011 out-of-pocket prescription medication expenses must be received on or before March 31, 2012, to be considered. Petitions and reimbursement requests received after March 31, 2011 (for 2010 expenses), and March 31, 2012 (for 2011 expenses), will be denied for being untimely. ()

03. Contents of the Petition and Reimbursement Requests. The Medicare-eligible retiree's or Medicare-eligible dependent spouse's petition and reimbursement request shall specifically state the reasons why the director should grant the Medicare-eligible retiree's or the Medicare-eligible dependent spouse's petition and reimbursement request, including but not limited to evidence that the petitioner has met all of the eligibility criteria above. ()

a. Reimbursement requests must include all of the following information on an itemized receipt or statement: ()

i. Date of service. ()

ii. Description of prescription medication. ()

iii. Total amount of expenses. ()

iv. Patient name. ()

v. Any amount covered by other insurance, if applicable. ()

04. Director's Review of the Petition and Reimbursement Request. The director shall review the petition and reimbursement request, and may ask for additional information or documentation from the petitioner to assist the director in reaching a decision on the petition and reimbursement request. ()

05. Director's Decision of the Petition and Reimbursement Request. The director shall approve or deny the petition and reimbursement request, and shall provide reasons for any denial within ten (10) business days after receipt of the petition or the receipt of requested information or documentation, whichever is later. ()

06. Appeal of Denial. A petitioner may appeal the director's denial within thirty (30) days of the denial. The appeal shall state the reasons why the director's decision is in error. The appeal shall be reviewed by the Group Insurance Advisory Committee within thirty (30) calendar days of receipt of the appeal. ()

a. The Group Insurance Advisory Committee may review the appeal and make a decision on the basis of the information and documentation provided by the Medicare-eligible retiree or his Medicare-eligible dependent spouse, may request additional information or documentation, and may take written or oral testimony. ()

b. The Group Insurance Advisory Committee shall issue a written decision on the Medicare-eligible retiree's or his Medicare-eligible dependent spouse's appeal within ninety (90) days of the date of the appeal. ()

c. The Group Insurance Advisory Committee shall deny any appeal for any of the following reasons: ()

i. The individual is not Medicare eligible. ()

ii. The individual has not yet retired from state employment. ()

iii. The Medicare-eligible retiree or the Medicare-eligible dependent spouse has not met all of the criteria described in Subsection 040.01 of these rules. ()

iv. The appeal is untimely or the original petition was submitted untimely. ()

07. Subsequent Reimbursement Requests After Approval of Petition. A Medicare-eligible retiree or his Medicare-eligible dependent spouse, whose petition for prescription medication reimbursement has been approved by the director, may submit subsequent requests for reimbursement to the Office of Group Insurance, until the individual has received two thousand dollars (\$2000) for reimbursed prescription medication, per calendar year, under these rules. ()

08. Reimbursement Considered Taxable Income. Any reimbursed prescription medication expenses by and through these rules are considered taxable income to the reimbursed party. ()

041. -- 049. (RESERVED).

050. CHANGES TO ELIGIBILITY RULES.

Changes, modifications or amendments to these rules that affects an individual's eligibility shall not be effective until those changes, modifications or amendments are included in the contract between the respective carrier and the Office of Group Insurance. ()

051. -- 054. (RESERVED).

055. NO RIGHTS OR BENEFITS CREATED.

Nothing contained in these rules creates additional group insurance coverage, policy, contract or benefits, nor does it create any vested right or benefit for any employee, retiree or their dependents. ()

056. -- 999. (RESERVED).

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.04.04 - RULES GOVERNING CAPITOL MALL PARKING

DOCKET NO. 38-0404-0901 (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) 67-5708, Idaho Code, and Senate Concurrent Resolution 135 (1976).

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 21, 2009.

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

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

Repeals existing Capitol Mall Parking rules. The repealed rules are being replaced by new rules.

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

There are no fees or charges being imposed through this rulemaking.

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

There is no fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the feasibility issue of reaching a consensus on parking rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tim Mason, Administrator, Division of Public Works, Department of Administration at (208) 332-1911.

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 28, 2009.

DATED this 28th day of August, 2009.

Melissa Vandenberg
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, ID 83720-0003
Ph: (208) 332-1832
Fax: (208) 334-2307

IDAPA 38.04.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 38 - DEPARTMENT OF ADMINISTRATION
38.04.04 - RULES GOVERNING CAPITOL MALL PARKING
DOCKET NO. 38-0404-0902 (CHAPTER REWRITE - 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 67-5708, Idaho Code, and Senate Concurrent Resolution 135 (1976).

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 21, 2009.

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 new Capitol Mall Parking rules will be made current with existing or desired practices and parking space limitations. These new rules replace existing rules that are being simultaneously repealed.

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

Parking permit fees will be established by the Department of Administration, and will be administered by Capitol Mall Parking.

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

There is no fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the feasibility issue of reaching a consensus on parking rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tim Mason, Administrator, Division of Public Works, Department of Administration at (208) 332-1911.

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 28, 2009.

DATED this 28th day of August, 2009.

Melissa Vandenberg
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720, Boise, ID 83720-0003
Ph: (208) 332-1832 / Fax: (208) 334-2307

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0404-0902

**IDAPA 38,
TITLE 04,
CHAPTER 04**

38.04.04 - RULES GOVERNING CAPITOL MALL PARKING

000. LEGAL AUTHORITY.

The following rules are promulgated pursuant to the authority of Section 67-5708, Idaho Code, and Senate Concurrent Resolution No. 135 (1976). ()

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 38.04.04, "Rules Governing Capitol Mall Parking." ()

02. Scope. These rules govern parking in the Capitol Mall. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, an agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost in the office of the agency. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative appeals of the procedures set forth in this chapter. ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference. ()

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

01. Office Hours. Capitol Mall Parking is open from 7:30 a.m. to 4:30 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. Capitol Mall Parking's mailing address is: Capitol Mall Parking, P.O. Box 83720, Boise, Idaho 83720-0013. ()

03. Street Address. Capitol Mall Parking is under Facilities Services, Division of Public Works, Department of Administration, and its principal place of business is 550 West State Street, Boise, Idaho 83702-5972. ()

04. Web Site Address. Capitol Mall Parking's web address is <http://www.adm.idaho.gov/pubworks/facilities/parking/>. ()

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.

01. Capitol Mall. The Capitol Mall consists of the following buildings: State Capitol (700 W. Jefferson Street), Joe R. Williams (700 W. State Street), Len B. Jordan (650 W. State Street), 550 W. State Street Parking Garage (550 W. State Street), Pete T. Cenarrusa (450 W. State Street), Division of Public Works (502 N. 4th Street), Alexander House (304 W. State Street), State Library (325 W. State Street), 954 Jefferson (954 W. Jefferson Street),

Capitol Annex (514 W. Jefferson Street), Blind Commission (341 W. Washington Street), Borah Building (304 N. 8th Street), and Idaho Supreme Court (451 W. State Street). ()

02. Capitol Mall Employee. A state employee whose assigned work area is in the Capitol Mall, and who receives a state of Idaho-issued paycheck from a tenant of the Capitol Mall. ()

03. Carpool. A vehicle carrying two (2) or more Capitol Mall employees who are working in the Capitol Mall at least four (4) work days per week. ()

04. Employee with a Disability. An employee with a disability as defined in Section 49-117(7)(b), Idaho Code. ()

05. Executive Branch Departments. Department of Administration, Department of Agriculture, Department of Commerce, Department of Correction, Department of Environmental Quality, Department of Finance, Department of Fish and Game, Department of Health and Welfare, Idaho State Police, Idaho Transportation Department, Industrial Commission, Department of Insurance, Department of Juvenile Corrections, Department of Labor, Department of Lands, Department of Parks and Recreation, Department of Revenue and Taxation, State Board of Education and Department of Water Resources. This definition excludes the Department of Self-Governing Agencies. ()

06. Facilities Services. Bureau of Facilities Services, Division of Public Works, Department of Administration. ()

07. General Parking. A parking space used for all Capitol Mall employees registered for general parking. ()

08. Legislative Attaché. An employee hired by the Legislative branch that receives a state of Idaho-issued paycheck during the Legislative session or is a year round employee of the Legislative branch. ()

09. Legislator. A member of the Idaho Senate or the Idaho House of Representatives for the state of Idaho. ()

10. Reserved Parking. A parking space assigned to a particular person, vehicle or agency. ()

11. State Elected Officials. The governor, lieutenant governor, secretary of state, attorney general, state controller, state treasurer and superintendent of public instruction, for the state of Idaho. ()

12. Temporary Contract Employee. An employee of a temporary employment service company who is working temporarily for a tenant of the Capitol Mall. ()

13. Visitor. Any person visiting the Capitol Mall to carry out state business or attend a state-sponsored event. ()

011. -- 019. (RESERVED).

020. PARKING LOT LOCATIONS.

All Capitol Mall parking lots will be identified by signage. Capitol Mall Parking manages the state-owned parking lots at the following locations: 550 W. State Street Parking Garage, 10th and Jefferson Streets, 8th Street between State and Bannock Streets, 7th and Washington Streets, and 3rd and Washington Streets. Capitol Mall Parking also manages parking spaces in and around the following Capitol Mall buildings: Capitol Annex, Len B. Jordan, Pete T. Cenarrusa, Division of Public Works, Borah Building and Idaho State Library. ()

021. TYPES OF AVAILABLE PARKING.

Designated parking spaces are available for reserved parking, state elected officials and directors of executive branch departments, Legislators, carpool, disabled employees and state agency vehicles. All other parking spaces, unless designated as public or visitor parking, are considered general parking. ()

022. PARKING SPACE ALLOCATION.

01. Reserved Parking Spaces. ()

a. Reserved parking spaces are available for state elected officials and directors of executive branch departments. Capitol Mall Parking will assign a reserved space to each state elected official and director of executive branch departments upon request. ()

b. Reserved parking spaces will be made available to the Senate pro-tem, and the speaker of the House of Representatives. Capitol Mall Parking will assign a reserved space to each individual. ()

c. All other Capitol Mall employees may apply for a reserved parking space. General reserved parking spaces are assigned to Capitol Mall employees on a first-come, first-served basis when designated reserved parking spaces become available. ()

i. Capitol Mall employees may not sell, trade or barter the right to use their assigned reserved parking space. Capitol Mall Parking retains the right to assign, reassign, suspend or revoke Capitol Mall employees' reserved parking spaces at any time. ()

d. Reserved parking spaces for state elected officials, directors of executive branch departments and Capitol Mall employees are located in the following parking lots only: the first floor of the 550 W. State Street Parking Garage, the Pete T. Cenarrusa Building parking lot, and the 8th Street parking lot between State and Bannock Streets. ()

e. Capitol Mall Parking will determine the location of all reserved parking spaces. ()

f. Reserved parking spaces for state elected officials, directors of executive branch departments and Capitol Mall employees will not exceed fifteen percent (15%) of general parking spaces available within the Capitol Mall. ()

02. Legislators' Parking Spaces. During Legislative sessions and special sessions, Capitol Mall Parking will make available one hundred three (103) reserved Legislator parking spaces to Legislators. ()

a. Legislators may chose to park in either a general Legislative parking space or a reserved Legislator parking space. Each Legislator is required to purchase the appropriate parking permit. ()

b. General Legislator and reserved Legislator parking spaces will be on the third floor of the 550 W. State Street Parking Garage and will be clearly marked. When the Legislature is not in session, all Legislator parking spaces will be redesignated as general parking spaces. ()

c. When the Legislature is not in session, a Legislator or Legislative attaché, possessing a valid Capitol Mall parking permit, may park in any general parking space. ()

03. Disabled Employee Parking Spaces. Capitol Mall Parking will make available reserved disabled employee parking spaces for employees who have a proven disability. ()

a. A temporarily or permanently disabled employee who has obtained an Americans with Disabilities Act (ADA) placard issued by the Idaho Transportation Department may request a reserved disabled employee parking space as close as possible to the employee's work location. ()

b. A disabled employee requesting a reserved disabled employee parking space must provide either a copy of his Americans with Disabilities Act (ADA) placard issued by the Idaho Transportation Department or a copy of the application to the Idaho Department of Transportation for an Americans with Disabilities Act (ADA) placard. ()

c. If Capitol Mall Parking only receives a copy of the application to the Idaho Department of Transportation for an Americans with Disabilities Act (ADA) placard, Capitol Mall Parking will provide a temporary

reserved disabled employee parking space until the Americans with Disabilities Act (ADA) placard issued by the Idaho Department of Transportation is received. Temporary reserved disabled parking spaces will only be made available for five (5) working days per disabled employee. ()

d. Reserved disabled employee parking spaces will be marked with signage. ()

e. A permit for a reserved disabled employee parking space will be the same fee as a permit for a general parking space. ()

04. Carpool Parking Spaces. Capitol Mall Parking will make available an indeterminate number of carpool parking spaces, which will be clearly marked, to employees who carpool at least four (4) work days per week. ()

a. Capitol Mall employees who carpool may request a carpool parking permit from Capitol Mall Parking to use a designated carpool space. ()

b. Carpool parking spaces will be available on a first-come, first-served basis for vehicles carrying two (2) or more Capitol Mall employees. All carpooling employees must be employees of the Capitol Mall and at least one (1) carpooling employee must have a general parking space permit. ()

c. A permit for a carpool parking space will be the same fee as a permit for a general parking space. ()

d. All unoccupied reserved carpool parking spaces will be redesignated as general parking spaces after 9 a.m. work days. ()

e. It is a parking violation to park in a reserved carpool parking space when the vehicle is carrying less than two (2) Capitol Mall employees before 9 a.m. ()

05. State-Owned Vehicles Parking Spaces. Capitol Mall Parking will make available designated state-owned vehicle parking spaces. ()

a. Capitol Mall Parking will make available an indeterminate number of designated state-owned vehicle parking spaces to department tenants of the Capitol Mall. ()

b. Designated state-owned vehicle parking spaces will be on the fourth level of the 550 W. State Street Parking Garage, and will be clearly marked "State Vehicle Only." ()

c. A Capitol Mall employee may park his personal vehicle in a designated state-owned vehicle parking space when removing a state vehicle for state purposes. The Capitol Mall employee's personal vehicle must display the state-owned vehicle parking space permit. ()

d. A visiting agency employee conducting official business at the Capitol Mall may park a state-owned vehicle in an unoccupied designated state-owned vehicle parking space or in any Capitol Mall visitor parking space. ()

06. Motorcycle Parking Spaces. Capitol Mall Parking will make available designated motorcycle parking spaces. ()

a. Capitol Mall employees may request a special motorcycle parking permit for motorcycles, at no additional cost, to park in the designated motorcycle parking areas. ()

b. In order to receive a motorcycle permit, the Capitol Mall employee must possess a valid general or reserved parking permit. ()

07. General Parking Spaces. All other undesignated parking is considered general parking. ()

- a. All Capitol Mall employees may request a general parking permit from Capitol Mall Parking. ()
- b. General parking spaces are available on a first-come, first-served basis, and possession of a valid general parking permit does not guarantee the Capitol Mall employee a general parking space. ()
- 08. Visitor Parking Spaces.** Capitol Mall Parking will make available a limited number of parking spaces for visitors and the public visiting the Capitol Mall. ()
- a. Non-metered visitor parking spaces will be available at the parking lot at the corner between 6th and Washington Streets, and on the southern side of the parking lot at the State Library Building, and will be clearly marked. ()
- b. State-owned vehicles that do not belong to the departments' tenants of the Capitol Mall, and non-Capitol Mall employees visiting the Capitol Mall on business, may park in visitor parking spaces. ()
- c. Capitol Mall employees may not park in visitor parking spaces between 6 a.m. and 6 p.m., Monday through Friday. ()
- 023. HOURS OF OPERATION.**
Space allocation is in effect from 6 a.m. through 6 p.m., Monday through Friday, excluding legal holidays. ()
- 024. -- 029. (RESERVED).**
- 030. PARKING PERMITS.**
Capitol Mall Parking will issue applicable parking permits to Capitol Mall employees. ()
- 01. Parking Permits for Reserved, Legislator, Disabled Employee, Carpool, State-Owned Vehicles and General Parking.** ()
- a. Capitol Mall Parking will reissue parking permits once a year. Outdated parking permits must be returned to Capitol Mall Parking. ()
- b. Capitol Mall Parking will issue one (1) type of parking permit to each Capitol Mall state elected official, director of an executive branch department, Legislator and employee, with the exception of a carpool parking permit and a special motorcycle parking permit. ()
- c. Capitol Mall Parking will issue only one (1) parking permit per employee. Capitol Mall Parking will not provide duplicate parking permits to employees. State elected officials, directors of executive branch departments, and Capitol Mall employees with reserved parking spaces may request an additional parking permit for an additional vehicle for five dollars (\$5). ()
- d. All individuals and department tenants are responsible for displaying the parking permit in the front windshield or other prominent location of the parked vehicle at all times. ()
- e. In the event that a parking permit is lost or destroyed, the official, Legislator or employee must sign a statement to that effect prior to Capitol Mall Parking issuing a new permit. ()
- 02. Temporary Monthly Parking Permits.** An individual performing work or providing services to a department tenant in the Capitol Mall, but who does not receive a state of Idaho-issued paycheck, may purchase a general monthly parking permit for a fee from Capitol Mall Parking. ()
- a. Upon request and receipt of the general parking permit fee, Capitol Mall Parking may issue a monthly general parking permit to individuals performing work or providing services to a department tenant in the Capitol Mall but who do not receive a state of Idaho-issued paycheck. This includes, but is not limited to, employees of the Idaho Central Credit Union, employees of vendors of the Commission for the Blind and Visually Impaired, and Capitol Mall tenant departments' temporary contract employees. ()

031. PARKING PERMIT FEES.

Parking permit fees will be established by the Department of Administration and will be administered by Capitol Mall Parking. ()

01. Elected Officials Parking Permits. The governor, lieutenant governor, secretary of state, attorney general, state controller, state treasurer, superintendent of public instruction, Senate pro-tem, and the speaker of the House of Representatives will be provided a reserved parking space at no charge. Additionally, upon request, Capitol Mall Parking will provide the governor two (2) additional reserved parking spaces. ()

02. Directors of Executive Branch Departments. Directors of executive branch departments will be provided a reserved parking space at the reserved parking space rate, and executive branch departments will be charged for the reserved parking spaces annually by Capitol Mall Parking. ()

03. Reserved Parking Permits. Reserved parking space permits are twenty-five dollars (\$25) per month. ()

04. General Parking Permits. General parking space permits are five dollars (\$5) per month. ()

05. Payment for Parking Permits. Capitol Mall employees will be charged the respective permit fee in the first paycheck of each month through a payroll deduction or through an automatic deduction system. ()

06. Legislators. Legislators who request a general Legislator parking space permit must pay the general parking permit fee, and Legislators who request a reserved Legislator parking space must pay the reserved parking permit fee. Legislators and Legislative attachés who request parking spaces must pay the associated space fee for every month that the Legislature is in session. ()

07. State-Owned Vehicles. State-owned vehicles belonging to the tenant departments will receive general state vehicle parking permits for a general parking space monthly fee. ()

08. Replacement Permits. If a parking permit is lost, stolen or destroyed, the Capitol Mall employee will be charged a five dollars (\$5) replacement fee for a new permit. ()

032. -- 039. (RESERVED).

040. PARKING LOT VIOLATIONS.

01. Driving Violations. Any driving violation in a Capitol Mall parking lot or garage may result in the suspension or loss of parking privileges. ()

a. It is a violation of these rules to drive or operate a personal vehicle negligently or recklessly in any Capitol Mall parking lot or garage. It is a violation of these rules to drive or operate a vehicle under the influence of illegal substances or alcohol in any Capitol Mall parking lot or garage. ()

b. It is a violation for any individual to drive above the posted speed limits or drive against posted directional arrows. ()

02. Parking Violations. Any parking violation in a Capitol Mall parking lot or garage may result in the suspension or loss of parking privileges. ()

a. It is a violation of these rules to park in a location that is not marked as a parking space within the Capitol Mall. This includes, but is not limited to, parking in or on a driveway, sidewalk or other common driving areas of any parking lot or garage. It is also a violation to park one (1) vehicle in more than one (1) parking space. ()

b. It is a violation to park in a reserved Legislator parking space without displaying the appropriate permit during Legislative sessions. ()

c. It is a violation to park in a reserved parking space, in a reserved disabled employee parking space, or in a reserved carpool parking space before 9 a.m., without displaying the appropriate parking permit. ()

d. It is a violation to park a motorcycle in any space not designated for motorcycle parking, unless the individual possesses a valid reserved parking permit and parks in his designated reserved parking space. ()

e. It is a violation of these rules to: ()

i. Use an invalid parking permit; ()

ii. Use a parking permit reported lost or stolen; ()

iii. Fail to properly display a valid Capitol Mall parking permit; or ()

iv. Transfer an invalid permit to another person. ()

03. Other Violations. The Capitol Mall parking lots and garage are private property, and any tampering or other physical defacement of any vehicle parked on the lots or in the garage is considered a violation. ()

a. The distribution of flyers or other materials on vehicles parked on Capitol Mall parking lots and in the 550 W. State Street Parking Garage is prohibited, and violators will be escorted off the property. ()

b. Any individual engaging in suspicious activity or threatening behavior, or an individual loitering in a Capitol Mall parking lot or in the 550 W. State Street Parking Garage, will be escorted off the property. ()

c. Public access is not allowed in the 550 W. State Street Parking Garage before 6 a.m. and after 6 p.m. and violators will be considered trespassers. ()

041. ENFORCEMENT.

01. Security and Patrol. Capitol Mall parking lots and the 550 W. State Street Parking Garage are secured and patrolled by Capitol Mall Parking, or its authorized representative. ()

02. Notice of Violation. Upon witnessing or finding a violation of these rules, Capitol Mall Parking, or its authorized representative, will leave notice with any person driving or on the vehicle parked in violation of these rules. ()

a. Notice may be in the form of a warning or a violation, will bear the date and hour of the violation, the nature of the violation, and the name of the Capitol Mall Parking employee or its authorized representative. A warning notice may be used only for those violations that do not cause the loss of a parking space and do not cause a safety hazard. ()

b. A ticket may be issued by Capitol Mall Parking, or its authorized representative, for a fine of at least two dollars (\$2), but will not exceed twenty-five dollars (\$25). ()

c. If an individual is determined to have altered, counterfeited or otherwise misused a parking permit, a ticket may be issued by Capitol Mall Parking, or its authorized representative, for a fine not to exceed fifty dollars (\$50). ()

d. All tickets issued by Capitol Mall Parking, or its authorized representative, will be forwarded to the city of Boise, county of Ada, for collection or prosecution. ()

e. Capitol Mall Parking is not precluded from suspending or terminating an individual's parking privileges if the warnings or fines have been imposed for the same violations. ()

042. SUSPENSION OR REVOCATION OF PARKING PRIVILEGES.

01. Delinquent Payment. Capitol Mall Parking may suspend or revoke any individual's parking permit if the parking permit fee is unpaid and at least thirty (30) days delinquent. Upon payment in full, Capitol Mall Parking will restore the individual's parking permit. ()

02. Parking Privileges Suspension. ()

a. Capitol Mall Parking may suspend an individual's parking permit and privileges for up to six (6) months for a violation of these rules. ()

b. Any Capitol Mall Parking permit holder, including a temporary parking permit holder, who has been cited for three (3) violations of these rules within six (6) months, may have his parking permit and privileges revoked for up to twelve (12) months. ()

03. Towing and Impounding. ()

a. Capitol Mall Parking or its authorized representative may tow any vehicle from any Capitol Mall parking lot or the 550 W. State Street Parking Garage, belonging to an individual who has been cited for three (3) or more Capitol Mall parking violations within a twelve-month period. The owner of the vehicle will be charged a service fee for releasing the towed and impounded vehicle. ()

b. In the event that the vehicle is considered a security risk, Capitol Mall Parking will make reasonable efforts to locate the owner of the vehicle before it is towed. ()

04. Reactivating a Suspended Permit. A suspended parking permit may be reactivated at the end of or after the applicable suspension period by reapplying for the automatic payroll deduction plan through Capitol Mall Parking and payment in full of any delinquent parking fees. ()

043. SURRENDER OF PARKING PERMIT.

01. Surrender of Permit. When an official, Legislator or Capitol Mall employee no longer works in the Capitol Mall or no longer needs to utilize Capitol Mall parking, the individual must submit a request to Capitol Mall Parking to cease automatic payroll deduction or billing for Capitol Mall parking. The individual must surrender the parking permit to Capitol Mall Parking within ten (10) days of the effective date of termination. ()

02. Cancellation of Automatic Payroll Deduction. ()

a. Capitol Mall Parking will notify the individual's agency's payroll clerk to cease the monthly parking fee deduction. Capitol Mall Parking will not refund a monthly parking fee after a monthly payroll deduction has been made. ()

b. Agency payroll clerks must receive a written request from Capitol Mall Parking prior to deleting the monthly parking fee from the employee's payroll deduction schedule. ()

044. -- 049. (RESERVED).

050. LOADING ZONE PARKING SPACES.

Capitol Mall Parking will designate and mark a limited number of parking spaces for short-term collection and delivery parking. It is a violation to park in loading zone parking spaces for an unauthorized purpose. ()

051. WAIVER OF RULES.

Pursuant to Section 67-5708, Idaho Code, the administrator for the Division of Public Works may waive any or all of the provisions of these rules if the administrator determines that application could result in discrimination among employees or otherwise violate law. ()

052. -- 999. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.22 - RULES GOVERNING REGISTRATION AND PERMIT FEE ADMINISTRATION

DOCKET NO. 39-0222-0901 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Section 49-201, Idaho Code, as applied to the provisions for registration and permit fee administration in Sections 49-434 and 49-439, 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 21, 2009.

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

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

This rulemaking will allow the cancellation of future installment payment plan privileges after two or more suspensions, whether in the same or different years. Upon written request for consideration by the customer and subsequent approval by the department, it will provide for the reinstatement of installment payment plan privileges after 12 consecutive months of no suspensions of any type on their account. The rulemaking provides for the collection of a \$50 installment payment plan fee for each plan to cover administrative costs.

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

A fee of \$50 is being imposed by this rulemaking to cover the administrative cost of setting up each installment payment plan, as authorized under Section 49-201(5), Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ((\$10,000)) during the fiscal year resulting from this rulemaking: There is no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes in this rulemaking are based on recommendations by the 2009 Legislature to be more lenient regarding suspensions and reinstatements of installment payment plan privileges and to make sure the administrative costs of this program are covered.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

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 28, 2009.

DATED this 19th day of August, 2009.

Linda L. Emry
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 PROPOSED TEXT OF DOCKET NO. 39-0222-0901

000. LEGAL AUTHORITY.

This rule, governing registration and permit fee administration as provided for in Sections 49-434 and 49-439, Idaho Code, is adopted under authority of Sections 49-201, ~~49-434, and 49-439~~, Idaho Code. (3-19-07)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS – MAILING AND STREET ADDRESS – PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W State Street with a mailing address of PO Box 7129, Boise ID 83707-1129. (3-19-07)

02. Office Hours. Daily office hours are ~~8:00~~ 7:30 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (3-19-07)(____)

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8611 or by Fax at 208-334-2006. (3-19-07)(____)

(BREAK IN CONTINUITY OF SECTIONS)

200. INSTALLMENT PAYMENTS FOR COMMERCIAL VEHICLE REGISTRATION.

The department offers a Payment Plan for registrants in compliance with Sections 49-434, Idaho Code. (3-19-07)

01. Requirements to Participate in Installment Payments. (3-19-07)

a. Participant must sign participation contract agreement. (3-19-07)

b. Only Full Fee and Idaho IRP registration fees are included in the payment plan. Other jurisdictions' IRP fees shall not be included. (3-19-07)

c. Only full annual registration fees shall be included in payment plan. Registrations for less than one full year shall not be included. (3-19-07)

d. Vehicles not registered within thirty (30) days after the previous year registration has expired shall not be eligible for the installment payment option. Submitted applications for registration that have been invoiced, but not paid for, by the due date stated on the fee summary sheet shall not be eligible for the installment payment option. (3-19-07)(____)

e. Installment contract requirements do not provide opportunity for registrant to opt out of any remaining installment payments. The balance of the payment plan shall continue to be paid even if the truck is not being operated. (3-19-07)

f. If registrant ~~sells vehicle or otherwise disposes of vehicle, and the applicant provides proof of sale, upon returning the license plate, registration certificate, and validation sticker,~~ meets the criteria in Section 300 of this rule, the prorated portion of the Idaho fee shall be credited toward the installment plan or refunded if the plan has been paid in full. (3-19-07)(____)

g. Registrant shall not participate in installment payment plan if the registrant's account has

previously been suspended ~~due to non-payment of previous payment plan~~ as stated in Subsection 200.06 of this rule. (3-19-07)()

h. The contract shall stipulate the payment periods and the installment confirmation letter shall stipulate the due dates of each subsequent payment. (3-19-07)

i. An installment payment plan fee of fifty dollars (\$50) shall be required and collected at the time of setup for each installment payment plan created. ()

02. Billings, Payments and Due Dates of Installment Plan. (3-19-07)

a. The department shall upon acceptance of the contract by the registrant, receive one-quarter of the annual registration ~~payment fee along with the installment payment plan fee~~, and then shall bill the registrant for three (3) equal installments based upon the previously set payment periods outlined in the contract, which are due by the end of the third, sixth, and ninth months after the effective date of the registration. (3-19-07)()

b. All installment payments are due no later than the last day of the month in which the billing is due. Courtesy billing notices for the next installment payment due will be mailed approximately one (1) month prior to the due date. (3-19-07)()

c. US Postal Service postmark shall be used to determine if payment is received on time. If the envelope is postmarked on or before the last day of the month, the payment shall be considered "on time." (3-19-07)

d. If the last day of the month falls on a Saturday, Sunday or legal holiday, the next business day shall be considered the due date. (3-19-07)

e. Non receipt of the department's billing notice does not relieve the burden of the registrant to pay the installment amount by the due date. (3-19-07)

03. Failure to Pay Installment Payment by Due Date. (3-19-07)

a. The department shall send out courtesy pre-suspension notices approximately five (5) days after the due date to registrants who have failed to remit payment by the due date printed on the quarterly billing. (3-19-07)()

b. The pre-suspension letter shall contain a late penalty fee of ten percent (10%) of the amount due and an additional one percent (1%) for each month or portion of a month that the payment is past due. (3-19-07)

c. Registrant shall pay installment amount portion that is due, plus assessed penalties and interest. (3-19-07)

04. Suspension of Registrant's Account Due to Non-Payment of Payment Plan. Approximately two (2) weeks after pre-suspension notices are mailed to the registrant, the department shall suspend accounts of registrant's that have failed to remit installment payment and/or interest and penalty. (3-19-07)

05. Reinstatement Fee for Payment Plan Registration. (3-19-07)

a. A forty dollar (\$40) reinstatement fee shall be applied to all payment plan accounts that have been suspended. (3-19-07)

b. Registrant must pay quarterly payment portion, penalty and interest, if applicable, and reinstatement fee before suspension shall be cleared from account. (3-19-07)

06. Repetitive Suspensions Result.

a. After the registrant's accounts of registrant's have has been suspended for delinquent installment payments two (2) or more times ~~in one (1) payment plan year~~, the registrant shall not be allowed to participate in

future payment plan programs- unless: ~~(3-19-07)~~()

i. Customer has twelve (12) consecutive months of no suspensions related to the account starting from the month the account is cleared; and ()

ii. Customer requests in writing to the department to participate in future installment payment plans and will be allowed to do so. ()

201. -- 299. (RESERVED).

300. REFUNDS.

01. Fees Eligible for Refund. (3-19-07)

a. Commercial vehicle registration is eligible for refund when the criteria in Section 49-434, Idaho Code, are met. (3-19-07)

b. If account has been overpaid, and no other fees are owed to the department. (3-19-07)

c. Unexpired portion of Idaho based fees are refundable for: (3-19-07)

i. A vehicle that has been sold or repossessed; ~~(3-19-07)~~()

ii. A vehicle that has been damaged beyond repair; or (3-19-07)

iii. A vehicle on which the lease has been terminated. (3-19-07)

02. Fees Not Eligible for Refunds: (3-19-07)

a. Other jurisdiction's fees are not refundable by Idaho. (3-19-07)

b. Temporary trip permits are issued for specific vehicles only and fees are not refundable, nor transferable to other vehicles. (3-19-07)

03. Request for Refunds: (3-19-07)

a. Registrant can make a request for refund of fees from the department. The refund request must include: (3-19-07)

i. Proof of sale or repossession of the vehicle; ~~(3-19-07)~~()

ii. Proof from the insurance company or law enforcement agency that the vehicle has been damaged beyond repair; or (3-19-07)

iii. Proof of lease termination from the leasing company. (3-19-07)

b. Request shall be subject to audit as provided in Idaho Code. (3-19-07)

c. All refund requests shall be reviewed by a Commercial Vehicle Services supervisor to ensure that all requests are valid and eligible. The Revenue Operations supervisor shall also approve/disapprove refunds. If the refund amount is greater than or equal to one thousand (\$1,000) dollars, a Financial Services manager shall also review and approve/disapprove the request before refund is processed. (3-19-07)

d. Approval/disapproval shall be indicated by either signature, or electronic approval by means of the department's financial management system. (3-19-07)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.41 - RULES GOVERNING SPECIAL PROVISIONS APPLICABLE TO FEES FOR SERVICES

DOCKET NO. 39-0241-0901 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 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(s) 49-201, 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 21, 2009.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking removes fixed rates and replaces them with a reference to charges now specified in Section 49-202(2)(h), Idaho Code. It also updates technology references to currently use terms. ("microfilm" to "imaged" and "magnetic tapes" to "electronic media")

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:

Compliance with changes to Idaho Code in HB334, 2009, effective January 1, 2010.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

This rulemaking does not impose or increase a fee or charge, but has been amended to refer to the fee increase imposed in HB334, 2009, effective January 1, 2010.

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: In compliance with Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because rulemaking is necessary for compliance with changes to Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ed Pemble, Driver Services Manager, 332-7830.

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 28, 2009.

DATED this 19th day of August, 2009.

Linda L. Emry
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 PROPOSED TEXT OF DOCKET NO. 39-0241-0901

000. LEGAL AUTHORITY.

This rule is adopted under the authority of Sections 49-201~~(1)~~, ~~49-202(2)~~, and ~~67-2510~~, Idaho Code.

~~(9-4-91)(8-1-09)T~~

(BREAK IN CONTINUITY OF SECTIONS)

100. ADMINISTRATION.

Idaho Code provides for the collection of fees for related services. This rule provides for automation considerations and a fee schedule to uniformly apply the ~~ten dollar (\$10) per hour~~ fee provided by Section 49-202(2)(h), Idaho Code. The following fees apply for services and copies of files regarding motor vehicle or other registration, motor vehicle titles, drivers' licenses or commercial drivers licenses, and are based on ~~a ten dollar (\$10) the per hour~~ ~~photocopying~~ charge: specified in Section 49-202(2)(h), Idaho Code. ~~(12-26-90)(8-1-09)T~~

01. Paper or ~~Microfilm~~ Imaged Records. Copies of supporting driver's license, registration, or title records from paper or ~~microfilm~~ imaged records, based on an average of twenty-four (24) minutes to fully process these requests. ~~Fee per document, four dollars (\$4) at the per-hour rate specified in Section 49-202(2)(h), Idaho Code, and rounded to the nearest whole dollar.~~ ~~(9-4-91)(8-1-09)T~~

02. Automated Records. Idaho Code does not provide a fee for complete county or statewide automated copies of registration or title files. A fee has been based on the costs to produce special file requests. ~~(4-11-06)~~

a. A base charge for programs requiring: One (1) to three (3) sorts, seventy-five dollars (\$75). Each additional sort, twenty-five (\$25). ~~(12-26-90)~~

b. In addition to the above, the computer cost, printer cost and tape access cost, as established by the information technology section will be charged. ~~(4-11-06)~~

c. Any mailing, shipping or special handling costs will also be added to the charges. ~~(12-26-90)~~

03. ~~Magnetic Tapes~~ Electronic Media Must Be Provided. Requestors must provide ~~magnetic tapes~~ electronic media for this purpose, unless the file can be transmitted electronically. Data is provided in a standard department format. Vehicle or driver history information is not included. The only selection criterion is by counties. ~~(4-11-06)(8-1-09)T~~

04. Records Provided Free of Charge. Motor vehicle and driver records will be provided free of charge to the following: ~~(9-4-91)~~

a. State Agencies. ~~(9-4-91)~~

b. County Assessors. ~~(9-4-91)~~

c. County Sheriffs. ~~(9-4-91)~~

d. Peace Officers requesting records in the performance of their duties as per Section 49-202(3), Idaho Code. ~~(9-4-91)~~

05. Rules for Providing Records Free of Charge. The Division of Motor Vehicles shall observe the following guidelines when providing records free of charge: ~~(4-11-06)~~

a. Records will be provided free of charge only if they are a standard computer run that does not require special programming and/or sorting. Records requiring special handling will be provided for a fee equal to the cost of the additional handling. (9-4-91)

b. Records will be provided free of charge electronically or on ~~computer tapes~~ electronic media supplied by the requestor, or as a standard computer printout. All other formats will be provided for a fee equal to the cost of the additional materials. ~~(9-4-91)~~(8-1-09)T

c. The Assessor's Clearinghouse and the Sheriff's Clearinghouse shall each establish a single standardized computer printout that will be used for all motor vehicle and driver requests from their respective agencies. (9-4-91)

d. Records access agreements between the Division of Motor Vehicles and government agencies requesting motor vehicle and driver records shall be negotiated and renewed annually, and shall contain a list of all personnel who will have access to the records and/or on-line terminals. (4-11-06)

e. On-line computer installation and equipment shall be charged at a rate defined in the annual agreement. (9-4-91)

101. -- 199. (RESERVED).

200. LAW ENFORCEMENT INQUIRIES.

The Department provides full access to motor vehicle files by Law Enforcement at no charge through the Idaho Law Enforcement Telecommunication Systems (ILETS). There is also no charge to Law Enforcement for certified ~~MVR~~ motor vehicle or driver record packets to peace officers. For additional services beyond access to motor vehicle records (special reports, etc...), actual costs incurred by the Department will be charged. ~~(12-26-90)~~(8-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

203. MISCELLANEOUS.

The fee for vehicle inquiries by name will be based on the proper fee per vehicle record. Commercial vehicle inquiries shall be based on a per vehicle record fee. ~~(12-26-90)~~(8-1-09)T

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.60 - RULES GOVERNING LICENSE PLATE PROVISIONS

DOCKET NO. 39-0260-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 49-201, 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 21, 2009.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule is being revised to include provisions for issuing Restricted Vehicle plates to Idaho licensed motorbike, all terrain vehicle, and utility vehicle dealers. Neither HB602, 2008 nor SB1098a, 2009 provided for issuing restricted vehicle dealer plates, which are necessary for dealers to conduct their business for demoing such vehicles to potential customers. Amendments are needed to add provisions for issuing wrecker plates to comply with SB1183, 2009. Amendments are being made to clarify unacceptable personalized plate messages to include prohibition against acts of violence, drug references, and sexual preference or orientation. A new section is being added to comply with HB226, 2009, providing for the creation of a business logo plate available as permanent commercial trailer plates for businesses who wish to create their own logo plate for registering their commercial trailers and provides for the periodic validation for non-resident owners every 3 years.

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: Compliance with legislative action in 2008 and 2009.

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: None.

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

NEGOTIATED RULEMAKING: In compliance with Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are necessary for compliance with changes to Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 19th day of August, 2009.

Linda L. Emry
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 PROPOSED TEXT OF DOCKET NO. 39-0260-0901

150. VEHICLE DEALER LICENSE PLATES FORMATS.

01. Designation for Manufacturers Plates. Plates issued to manufacturers shall bear the designation "MFR" and be numbered from nine thousand (9000) through nine thousand, nine hundred, ninety-nine (9999). (1-3-92)

02. Designation for Dealer Plates. Plates issued to dealers shall bear the designation "DLR" and the sequential license plate number shall be a maximum of two (2) digits. (1-3-92)

a. If a dealer is issued more than ninety-nine (99) plates, an alpha character will be placed in the first position, followed by a number. (1-8-90)

b. The dealer number shall be a maximum of four (4) digits. No dealer number shall be preceded by a zero (0): Dealer number one (1), plate number one (1): 1-01; Dealer number one thousand one (1001), plate number one hundred (100): 1001-A1. (1-8-90)

c. Dealer restricted vehicle plates will display the abbreviation "DLR" within the lower left hand box labeled "Restricted Vehicle". The dealer validation sticker shall be displayed within the box labeled "Dealer Validation Sticker". (7-1-09)T

151. VEHICLE DEALER LICENSE PLATES RESTRICTIONS.

01. Restrictions. Restrictions on the use of manufacturer or dealer plates are provided for by Section 49-1627, Idaho Code. In addition, the following restrictions shall apply: (1-3-92)

a. Authorized employees may operate vehicles displaying dealer plates only when operated in the furtherance of the dealer's business. The authorized employee must carry an identification card issued by the dealer. The identification card shall contain the employee name, dealership, date of issue, dealer number and signature of an authorized representative of the dealership and the signature of the employee. This use shall be limited to normal business hours unless the operator is in possession of a letter from the dealer listing the specific reason for the after-hour use. (1-3-92)

b. A manufacturer shall not display manufacturer plates on vehicle types other than those manufactured by the manufacturer. (1-8-90)

c. A new or used motorcycle ~~or all terrain vehicle~~ dealer shall not display motorcycle dealer plates on other vehicle types ~~nor on a new motorcycle or all terrain vehicle~~ that the dealer is not enfranchised to sell. ~~(4-2-08)~~(7-1-09)T

d. A new vehicle dealer shall not display new vehicle dealer plates on new vehicles that the dealer is not enfranchised to sell. (4-2-08)

e. A new or used motorbike, all terrain vehicle, or utility vehicle dealer shall not display dealer restricted vehicle plates on other vehicle types nor on any new motorbike, all terrain vehicle, or utility vehicle that the dealer is not enfranchised to sell. (7-1-09)T

f. Vehicles displaying a dealer restricted vehicle plate shall be limited to operation off-highway, on authorized local jurisdiction roadways, on those roadways maintained by the Idaho Department of Lands, the Bureau of Land Management, and the US Forest Service. Restricted vehicles displaying the dealer restricted vehicle plate shall not operate on any state highway, but may cross such at a designated crossing. (7-1-09)T

g. Vehicles displaying a dealer restricted vehicle plate are not required to display the Idaho

Department of Parks and Recreation Off-highway registration to be valid, but are required to be validated in the same manner as are standard dealer plates and display the required annual validation sticker on the restricted plate.

(7-1-09)T

eh. A prospective purchaser shall not have in his possession a vehicle belonging to a dealership after normal business hours without a letter of authority from the dealership. (4-2-08)

fi. A dealer or manufacturer shall not display a dealer plate for purposes other than provided for by law or regulation. (4-2-08)

02. Penalties. In addition to the penalties for violation of plate use provided for in Section 49-236, Idaho Code, a dealer or manufacturer may have his license to do business in Idaho suspended for a period not less than fifteen (15) days nor more than thirty (30) days. (1-8-90)

(BREAK IN CONTINUITY OF SECTIONS)

154. PROVISIONS FOR WRECKER PLATES.

01. Purpose. Wrecker plates are for the exclusive use of businesses engaged in the towing of a wrecked, abandoned, salvaged, or disabled motorized vehicle. Plates shall not be used on vehicles being repossessed. (7-1-09)T

02. Numbering of Plates. Plates shall be numbered as determined by the department and shall display the abbreviation "WRKR" vertically on the left hand side of the plate. (7-1-09)T

03. Renewal of Plates. The wrecker registration and plate are valid for one (1) year from January 1 through December 31 and may be renewed by use of a registration sticker showing the year of validation. (7-1-09)T

04. Use of Plates. Plates are not to be displayed on the towing power unit vehicle nor are they to be used on a vehicle not being towed. Plates are to be displayed on the rear of the towed vehicle in such a manner as to be visible to vehicles approaching from the rear. Wrecker plates may be moved from one (1) towed motorized vehicle to another vehicle under the direct lawful control of the registration holder. (7-1-09)T

05. Possession of Registration. When towing a motorized vehicle displaying a wrecker plate, the operator of the towing vehicle shall carry the wrecker plate registration in the towing vehicle. (7-1-09)T

06. Acquisition/Renewal of Wrecker Plates. Wrecker plates will be issued and renewed through the department by mail or by fax using an application and renewal process determined by the department. (7-1-09)T

1545. -- 198. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

202. PROVISIONS FOR PERSONALIZED LICENSE PLATES.

01. Special Characters or Marks. No special characters, or punctuation marks, may be used for personalized messages on license plates. (1-3-92)

a. Up to seven (7) letters or any combination of seven (7) letters and numbers and spaces (no half spaces) may be used for personalized messages on eligible six inch by twelve inch (6" x 12") license plates. (5-8-09)

b. Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on four inch by seven inch (4" x 7") motorcycle plates. (5-8-09)

c. Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on specialty program license plates. (5-8-09)

d. Disability six inch by twelve inch (6" x 12") plates will display the international handicapped symbol followed by up to five (5) letters, numbers, and spaces in the personalized message. Disability four inch by seven inch (4" x 7") motorcycle plates will display the international handicapped symbol followed by up to four (4) letters, numbers, and spaces (no half spaces) in the personalized message. (5-8-09)

02. Issue of Personalized Plates. Personalized plates can be issued only to vehicles if no specific wording is required on the plate to identify the purpose for which the vehicle is registered. Personalized plates will not be issued if such plates would jeopardize the integrity of unique plate identification requirements. Examples include but are not limited to: (1-3-92)

a. Commercial vehicles registered under the International Registration Plan (IRP), because the designators PRP are required to be printed on the plate; (1-3-92)

b. Vehicles for which the designators "PRP" are required to be printed on the plate to identify the use; and (4-2-08)

c. Utility, horse, or enclosed car hauling trailers with RV facilities or boat trailers. (4-2-08)

03. Specific Requests. Requests for specific plate letters and/or numbers will be issued on a first come, first served basis. In the event of a request for the same plate by more than one (1) individual, the request with the earliest postmark, e-mail transmission time, or fax transmission time will prevail. If the postmarks are the same, the date stamped upon arrival at the Department will prevail. Applications submitted at county assessors' offices will not be considered valid until stamped in by the Department. Telephone requests will not be accepted. (4-2-08)

04. Lack of Current Plates. When an applicant for personalized plates does not have current regular number plates: (1-3-92)

a. The Department may issue a thirty (30) day temporary registration to allow time for the billing process for personalized plates. The fee for each thirty (30) day temporary registration shall be as required by Section 49-523, Idaho Code. (4-2-08)

b. The Department may, upon payment of all required fees, issue a temporary registration document as provided in Section 012 of these rules. (4-2-08)

05. Credits. When personalized plates are issued before an applicant's current registration is expired, credit will be given for unexpired registration fees only. (1-3-92)

06. Renewing Plates. The applicant will have the choice of renewing existing personalized plates with validation stickers or ordering a new set of plates at the time of renewal. If new plates are requested, the plate fee will be charged in addition to all other fees that are due. New plates must be purchased every seven (7) years as provided in Section 49-443, Idaho Code. (4-2-08)

07. Transfer of Plates. When personalized plates are issued, the vehicle's regular number plates may be transferred to another vehicle belonging to the owner. If registration credit is given from the regular number plates to the personalized, the regular number plate registration is canceled. (1-3-92)

08. Acceptability of Plates Message. Acceptability of the personalized license plate message and issuance, denial or cancellation will be determined by the Department based on the following criteria: (1-3-92)

a. The combination of numbers and letters requested or combinations of same may not duplicate an existing combination in use. (1-3-92)

b. The message, in any language, may not carry a sexual connotation nor consist of a term that is considered to be one of: obscenity; contempt; prejudice; hostility; insult; racial degradation; ethnical degradation; profanity; or refers to bodily functions, bodily fluids, or intimate body parts; sexual preference or orientation; act of violence, illegal substances; or vulgarity as defined in dictionaries of general use, including, but not limited to, Webster's Unabridged Dictionary and the Harper & Row New Dictionary of American Slang. ~~(5-8-09)~~(7-1-09)T

c. The criteria in Paragraph 202.08.b. of these rules is not to be considered an exhaustive list. A compilation of offensive or obscene words, terms or letter/number combinations gathered from the experience of Idaho and other states may also be used as a guide. (4-2-08)

d. When a complaint is received from the public concerning an issued plate, the name of the caller will not be recorded nor, if known, revealed. (1-3-92)

e. Final determination regarding applications for questionable messages or cancellation of issued plates will be made by the Division of Motor Vehicles. The determination process shall include a first review by technical staff, followed by a second review by supervisory and management staff. An applicant does, however, have a right to a hearing on the decision. (4-2-08)

09. Message Preferences. Applicants may submit three (3) message preferences including the specific meaning of each. The first choice that is available and acceptable will be issued. If none of the preferences are available or acceptable, the applicant will be notified by return mail. (4-2-08)

10. Recalled Plates. Personalized plates may be recalled by the Department for the following reasons: (1-3-92)

a. Error in manufacturing; or (1-3-92)

b. Clerical error. (1-3-92)

c. Unacceptable personalized messages as outlined in Paragraph 202.08.b. of these rules. (4-2-08)

11. Unexpired Fees. If a set of personalized plates is recalled, the personalized plate program fee, unexpired portion of the registration fee, E.M.S. fee, plate fee, (if plates are returned to the department), and all other applicable special plate fees, will be refunded or transferred to a new issue of personalized plates. (4-2-08)

12. Expired Plates. Personalized plates that are allowed to expire shall become immediately available for reissue to another applicant. There is no grace period. (1-3-92)

(BREAK IN CONTINUITY OF SECTIONS)

204. PERMANENT COMMERCIAL TRAILER - BUSINESS LOGO PLATES PROVISIONS.

01. Applying for a Business Logo Plate. Businesses applying for a business logo plate pursuant to Section 49-415G, Idaho Code, will be required to remit a non-refundable fee as set by the Idaho Transportation Board for programming costs of a business logo plate. This fee will be utilized for programming of state systems to accommodate the new plate type, and periodic verification of ownership of trailers issued such plates. Such fee shall not exceed actual costs. (7-1-09)T

02. Completed Application. Businesses applying for a business logo plate must complete an application provided by the department. (7-1-09)T

03. Listed Business Name. Business logo plates are only available to a company whose name is listed on any Secretary of State's business name listing. (7-1-09)T

04. Licensed Business Name Only. Business logos may only contain the licensed business name of the designated company and not the products or business it provides or transports. (7-1-09)T

05. Copyrighted or Trademarked Designs. Any copyrighted or trademarked design must be accompanied by a written release or authorization to reproduce such design on Idaho license plates. (7-1-09)T

06. Verified Business Vehicles. Business logo plates will only be issued to vehicles verified to be owned and titled in the name of the business applying for such logo. (7-1-09)T

07. Business Logo Graphics. Messages and designs contained within the business logo graphics must comply with Subsection 202.08.b. of this rule regarding acceptability of plate messages including designs. (7-1-09)T

08. Verification of Business Owner Status. Periodic verification of owner status shall be sent by the department to non-resident owners of business logo plates and North America permanent trailer plates, every three (3) years to verify current vehicle ownership. Failure of the owner to respond and confirm ownership shall result in the plate being canceled. (7-1-09)T

2045. -- 299. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.12 - RULES GOVERNING SAFETY REQUIREMENTS OF OVERLEGAL PERMITS

DOCKET NO. 39-0312-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making procedures. The action is authorized pursuant to Section 49-201, 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 21, 2009.

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 Federal Motor Carrier Safety Regulations (FMCSR 393.87) have recently changed the required dimension for flags from 12"x12" to 18"x18". This change is being made to ensure that the administrative rule is in compliance with federal regulation.

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

There are no fee or charges being imposed through this rulemaking.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this change was necessary for compliance with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicles Size and Weight Specialist, 334-8418.

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 28, 2009.

DATED this 19th day of August, 2009.

Linda L. Emry
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 PROPOSED TEXT FOR DOCKET NO. 39-0312-0901

000. LEGAL AUTHORITY.

This rule, governing the movement of vehicles or loads which are in excess of the sizes or weights allowed by Sections 49-940, 49-1001, 49-1002, ~~49-1004~~, or 49-1010, Idaho Code, is adopted under the authority of Sections ~~49-312 and 49-1004~~ 201, Idaho Code. (9-14-92)()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street And Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. (4-2-08)

02. Office Hours. Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (~~4-2-08~~)()

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

200. FLAGGING REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS.

Warning flags for oversize vehicles and/or loads, excluding extra-length vehicle combinations, shall be marked by warning flags meeting the following: (4-5-00)

01. Warning Flags. Warning flags are required on all overwidth vehicles and/or loads and when the rear overhang exceeds the end of the trailer by four (4) feet or more. (4-5-00)

02. Size. Minimum size of flags is ~~twelve~~ eighteen (128) inches by ~~twelve~~ eighteen (128) inches. (~~4-5-00~~)()

03. Color. Red or fluorescent orange. (4-5-00)

04. Placement of Flags. On overwidth vehicles and/or loads, flags shall be placed at the four (4) corners and/or extremities of the vehicle and/or load as follows: (4-5-00)

a. Front. Fastened to each front corner of the vehicle and/or load if it exceeds legal width. (4-5-00)

b. Rear. Fastened to each rear corner of the vehicle and/or load if it exceeds legal width. (4-5-00)

c. Side. Fastened to mark any extremity, when extremity is wider than the front or the rear of the vehicle and/or load. (4-5-00)

d. Overhang. If the overhang is two (2) feet wide or less only one (1) flag is required on the end of the overhang. If the overhang is over two (2) feet wide, two (2) flags are required on the end of the overhang to show the maximum width of the overhang. (4-5-00)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.16 - RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE
VEHICLES AND/OR LOADS

DOCKET NO. 39-0316-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Section 49-201, 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 21, 2009.

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

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

As written, the current restriction applies to loads exceeding four feet overhang in front of flatbed trailers, between the trailer and the tractor of the vehicle combination. Staff partnered with industry to research and determined that seven feet of front trailer overhang can be safely accommodated for night operations on two-lane, two-way highways. An overhang which exceeds seven feet will be restricted to daylight only travel when operating on two-lane, two-way highways.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rulemaking was initiated at the request of industry and confers a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

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 28, 2009.

DATED this 19th day of August, 2009.

Linda L. Emry
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 PROPOSED TEXT FOR DOCKET NO. 39-0316-0901

000. LEGAL AUTHORITY.

This rule, governing the movement of vehicles and/or loads which are in excess of the sizes allowed by Sections 49-1004 and 49-1010, Idaho Code, is adopted under the authority of Sections ~~40-312 and 49-1004~~201, Idaho Code. (4-5-00)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. (3-20-04)

02. Office Hours. Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (3-20-04)(____)

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

600. OVERLENGTH RESTRICTIONS.

Oversize vehicles operating under authority of an overlegal permit ~~for oversize vehicles~~ which exceed ~~four~~ seven (47) feet of front overhang, on any vehicle in the combination, are restricted to daylight travel only on two (2) lane, two (2) way highways. (4-5-00)(____)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.41 - RULES GOVERNING TRAFFIC CONTROL DEVICES

DOCKET NO. 39-0341-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making procedures. The action is authorized pursuant to Sections 40-313 and 49-201(3), 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 21, 2009.

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

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

This rulemaking adopts the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), the 2003 edition including revisions #1 and #2, published December 21, 2007. It also adds conforming additions to the manual, as adopted by the Idaho Transportation Board and approved by FHWA/Idaho, allowing the optional use of the IdaShield object marker for additional delineation of non-signalized at-grade railroad/road crossings of public roads. Studies show driver awareness and compliance with traffic rules at these crossings increases 20-25% with the use of IdaShield, which results in increased public safety and a decrease in the number of vehicular accidents.

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

There is no fee or charge being imposed through this rulemaking.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the MUTCD is the nationwide standard for traffic control devices and the department is required by statute to adopt such a standard with conforming additions to address needs and exceptions, unique to Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brent Jennings, Highway Operations and Safety Engineer, 334-8557.

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 28, 2009.

DATED this 19th day of August, 2009.

Linda L. Emry
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 PROPOSED TEXT FOR DOCKET NO. 39-0341-0901

000. LEGAL AUTHORITY.

The Idaho Transportation Board adopts this rule under the authority of Sections 40-313, and 49-201(3) ~~and 67-5203A~~, Idaho Code. (5-16-90)(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The "Manual on Uniform Traffic Control Devices for Streets and Highways" is published by the Federal Highway Administration of the U.S. Department of Transportation. The 2003 edition of the Manual and all subsequent amendments, through and including revision number ~~one~~ two (~~#1~~) dated ~~July~~ December 21, 2004~~7~~, are hereby incorporated by reference and made a part of the Rules of the Idaho Transportation Department. The following ~~exceptions~~ conforming additions to the Manual are adopted by the Idaho Transportation Board: (4-1-05)(____)

01. Section 2H-04, General Design Requirements for Recreational and Cultural Interest Area Symbol Signs. On page 2H-1, modify the first sentence under Standard to read as follows: Recreational and cultural interest area symbol signs shall be square or rectangular in shape and shall have a white symbol or message and white border on a brown background, with the exception of Scenic Byway signs which shall be allowed to use a multi-colored format. (4-1-05)

02. Section 1A.11, Relation to Other Documents. On page 1A-7, in the first paragraph under Standard, change the paragraph to read as follows: To the extent that they are incorporated by specific reference, the latest editions of the following publications, or those editions specifically noted, shall be a part of this Manual: Idaho Transportation Department (ITD) Sign Chart; and "Color Specifications for Retroreflective Sign and Pavement Marking Materials" (appendix to subpart F of Part 655 of Title 23 of the Code of Federal Regulations). The "Standard Highway Signs" book (FHWA) shall be a part of this Manual as a supporting document and add the following as the first sentence of the "Support" statement: Idaho Transportation Department Sign Chart includes all signs approved for use on a highway under the jurisdiction of the Idaho Transportation Department, their sign number designations and a cross reference index for comparison of all MUTCD approved signs and those included on the Idaho Transportation Department sign chart. (4-1-05)

03. Section 2C.30, Speed Reduction Signs (W3-5, W3-5a) on page 2C-15, delete "W3-5" from the title of the section and from the first sentence of the Guidance Statement, and Figure 2C-5, Advisory Speed and Speed Reduction Signs, on page 2C-16, remove the W3-5 sign from the figure. (4-1-05)

04. Section 2C.39, Traffic Signal Signs (W25-1, W25-2). On page 2C-20, delete the section in its entirety, and Figure 2C-8. Intersection Warning Signs, on page 2C-20, remove the W25-1 and W25-2 signs from the figure. (4-1-05)

05. Section 2D.15, Cardinal Direction Auxiliary Signs (M3-1 Through M3-4). On page 2D-6, change the first sentence under Standard to read as follows: "To improve the readability, the first letter of the cardinal direction words shall be ten percent larger, rounded up to the nearest whole number size, except for those sign installations that were in existence prior to the adoption of this rule." (4-1-05)

06. Section 2E.28, Interchange Exit Numbering. On page 2E-24, in the fourth sentence under Standard, revise the sentence to read as follows: "The standard exit number plaque shall include the word EXIT, the appropriate exit number, and the suffix letter A or B (on multi-exit interchanges) in a single-line format on a plaque ~~750 mm (30)~~ thirty-six (36) inches in height, except for those sign installations that were in existence prior to the adoption of this rule." (4-1-05)(____)

07. Section 2E.37, Interchange Sequence Signs. On page 2E-38, revise the last Standard to an Option to read as follows: “Interchange Sequence signs located in the median may be installed at overhead sign height.” (4-1-05)

08. Section 3C.01, Object Marker Design and Placement Height. On page 3C-1 under “Standard:” add the following paragraphs as a second paragraph under Type 1, Type 2 and Type 3 Object Markers to allow an alternate method of marker construction: ()

a. Type 1 - either a marker consisting of a rigid substrate sheeted with yellow ASTM 4956D, TYPE IV retroreflective sheeting screen printed to display nine (9) yellow retroreflective circles, each with a minimum diameter of seventy-five (75) millimeters (three (3) inches), arranged symmetrically on a black (OM1-2) diamond shaped panel four hundred fifty (450) millimeters (eighteen (18) inches) or more on a side; or an all-yellow ASTM 4956D, TYPE IV retroreflective diamond shaped panel (OM1-3) of the same size. ()

b. Type 2 - either a marker (OM2-1V or OM2-1H) consisting of a rigid substrate sheeted with white ASTM 4956D, TYPE IV retroreflective sheeting and displaying three (3) yellow circles of ASTM 4956D, TYPE IV retroreflective sheeting, each with a minimum diameter of seventy-five (75) millimeters (three (3) inches), arranged either horizontally or vertically on a white panel measuring at least one hundred fifty (150) millimeters by three hundred (300) millimeters (six (6) inches by twelve (12) inches); or on an all-yellow horizontal or vertical retroreflective panel (OM2-2V or OM2-2H), sheeted with ASTM 4956D, TYPE IV retroreflective sheeting measuring at least one hundred fifty (150) millimeters by three hundred (300) millimeters (six (6) inches by twelve (12) inches). ()

c. Type 3 - a striped marker, three hundred (300) millimeters by nine hundred (900) millimeters (twelve (12) inches by thirty-six (36) inches), consisting of a rigid substrate sheeted with yellow ASTM 4956D, TYPE IV retroreflective sheeting screen printed to display a vertical rectangle with alternating black stripes and retroreflective yellow stripes sloping downward at an angle of forty-five (45) degrees toward the side of the obstruction on which traffic is to pass. The minimum width of the yellow and black stripes shall be seventy-five (75) millimeters (three inches (3 in)). ()

d. Add a category for Type 4 object markers, to read as follows: ()

i. Type 4 - a striped marker, eight hundred thirty-eight (838) millimeters by nine hundred sixty-five (965) millimeters (thirty-three (33) inches by thirty-eight (38) inches), consisting of a vertical rectangle with two (2), two hundred ninety-two (292) millimeter (eleven point five (11.5) inch) side wings and a two hundred sixteen (216) millimeter (eight point five (8.5) inch) center section which are formed by bending the panel from top to bottom at a forty-five (45) degree angle away from approaching traffic. The rigid substrate panel is sheeted on both sides with white ASTM 4956D, TYPE IX diamond grade prismatic retroreflective sheeting and has reflective chrome stripes and red transparent ink stripes applied to the side wings sloping downward from the top outer corners at an angle of forty-five (45) degrees toward the center of the marker where they meet corresponding stripes which have been placed at a ninety (90) degree angle across the center section of the marker, except on the back of the marker which shall have the center section unsheeted and on the areas of the bends which shall have a nineteen (19) millimeter (point seventy-five (.75) inch) wide strip from top to bottom left unsheeted. The stripes shall meet the following dimensions: chrome stripes shall be thirty-eight (38) millimeters (one point five (1.5) inches) and red stripes shall be one hundred forty (140) millimeters (five point five (5.5) inches). ()

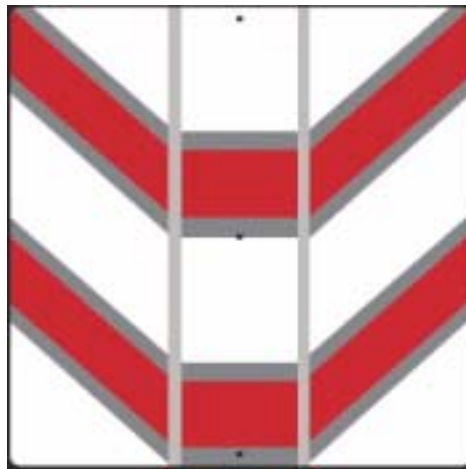
ii. Under “Support:” add the following as paragraph three (3): ()

(1) The Type 4 object marker, known in Idaho as OM-4 (IdaShield), shall be placed below the Highway-Rail Grade or Highway-Light Rail Transit Grade crossing Crossbuck Sign Assembly on the right hand side of the roadway on each approach to a crossing where automatic signal warning devices do not exist. The bottom of the shield should be six hundred ten (610) millimeters (twenty-four (24) inches) above the top of the rail and shall not be more than nine hundred fifteen (915) millimeters (thirty-six (36) inches) above the ground. ()

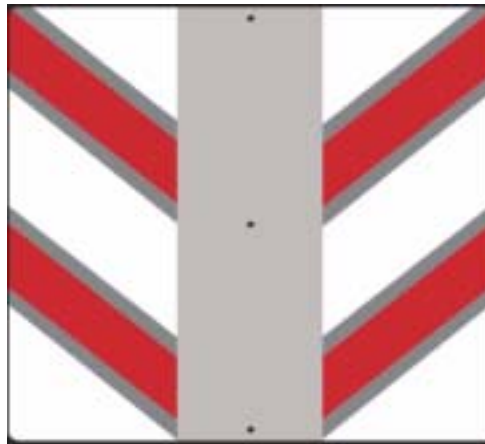
(2) On page 3C-2 Figure 3C-1, Object Markers and End-of-Roadway Markers, add a Type 4 Object Marker category to the figure which shall include an example of an OM-4 object marker known in Idaho as IdaShield. ()

Type 4 Object Markers
OM-4 (IdaShield)

FRONT



BACK



()

089. **Table 4C-1, Warrant 1, Eight-Hour Vehicular Volume.** On page 4C-3, remove all references to the fifty-six percent (56%) volume columns and note “d” and Section 4C.02 Warrant 1, Eight-Hour Vehicular Volume, on page 4C-4, remove the Option statement in its entirety. (4-1-05)

0910. **Section 4D.04, Meaning of Vehicular Signal Indications.** On page 4D-2, in the second paragraph of Item C.1, substitute the following for the first sentence: “Except when a sign is in place prohibiting a turn on red or a RED ARROW signal indication is displayed, vehicular traffic facing a CIRCULAR RED signal indication may

cautiously enter the intersection to turn right, or to turn left from a one (1) way or two (2) way street into a one (1) way street, after stopping in conformance with the provisions of the Idaho Vehicle Code.” (4-1-05)

101. Section 4K.03, Warning Beacon. On page 4K-2, in the second paragraph under Standard, revise the second sentence to read as follows: “The beacon shall not be included within the border of the sign.” (4-1-05)

142. Section 5F.02, Highway-Rail Grade Crossing (Crossbuck) Sign Assembly (R15-1, R15-2). On page 5F-1, in the title add the word “Assembly” after the word “Sign,” and Under Standard, insert the following text as the first sentence: “The Highway-Rail Grade Crossing (Crossbuck) (R15-1) sign (see Figure 5F-1) may be an assembly consisting of separate sign blades, assembled to appear as a single sign when installed at a highway-rail grade crossing.” (4-1-05)

123. Section 5F.04, STOP or YIELD Signs (R1-1, R1-2). On page 5F-1, delete the first paragraph titled as Option Statement, retaining the Standard for Stop Ahead (W3-1) or Yield Ahead (W3-2) signs and insert the following paragraph as the second paragraph under Standard: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (4-1-05)

134. Section 7B.11, School Speed Limit Assembly (S4-1, S4-2, S4-3, S4-4, S4-6, S5-1). On page 7B-7, in the fourth paragraph under Option, revise the second sentence to read as follows: “The lenses of the Speed Limit Sign Beacon shall not be positioned within the face of the School Speed Limit (S5-1) sign.” (4-1-05)

15. Section 8B.05, EXEMPT Highway-Rail Grade Crossing Signs (R15-3, W10-1a). ()

a. On page 8B-5, add the following paragraph titled as: “Standard: All EXEMPT (R15-3) signs placed at a highway-rail grade crossing, shall require train crews to flag the crossing and stop all vehicular traffic prior to allowing any railroad equipment to enter the crossing. Placement of an EXEMPT (R15-3) sign shall require a written agreement between the railroad company and the agency having jurisdiction over the highway which requires both parties to comply with the proper procedures for placement of EXEMPT signs at Highway-Rail Grade Crossings. A copy of all agreements shall be forwarded to the Idaho Transportation Department Highway-Rail Safety Coordinator.” ()

b. Retain the “Option” statement and modify the “Support” statement as follows: Support: These supplemental signs inform drivers of vehicles carrying passengers for hire, school buses carrying students, or vehicles carrying hazardous materials that a stop is not required at certain designated highway-rail grade crossings. ()

146. Section 8B.08, STOP (R1-1) or YIELD (R1-2) Signs at Highway-Rail Grade Crossings. On page 8B-6, delete the first five paragraphs titled as “Option, Support and Guidance Statements,” retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and insert the following: paragraph as the second paragraph under Standard: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (4-1-05)

157. Section 8B.22, Dynamic Envelope Markings. On page 8B-13, revise the first sentence under Standard to read as follows: “If used, the dynamic envelope shall be contrasting pavement color and/or contrasting pavement texture.” And, on page 8B-13, revise the first sentence under Guidance to read as follows: “If used, dynamic envelope pavement markings with contrasting pavement color and/or texture should be placed for a distance of 1.8 m (6 ft.) from the nearest rail, installed parallel to the tracks, unless the operating railroad company advises otherwise.” (4-1-05)

168. Figure 8B-8, Typical Train Dynamic Envelope Pavement Markings. On page 8B-13, delete

Figure in it's entirety. (4-1-05)

179. Section 8D.07, Traffic Control Signals at or Near Highway-Rail Grade Crossings. On page 8D-07, in the tenth paragraph titled Standard, add text "if justified by an engineering study," to the end of the final sentence in the paragraph. (4-1-05)

~~1820.~~ Section 10C.04, STOP (R1-1) Or YIELD (R1-2) Signs at Highway-Light Rail Transit Grade Crossings. On page 10C-2 and 10C-4, delete the Guidance, and Option Statements," retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and insert the following paragraph as the first paragraph under Standard: "Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence." (4-1-05)

21. Section 10C.10, EXEMPT Highway-Rail Grade Crossing Sign (R15-3, W10-1a). ()

a. On page 10C-5, add the following paragraph titled as: "Standard: All EXEMPT (R15-3) signs placed at a highway-rail grade crossing, shall require train crews to flag the crossing and stop all vehicular traffic prior to allowing any railroad equipment to enter the crossing. Placement of an EXEMPT (R15-3) sign shall require a written agreement between the railroad company and the agency having jurisdiction over the highway which requires both parties to comply with the proper procedures for placement of EXEMPT signs at Highway-Rail Grade Crossings. A copy of all agreements shall be forwarded to the Idaho Transportation Department Highway-Rail Safety Coordinator." ()

b. Retain the "Option" statement and modify the "Support" statement as follows: Support: These supplemental signs inform drivers of vehicles carrying passengers for hire, school buses carrying students, or vehicles carrying hazardous materials that a stop is not required at certain designated highway-light rail transit grade crossings. ()

~~1922.~~ Section 10C.25 Dynamic Envelope Delineation. (4-1-05)

a. On page 10C-12, delete the word "markings" in the title and, under Support, delete the word "markings" and replace with "contrasting pavement color and/or contrasting pavement texture." (4-1-05)

b. On page 10C-12, under Option: Replace the sentence with the following: "The dynamic envelope may be delineated on the pavement using contrasting pavement color and/or contrasting pavement texture (see Figures 10C-7 and Figure 10C-10)," and on page 10C-12, delete "Standard, relating to pavement markings in its entirety," and on page 10C-12, revise Guidance, to read as follows: "If used at the light-rail transit crossing, dynamic envelope contrasting pavement color and/or texture should be placed at a distance of 1.8 m (6 ft.) from the nearest rail, installed parallel to the tracks, unless the transit authority and/or operating railroad company advises otherwise," and on page 10C-12, delete the work "markings" in all four paragraphs under the second Option and replace with "delineation." (4-1-05)

203. Figure 10C-8, Typical Light Rail Transit Vehicle Dynamic Envelope Delineation Pavement Markings. On page 10C-13, delete Figure 10C-8 in it's entirety. (4-1-05)

~~214.~~ Section 10D.06, Traffic Signal Preemption Turning Restrictions. On page 10D-4, under the third paragraph titled Guidance: add text "if justified by an engineering study," to the end of the final sentence in the paragraph. (4-1-05)

(BREAK IN CONTINUITY OF SECTIONS)

100. AVAILABILITY OF THE “MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS.”

01. Review of Manual. Persons wishing to review the Manual may do so at any of the locations listed in Section 005. The Manual and subsequent amendments are also available for review at the Idaho State Library.
(3-20-04)

02. Purchase of Manual. The Manual and all subsequent amendments dated ~~July~~ December 21, 2004~~7~~, with Revision No. 1 and Revision No. 2 changes may be viewed and printed from the Federal Highway Administration website, <http://mutcd.fhwa.dot.gov> or purchased from a number of organizations described on the website, such as the U.S. Government Printing Office, AASHTO, ATSSA, and ITE. ~~(4-1-05)~~()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.04.05 - RULES GOVERNING AIRCRAFT REGISTRATION

DOCKET NO. 39-0405-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Section(s) 21-111 and 21-114, 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 21, 2009.

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

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

The rule currently cites Section 63-1203, Idaho Code, which has been repealed by the legislature and replaced with Section 63-301, Idaho Code, with equivalent wording. Minor wording changes were included to clarify the intent of the rule and language added as prescribed by the Office of the Administrative Rules Coordinator.

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 since there is no impact to the industry or to the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John DeThomas, Aeronautics Division Administrator, 334-8788. 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 28, 2009.

DATED this 19th day of August, 2009.

Linda L. Emry
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 PROPOSED TEXT OF DOCKET NO. 39-0405-0901

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.04.05, "Rules Governing Aircraft Registration," IDAPA 39, TITLE 04, Chapter 05. ()

02. Scope. This rule establishes the procedures for aircraft registration in the state of Idaho.

~~(11-28-90)~~()

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 an office in Boise at 3483 Rickenbacker Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ()

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ()

03. Telephone and FAX Numbers. The division office may be contacted during office hours by phone at 208-334-8775 or 800-426-4587 or by fax at 208-334-8789. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()

0027. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

101. REGISTRATION PERIOD.

01. Annual Period. The registration period for the registration of aircraft in the state of Idaho shall run from January 1 through December 31 of each year. (11-28-90)

02. Annual Registration Closing Date. The closing date for the annual registration shall be the first Monday of November in each year. A list of unregistered aircraft, as of that date, shall be forwarded to the proper county assessor for inclusion in personal property assessment due on the fourth Monday in November, as required by Section 63-~~1203~~ 301, Idaho Code. ~~(11-28-90)~~()

102. APPLICATIONS FOR AIRCRAFT REGISTRATION.

01. Current Registration Certificate. An owner who holds a currently effective registration certificate for an aircraft issued by the Federal government shall make application for an aircraft registration upon appropriate forms to be prescribed and furnished by the Division. Every such application shall contain a statement of the applicant's title and the names and addresses of all persons having any interest therein. (11-28-90)

02. Application Information. Every application for an aircraft registration shall contain: The name of the manufacturer, model, year, the aircraft identification number and serial number, engine type, and aircraft manufacturer's certified maximum gross weight. ~~(1-2-93)~~()

IDAPA 40 - COMMISSION ON THE ARTS

40.01.01 - RULES OF THE IDAHO COMMISSION ON THE ARTS

DOCKET NO. 40-0101-0901

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 67-5605, 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 21, 2009.

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 revise program deadlines, broaden the artists and art organizations eligible to apply for grants, and allow the award of grants to on-going projects and programs. The proposed rule changes revise deadline dates for consistency, identify eligible artists and art organizations, and provide that ongoing projects and programs are eligible for grants.

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: NA

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 Michael Faison, Executive Director, (208) 334-2119, ext. 29.

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 28, 2009.

DATED this 28th day of August, 2009.

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, ext. 29
Fax: (208) 334-2488

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 40-0101-0901

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; (5-8-09)
- 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; (5-8-09)
- i.** Projects or activities already completed or documentation of previously completed projects; (5-8-09)
- 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; (~~5-8-09~~)()
- 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; (5-8-09)
- 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. (5-8-09)
- 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.** ~~Unincorporated~~ 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)

(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 event or opportunity that was the subject of award to the applicant in the prior fiscal year. (5-8-09)

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 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. The Commission may give preference to applicants who have not previously received funds through a Commission program. (5-8-09)

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~~ second Monday of March, June, September, or December. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

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. Applicants younger than eighteen (18) years of age are allowed to apply as apprentices when their artistic traditions are typically passed down to persons under eighteen (18). (5-8-09)

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 apprenticeships applications are evaluated on 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. The Commission may give preference to traditional art forms with few practicing artists. (5-8-09)

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 the master. Applicants are also encouraged to submit the master's resume. (5-8-09)

07. Traditional Arts Apprenticeships -- Application Deadlines. Traditional arts apprenticeships applications must be postmarked or hand delivered to the Commission on or before the last business day of ~~March~~ January. (5-8-09)(____)

(BREAK IN CONTINUITY OF SECTIONS)

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~~ and arts 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.~~ (5-8-09)(____)

01. QuickFund\$ -- QuickProjects. QuickProjects provides funds for ~~pilot~~ arts projects, ~~projects essential to the initial growth of an organization, or new~~ and programs of organizations that do not receive support through the Public Programs in the Arts or Entry Track Grant program. (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 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. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. 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. (5-8-09)

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 second Monday of March, June, September, or December. (5-8-09)

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-0901

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 21, 2009.

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 rules need to be revised to address the following issues/problems identified with the current rules:

1. The current rules do not identify where the public can find documents incorporated into the rules by reference;
2. The Board wishes to adopt a later version of an already adopted code of professional ethics;
3. The Board wishes to make select licensure requirements regarding documentation and examination of veterinarians and veterinary technicians consistent where appropriate;
4. Eliminate an existing requirement that technicians, assistants and others delegated functions by a supervising veterinarian actually be employees of the veterinarian;
5. Remove verbal abuse or harassment of a patient or owner as an independent ground for discipline for a veterinary technician, making it consistent with disciplinary provisions for veterinarians;
6. The current rule does not require a notation in the medical records of how a prescription is administered;
7. Provisions addressing how long a veterinarian has to release medical records are too vague;
8. A requested change in the Board of Pharmacy statutes regarding prescription drug order will necessitate a corresponding change with Board of Veterinary Medicine rules on the same subject;
9. Existing provisions regarding the storage and disposal of drugs, stock, and material are inadequate;
10. A provision regarding law enforcement officers and restraint drugs is unnecessary given the Board's modification of the definition of a certified euthanasia technician;
11. Existing provision requiring specific injection needle sizes are too restrictive;
12. Language to address transportation of drugs in a secure fashion needs to be added;
13. Supplies and other requirements for euthanasia rooms need to be updated;
14. References to law enforcement certified euthanasia technicians providing verification of supervision by a veterinarian is unnecessary and needs to be removed since law enforcement CETs will no longer be allowed; and
15. Provisions relating to reinstatement of a certified euthanasia technician are confusing and need revision.

The proposed rules will make the following amendments:

1. Insert a provision that documents incorporated by reference can be accessed via the Board's website;
2. Adopt the April 2008 version of the Principles of Veterinary Medical Ethics of the AVMA;
3. Provide that applicants for veterinarian technician licensure provide certified copies of school records or letters verifying completion of education requirements and clarifying that technician applicants may take the state jurisprudence examination more than once, but at three month intervals;
4. Eliminate multiple references in various parts of the rules requiring technicians and assistants to be employed by a supervising veterinarian, thereby allowing for volunteers and others;
5. Striking verbal abuse or harassment of patient as grounds for discipline of a veterinary technician to be consistent with grounds for discipline of a veterinarian;
6. Inserting a requirement that the route of administration of drugs be noted in the patient's medical records;
7. Requiring that veterinarians provide a copy of a patient's records within a specified period of time;
8. Change the period of time given a veterinarian to provide a written order as a follow-up to an oral order

- given a veterinary drug outlet to mirror a similar change requested by the Board of Pharmacy in its statutes;
9. Clarify the disposal of controlled substances and outdated stock and material;
 10. Eliminate a reference to law enforcement agencies and personnel as certified euthanasia technicians;
 11. Modifying the requirements on needle sizes for euthanasia agencies to reflect realities and give more flexibility;
 12. Adding a requirement that drugs approved for use by certified euthanasia technicians be transported only in a storage cabinet securely bolted to the transporting vehicle;
 13. Modifying the supplies and items required to be in a euthanasia room, including current certifications;
 14. Striking a reference to law enforcement CETs working under the supervision of a veterinarian, since this is incorrect under the Board's redefinition of a CET; and
 15. Clarifying confusing provisions regarding reinstatement of a CET.

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 the Board specifically surveyed Idaho veterinarians, the Idaho Veterinary Medical Association, and humane society officials regarding proposed changes that would affect their facilities. Input from these groups was then implemented in the rule changes. Additionally, several of the rule changes are simple "housekeeping" changes that update the rules as needed based on statute changes and documents incorporated by reference, and provide consistency between requirements that are common to both veterinarians and certified veterinary technicians.

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 28, 2009.

DATED this 6th day of August, 2009.

Karen Ewing
Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
P. O. Box 7249, Boise, ID 83707
Telephone: (208) 332-8588
Facsimile: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCET NO. 46-0101-0901

005. INCORPORATION BY REFERENCE.

01. Documents Incorporated. The following documents are incorporated herein by reference in accordance with the provision of Section 67-5229, Idaho Code. A copy of each of these documents may be obtained or electronically accessed via the Board of Veterinary Medicine's website at www.bovm.state.id.us. (~~3-30-01~~)()

- a.** The Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), ~~as adopted and revised January 1, 2005~~ April 2008. ~~(3-30-07)~~(____)
- b.** The Educational Commission for Foreign Veterinary Graduates Information for Graduates of Colleges of Veterinary Medicine Outside the United States and Canada (ECFVG), adopted May 1, 2000. (3-30-01)
- c.** The American Association of Veterinary State Boards' (AAVSB) Program for the Assessment of Veterinary Education (PAVE), adopted August 15, 2002. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

100. CERTIFICATION OF VETERINARY TECHNICIANS.

Any person representing himself as a veterinary technician, licensed veterinary technician, registered veterinary technician, or certified veterinary technician, shall hold a valid, unexpired certificate to practice veterinary technology in the state of Idaho. (3-30-07)

01. Application for Certification -- Contents -- Examinations. An individual desiring to be certified as a veterinary technician shall make written application to the Board upon a form furnished by the Board. A complete application shall be valid and maintained at the Board office for a period of one (1) year, contain the applicant's notarized signature, and include: (3-30-01)

- a.** A copy of a birth certificate or current passport proving that the applicant is eighteen (18) years of age or older. (4-2-08)
- b.** Notarized affidavits issued during the year preceding certification from two (2) individuals, personally acquainted with the applicant, attesting to the fact that the applicant is of good moral character. (3-30-01)
- c.** Documentation of education/training/experience as follows: (3-30-01)
- i.** A ~~notarized~~ certified copy of a diploma or ~~certificate transcript, or a letter~~ verifying graduation from a veterinary technology program, accredited by the American Veterinary Medical Association; ~~or~~ ~~(3-30-01)~~(____)
- ii.** A ~~notarized~~ certified copy of a diploma or ~~certificate transcript, or a letter~~ verifying graduation from a veterinary technology program equivalent to a program accredited by the American Veterinary Medical Association, or from another college or institution approved by the Board; ~~or~~ ~~(3-30-01)~~(____)
- iii.** ~~Notarized verification of having been awarded~~ A certified copy of a diploma or transcript, or a letter verifying the award of a D.V.M. or V.M.D. degree or equivalent, from an accredited school of veterinary medicine; or ~~(3-30-01)~~(____)
- iv.** If a foreign veterinary graduate, notarized verification of having been awarded a D.V.M. or V.M.D. degree or equivalent in a program of veterinary medicine from a foreign school of veterinary medicine or the veterinary department of a foreign university or another college or institution that is approved by the Board. (3-30-07)
- d.** Verification of a criterion-referenced passing score reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards on the Veterinary Technician National Examination (VTNE) or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board. If such a score is not available, the passing score shall be as reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards or by the Board and shall be considered equal to or greater than one and five-tenths (1.5) standard deviation below the mean score of the examination. (3-30-01)

i. The VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board may have been taken at any time. (3-30-01)

ii. Scores for the VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board are to be provided to the Board by the Professional Examination Service or its designee or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards. (3-30-01)

e. A passing score ~~of at least for the jurisprudence examination, which should be~~ ninety percent (90%) ~~correct on the Idaho Veterinary Technician Jurisprudence Examination or such score as deemed appropriate~~ by the Board. ~~The jurisprudence examination, as prepared by the Board or its designee, may be taken more than once, at three-month intervals.~~ (3-30-01)(____)

02. Application for Certification -- Fee -- Deadline -- Validity. (3-30-01)

a. A completed application, other required documents, and first year's certification fee in the amount established by the Board shall be received at the Board office by the first day of January or June. (3-30-01)

b. The Board will review applications and issue certifications in January and June of each year. Veterinary Technician Certifications shall be consecutively numbered beginning with the number one (1) and all numbers shall be prefixed with the letters CVT. If an applicant is found not qualified, the Board shall notify the applicant in writing of such finding and grounds therefor. An applicant denied certification may request a hearing pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code. Any applicant who is denied certification shall be allowed the return of the certification fee portion of the application fee. (3-30-01)

c. Any applicant taking and passing the Idaho Veterinary Technician Jurisprudence Examination and not wanting to be certified at the next review by the Board shall be allowed the return of the certification fee portion of the application fee only. (3-30-01)

101. TEMPORARY CERTIFICATION.

The Board may, at its discretion, issue a temporary certification. The temporary certification shall be valid for one (1) year or until the next certification review by the Board, whichever comes first, and under no circumstances shall a second temporary certification be issued to the same person. A temporary certification shall not be issued to any applicant whose certification, license or registration has been revoked in any state for a reason other than nonpayment of fees or failure to fulfill the renewal requirements. An applicant granted a temporary certification shall provide notarized verification of twelve (12) months of active practice during the past year as a veterinary technician in another state or shall perform all veterinary technology procedures under the direct supervision of ~~the employing an~~ Idaho licensed veterinarian. Temporary certifications shall be consecutively numbered beginning with the number one (1) and all numbers shall be prefixed with the letters TC. (3-30-01)(____)

01. Certification Requirements. Requirements for a temporary certification shall be the same as for the original certification. (3-30-01)

02. Responsibility. Nothing herein shall be construed to relieve the temporary certificate holder of any responsibility or liability for any of their own acts and omissions. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

103. SUPERVISING VETERINARIANS.

01. Statement of Purpose. Veterinarians licensed under the provisions of Title 54, Chapter 21, Idaho Code, shall be responsible for all temporary licensees and temporary certification holders, certified euthanasia technicians, certified veterinary technicians, veterinary assistants, or any others ~~in their employ~~ to whom they

delegate the performance of acts pertaining to the practice of veterinary medicine. ~~(3-30-01)~~(____)

02. A Supervising Veterinarian Shall: (3-30-01)

a. Provide direct supervision for all procedures pertaining to the practice of veterinary medicine that are delegated to a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or any others ~~in his employ~~ with the exception of: ~~(3-30-01)~~(____)

i. Routine procedures in the practice of veterinary technology that include, but are not limited to, taking radiographs, weight and temperature, or as determined by the standard of practice for the area. These routine procedures may be performed under the indirect supervision of the veterinarian. (3-30-01)

ii. Previously prescribed antibiotics and medications, which may be administered under the indirect supervision of the veterinarian. Previously prescribed antibiotics and medications shall not include injectable controlled substances, injectable tranquilizers, injectable sedatives, and injectable or inhalant anesthetics, which may only be administered under the direct supervision of the veterinarian. (3-30-01)

iii. Emergency situations where the animal has been placed in a life-threatening condition and immediate treatment is necessary to sustain life. In these situations, in order to stabilize the animal, the veterinarian, while en route to the location of the distressed animal, may prescribe treatment and delegate appropriate procedures pertaining to the practice of veterinary medicine under indirect supervision. Such emergency treatment and procedures may only be continued under indirect supervision until the veterinarian arrives at the animal's location. (3-30-01)

b. Be available to supervise and direct all procedures pertaining to the practice of veterinary medicine that are delegated to ~~individuals in his employ~~ others. ~~(3-30-01)~~(____)

c. Bear legal responsibility for the health, safety and welfare of the animal patient that the temporary licensee, temporary certification holder, certified veterinary technician, assistant, or any others ~~in his employ~~ serves. ~~(3-30-01)~~(____)

d. Not delegate an animal health care task to an unqualified individual. (3-30-01)

e. Make all decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient. (3-30-01)

f. Have examined the animal patient prior to the delegation of any animal health care task to a certified veterinary technician, temporary certification holder, or assistant. The examination of the animal patient shall be conducted at such times as acceptable veterinary medical practice dictates, consistent with the particular delegated animal health care task. (3-30-01)

g. Diagnose and perform operative dentistry, oral surgery, and teeth extraction procedures. Operative dentistry and oral surgery are considered to be any dental procedure which invades the hard or soft oral tissue including, but not limited to, a procedure that alters the structure of one (1) or more teeth or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth. Operative dentistry and oral surgery do not include, removal of calculus, soft deposits, plaque, stains, floating to shape the teeth, or smoothing, filing or polishing of tooth surfaces above the gum line. (3-30-01)

03. Limitations on Supervising Veterinarians. Unless otherwise provided by law or rule, a supervising veterinarian shall not authorize a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or ~~any others in his employ~~ anyone else, other than a licensed veterinarian or a veterinarian holding a valid temporary permit to perform the following functions: ~~(3-30-01)~~(____)

a. Surgery; (7-1-93)

b. Diagnosis and prognosis of animal disease; (7-1-93)

- c. Prescribing drugs, medicines and appliances; or (3-30-01)
- d. Diagnosis and performance of procedures that constitute operative dentistry/oral surgery as defined by Section 54-2103(13)(b), Idaho Code. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

105. GROUNDS FOR DISCIPLINE OF VETERINARY TECHNICIANS.

In addition to the provisions of Section 54-2118, Idaho Code, the Board may refuse to issue, renew, or reinstate the certification of a veterinary technician, or may deny, revoke, suspend, sanction, place on probation, or require voluntary surrender of the certification of a veterinary technician, or may impose other forms of discipline, and enter into consent agreements and negotiated settlements with certified veterinary technicians pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code, for any of the following reasons: (3-30-01)

- 01. Fraud, Misrepresentation, or Deception.** The employment of fraud, misrepresentation or deception in obtaining certification. (3-30-01)
- 02. Unethical or Unprofessional Conduct.** Unethical or unprofessional conduct is conduct that includes, but is not limited to, any of the following: (3-30-01)
 - a. False or misleading advertising or solicitation; (3-30-01)
 - b. Providing any procedure to an animal that constitutes the practice of veterinary medicine or veterinary technology and which has not been delegated by the ~~employing~~ supervising veterinarian, except in the case of an emergency as defined by Section 54-2103(16), Idaho Code; ~~(3-30-01)(_____)~~
 - c. Working in conjunction with any unlicensed or uncertified person who is practicing veterinary medicine or veterinary technology; (3-30-01)
 - d. Failing to apply sanitary methods or procedures in the treatment of any animal; (3-30-01)
 - e. Physically abusing a patient or failing to conform to the currently accepted standards of care in the field of veterinary technology for any animal under his care; (3-30-01)
 - ~~f. Verbally abusing or harassing a patient or owner or caretaker of an animal; (3-30-01)~~
 - gf.** Practicing veterinary technology in a manner that endangers the health and welfare of the patient or the public. A certified veterinary technician shall not practice veterinary technology if his ability to practice with reasonable skill and safety is adversely affected by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical disability; (3-30-01)
 - hg.** Gross ignorance, incompetence or inefficiency in the practice of veterinary technology as determined by, but not limited to, the practices generally and currently followed and accepted by persons certified to practice veterinary technology in this state and the current teaching at accredited programs in veterinary technology; (3-30-01)
 - ih.** Intentionally performing a duty, task or procedure in the field of veterinary technology for which the individual is not qualified; (3-30-01)
 - ji.** Swearing falsely in any testimony or affidavits relating to, or in the course of, the practice of veterinary technology. (3-30-01)
 - kj.** Engaging in conduct of a character likely to deceive or defraud the public. (3-30-01)

03. Conviction of Violating Any Federal or State Statute, Rule or Regulation. Conviction of a charge of violating any federal or state statute or rule or regulation regulating narcotics, dangerous drugs or controlled substances. (3-30-01)

04. Conviction of a Charge or Crime. Being found guilty, convicted, placed on probation, having entered a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure a defendant's appearance, or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following: (3-30-01)

a. Any felony, as defined by Title 18, Chapter 1, Idaho Code; or (3-30-01)

b. Any other criminal act that in any way is related to the practice of veterinary technology as defined by Section 54-2103(47), Idaho Code. (3-30-01)

05. Medical Incompetence. Medical incompetence in the practice of veterinary technology, which means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients. (3-30-01)

06. Physical or Mental Incompetence. Physical or mental incompetence, which means the individual's ability to practice veterinary technology with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance, or as a result of any physical or mental disability. (3-30-01)

07. Malpractice or Negligence. Malpractice or negligence, in the practice of veterinary technology, which includes, but is not limited to: (3-30-01)

a. Treatment in a manner contrary to accepted practices in veterinary technology and with injurious results; (3-30-01)

b. Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of an act that is part of the practice of veterinary technology; (3-30-01)

c. Performance of an act that is part of the practice of veterinary technology without adequate supervision; except in the case of an emergency as defined by Section 54-2103(16), Idaho Code; or (3-30-01)

d. The negligent practice of veterinary technology, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death. (3-30-01)

08. Cruelty to Animals. Cruelty to animals, including, but not limited to, the intentional and malicious infliction of pain, physical suffering, injury or death, performance of experimental treatments without the owner's consent, deprivation of necessary sustenance, withholding of appropriate pain medications or levels of pain medications, or the administration of unnecessary procedures and treatment. Infliction of pain on any animal in self-defense, or to prevent physical harm to others, or in accordance with local custom and culture in moving, handling, treating, dehorning, castrating or performing other procedures on livestock, shall not be considered cruel or physically abusive unless done in an unnecessary or intentionally malicious manner. This provision does not alter Section 25-3514, Idaho Code. (3-30-01)

09. Revocation, Suspension, Limitation or Subjection. The revocation, suspension, limitation, or subjection of a license, certificate or registration or any other disciplinary action by another state or U.S. jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice veterinary technology in that state or jurisdiction on grounds other than nonpayment of the renewal fee. (3-30-01)

10. Continuing Education. Failure to comply with the continuing education requirements outlined by the rules of the Board. (3-30-01)

11. Failure to Cooperate. (3-30-01)

- a.** Failure of any applicant or certificate holder to cooperate with the Board during any investigation, even if such investigation does not personally concern the applicant or certificate holder. (3-30-01)
- b.** Failure to comply with the terms of any order, negotiated settlement, or probationary agreement of the Board. (3-30-01)
- c.** Failure to comply with the terms for certification renewal or to timely pay certification renewal fees as specified by Section 104 of these rules. (3-30-01)
- 12. Aiding or Abetting.** Knowingly aiding or abetting an unlicensed or uncertified person to practice veterinary medicine or veterinary technology. (3-30-01)
- 13. Current Certification.** Practicing as a certified veterinary technician without a current certification. (3-30-01)
- 14. Acceptance of Fees.** Accepting fees for veterinary technician services from a client. (3-30-01)
- 15. Unlawful Practice.** Representing oneself as a doctor of veterinary medicine, which constitutes the unauthorized practice of veterinary medicine in violation of Title 54, Chapter 21, Idaho Code. (3-30-01)
- 16. Violation of Law, Rules or Order.** Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation or conspiracy to violate any of the provisions of the veterinary law or rules or a written order of the Board issued pursuant to Title 54, Chapter 21, Idaho Code. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

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, and route of administration for both inpatient and outpatient care. (~~7-1-97~~)(_____) (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 within fourteen (14) calendar days, a copy or summary of the patient's medical record, upon the request of the patient's owner or other caretaker. Vaccination records shall be supplied within twenty-four (24) hours, unless the business is closed, in which case the records shall be provided within twenty-four (24) hours of resumption of business. 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. (5-8-09)

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. (5-8-09)

(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 this completed form shall be attached to the prescription or legend drugs that are delivered to the animal(s)'s owner or legal caretaker. (5-8-09)

(3) When a veterinarian issues an oral prescription drug order to a retail veterinary drug outlet, the oral order shall be followed 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~~ no later than seven (7) days after the retail veterinary drug outlet receives the oral order. 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. (5-8-09)(____)

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, and disposed of in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. (3-30-01)(____)

09. Return or Disposal of Expired Stock and Material. Except for controlled substances, which shall be disposed of in accordance with Paragraph 154.08.g. of these rules, all stock and material that has exceeded its

expiration date shall be removed from stock and disposed of appropriately. ()

(BREAK IN CONTINUITY OF SECTIONS)

201. METHODS OF EUTHANASIA.

Methods of euthanasia approved by the CETF and used for the purpose of humanely euthanizing injured, sick, homeless or unwanted pets and animals: (7-1-97)

01. Approved Drugs. (7-1-97)

a. Euthanasia drugs are any Schedule II non-narcotic or Schedule III non-narcotic euthanasia drug covered by the Controlled Substances Act that has first been approved in writing by the Idaho Board of Pharmacy, the CETF and the Board. A list of approved euthanasia drugs is on file at the Board office. (3-30-01)

b. Restraint drugs are any Schedule III or Schedule IV narcotic or non-narcotic controlled substance as defined by the Controlled Substances Act, or other legend drugs that have been approved for use by certified CEAs or CETs ~~who are classified as law enforcement agencies or law enforcement personnel~~. Such restraint drugs shall be limited to those approved in writing by the Idaho Board of Pharmacy, the CETF and the Board. A list of approved restraint drugs is on file at the Board office. ~~(3-30-01)~~()

02. Carbon Monoxide-Induced Euthanasia Chambers. Carbon monoxide-induced euthanasia chambers are acceptable only when the equipment is properly designed and operated. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

204. CERTIFIED EUTHANASIA AGENCY.

A certified euthanasia agency is a law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals that has been inspected and certified by the euthanasia task force or the Board, Section 54-2103(8), Idaho Code. In order to be certified to purchase and store approved drugs, certified euthanasia agencies shall be inspected by the CETF or the Board and shall meet the following criteria: (3-30-01)

01. Approved Drugs. Approved drugs shall be kept in a locked cabinet securely attached to the building in which it is housed. (3-30-01)

a. Each agency shall maintain a current written list of CET. (3-30-01)

b. Access to the drug storage cabinet shall be limited to licensed veterinary supervisors and assigned CET. Such persons shall be responsible for the security of the approved drugs and shall allow withdrawal of the approved drugs only to a person certified by the Board and registered with the Idaho Board of Pharmacy to administer such drugs. (3-30-01)

c. All approved drugs shall be prepared according to the manufacturer's instructions. (7-1-97)

d. ~~Two (2) different n~~Needles in a range of sizes that are required: eighteen (18) and twenty (20) the appropriate gauge for the intended use. ~~An agency may have other needle sizes according to its needs.~~ Needles shall be of medical quality, and shall not be used if they are dirty, clogged, barbed, or might otherwise cause unnecessary discomfort for the animal. Needles shall not be used more than five (5) times. ~~(3-30-01)~~()

e. Three (3) different syringe sizes are required: three (3), six (6), and twelve (12) cc. An agency may have other syringe sizes according to its needs. Syringes shall be of medical quality. They may be reused if they are properly cleaned. (3-30-01)

- f.** Used needles and syringes that are to be reused shall be kept in the same secure or temporary storage as the approved drugs. (7-1-97)
- g.** Spent needles and syringes shall be disposed of in a manner that makes their re-use impossible. (7-1-93)
- 02. Proper Storage.** When no CET is on duty, proper storage for approved drugs is in a locked storage cabinet. (3-30-01)
- a.** The cabinet shall be of such material and construction that it will withstand strong attempts to break into it. A metal safe is preferred. (7-1-93)
- b.** The cabinet shall be securely attached to the building in which it is housed. (7-1-93)
- c.** The temperature and environment in the storage cabinet shall be adequate to assure the proper keeping of the drug. (7-1-93)
- 03. Proper Labeling.** Proper labeling of approved drugs shall include: (7-1-97)
- a.** Shipment records showing receipt of the approved drugs shall be maintained and include all information required by federal law, the date the shipment was received, the amount, the source, and the invoice number. Upon removal from the shipment carton, each individual container of an approved drug shall be labeled with the drug name and strength, the date the drug was prepared, a drug hazard warning label and the name and address of the agency owning the drug. (7-1-97)
- b.** Administration records showing the date an approved drug was administered, weight, species of animal and dosage of each drug administered for euthanasia and restraint, identification of the person who dispensed the approved drugs and if applicable identification of the veterinarian or CET who supervised the dispensing shall be maintained. (3-30-01)
- c.** Records of wastage shall be maintained and signed by the person administering the approved drug and the CET responsible for security. (3-30-01)
- d.** A weekly record of the approved drugs on hand, minus the amounts withdrawn for administration, signed by the CET or person responsible for security. (3-30-01)
- e.** Disposal records of any expired or unwanted approved drugs shall be maintained. Disposal of unwanted drugs and the containers, instruments and equipment used in the administration of the approved drugs shall be in conformance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (3-30-01)
- 04. Temporary Storage.** When a CET is on duty and when animals are being euthanized throughout the workday, approved drugs may be kept in a temporary storage cabinet. When approved drugs are transported in a vehicle, the temporary storage cabinet shall be securely bolted to the vehicle. The cabinet shall be constructed of any strong material and shall be securely locked when not in use. The key to this cabinet shall be available only to the licensed veterinary supervisor and designated CET. (~~7-1-97~~)(____)
- 05. Record Keeping.** Proper record keeping; (7-1-97)
- a.** All records shall be filed in chronological order in a binder that is labeled with the name of the agency. (7-1-93)
- b.** All records shall be kept for a period of three (3) years from the calendar date on the record. (7-1-93)
- 06. Proper Sanitation.** The euthanasia area shall be clean and regularly disinfected. (3-30-01)
- 07. Other Site Conditions.** Other site conditions relevant to the proper euthanasia environment.

- (7-1-93)
- a. Each agency shall have a specific area designated for euthanasia. The area shall be: (7-1-93)
- i. A separate room; or (7-1-93)
- ii. An area that is physically separated from the rest of the agency by a wall, barrier or other divider; (7-1-93)
- or
- iii. An area that is not used for any other purpose while animals are being euthanized. (7-1-93)
- b. The euthanasia area shall meet the following minimum standards: (7-1-93)
- i. Lighting shall be bright and even; (7-1-93)
- ii. The air temperature shall be within a reasonable comfort range for both the personnel and animals. A minimum sixty (60) degrees F and maximum ninety (90) degrees F is recommended; (7-1-93)
- iii. The area shall have adequate ventilation that prevents the accumulation of odors. At least one (1) exhaust fan vented directly to the outside is recommended; and (7-1-93)
- iv. The floor of the area shall provide dry, non-slip footing to prevent accidents. (7-1-93)
- c. The euthanasia area shall have the following equipment: (7-1-93)
- i. A table or other work area where animals can be handled while being euthanized. (7-1-93)
- ii. A cabinet, table or work bench where the drugs, needles, syringes and clippers can be placed. (7-1-93)
- d. The following items and materials shall either be kept in the euthanasia area or ~~shall be~~ brought to the area each time an animal is euthanized: (7-1-93)()
- i. A first aid kit that meets minimum first aid supply standards; (7-1-93)
- ii. One (1) or more tourniquets; (7-1-93)
- iii. Standard electric clippers with No. 40 blade; (7-1-93)
- iv. Animal control stick for dogs and animal net for cats (if the agency handles cats); (7-1-93)
- v. Stethoscope; (7-1-93)
- vi. ~~Towels, sponges, &~~Disinfectant. (7-1-93)()
- vii. The current certification cards for the CEA and all CETs working at the CEA, which shall be kept together. The CEA is strongly encouraged to keep all DEA and Idaho Board of Pharmacy registration cards together with the certification cards. ()
- e. All equipment shall be in good working order. (7-1-93)
- 08. Equipment Stored.** All equipment shall be stored so that it does not create a safety hazard for the personnel. All drugs and other chemical agents used in the euthanasia area shall be clearly labeled as specified by Subsection 204.03 of these rules. (3-30-01)

09. Certification Renewal. Certifications may be renewed upon successful completion of a facility inspection by a CETF member, a member of the Board or other individual appointed by the CETF and payment of the

annual renewal fee. (3-30-01)

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. Demonstrate efficiency in venous access in the presence of a CETF or Board member, or a person approved by the Board: (5-8-09)
 - 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 by a CEA prior to the expiration 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, at CETF discretion. ~~(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. 47-0101-0901

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 33-105, 33-2402, 33-2403, 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 21, 2009.

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

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

This rule brings the appeals process, outlined in the Field Service Manual and incorporated by reference, into alignment with the language included in the rule, eliminating confusion caused by the different language.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the non-controversial nature. The changed language is already a part of the rule, but in a document that is incorporated by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tracie Bent at 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 28, 2009.

DATED this 28th day of August, 2009.

Tracie Bent
Chief 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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0101-0901

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 Subsection 004.01.b. (See <http://www.vr.idaho.gov/>). (2-17-09)

01. Informal ~~Dispute Resolution~~ Appeals Process. ~~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. The informal administrative review process is an option available to the individual as a proven means likely to result in a timely resolution of disagreements. An individual must request an informal administrative review within ten (10) calendar days of the agency notice regarding the provision or denial of services that are in question. The request must be in writing to the regional manager. The request must describe the complaint. In holding an informal administrative review, the regional manager will function as the administrative review officer and will be responsible for:~~ (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. Conducting the review within fifteen (15) calendar days following written receipt of a request for such a hearing.~~ (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. Advising the individual of their right to have a representative present and encouraging the individual to use the services of CAP.~~ (5-3-03)()

c. ~~Insuring that the review is conducted at a time mutually agreed to by the parties involved that ensures the entire appeals process can be completed within forty-five (45) calendar days, unless the parties agree to a specific extension of time.~~ ()

d. ~~When undue delay is caused by the individual in scheduling an administrative review, the individual will be informed that if the review is not conducted within thirty (30) calendar days following the individual's request for an informal administrative review, the individual's request will be viewed by IDVR as invalid.~~ ()

e. ~~When the individual makes a documented effort to utilize CAP or another selected advocate to resolve the dissatisfaction, the time allowed for conducting an administrative review will be extended accordingly.~~ ()

f. ~~Holding the review at a time and place convenient to the individual, generally at the local IDVR branch office.~~ ()

g. ~~Providing communication methods for those individuals who have a sensory impairment. An interpreter will be provided for those individuals who cannot communicate in English.~~ ()

h. ~~Assuring that the individual is provided transportation to and from the review site, if needed.~~ ()

i. ~~The administrative review officer (regional manager) will attempt to resolve the matter to the satisfaction of the individual, developing a written agreement with the individual at the conclusion of the appeal process. A copy will be sent to the Administrator, Chief of Field Services, the involved counselor(s) and the counselor's supervisor. The results are binding for the agency unless the decision is not permitted by law. The individual may reject the findings of the review and request a formal appeal known as an Impartial Due Process Hearing.~~ ()

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- Formal Appeals Process. The formal appeal process is an option available to any individual who is dissatisfied with any determination made by personnel of IDVR that affects the provisions of vocational rehabilitation services. An individual may request, or if appropriate may request through the individual's representative, a timely review of the determination. Such request must be made within sixty (60) days of the IDVR case management decision resulting in the initial disagreement. The formal appeal process shall include an impartial due process hearing by an impartial hearing officer (IHO). (5-3-03)()

a. A formal hearing is a procedure whereby an individual who is dissatisfied with any determination concerning the provision or denial of IDVR services or the findings of the administrative review may seek a determination of agency action before an impartial hearing officer. ()

b. The individual must request a hearing within ten (10) calendar days of the agency notice regarding the provision or denial of services based upon the conclusion of the administrative review or mediation. The individual may bypass the informal administrative review or mediation process entirely and go directly to the impartial due process hearing (fair hearing). That process will then commence immediately. ()

c. A request for a hearing must be sent in writing to the Chief of Field Services and clearly state the individual's dissatisfaction. ()

d. The hearing shall be conducted within sixty (60) calendar days of receipt of the individual's request for review, unless informal resolution is achieved prior to the 60th day, or the parties agree to a specific extension of time. ()

e. A hearing shall be conducted by an impartial hearing officer selected from the pool of qualified persons identified jointly by the Administrator of IDVR and the State Rehabilitation Council. ()

f. The hearing officer shall issue a written report of the findings and decision of the hearing within thirty (30) calendar days of the completion of the hearing. ()

g. The decision of the hearing officer shall be considered final by the agency. ()

h. Any party who disagrees with the findings and decisions of an impartial hearing officer shall have the right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. ()

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~~ An individual may 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 immediately without having to go through other appeal steps. ~~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. Even if an individual agrees to an informal hearings process, such individual is entitled to a due process hearing within sixty (60) days of the IDVR case management decision that initiated the disagreement, unless both parties agree to an extension.~~ (5-3-03)()

04. Mediation. Mediation is an alternate dispute resolution method available to applicants and eligible individuals who have initiated the formal appeals process. ()

a. An individual must request mediation within ten (10) calendar days of the agency notice regarding the results of the administrative review. Mediation is available to an individual when an administrative review has not resolved the dispute to the satisfaction of the individual. ()

b. A request for mediation must be made in writing to the Chief of Field Services and clearly state the reason for dissatisfaction with the results of the administrative review. The Chief of Field Services will represent

IDVR or assign a member of the administrative or supervisory staff who has not participated in agency action that created the individual's dissatisfaction. ()

c. Participation in the mediation process is voluntary on the part of the individual and on the part of IDVR. Either party may reject mediation as an alternate dispute resolution method. Either party, once accepting mediation as an alternate dispute resolution method, may terminate the mediation process. ()

d. Mediation is not used to deny or delay the individual's right to pursue an impartial hearing. Should the individual or designated representatives select mediation in lieu of a formal hearing, the option for the formal hearing will be extended to allow the results of the mediation to be established. After the final results of the mediation are determined, the individual retains the right to request a formal hearing. ()

e. Mediation is conducted by qualified and impartial mediators who are selected randomly from a list of mediators maintained by IDVR. ()

f. Mediation discussions are confidential and may not be used as evidence in a subsequent due process hearing. ()

g. The mediator will develop a written mediation agreement if agreement between the parties is reached, signed by the individual, the mediator and IDVR. ()

h. Cost of mediation is paid by IDVR, although no costs are provided for representation for the individual. ()

IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

48.01.01 - RULES OF PROCEDURE OF THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

DOCKET NO. 48-0101-0901

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Section 54-3605(15), Idaho Code.

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

WEDNESDAY, OCTOBER 28, 2009 -- 9:30 to 11:00 a.m.

**J.R. WILLIAMS BUILDING
East Conference Room
700 West State St., Boise, Idaho**

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

DESCRIPTIVE SUMMARY: The Commission will offer grants in furtherance of its mission to protect the public and promote the Idaho grape and wine industry. The rules will establish the framework of the grant program.

The summary of this action is found in Idaho Administrative Bulletin Vol. 09-9, dated September 2, 2009, pages 327 through 329.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Moya Shatz, Executive Director, (208) 455-8354.

SUBMISSION OF WRITTEN COMMENTS: The comment period for the rulemaking under Docket No. 48-0101-0901 has been extended. Anyone may submit written comments regarding that rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this 18th day of September, 2009.

Moya Shatz
Executive Director
Idaho Grape Growers and Wine Producers Commission
117 9th Ave., Ste. 2
P. O. Box 1218
Caldwell, ID 83606
Telephone: (208) 455-8354
Facsimile: (208) 455-8364

IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

**48.01.01 - RULES OF PROCEDURE OF THE IDAHO GRAPE GROWERS
AND WINE PRODUCERS COMMISSION**

DOCKET NO. 48-0101-0902 (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 54-3605(15), Idaho Code.

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

WEDNESDAY, OCTOBER 28, 2009 -- 9:30 to 11:00 a.m.

**J.R. WILLIAMS BUILDING
East Conference Room
700 West State St., Boise, Idaho**

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

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

Section 54-3610, Idaho Code, was revised to authorize the proposed rule changes in the 2009 legislative session. Increase to the tax rates applicable to grape growers and wineries in Idaho.

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

The tax on wine production is revised to four cents (\$.04) per gallon, seven dollars (\$7) per ton of grapes, and six dollars and sixty-eight cents (\$6.68) per one hundred sixty-seven (167) gallons of grape juice produced outside of Idaho. The tax is phased in over a three (3) year period with a cap for taxes on wineries imposed in the first year.

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 Commission may receive additional revenue from the proposed changes. Idaho Code provides persons subject to the tax with an opportunity to opt out of the tax. The Commission is not able to determine whether more taxpayers will opt out due to the revisions.

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 Moya Shatz, Executive Director, (208) 455-8354.

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 28, 2009.

DATED this 24th day of August, 2009.

Moya Shatz, Executive Director
Idaho Grape Growers and Wine Producers Commission
117 9th Ave., Ste. 2
P. O. Box 1218
Caldwell, ID 83606

Telephone: (208) 455-8354
Facsimile: (208) 455-8364

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 48-0101-0901

020. TAX AND LATE PAYMENT PENALTY.

01. **Levy and Rate of Tax.** In accordance with Section 54-3610, Idaho Code, a tax is levied and imposed on wineries and grapes used, grown, or purchased for the production of wine in Idaho. The rate of tax shall be: (3-19-07)

a. ~~One hundred dollars (\$100)~~ Four cents (\$.04) per winery gallon of wine produced during the previous calendar year. (3-19-07)()

b. ~~Five Seven~~ dollars (\$57) per acre ton of grapes cultivated harvested in Idaho for the purpose of vinification during the previous calendar year. (3-19-07)()

c. ~~Five Seven~~ dollars (\$57) per ton for grapes purchased from producers outside Idaho for the production of wine in Idaho during the previous calendar year. (3-19-07)()

d. ~~Five Six~~ dollars and sixty-eight cents (\$56.68) per one hundred sixty-seven (167) gallons, or any portion thereof, of grape juice purchased from producers outside Idaho for the production of wine in Idaho during the previous calendar year. (3-19-07)()

e. The tax rates set forth in Paragraphs 020.01.a. through 020.01.d., shall be phased in over a three-year (3) period as follows: ()

i. Thirty-three percent (33%) in fiscal year 2010; ()

ii. Sixty-six percent (66%) in fiscal year 2011; and ()

iii. One hundred percent (100%) in fiscal year 2012 and all subsequent years, except that the maximum tax levied upon any winery for fiscal year 2010 shall be one thousand dollars (\$1,000). ()

02. **Maximum Minimum Levy.** The ~~total~~ minimum taxes paid by any ~~individual~~ grower or winery shall ~~not exceed three~~ be one hundred dollars (\$100) annually. (3-19-07)()

03. **Payment of Tax.** The ~~producer cultivating grower harvesting~~ grapes for the production of wine shall pay the tax levied upon the ~~producer~~ grower. Each winery shall pay the tax levied upon the winery. Purchasers of grapes grown or grape juice produced outside Idaho shall pay taxes levied on such grapes and grape juice. All taxes shall be paid on or before June 30 of each year. (3-19-07)()

04. **Late Payment Penalty.** Persons making payment of the levied tax after the date set forth in this chapter shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. In addition to the late payment penalty, the Commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in Section 020 of these rules. (3-19-07)

05. **Opt Out Alternative.** A grower or producer may opt out of the levy of tax by submitting a letter to the Commission no later than June 30 of each year stating intent to opt out of the application of the provisions of Title 54, Chapter 36, Idaho Code, for the upcoming fiscal year. The letter shall include the grower or producer's name and address. (3-19-07)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0904

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105 and 39-107, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by October 26, 2009.

WEDNESDAY, OCTOBER 28, 2009 -- 9 a.m. to 12 noon

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Conference Room B
1410 N. Hilton, Boise, Idaho**

PRELIMINARY DRAFT: By October 7, 2009, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/air/58_0101_0904_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) has initiated this rulemaking in response to a Petition for Initiation of Rulemaking filed by Idaho Conservation League (ICL) and P4 Production, LLC (P4). In the petition, ICL and P4 requested that the Board of Environmental Quality direct DEQ to initiate negotiated rulemaking to solicit public comment and involvement in developing air quality rules designed to limit and control mercury emissions from certain facilities. The petition was granted by the Board on July 29, 2009.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in participating in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by October 30, 2009. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 26th day of August, 2009.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.03 - CONTRIBUTION RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0103-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective March 1, 2010, 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 59-1314(1) and 72-1405, 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.

Adds a new rule (102) to provide for an additional employee contribution of .04% applicable to public safety officers, as defined in Section 59-1352A, Idaho Code. Section 59-1352A, Idaho Code, provides for a \$100,000 disability benefit for public safety officers and provides that the benefit shall be funded by public safety officer contributions (not employer contributions). Renumber existing rule 102 as Rule 103.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. 09-8, pages 147 and 148.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 1st day of September, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208-334-3408

DOCKET NO. 59-0103-0901 - 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 09-8, August 5, 2009, pages 147 and 148.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.05 - SEPARATION FROM SERVICE RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0105-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 59-1314(1) and 72-1405, 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.

Amend Rule 103 to add a new Subsection 103.04 regarding interest applicable to waiting period payments.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. 09-8, pages 149 and 150.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 1st day of September, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208-334-3408

DOCKET NO. 59-0105-0901 - 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 09-8, August 5, 2009, pages 149 and 150.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - RETIREMENT RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0106-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 59-1314(1) and 72-1405, 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: Amend Rules 553, 554 and 576 to remove the requirement for "group insurance related to retiree insurance for which unused sick leave dollars can be used to pay premiums. Amend Rule 554.02 to remove obligation on PERSI to deduct insurance premiums from retirement allowance once unused sick leave credits are exhausted. Make technical corrections to Rules 131, 132 and 146 to correct cross-reference. Amend Rules 550, 552, 576 and 577 to change incorrect reference to Section 67-5339, Idaho Code to correct reference to Section 67-5333, Idaho Code.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. 09-8, pages 151 through 154.

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 Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 1st day of September, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
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Phone: 208-287-9230
Fax: 208-334-3408

DOCKET NO. 59-0106-0902 - 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 09-8, August 5, 2009, pages 151 through 154.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption

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IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

*The written comment deadline is October 28, 2009, unless otherwise listed.
(Temp & Prop) indicates that the Rule is both Temporary and Proposed.
(*PH) indicates that a Public Hearing has been scheduled for this docket.*

IDAPA 01 - BOARD OF ACCOUNTANCY **PO Box 83720, Boise, ID 83720-0002**

01-0101-0901, Idaho Accountancy Rules. Allows a licensee to apply for a retired license at age 55; updates incorporation by reference documents and corrects statutory citations.

IDAPA 02 - DEPARTMENT OF AGRICULTURE **PO Box 790, Boise, ID 83701-0790**

02.01.04 - Rules Governing the Idaho Preferred® Promotion Program.

02-0104-0901, Simplifies fee payment for new participants who join midway through the year; updates promotion opportunities to reflect current program options; clarifies annual renewal process.

02-0104-0902, Allows ISDA to charge Idaho Preferred® participants for promotional materials.

02-0105-0901, Rules Governing Certificates of Free Sale. New chapter establishes the fee and application procedures for obtaining a certificate of free sale.

02-0413-0901, Rules of the Department of Agriculture Governing Retail Raw Milk. Chapter repeal.

02-0413-0902, Rules Governing Raw Milk. Modifies raw milk quality standards and sanitary requirements for human consumption; clarifies the "cow share" program; provides a small herd exemption for facility construction requirements; incorporates by reference the sanitary milk production and milk processing provisions of the 2009 Pasteurized Milk Ordinance; establishes sanitary criteria, milk quality, and permitting protocols for "cow share" programs.

***02-0419-0901, Rules Governing Domestic Cervidae.** (*PH) Introduces herd management plans to enable the agency to conduct facility inspections and herd inventories more efficiently.

02-0431-0901, Rules Governing the Stockpiling of Agricultural Waste. New chapter establishes specific setback distances for stockpiled livestock waste that is not stored on agricultural waste storage property.

02-0501-0901, Resource Conservation and Rangeland Development Program. Addresses needed security changes; completes an update of the RCRDP loan program and removes RCRDP grant program now covered by WQPA rules; sets new application requirements and improves loan servicing.

02-0603-0901, Rules Pertaining to the Idaho Nursery and Florists Law. (Temp & Prop)

02-0604-0901, Phytosanitary and Post-Entry Seed Certification. (Temp & Prop)

Both fee rules drop the hourly rate for the issuance of federal phytosanitary certificates and initiate a \$60 per certificate fee to cover the federal administrative fee and increased costs to the programs.

02-0608-0901, Quarantine Rules Pertaining to Apples and Cherries. Removes peach, nectarine, and apricot from list of regulated articles that host apples maggots.

02-0622-0901, Noxious Weeds Rules. Updates list of noxious weeds by adding new species and removing or reclassifying currently listed species.

02-0633-0901, Organic Food Product Rules. Changes application and registration deadline to July 1st and removes late fees for certification and registration.

**IDAPA 03 - STATE ATHLETIC COMMISSION
1109 Main St., Ste. 220, Boise, ID 83702**

03.01.01 - Rules of the State Athletic Commission.

03-0101-0901, Requires application for a sanctioning permit; requires all combatants to apply for a license; adds \$30 application and renewal fee for a ring official; allows commissioner to lower the age of a ring official to 18 given good cause; changes term "boxer" to "combatant".

03-0101-0902, Defines the types of events regulated; clarifies blood testing requirements, the criteria for approval of amateur sanctioning authorities, and the annual review of such approval; provides other security in lieu of a bond; requires a physical and eye exam within 36 hours of an event; clarifies fair techniques and fouls in MMA and limits MMA contests to 3 rounds for amateur events and 5 rounds for professional events.

**IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS
PO Box 83720, Boise, ID 83720-0285**

05-0101-0901, Rules for Contract Providers. Clarifies and updates current practices; updates definitions and removes redundancies.

**IDAPA 07 - DIVISION OF BUILDING SAFETY
1090 E. Watertower St., Meridian, ID 83642**

07-0106-0901, Rules Governing the Use of the National Electrical Code. Would allow the installation of certain cables in crawl spaces to be run at angles with floor joists without the need for drilling holes or a running board.

07.02.05 - Rules Governing Plumbing Safety Licensing.

07-0205-0901, Outlines the specific skills that will be tested as part of the journeyman plumbing practical exam.

07-0205-0902, Specifies the continuing education requirements and deadlines for certificate of competency renewals for journeyman and contractor plumbers and requires division's approval of CE courses and instructors.

07-0205-0903, Requires apprentices to register for 5-year period and specialty apprentices to register for 3-year period; to be eligible to sit for the journeyman exam, an apprentice must provide the division proof of completion of the required number of employment and instructional hours.

07.03.01 - Rules of Building Safety.

07-0301-0901, Adopts 2009 editions of the International Building Code, International Residential Code, the International Energy Conservation Code, and the International Existing Building Code, with specified amendments.

07-0301-0902, Adopts 2009 edition of the International Energy Conservation Code with specified amendments.

07-0301-0903, Provides notice of availability of guidance, educational, and technical support to school districts to implement the processes of integrated design and fundamental commissioning and of a list of all third party commissioning agents in the state; provides for a process of performing and certifying the annual optimization review to ensure energy efficiency; and provides for certifications regarding qualification of schools for the building replacement value calculation.

07-0303-0901, Rules for Modular Buildings. Identifies organizations designated by the Board from which inspectors may obtain certification as a qualified inspector.

07.03.11 - Rules Governing Manufactured/Mobile Home Industry Licensing.

07-0311-0901, Provides for civil penalties for violators of Idaho's manufactured housing industry licensing laws and rules; more accurately identifies those who sell manufactured homes as "retailers" instead of "dealers."

07-0311-0902, (Temp & Prop) No longer requires that original and renewal applications for manufactured home retailers (dealers) and installers show proof of completion of required education hours.

07-0601-0901, Rules Governing Uniform School Building Safety. Eliminates references to specific editions of the various codes that are adopted and updates the statutory authority requiring code adoption.

07.07.01 - Rules Governing the Installation of Heating, Ventilation and Air Conditioning.

07-0701-0901, Provides the division authority to impose a civil penalty against any person who fails to request an inspection of an HVAC installation.

07-0701-0902, Amends the Fuel Gas Code to require piping, regulators, meters, and other equipment to be installed in a manner that protects it from any physical damage and heavy snowfall; specifies requirements for the location and minimum spacing of certain gas piping stubbed out for meter or regulator connection; makes the International Fuel Gas Code and the International Mechanical Code the applicable minimum standards for installations performed in residential buildings and commercial buildings.

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

PO Box 83720, Boise, ID 83720-0037

08-0104-0901, Rules Governing Residency Classification. (Temp & Prop) Changes align with statutory changes and clarify language allowing students to retain resident status when they leave the state for educational purposes.

08-0111-0901, Registration of Postsecondary Educational Institutions and Proprietary Schools. (Temp & Prop) Clarifies that postsecondary institutions must register with the State Board to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate.

08-0114-0901, Idaho Rural Physician Incentive Program. New chapter sets out requirements for program and procedures for accessing the rural physicians incentive fund.

08.02.02 - Rules Governing Uniformity.

08-0202-0906, Requires teachers and administrators to take 1 of 3 courses in Mathematical Thinking for Instruction that most closely aligns with their current assignments as part of their professional development.

08-0202-0907, Creates a mathematical consulting teacher endorsement to ensure that qualified educators are conducting follow up support for the Mathematical Thinking for Instruction course.

08.02.03 - Rules Governing Thoroughness.

08-0203-0905, Defines an Idaho high school credit as a minimum of 60 hours of instruction; provides a waiver process for requiring less than 60 hours of total instruction if substantiated; establishes a policy for mastery of a subject.

08-0203-0906, (Temp & Prop) Defines and establishes the Idaho Special Education Manual as the official policies, procedures and criteria for special education in Idaho in accordance with federal law; removes obsolete references and requirements.

08-0203-0907, Changes the term "Idaho Achievement Standards" to the "Idaho Content Standards".

IDAPA 09 - DEPARTMENT OF LABOR

317 W. Main St., Boise, ID 83735

09-0301-0901, Rules of the Rural Broadband Development Matching Fund Program. (Temp & Prop) Chapter repeal.

IDAPA 11 - IDAHO STATE POLICE

700 S. Stratford Drive, Meridian, ID 83643

11-0501-0901, Rules Governing Alcohol Beverage Control. Increases fingerprint fees; establishes definitions and fees for multi-purpose arenas; provides specific circumstances when minors are permitted or prohibited on premises; requires display of suspension notices for providing notification to the public.

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council.

11-1101-0901, (Temp & Prop) Establishes that the certification of a former officer who is under decertification investigation will not lapse while under investigation and requires applicants to disclose any prior decertification proceedings against them and the results thereof.

11-1101-0902, Establishes requirements for Conducted Energy Device certification; updates language to encompass all disciplines the Council certifies; requires an officer charged with a felony or non-traffic misdemeanor to notify the

POST executive director; establishes that a decertified officer is not eligible for POST certification of any kind in the future and that an officer under decertification investigation is not eligible for certification while under investigation; updates contact information.

11-1104-0901, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers. Allows the POST executive director to review “general under honorable conditions” and “uncharacterized” military discharges for possible waiver; requires applicants to disclose any decertification proceedings against them and the results thereof.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
PO Box 25, Boise, ID 83707

13-0103-0901, Public Use of the Lands Owned or Controlled by the Department of Fish and Game. Allows director to delegate more authority to regional staff; defines “designated roads and trails” and “commercial use”; prohibits certain unpermitted uses, such as landing or launching aircraft, discharging paintball guns, placing geocaches, group events of over 15 people, and use of non-certified weed-seed-free hay; prohibits leaving portable hunting blinds and tree stands unattended for more than 30 minutes.

13-0111-0901, Rules Governing Fish. Eliminates definition of “no bait”; corrects wording regarding the 2 pole permit, steelhead and salmon permits, and recording of harvested fish; requires a sliding sinker for sturgeon fishing; allows unlimited poles for boat fishing on Lake Pend Oreille in conjunction with the Angler Incentive Program; amends requirements for trapping or seining minnows or crayfish; eliminates statewide bag and possession limits to allow regional limits; requires a maximum 5/8” hook gap for steelhead fishing.

13.01.14 - Rules Governing Falconry.

13-0114-0901, Repeal of chapter.

13-0114-0902, Chapter rewrite implements major revisions made to federal falconry regulations that eliminates federal permitting requirements and increases state management authority for falconry.

IDAPA 15 - OFFICE OF THE GOVERNOR - MILITARY DIVISION
4040 Guard Street, Boise, ID 83705

Bureau of Homeland Security

15-0301-0901, Hazardous Substance Response Rules. Creates local emergency response authorities and regional response teams; establishes the location and jurisdiction of regional response teams; determines liability for incident response costs; provides procedures for notification to local and state emergency response authorities of a hazardous substance incident and the call-out procedure for emergency response agencies; provides for cost recovery and cost reimbursement procedures for emergency response agencies.

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

16-0202-0902, Rules of the Emergency Medical Services (EMS) Physician Commission. (Temp & Prop) Chapter rewrite defines the allowable scope of practice, act and duties that can be performed by licensed EMS personnel and defines required level of physician supervision; incorporates by reference the Commission's Standards Manual; and conforms rule to statutory changes.

16-0203-0901, Rules Governing Emergency Medical Services. Changes align definitions and terms with statutory changes; removes waiver provision for nontransport EMS service minimum standards waiver requests; removes references to EMT-1 licensure level.

16-0304-0904, Rules Governing the Food Stamp Program in Idaho. (Temp & Prop) Clarifies the criteria used to determine a full month of income for food stamp households.

16.03.09 - Medicaid Basic Plan Benefits.

16-0309-0903, Removes limitation on the “place of service” where medically necessary services can be delivered; revises psychosocial rehabilitation rules to match new rewritten mental health rules; revises paraprofessionals rules to align with licensure rules and DDA rules.

16-0309-0904, Removes the cap on benefits to allow a participant to earn the maximum number of points in both the Behavioral Preventative Health and Wellness Preventative Health programs; limits points received to offset

premiums only; aligns pharmacy provider qualifications; removes sporting or fitness programs; removes references to vouchers, and requires prior authorization for PHA services and products.

16.03.10 - Medicaid Enhanced Plan Benefits.

16-0310-0905, Updates Personal Care Services to reflect changes in the payment methodology for PCS homes; separates, aligns, clarifies, and augments rules for adult PCS and children's PCS; and clarifies PCS medication rules.

16-0310-0906, Removes requirement that developmental disability and psychosocial rehabilitation providers must contract with schools to provide services; removes references to the ISSH Waiver; revises rule on negotiations for the plan of service since Independent Assessor Provider no longer reviews individual support plans.

16-0310-0907, Removes current fiscal intermediary rules for the HCBS A&D waiver and replaces them with a reference to the self-direction rules found in IDAPA 16.03.13, and references to requirements for providers of FI services; clarifies agency training and criminal history requirements that pertain to personal assistance agencies.

16-0313-0901, Consumer-Directed Services. (Temp & Prop) Aligns, clarifies, and augments the self-direction programs to include the HCBS A&D programs; requires use of a provider agreement rather than a contract with the fiscal employer agent.

16-0410-0902, Rules Governing the Community Services Block Grant Program. (Temp & Prop) Excludes child support income when determining program eligibility; increases income limit for CSBG Program eligibility to 200% of the federal poverty guidelines.

16-0414-0901, Rules Governing the Low Income Home Energy Assistance Program. (Temp & Prop) Uses 60% of State Median Income to determine income eligibility and excludes child support as countable income.

16-0750-0901, Rules and Minimum Standards Governing Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. Provides the minimum standards, licensing, and regulations for a certificate of approval to operate a nonhospital, medically-monitored detoxification/mental health diversion unit in Idaho.

**IDAPA 17 - INDUSTRIAL COMMISSION
PO Box 83720, Boise, ID 83720-0041**

17-0203-0901, Security for Compensation. Self-insured employers must maintain a licensed resident claims adjuster located within Idaho to service claims; requires documents to be date-stamped with the name of the receiving office and by each receiving agent or vendor acting on behalf of the claims office to determine where delays in claims processing may be occurring; requires prompt and accurate reporting of each adjuster for each policyholder of the surety; deletes obsolete order.

17.02.08 - Miscellaneous Provisions.

17-0208-0902, Requires attorneys to provide an itemization of the amount and disposition of any and all medical bills or medical obligations to third-party payers remaining due after approval of a lump sum settlement.

17-0208-0903, Updates the conversion factors on the medical fee schedule.

17.06.01 through 17.06.05 - Boiler and Pressure Vessel Safety Rules.

17-0601-0901, General. Chapter repeal.

17-0602-0901, Administration. Chapter repeal.

17-0603-0901, Inspections. Chapter repeal.

17-0604-0901, Repairs and Alterations. Chapter repeal.

17-0605-0901, Boiler Attendants. Chapter repeal.

17.08 - Idaho Minimum Safety Standards and Practices for Logging.

17-0801-0901, General Provisions. Updates meet OSHA requirements regarding logging signs.

17-0802-0901, Health, Safety, and Sanitation. Updates meet OSHA requirements relating to first aid transportation, required first aid training, identifying proper contents of first aid kits, clarifying safety shoe and life jacket requirements.

17-0803-0901, Explosives and Blasting. Updates meet OSHA requirements relating to crimping of fused detonator caps.

17-0805-0901, Signals and Signal Systems. Updates meet OSHA requirements relating to signaling of dangerous conditions.

17-0808-0901, *Falling and Bucking.* Updates meet OSHA requirements relating to first aid training by logging cutters, back-cuts of timber, and properly identifies illustrations of undercuts.

17-0809-0901, *Rigging, Lines, Blocks, and Shackles.* Updates meet OSHA requirements relating to rope clip fastening.

17-0810-0901, *Canopy and Canopy Construction for Logging Equipment.* Updates meet OSHA requirements relating to seatbelts for logging construction equipment.

17-0816-0901, *Recommended Safety Program.* Updates meet OSHA requirements relating to first aid training, and to clarify reporting of injuries and fatalities, management responsibilities, record keeping and establishment of a safety committee.

IDAPA 18 - DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-0043

18-0144-0901, *Schedule of Fees, Licenses and Miscellaneous Charges.* (Temp & Prop) Establishes application, licensing, and renewal fees for an Independent Review Organization.

18-0153-0901, *Continuing Education.* Changes law and ethics course requirement; adds general subjects acceptable for public adjusters; clarifies the qualifications and standards for credit for courses taught on-line; requires reporting of course completion within 180 days or 30 days prior to the producer's license expiration date; addresses requirements for pursuing independent study courses; provides for additional credit when an individual teaches a course for credit.

IDAPA 19 - BOARD OF DENTISTRY

PO Box 83720, Boise, ID 83720-0021

19-0101-0901, *Rules of the State Board of Dentistry.* Provides procedures for specialty examinations for licensure for dental specialists; restricts continuing education credits from self-study for license renewals to 8 for dentists and 6 for dental hygienists; allows a dentist with no anesthesia permit to use other anesthesia personnel in his office during dental procedures, as long as the dentist's facilities meet anesthesia permit holder requirements.

IDAPA 20 - DEPARTMENT OF LANDS

PO Box 83720, Boise, ID 83720-0043

20-0304-0901, *Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho. (*PH) Removes fees from rule and allows the Board to set fees per statute; clarifies several definitions and encroachment standards; allows some boat lifts to be approved with an abbreviated permitting process; provides for lake specific encroachment standards.

20-0317-0901, *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.* Removes fees from rule and allows the Board to set the fees; clarifies the rights granted, how rental rates are determined, and the lease modification process.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

1109 Main St., Suite 220, Boise, ID 83702

24-0101-0901, *Rules of the Board of Architectural Examiners.* (Temp & Prop) Updates the board's website address and the incorporation by reference section to include the 2009-2010 NCARB Handbook for Interns and Architects.

24-0301-0901, *Rules of the Board of Chiropractic Physicians.* Updates the board's website address; adds definition for direct personal supervision; clarifies who qualifies as a chiropractic intern and when a temporary permit is available.

24-0501-0901, *Rules of the Board of Drinking Water and Wastewater Professionals.* Updates the board's website address; reduces fees for endorsement, original license, and license renewal; creates, defines, and sets forth the qualifications for a Class 1 Restricted license and Very Small Wastewater System license; clarifies an ambiguity in the qualifications for a land application license.

24-0601-0901, *Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants.* (Temp & Prop) HB 261 moved the licensing from the Board of Medicine to the Bureau of Occupational Licenses; changes comply with statutory amendments to protect the public health, safety and welfare.

24-0701-0901, Rules of the Idaho State Board of Landscape Architects. Clarifies reference requirement for applicants; updates web address.

24-0801-0901, Rules of the State Board of Morticians. Updates the board's website address; outlines the requirements for continuing education to maintain licensee competency.

24-1001-0901, Rules of the State Board of Optometry. (Temp & Prop) Defines "opticianry"; clarifies that failure to release contact lens prescriptions as required by federal law could be gross incompetence; clarifies the expiration date for prescriptions, spectacles and contact lenses.

24-1101-0901, Rules of the State Board of Podiatry. Updates the board's contact information; updates the American Podiatric Medical Association's Code of Ethics to current edition; clarifies licensure by endorsement requirements for residency programs and disciplinary action.

24.12.01 - Rules of the Idaho State Board of Psychologist Examiners.

24-1201-0901, Creates an inactive status; establishes and clarifies board's ability to require a licensee complete a rehabilitation program as part of discipline for a violation; allows board to waive a licensee's continuing education in a hardship circumstance; allows additional activities to qualify for continuing education and clarifies continuing education requirements.

24-1201-0902, Clarifies the experience required for a psychology license to allow credit for an internship; allow for licensure through endorsement; establishes a temporary license to practice in Idaho in an emergency or special circumstance.

24-1501-0901, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Clarifies the content of the graduate program to ensure competency; allows for supervision to be provided by a counselor education faculty member for the benefit of a student and it clarifies interns; supervised experience need not be provided by a registered supervisor for out-of-state applicants; deletes reference to professional counselor administration fees for examination; clarifies endorsement for applicants from a foreign country; updates language for various methods of meeting licensure requirements; updates Board website address.

24-1601-0901, Rules of the State Board of Dentistry. Updates board contact information; clarifies that supervising denturist or dentist must be present and directly observe any intern interaction with a patient.

24-1701-0901, Rules of the State Board of Acupuncture. Decreases application and annual renewal fees for licensure, certification, and technician certification; updates board's website address.

24-1801-0901, Rules of the Real Estate Appraiser Board. Updates the incorporation by reference of the Uniform Standards of Professional Appraisal Practice document to the current edition; clarifies the definition of a classroom hour and a residential unit; increases license renewal fee to \$350; adds a lack of activity section to allow for termination of incomplete applications upon notification; clarifies requirements for licensure as established by the federal Appraisal Qualifications Board; clarifies continuing education for registered trainees; corrects education classroom hours for residential appraisers and clarifies education requirements for general appraisers in compliance with the AQB; clarifies continuing education requirements and provides an exemption from CE for health or other good cause.

24-1901-0901, Rules of the Board of Examiners of Residential Care Facility Administrators. Updates Board's contact information; allows for termination of inactive applications upon notification to the applicant; clarifies qualifications for applicants licensed as nursing home administrators to ensure competency; adds a special exemption from continuing education requirements to allow the board to consider a hardship.

24-2201-0901, Rules of the Idaho Liquefied Petroleum Gas Safety Board. Updates board's website address; increases fees for inspections to align the board's revenues to expenditures to eliminate its budget deficit.

24-2301-0901, Rules of the Speech and Hearing Services Licensure Board. Updates board's website address; establishes an endorsement fee; increases renewal fee; exam fees for unexcused applicants are non refundable; clarifies the need for continuing education when reinstating a license and the requirements for endorsement for out-of-state applicants; adds provision to carry over continuing education and adds a special exemption for continuing

education; clarifies issuance of provisional permits and number of permit holders that can be supervised at a time; clarifies what records must be maintained by the supervisor of a hearing aid dealer and fitter and the contents of quarterly reports for audiology and hearing aid dealers and fitters.

24-2601-0901, Rules of the Idaho Board of Midwifery. Establishes the framework for licensure and the scope of practice for midwives.

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

1365 North Orchard, Suite 172, Boise, ID 83706

25-0101-0901, Rules of the Outfitters and Guides Licensing Board. Updates board's website address; adds additional activities to the definition of "hazardous excursions"; eliminates the multiple-year license and clarifies on line fees, Outfitter bond cancellations and the fee for controlled hunts; eliminates the rule associated with cash bonds; clarifies executive director's limited authority to grant or deny certain license applications or temporary authorization applications.

IDAPA 26 - 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.

26-0120-0902, Prohibits the use of saddle or other recreational packing livestock on trails, roadways, and other areas unless designated through signing for that purpose or with permission of the park manager or designee.

26-0120-0903, Provides definitive guidance for agency staff in wildfire management by providing procedures to follow when large geographic areas may be affected by fire closures.

26-0120-0904, Clarifies that any hunting or pursuit of wildlife in a park setting must also comply with current IDFG rules and regulations.

26-0131-0901, Rules Governing the Administration of Idaho Department of Parks and Recreation Recreational Program Grant Funds. Increases the off-highway vehicle registration sticker fee by \$1 to fund county sheriffs for off-highway vehicle related law enforcement and establishes a formula to distribute these funds to sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program.

IDAPA 27 - BOARD OF PHARMACY

PO Box 83720, Boise, ID 83720-0067

27.01.01 - Rules of the Idaho State Board of Pharmacy.

27-0101-0901, Amends standards of conduct to require licensees to provide the board with notice of any changes to the licensee's name, address, or telephone number within 10 business days from the date of any such change.

27-0101-0902, Establishes criteria for registration of drug outlets and pharmacists engaged in the practice of telepharmacy across state lines; provides necessary regulatory framework for the practice of telepharmacy across state lines to meet statutory mandates; establishes a registration fee and annual renewal fee for out-of-state pharmacists engaged in the practice of telepharmacy across state lines; deletes the Idaho Telepharmacy Pilot Project rules; authorizes and establishes criteria for outsourcing, under certain circumstances, of "central prescription processing or filling" to a "central pharmacy" and defines those terms; defines "institution engaged in the practice of telepharmacy across state lines," "central order entry pharmacy," and "hospital system."

27-0101-0903, Requires pharmacies to notify the board in writing of their hours of operation and of any change in those hours at least 30 days prior to commencing new hours of operation and requires pharmacies to remain open during their stated hours of operation and to maintain sufficient staffing to ensure pharmacies are open during their stated business hours.

27-0101-0904, Provides standards and procedures for the inspection, distribution, transfer, acceptance, storage, and dispensing of donated drugs; and establishes provisions to enforce the Idaho Legend Drug Donation Act.

27-0101-0905, Clarifies that a pharmacist, filling a drug order for a legend drug that is not a controlled substance, may provide up to a 3-month supply when the practitioner has written a prescription for a smaller supply with refills in sufficient numbers to fill the larger supply.

27-0101-0906, Sets forth conditions for a licensed pharmacist to practice outside a licensed pharmacy; addresses access to records and information, provides for security and documentation, and mandates the maintenance of records to provide accountability and an audit trail.

27-0101-0907, Adds repackagers who are authorized distributors of record for FDA registered manufacturers to the definition of normal distribution channel per the Wholesale Drug Distribution Act

27-0101-0908, Clarifies that a pharmacy may transfer a prescription to another pharmacy without first having to fill it and clarifies the recordkeeping responsibility of the receiving pharmacy.

**IDAPA 28 - DEPARTMENT OF COMMERCE
PO Box 83720, Boise, ID 83720-0093**

28.02.03 - Rules of the Idaho Regional Travel and Convention Grant Program.

28-0203-0901, (Temp & Prop) Chapter repeal.

28-0203-0902, (Temp & Prop) Establishes framework for the distribution of grant funds to eligible non-profit, incorporated organizations to stimulate and expand the travel and convention industry throughout the state.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION
PO Box 83720, Boise, ID 83720-0074**

31-4101-0901, The Telephone Customer Relations Rules. Simplifies regulatory requirements and allows companies more flexibility to respond to customers' service requests, while maintaining some service quality standards related to basic local exchange service to encourage competition in telephone services.

31-4102-0901, Information to Customers of Telephone Companies. Chapter repeal.

31-4201-0901, The Title 62 Telephone Corporation Rules. Chapter repeal.

**IDAPA 33 - IDAHO REAL ESTATE COMMISSION
PO Box 83720, Boise, ID 83720-0077**

33.01.01 - Rules of the Idaho Real Estate Commission.

***33-0101-0901**, (*PH) Establishes the conditions for accepting a late license renewal application.

***33-0101-0902**, (*PH) Clarifies that a late renewal constitutes a lapse of the required errors and omissions coverage, even if coverage is later made retroactive by the carrier.

33-0102-0901, Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases. Provides that a non-Idaho attorney may represent a party and appear before the commission in a contested case under the procedures for limited admission.

33-0103-0901, Rules Governing Subdivided Lands Registration. Reduces registration fees to encourage use of the on-line documents management system.

**IDAPA 35 - IDAHO TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**

35-0101-0901, Income Tax Administrative Rules. Adds new tax brackets; includes trusts and estates into discussion of capital gains deduction and pass-through entities; modifies how a taxpayer can make the election to forego the net operating loss carryback by removing the option of attaching the federal election; provides rules for nonresidents for calculating deductions in computing Idaho adjusted gross income; provides that unemployment compensation for nonresidents is sourced to state that paid it; directs taxpayers on how to make intercompany eliminations; provides that commissions and fees related to the sale of another taxpayer's real property are sourced to the state where the property related to the commission and fees is located; clarifies that one qualified corporation within the water's edge group that makes the election binds the other corporations to that election, including corporations added to the combined group in years after the initial election; states that filing of a protective 1120-F return by itself will not constitute the filing of a federal return for purposes of the water's edge combined report; allows a resident trust or estate an income tax credit for taxes paid to other states; corrects terms and delete obsolete information relating to the tax paid by an S corporation; notes the reduction required to qualified investment for grants received from the rural Idaho economic development biofuel infrastructure matching grant fund; amends grocery tax credit; requires all W-2s to be filed with commission by the last day of February.

35-0102-0901, Idaho Sales and Use Tax Administrative Rules. Contractors who install materials into real property are consumers of the property and material suppliers who do not install building materials are retailers and are required to collect sales tax; defines "transportation of freight or passengers" and stipulates that service provision must be indiscriminate and must transport people and goods; removes terms "zoos and museums" from rule; deletes tire pressure requirement for ATVs and clarifies that the new resident exemption applies to motor vehicles, privately owned aircraft and off-road vehicles; if seller holds valid certificate he is not required to collect sales tax; amends the Demonstration Pilot Project Fund requirements.

35.01.03 - Property Tax Administrative Rules.

35-0103-0902, Updates references to appropriate and current editions of guides and professional standards; clarifies that a candidate must pass at least 2 appraisal courses in the property tax certification program; rewrites assessment procedures for section 42 low income housing properties; requires commission to notify the urban renewal agency of the pending dissolution of a revenue allocation area; makes January 1 the date for establishing market value for determining the occupancy value upon which the tax is based; requires assessor to notify commission when the homeowner's exemption is erroneously claimed; provides the reporting process to be used by taxpayers per statute; when a taxing district annexes parcels, the annexation value may be included on the new construction roll, but the new construction roll can not include the value of new construction that has been included in the annexation value; require that the personal property declaration form be filed for taxpayers who are eligible for and expect to receive the benefit of the QIE; define the due date as irrespective of any income tax extensions that may have been granted.

35-0103-0903, (Temp & Prop) Provides and explains the formula to compute the voter test; adds school two-year temporary supplemental funds and the Cooperative Service Agency funds to list of funds to be left in the base when computing levies for taxing districts encompassing urban renewable revenue allocation areas.

35-0105-0902, Motor Fuels Tax Administrative Rules. Ethanol must be reported as a receipt on the motor fuels distributors report when it is blended with gasoline; deductions on the monthly motor fuel distributor report for ethanol and biodiesel cannot be claimed for periods before 6/1/09; requires motor fuels distributor who reports at least 25 receipts or disbursements of motor fuel on its monthly fuel tax return to file electronically and adds an exemption to this; exempts persons who produce 5,000 gallons or less of biodiesel fuel in a calendar year for their personal consumption from paying the 1¢ per gallon petroleum transfer fee; informs consumers of new penalties for using dyed diesel fuel for an illegal purpose; sets recordkeeping requirements for carriers registered under the Full Fee Plan.

35-0109-0901, Idaho County Option Kitchen and Table Wine Tax Administrative Rules.**35-0112-0901, Idaho Beer Tax Administrative Rules.**

Both rulemakings allow for quarterly, semiannual, and annual returns for distributors and wine direct shippers who are remitting less than \$600 per reporting of tax.

35.02.01 - Tax Commission Administration and Enforcement Rules.

35-0201-0901, Corrects Twin Fall's field office address; adds recordkeeping and retention requirements; adds interest rate and applicable Revenue Ruling for 2010 to the table that identifies this information by year; clarifies what a "perfected protest" is and to define "unperfected protest"; addresses "settlements" rather than "compromises," defines "disputed liability," "doubt as to collectability" and "economic hardship"; adds "promotion of effective tax administration" as an additional ground; adds the ISP's Alcohol Beverage Control Bureau to the list of disclosure agreements.

35-0201-0902, (Temp & Prop) Details procedures the commission will follow when the commission settles an administrative proceeding in which the amount in dispute exceeds \$50,000.

IDAPA 38 - DEPARTMENT OF ADMINISTRATION**PO Box 83720, Boise, ID 83720-0003**

38-0301-0901, Rules Governing Group Insurance. Establishes active and retired state employee eligibility requirements and the 2 year supplemental reimbursement for individuals in the Medicare prescription drug gap.

38.04.04 - Rules Governing Capitol Mall Parking.

38-0404-0901, Chapter repeal.

38-0404-0902, Chapter rewrite updates rules with existing or desired practices and parking space limitations.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**PO Box 7129, Boise ID 83707-1129**

39-0222-0901, Rules Governing Registration and Permit Fee Administration. Allows cancellation of future installment payment plan privileges after 2 or more suspensions and provides for the reinstatement of installment payment plan privileges after 12 consecutive months of no suspensions of any type on their account; provides for collection of a \$50 installment payment plan fee for each plan to cover administrative costs.

39-0241-0901, Rules Governing Special Provisions Applicable to Fees for Services. Removes fixed rates and replaces them with a reference to charges in statute; change terms "microfilm" to "imaged" and "magnetic tapes" to "electronic media".

39-0260-0901, Rules Governing License Plate Provisions. Provides for issuing Restricted Vehicle plates to Idaho licensed motorbike, all terrain vehicle, and utility vehicle dealers and Restricted Vehicle dealer plates and wrecker plates; clarifies what is considered an unacceptable personalized plate message; provides for the creation of a business logo plate available as permanent commercial trailer plates for businesses wanting their own logo plate for registering their commercial trailers and provides for the periodic validation for non-resident owners every 3 years.

39-0312-0901, Rules Governing Safety Requirements of Overlegal Permits. Changes the required dimension for flags from 12"x12" to 18"x18" per federal regulation.

39-0316-0901, Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads. Allows for 7 feet of front trailer overhang for night operations on 2-lane, 2-way highways; overhangs exceeding 7 feet will be restricted to daylight only travel when operating on 2-lane, 2-way highways.

39-0341-0901, Rules Governing Traffic Control Devices. Adopts by reference the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways; adds conforming additions to the manual; allows the optional use of the IdaShield object marker for additional delineation of non-signalized at-grade railroad/road crossings of public roads.

39-0345-0901, Rules Governing Aircraft Registration. Clarifies required application information for aircraft registration.

**IDAPA 40 - IDAHO COMMISSION ON THE ARTS
2410 Old Penitentiary Rd. N., Boise, ID 83712**

40-0101-0901, Rules of the Idaho Commission on the Arts. Changes revise deadline dates for consistency; identify eligible artists and art organizations; provides that ongoing projects and programs are eligible for grants.

**IDAPA 46 - BOARD OF VETERINARY MEDICINE
PO Box 7249, Boise, ID 83707**

46-0101-0901, Rules of the State of Idaho Board of Veterinary Medicine. Adopts by reference the April 2008 version of the Principles of Veterinary Medical Ethics of the AVMA; provides that applicants for veterinarian technician licensure provide certified copies of school records or letters verifying completion of education requirements; clarifies that technician applicants may take the state jurisprudence examination more than once, but at three month intervals; eliminates multiple references in various parts of the rules requiring technicians and assistants to be employed by a supervising veterinarian; strikes verbal abuse or harassment of patient as grounds for discipline of a veterinary technician to be consistent with grounds for discipline of a veterinarian; requires that the route of administration of drugs be noted in the patient's medical records; requires that veterinarians provide a copy of a patient's records within a specified period of time; changes time period for a veterinarian to provide a written order as a follow-up to an oral order given a veterinary drug outlet; clarifies the disposal of controlled substances and outdated stock and material; removes a reference to law enforcement agencies and personnel as certified euthanasia technicians; modifies requirements on needle sizes for euthanasia agencies; adds requirement that drugs approved for use by certified euthanasia technicians be transported only in a storage cabinet securely bolted to the transporting vehicle; modifies the supplies and items required to be in a euthanasia room, including current certifications; strikes reference to law enforcement CETs working under the supervision of a veterinarian; clarifies provisions for reinstatement of a CET.

**IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION
PO Box 83720, Boise, ID 83720-0037**

47-0101-0901, Rules of the Idaho Division of Vocational Rehabilitation. Clarifies the appeals process.

**IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION
PO Box 1218, Caldwell, ID 83606**

***48-0101-0902, Rules of the Idaho Grape Growers and Wine Producers Commission.** (*PH) Revises the tax (to be phased in over a 3-year period with a cap for taxes on wineries imposed in the first year) on wine production to \$.04 per gallon, \$7 per ton of grapes, and \$6.68 per 167 gallons of grape juice produced outside of Idaho.

NOTICE OF PROCLAMATION OF RULEMAKING

Board of Correction

06-0101-0901, Rules of the Board of Correction.

NOTICE OF ADOPTION OF TEMPORARY RULES

Dept. of Health and Welfare

16-0210-0902, Idaho Reportable Diseases.

16-0603-0902, Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs.

NOTICE OF PUBLIC HEARING

Dept. of Education

08-0202-0905, Rules Governing Uniformity.

08-0203-0903, Rules Governing Thoroughness.

Idaho Grape Growers and Wine Producers Commission

48-0101-0901, Rules of the Idaho Grape Growers and Wine Producers Commission

NOTICE OF NEGOTIATED RULEMAKING MEETINGS

Dept. of Agriculture

02-0414-0902, Rules Governing Dairy Waste.

Dept. of Environmental Quality

58-0101-0901, Rules Governing the Control of Air Pollution in Idaho.

Please refer to the Idaho Administrative Bulletin, **October 7, 2009, Volume 09-10**, for all rulemaking notices and for the text of temporary, proposed and final rules, public hearings and negotiated rulemaking meeting schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code, or for information on purchasing the Bulletin and other rules publications, visit our website at www.adm.idaho.gov/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of the Administrative Rules Coordinator, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK,
YOU MUST BE CONNECTED TO THE INTERNET.**

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